



rdi Report

Rural Development Institute Reports on Foreign Aid and Development

#120

February 2004

**Ejidos and Comunidades in
Oaxaca, Mexico: Impact of the
1992 Reforms**

Jennifer Brown



RDI Reports on Foreign Aid and Development #120

Ejidos and Comunidades in Oaxaca, Mexico: Impact of the 1992 Reforms

Jennifer Brown



February 2004

This report may be reproduced in whole or
in part with acknowledgment as to source.

The Rural Development Institute (RDI), located in Seattle, Washington, USA, is a nonprofit 501(c)(3) corporation. RDI is a unique organization of lawyers devoted to problems of land reform and related issues in less developed countries and in countries whose economies are undergoing transition. RDI's goal is to assist in alleviating world poverty and instability through land reform and rural development. RDI staff have conducted field research and advised on land reform issues in over 40 countries in Asia, Latin America, Africa, Eastern Europe and the Middle East. For more information, visit the RDI web site at <www.rdiland.org>.

Jennifer Brown is a Staff Attorney at the Rural Development Institute (jenniferb@rdiland.org).

RDI thanks the Compton Foundation for its support of this research.

For more information about RDI, visit the RDI web site at <www.rdiland.org>. Correspondence may be addressed to the author at the Rural Development Institute, 1411 Fourth Avenue, Suite 910, Seattle, Washington 98101, USA, or emailed to <jenniferb@rdiland.org>.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
I. INTRODUCTION	3
II. LAND POLICY AND THE 1992 AGRARIAN LAW	4
III. CURRENT LEGAL FRAMEWORK AND RESEARCH FINDINGS	6
A. Land Use.....	8
B. Internal Governance and Membership.....	12
C. Registration and Certification	15
D. Transfer of Land and Privatization.....	20
E. Leasing Land.....	23
F. Partition and Inheritance.....	24
G. Credit.....	25
H. Conflicts and Dispute Resolution.....	26
IV. CONCLUSION	29

Executive Summary

In 1992 the Mexican Government made substantial changes to the communal agrarian structure that has governed fully half of the country's agricultural land (103 million hectares) since the land reform that followed the 1910 Mexican Revolution. These changes allow once inalienable *ejidal* land parcels (but not *comunidad* land, which is communally held by indigenous groups) to be transferred, leased, used as collateral, and in some cases, fully privatized. The Rural Development Institute (RDI) visited Oaxaca State to investigate the current impact of these reforms.

Concurrent with the implementation of these reforms, the federal government launched a program to certify and register *ejidal* and *comunidad* land rights. This certification process forced the resolution of many long-standing disputes and enhanced tenure security by protecting against future encroachments and border disputes.

While farmers are generally positive about the certification program, which has helped solve disputes and increase security, few have taken the additional step of fully privatizing their holdings. The advantages of privatization mainly include the unrestricted ability to sell the land and perhaps an increased ability to access formal credit. Farmers interviewed for this research, however, saw little benefit to full privatization, because they believe their certified, long-term use rights are secure. Farmers are only interested in privatization for the purpose of selling land, usually for non-agricultural purposes. The possible incentive of better access to formal credit did not influence farmers to privatize. Moreover, privatization entails higher land taxes.

Few farmers interviewed in Oaxaca have taken advantage of the new ability to lease out land, and the level of legal leasing found in the studied areas of Oaxaca appears to be similar to the level of illegal leasing occurring before the reforms. This, however, could very well be the result of the widespread lack of understanding of the new legal ability to lease land.

Similarly, the new ability to use *ejidal* land as collateral has not spurred new investment in agricultural land in Oaxaca; banks were largely unwilling to use *ejidal* plots as collateral. None of the interviewed farmers stated that they had used their *ejidal* plots as collateral for formal loans.

Finally, and perhaps most troubling, the reforms have had the impact of eroding women's rights on *ejidos* and *comunidades*. Unless they are *ejidatarios* or *comuneros* with land rights (generally only female heads of household are), women have no administration or disposal rights over *ejidal* or *comunidad* land rights.

In this report we offer several preliminary recommendations:

- *Provide education to social sector farmers about the currently misunderstood aspects of the Agrarian Law regarding land transfers and leases.*
- *Consider removing current disincentives to privatization. Ejidal parcels are not being accepted by banks as collateral; privatization may allow such farmers to access credit necessary for productive operation and investments. A current disincentive to privatization is the fact that land taxes rise sharply upon privatization. Consider granting an exemption for newly privatized parcels.*
- *Provide government assistance to social sector farmers on par with assistance that has previously been provided to private farmers.*
- *Amend the Agrarian Law and alter the certification process to permit married couples or those in consensual unions the right to jointly hold ejidal or comunidade rights.*
- *Permit social sector farmers to partition their land rights for inheritance purposes. Such partitions are occurring informally. The legal bar to partition creates an incentive not to update registration records, which are currently being brought up-to-date at much expense.*

I. INTRODUCTION

In an effort to revitalize the social sector of Mexican agriculture, in 1992 the government of President Carlos Salinas de Gortari made fundamental changes to Mexico's Constitution and promulgated a new Agrarian Law.¹ The social sector includes collectively owned (but usually individually cultivated) land. Within the social sector there are two distinct forms of group ownership, *ejidal* and *comunal*, each of which will be further described below. These reforms allow *ejidal* land (communally held, with farmers holding use rights to individual parcels) to be leased, mortgaged, transferred and, if approved by two-thirds of the *ejidatarios*, privatized. Such land had been non-transferable and inalienable (other than through inheritance) prior to the reforms.

These reforms impacted a significant amount of land in Mexico. As of 1991, half of the agricultural land in Mexico was held by the *ejidos* and *comunidades*.² These changes were born out of a new "economic vision" for agriculture and a hope that, by privatizing the social sector, commercial agriculture would replace subsistence agriculture.

To better understand these reforms and their consequences, the Rural Development Institute (RDI) conducted research in Oaxaca State in March 2002.³ Oaxaca, located in southern Mexico on the Pacific coast, is one of Mexico's poorest states and much of the state's rural population practices subsistence agriculture. Half of Oaxaca's population is indigenous and 85% of the land is held by *ejidos* or *comunidades*. In Oaxaca there are 823 *ejidos* (holding 1,670,879 hectares or 18% of total land) and 716 *comunidades* (holding 6,261,398 hectares or 67% of total land).⁴

¹ Article 27 of the Mexican Constitution was amended and the Federal Agrarian Reform Law of 1971 was replaced with a new Agrarian Law. CONSTITUTION OF MEXICO art. 27 (as amended in 1992) in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P Blaustein & Gisbert H. Flanz eds. 1998) at 17 and LEY AGRARIA (1992) (translated by Foreign Tax Law, Marsh McFadden Quick, ed., National Law Center for Inter-American Free Trade) [hereinafter AGRARIAN LAW] at transitory art. 3.

² See Jorge Luis Ibarra Mendivil, *Recent Changes in the Mexican Constitution and Their Impact on the Agrarian Reform*, in REFORMING MEXICO'S AGRARIAN REFORM (Laura Randall, ed., 1996) at 54.

³ This research was made possible by a grant from the Compton Foundation. RDI staff have conducted field research and advised on land reform issues in 40 countries in Asia, Latin America, Eastern Europe, Africa and the Middle East. This was RDI's first research trip to Mexico. The twin objectives of this research were to gain an understanding of the current agrarian situation in order to offer preliminary suggestions for improvements against the background of RDI's comparative experience and to identify useful lessons and examples that could be of use in RDI's ongoing work in other countries.

⁴ Interview with Dr. Magdiel Hernandez Caballero, Head of the *Secretaria de la Reforma Agraria* (SRA) in Oaxaca City (March 2002).

II. LAND POLICY AND THE 1992 AGRARIAN LAW

Prior to the 1910 Revolution, over half of Mexico's land was controlled by fewer than 11,000 haciendas, and a mere 834 families owned over 130 million hectares of land.⁵ A strong impetus of the 1910 Revolution, especially as led by Emiliano Zapata in the south, was to return land to indigenous communities (such land had previously been seized from them) and to grant land to groups of landless peasants.⁶

The Constitution of 1917 sought to achieve this land redistribution goal by mandating that land be taken from large landholders and granted to landless laborers. The laboring peasant class could apply in groups of at least 20 to receive land to hold communally (termed "*ejidos*"). This redistribution effort was aggressively pursued during the presidency of Lázaro Cárdenas, and between 1934 and 1940, 20 million hectares of land were distributed to 810,000 people, reducing the number of landless laborers by over 50%.⁷

The Constitution also provided a mechanism for indigenous communities to reclaim their historic landholdings; during the decades following the Revolution, the national government recognized the land rights of indigenous groups and over time returned 16,500,000 hectares of land to their control.⁸ These indigenous communities (termed "*comunidades*") also hold their land communally. While land granted to both *ejidos* and *comunidades* was (and in most cases still is) held communally, individuals in all *ejidos* and many *comunidades* have long-term use rights to particular parcels that they cultivate independently.

Since the middle of the last century, public investment has favored private landholders, who have benefited much more than the *ejidos* and *comunidades* through irrigation projects, other infrastructure projects, subsidized inputs and credit programs.⁹ Productivity on *ejidal* and *comunidad* lands has languished behind private commercial agriculture, though it has been generally accepted that when factors such as land quality, water availability, and access to credit are factored in, productivity on *ejidos* is comparable to that of private farms.¹⁰ Very

⁵ See William C. Thiesenhusen, *Mexican Land Reform, 1934-91: Success or Failure?*, in REFORMING MEXICO'S AGRARIAN REFORM (Laura Randall, ed., 1996) at 36.

⁶ See Friedrich Katz, *The Agrarian Policies and Ideas of the Revolutionary Mexican Factions Led by Emiliano Zapata, Pancho Villa, and Venustiano Carranza*, in REFORMING MEXICO'S AGRARIAN REFORM (Laura Randall, ed., 1996) at 23.

⁷ Thiesenhusen, *supra* note 5, at 37.

⁸ Property Registration: Actions by Mexico (paper presented at 18th Meeting of the Summit Implementation Review Group, Summit of the Americas, April 2000) available at <<http://www.property-registration.org/Documents/Mexico-inf-eng.htm>>.

⁹ Thiesenhusen, *supra* note 5, at 40.

¹⁰ Wayne A. Cornelius and David Myhre, *Introduction*, in THE TRANSFORMATION OF RURAL MEXICO: REFORMING THE EJIDO SECTOR (Wayne A. Cornelius and David Myhre, eds., 1998) at 8.

little has been done by the government to remedy the disparity in access to these various land-improvement and production-enhancement factors, rendering agriculture on *ejidal* and *comunidad* land generally only sufficient for subsistence.¹¹

The 1917 Constitution placed substantial restrictions on the use and transferability of *ejidal* and *comunidad* land. These lands could not be sold, leased or mortgaged, but could be bequeathed. Holders of *ejidal* land were required to work the land continuously to retain their use rights. Land left idle for more than two years was considered abandoned and the use rights reverted to the *ejido*.

The 1992 reforms represented a drastic change in the government's policy on social sector agriculture. These reforms were embodied in an Amendment to Article 27 of the Constitution, which was subsequently implemented by the 1992 Agrarian Law. The change provided that *ejidal* land can now, under certain conditions, be sold, leased, sharecropped or otherwise transferred. It can also be used as collateral or transferred to companies. *Comunidad* land remains protected and cannot be transferred in any of these ways or used as collateral. However, *comunidades*, like *ejidos*, can now enter into partnerships with private companies. In addition, if a *comunidad* desires the flexibility the new law provides to *ejidos*, the *comunidad* has the option of converting into an *ejido*.¹²

The 1992 changes also ended the expropriation and redistribution of land for rural agriculture, that had been on-going (albeit at a much slower pace more recently) since the Revolution.¹³ Nationwide, twenty percent of those who had applied for land before 1992 did not receive land before the cut-off.¹⁴

Since adoption, the Agrarian Law has remained unchanged; however, the government is beginning to discuss possible changes to both the law and social sector agricultural policy.¹⁵

¹¹ Thiesenhusen, *supra* note 5, at 39.

¹² AGRARIAN LAW art. 104.

¹³ There is still a ceiling on land holdings ranging from 100 to 300 hectares for cultivated land depending on the crop grown on the land. See note 18, *infra*, for specifics on the land holding ceiling. If a land holding exceeds the ceiling it is to be divided or disposed of in accordance with state-level laws, rather than being redistributed to the land-poor. The Agrarian Law indicates that a common way of disposing of such above-ceiling land is through public auction. CONSTITUTION OF MEXICO art. 27 and AGRARIAN LAW arts. 117-124.

¹⁴ Interview with Dr. Magdiel Hernandez Caballero, Head of the *Secretaria de la Reforma Agraria* in Oaxaca City (March 2002).

¹⁵ *Id.*

III. CURRENT LEGAL FRAMEWORK AND RESEARCH FINDINGS

Research for this report was collected through interviews with leadership and members of 11 *ejidos* and *comunidades* in Oaxaca. These interviews were conducted using rapid rural appraisal techniques.¹⁶ Government officials working with *ejidos* and *comunidades* to implement these reforms were also interviewed, as were several private lawyers. Box 1 contains a list of the *ejidos* and *comunidades* visited during March 2002, including the status of the implementation of the reforms in each place. "PROCEDE," as referred to in Box 1, is a registration program that acts like a gatekeeper in ensuring that all registration records are up to date and regularized before an *ejido* can go forward with privatization. It is described in greater detail below. Box 2 contains a description of the basic government administrative structure working with *ejidos* and *comunidades* and notes the people in each agency interviewed as part of this research.

Box 1:

Ejidos and Comunidades Visited

Santa Catarina Albarradas

Comunidade, had not yet participated in PROCEDE

San Miguel Albarradas

Comunidade, was in process of completing PROCEDE

Santa Maria Albarradas

Comunidade, completed PROCEDE in 1998

Santiago Matalán

Comunidade, had just started evaluating whether to participate in PROCEDE

San Pablo Villa de Mitla

Ejido, completed PROCEDE in 1998

San Juan Chilateca

Ejido, completed PROCEDE

San Raymondo Jalpa

Ejido, completed PROCEDE and has privatized some parcels

San Marcos Tlapazola

Comunidade, had not completed PROCEDE

San Lucas Quivavini

Ejido, completed PROCEDE

San Lucas Quivavini

Comunidade, completed PROCEDE in 1995

San Bartolo Coyotepec

Ejido, completed PROCEDE in 1994

¹⁶ In these interviews, rural interviewees are not respondents to a questionnaire, but active participants in a semi-structured interview. The researchers use a checklist of issues as a basis for questions, not necessarily addressing all questions in each interview and sometimes departing from the basic questions to pursue interesting, unexpected, or new information.

Box 2:**Government Agencies Visited*****Procuradía Agraria***

The *Procuradía Agraria* (PA) is a federal agency created to assist *ejidatarios* (*ejido* members) and *comuneros* (*comunidad* members) in discerning their new rights under the 1992 reforms. The PA assists *ejidos* in the PROCEDE process, and may provide representation in court proceedings.¹⁷ It also oversees the application of the Agrarian Law to ensure that the amount of land owned by individuals and corporations is within legally permitted limits.¹⁸ Persons interviewed at the Oaxaca State PA office included:

- An Agrarian Engineer who works on PROCEDE implementation.
- Lic. Lucina Yadira Rodríguez Mtz., an Agrarian Attorney providing legal assistance to *ejidos* and *comunidades*.
- Several Agrarian Visitors, including Eng. Donato Celaya. Agrarian Visitors are PA field agents who directly interact with *ejidos* and *comunidades* to implement government programs and provide other assistance.

Secretaría de la Reforma Agraria

The *Secretaría de la Reforma Agraria* (SRA) is also a federal agency. The SRA was established in 1974, but has taken on new responsibilities as a result of the 1992 legal reforms. Before 1992 it was responsible for distributing land to *ejidos* and *comunidades*. Now the SRA regulates national lands, enforces the land ceiling, identifies unused empty lands, expropriates land for public purposes, and is involved in the implementation of PROCEDE.

- Dr. Magdiel Hernandez Caballero, Head of the SRA in Oaxaca State, was interviewed.

Registro Agrario Nacional

The *Registro Agrario Nacional* (RAN) is the federal agency responsible for recording rights to *ejidal* and *comunidad* land. A separate agency registers private property.¹⁹ RAN issues: (1) use rights certificates for individual parcels of agricultural land, (2) use rights certificates designating member's rights to a portion of common lands, and (3) ownership titles for urban plots.²⁰ *Ejid*os generally contain all three types of land while *comunidades* are only legally recognized as holding the latter two classifications of land. Documents on record with RAN are considered full proof of rights in a court of law.²¹ All *ejidal* and *comunal* land transactions must be recorded through RAN.

(continued)

¹⁷ Interview with Dr. Magdiel Hernandez Caballero, Head of the *Secretaría de la Reforma Agraria* in Oaxaca City (March 2002).

¹⁸ AGRARIAN LAW art. 136, sec. 8. Land can be held by individuals up to the limit of "small property ownership" without fear of expropriation. An individual can hold up to 100 hectares of irrigated land (the ceiling is higher for poorer quality land) and corporations can hold up to 2,500 hectares if the number of persons participating in the corporation correlates to the maximum holdings for individuals (i.e., 25 people could hold 2,500 hectares of irrigated agricultural land). AGRARIAN LAW arts. 118-124. See also note 13, *supra*, for a discussion of the disposal of above-ceiling land.

¹⁹ AGRARIAN LAW arts. 148-156.

²⁰ *Id.* art. 152.

²¹ *Id.* art. 150.

-
- Lic. Juan A. Lopez Scherenberg, Head of RAN in Oaxaca State, was interviewed.

Agrarian Courts

Tribunales Agrarios Unitarios and the *Tribunal Superior Agrario* were created as part of the 1992 reforms to resolve *ejidal* and *comunal* disputes. They are described in greater detail in the sub-section below on land disputes.

Junta de Conciliación Agraria

The *Junta de Conciliación Agraria* is unique to Oaxaca State and was formed to resolve the large volume of boundary conflicts among *ejidos* and *comunidades* in Oaxaca. It attempts to solve these disputes through the mutual agreement of the entities obtained through multiple meetings and negotiations.

- Lic. Mario Artutro Perez Brena was interviewed.

The following sub-sections each describe a different aspect of the structure and functions of *ejidos* and *comunidades* beginning with a description of the land use and internal governance of these entities. This is followed by a discussion of the impacts of the 1992 reforms in terms of registration, land markets, inheritance and credit. Each subsection begins with an explanation of the legal framework for each topic before presenting the research observations. Where appropriate, findings that were of concern are highlighted and possible solutions or areas for further study are noted.

A. Land Use

1. Legal Framework

Land held by *ejidos* and *comunidades* is divided into several classifications.²² *Ejidos* have three land classifications: (1) parcelized arable land held and worked by recognized members; (2) common land, generally consisting of forest, mountain, grazing land or waste land, which is monitored and managed by the *comisariado*²³; and (3) land for human settlements.²⁴ Some *ejidos*, however, do not hold common land. *Comunidades* have two land classifications: (1) common land, which may be forest, mountain, grazing land, waste land or arable land; and (2) human settlement land. *Comunidades* can internally recognize members' individual rights to parcels (and often do so for arable land), but legally all members are considered to have the right to equal shares of the commonly held land.²⁵ Recognized members of *ejidos* and *comunidades* (*ejidatarios* and *comuneros* respectively) have

²² This section describes the current legal framework for land use.

²³ The *comisariado* is the democratically elected governing body of an *ejido* or *comunidad* and is described in further detail in the following sub-section.

²⁴ Interview with Agrarian Engineer at the *Procuradía Agraria* office in Oaxaca (March 2002).

²⁵ AGRARIAN LAW arts. 101 and 102.

land use and voting rights. Generally the head of the household alone is a recognized member.²⁶

The use of each classification of land varies, as does the management and ownership.²⁷ First, plots for human settlement in both *ejidos* and *comunidades* are fully owned by their holders.²⁸ Second, *ejidatarios* (but not *comuneros*) have secure use rights to their arable parcels and, as described in coming sub-sections, may become private owners of such parcels. Either way, *ejidatarios* are free to use and develop these parcels as they please.²⁹ While *comunidades* may recognize members' use rights to individual plots of arable land, such plots are legally regulated as common land, rather than as *ejidal* parcels. Finally, management of common land is left up to the internal regulation of the *ejido* or *comunidad*.³⁰ Generally speaking, there are no government-imposed restrictions on how common lands can be used and managed. However, common land within the forestry zone is protected from overexploitation and is monitored by the Institute of Ecology.³¹

2. Research Findings

The members of all *ejidos* and *comunidades* visited manage their land in terms of the three classifications outlined by the Agrarian Law (or two classifications, in the case of *comunidades*). Our research focused mainly on the use and management of parcelized land and common land; we only peripherally inquired into the use and management of land for human settlement.

Even though *comuneros* do not have legally recognized individual parcels, in practice, *comuneros* (like *ejidatarios*) hold long term rights to individual parcels according to internal *comunidad* regulations. The exception was one mountainous *comunidad* where families constantly rotated the land they cultivated and did not have a long term claim to a particular parcel. In this *comunidad* families simply found a new area to cultivate after their other field stopped producing (about every 2-3 years). This was due to the fact that their plots were in a mountainous area where topsoil erodes and land fertility is lost after a couple of seasons. All other *comunidades* had internal systems (some written, some not) whereby the

²⁶ See sub-section B.1, "Internal Governance and Membership," *infra*, for a further discussion of membership criteria.

²⁷ Prior to the 1992 legal changes it was unclear whether the government or *ejidal* or *comunidad* bodies themselves held underlying ownership of these lands. It is now clear that individuals own their house building sites and is understood that the *ejidal* or *comunidad* entities own the parceled or common land. Interview with Lic. Juan A. Lopez Scherenberg, head of the *Registro Agrario Nacional* in Oaxaca State (March 2002).

²⁸ AGRARIAN LAW art. 68.

²⁹ *Id.* art. 76.

³⁰ *Id.* art. 74.

³¹ Interview with Donato Celaya, Agrarian Engineer of the *Procuradía Agraria*, while visiting San Miguel *comunidad* (March 2002).

comunidad recognized a family's historic claim to a particular piece of land. Even in *comunidades* where families continuously use the same parcel, members also often practice rotational farming on mountainous common land. This method of cultivating and depleting parcels in a short time is not a sustainable farming method as it quickly erodes the topsoil and consumes a lot of land. Terracing programs or agricultural extension may be needed to help these communities transition out of this unsustainable farming practice. In one area visited, such a terracing program had already been undertaken; however, it was of no benefit to the community because the land terraced was a great distance from the settlement and no one was currently using the terraced land. Further research is needed to determine how the current extension system works in Oaxaca and how it could be used to assist farmers in developing more sustainable farming methods.

Generally speaking, *ejidos* hold better quality land than *comunidades*. This is due to the historic fact that the large *haciendas*, from which *ejidal* land was taken, generally held the best quality valley land. Thus, *ejidatarios* usually do not farm hilly land and do not have the severe soil erosion problems that many *comuneros* have.

The average size of an individual parcel in the places visited in Oaxaca was between one and three hectares, although in some areas farmers held plots under one hectare and in others farmers held up to five hectares. Nationwide, parcels held by *ejidal* members average 1.2 hectares, while landholdings by private farmers average 2.8 hectares.³² However, in many places visited, the area of land that a family can cultivate is only limited in practice by the amount of family labor available and whether or not the family owns agricultural equipment. This is because most families, in addition to having access to a plot of land within the *comunidad* or *ejido* which their family has recognized cultivation rights to, are also free to bring existing and currently unused common land into cultivation as long as it is not in a forestry zone.

The most common crops encountered on farmers' parcels were maize and beans, though if farmers had access to irrigation they also grew alfalfa, tomatoes and melons. Additionally, some *ejidatarios* invested in the long-term crop agave, which takes five to six years to mature and is used in making tequila. Only two of the *ejidos* or *comunidades* visited had widespread access to irrigation for use during the dry season.

Most farmers were not able to grow enough to sell their produce at market on a consistent basis. The exceptions were farmers who had access to irrigation. Another constraint was transportation. For distant communities, getting crops to

³² Klaus Deininger *et al.*, Mexico's "Second Agrarian Reform": Implementation and Impact (2001) (World Bank paper on file with the Rural Development Institute) at 5.

market was a real challenge, and they therefore often sold to middlemen who came directly to their fields with trucks. They complained that this gave them little leverage to bargain for favorable prices.

Some *ejidos* and *comunidades* overcame these obstacles by pooling member resources. One *ejido* visited had successfully sunk two wells, which it paid for initially by raising funds from its members in proportion to the area cultivated. Once the wells were established, the *ejido* implemented an irrigation fee structure linked to water use to raise operating and maintenance funds. Similarly, a *comunidad* visited had recently purchased a truck by pooling member funds. They purchased this truck for the purpose of transporting crops and people to market. These successful collaborative models ought to be shared with other *ejidos* and *comunidades*. Members from these places could even be brought by Agrarian Visitors (field officers of the *Procuradía Agraria*) to other *ejidos* and *comunidades* to share their experiences and explain how they accomplished these goals. Other public education campaigns, by radio or television, might also be considered.

Uncultivated common land is sometimes used for gathering fuel wood and grazing animals, though many *ejidos* and *comunidades* do not regularly use large tracts of their common land. *Comisariados* generally took their responsibility to protect and manage the common land seriously. To meet this responsibility *comisariados* organized groups to walk the common land for monitoring purposes and also organized fire brigades when needed. The *ejido* visited in Mitla shares and coordinates use of common land with three other *ejidos*, who together co-manage a large piece of common land. When asked about conflicts over this arrangement, the Mitla *ejidatarios* said there are not many conflicts because the land is hilly and unusable. Once a month they inspect the common land to ensure that no one is harming it. If they find harm, they form a committee and meet with the other *ejidos* to try to solve the problem. If they cannot solve the problem themselves they go to Oaxaca to seek assistance from the *Procuradía Agraria*.

While some *ejidos* and *comunidades* rarely use their common land, others may be using it to the point of overexploitation. An Agrarian Visitor reported that one *comunidad* was harvesting far too much wood from its common land and feared they were destroying their watershed. The Agrarian Visitor also noted that the Institute of Ecology was not properly monitoring the forest. Indeed, stacks of wood were seen by the roadside waiting to be picked up by wood purchasers. Other areas of Mexico, including areas within Oaxaca, have successfully implemented sustainable forestry programs centered on community forest management.³³ The World Bank and others are supporting community forestry

³³ See e.g., Carol Zabin, *Free Markets and Forests: Community-Based Forestry in the Era of Neoliberal Reform*, in *THE TRANSFORMATION OF RURAL MEXICO: REFORMING THE EJIDO SECTOR* (Wayne A. Cornelius and David Myhre, eds., 1998) at 401.

efforts that may be useful to curb the overexploitation of such resources, while still allowing communities to earn an income from their natural resource holdings.

B. Internal Governance and Membership

1. Legal Framework

There are three governance units in an *ejido* or *comunidad*: (1) the assembly, which is comprised of all members; (2) the *comisariado*, which is the elected executive leadership body; and (3) the vigilance council, which is also elected and is responsible for monitoring the *comisariado*.³⁴ Each of these three bodies existed before the 1992 changes; however, the role of each and some meeting and voting requirements have changed.³⁵ For example, prior to the reforms the assembly was required to meet once a month and now is only required to meet at least once every six months. The reforms sought to curb the powers of the *comisariado*, and to strengthen to power of the assembly by limiting the terms of *comisariado* and vigilance council leaders and making the assembly ultimately responsible for most management decisions. The *comisariado* (made up of at least a president, secretary and treasurer) and the vigilance council (made up of at least a president and two secretaries) are elected every three years and members cannot be subsequently re-elected. For certain major decisions, such as the decision to privatize, a representative of the *Procuradía Agraria* must attend to observe the meeting. For most other types of meetings the assembly is free to invite a *Procuradía Agraria* representative if it chooses.

Individuals generally become members of *ejidos* and *comunidades* through birth into the *ejido* or *comunidad* and their membership arises either as the result of the recognition of their membership by the *ejidal* assembly or through the inheritance of land rights. A person can also become a member after living on *ejidal* or *comunidad* lands for one year and being recognized as a member by the *ejidal* or *comunidad* assembly.³⁶ Beyond the legally imposed residency requirement, *ejidos* and *comunidades* are free to formulate their own requirements for membership.

Not everyone who works or lives inside an *ejido* or *comunidad* is considered a member: only those who hold land use rights are considered members and have the right to vote. Generally, the head of a household is the sole member. Most women, unless they are widowed or divorced and head their own household, do not hold land use rights and are not voting members of *ejidos* or *comunidades*. This

³⁴ AGRARIAN LAW arts. 21-40.

³⁵ Helga Baitenmann, *The Article 27 Reforms and the Promise of Local Democratization in Central Veracruz*, in THE TRANSFORMATION OF RURAL MEXICO: REFORMING THE EJIDO SECTOR (Wayne A. Cornelius and David Myhre, eds., 1998) at 105.

³⁶ AGRARIAN LAW art. 13.

is supported by nation-wide research, which demonstrates that most female *ejidatarios* and *comuneros* are female household heads.³⁷

Additionally, two other specific groups live in these communities who do not have membership and voting privileges. *Avecindados* live in the human settlement area of an *ejido* or *comunidad* but do not have use rights to land. *Posesionarios* hold temporary use rights to land that *ejido* members are currently not using, but are not members.

*Ejid*os and *comunidades* may create written internal regulations, which must be registered with the *Registro Agrario Nacional*.³⁸ Of the approximately 1,500 *ejidos* and *comunidades* in Oaxaca, 300 to 400 have registered their written rules.³⁹ The *Procuradía Agraria* is obliged to help with the creation of these written rules if asked, and the *Registro Agrario Nacional* may suggest changes to the rules submitted for registration if they are unconstitutional or otherwise exceed the bounds of the *ejido* or *comunidad*'s authority.

*Ejid*os and *comunidades* can raise funds through fines or fees for the use of equipment, irrigation infrastructure, etc. They are also responsible for raising funds to pay the federal tax, which is assessed on the *ejido* or *comunidad* as a whole.⁴⁰

2. Research Findings

Each *ejido* or *comunidad* is very much its own decentralized self-governing body and, outside of the general parameters established by the Agrarian Law, can do as it pleases. Some have used this flexibility to devise complex internal rules, service requirements and joint projects, while for others, infighting has kept them from using this flexibility to their benefit. Many *ejidos* and *comunidades* have written rules, but not having written rules is not perceived as a problem since the rules are customary and longstanding and are therefore known by all.

All *ejidos* and *comunidades* visited elect new leadership every three years as stipulated by law, and all are aware of and follow the rule that consecutive terms are not permitted. Indeed, in several places visited, holding a leadership position seems to be viewed as more of an obligation and a fulfillment of a service requirement than a sought-after privilege. *Comisariado* members state that their obligations include monitoring and managing common land (e.g., watching for

³⁷ CARMEN DIANA DEERE AND MAGDALENA LEÓN, *EMPOWERING WOMEN: LAND AND PROPERTY RIGHTS IN LATIN AMERICA* (2001) at 72.

³⁸ AGRARIAN LAW art. 10.

³⁹ Interview with Lic. Juan A. Lopez Scherenberg, head of the *Registro Agrario Nacional* in Oaxaca State (March 2002).

⁴⁰ *Id.*

forest fires), the exploitation of common resources, and human settlement land (the latter duty overlaps with duties of the municipality).

All *ejidos* and *comunidades* visited have service requirements for their members. Some have very elaborate systems whereby members rotate during their lives through a series of 15 posts, including leadership positions. Often the services that the *ejidos* or *comunidades* require complement the services that the local municipality requires (e.g., policing activities, local school committee). Because of the importance placed on these service requirements, if a member leaves the community for an extended period of time, he or she is often required to make a payment to the *comisariado* to make up for the fact that he or she was not available for service.

Nearly all *ejidos* and *comunidades* hold regular meetings, and many seem to follow the practice of inviting a *Procuradía Agraria* representative to most general membership meetings, although this is not legally required. Most *ejidos* and *comunidades* visited have good relationships with their assigned Agrarian Visitor, though this is not the case throughout Oaxaca, with some *ejidos* and *comunidades* reported to be very suspicious of the Agrarian Visitors. Moreover, some places visited have trouble holding regular meetings. For example, the *ejido* of Mitla must habitually reschedule meetings for lack of a quorum. Also, a few *comunidades* bar women from their meetings. Specifically, two of the mountainous *comunidades* visited do not permit women to attend assembly meetings. During our visit to one *comunidad* the male *comunidad* members were very upset that five or six women attended an assembly meeting in place of their husbands. They tried to force the women to leave but the Agrarian Visitor eventually convinced them to allow the women to stay.

For equity reasons and because men in Oaxaca are increasingly migrating for work, leaving the *ejido* or *comunidad* for large portions of the year, it is increasingly important to ensure that women understand and are involved in the management of *ejidos* and *comunidades*. In addition to issues of equity and fairness, because women participate in many farming activities (regardless whether they have recognized rights to land) it is imperative that they are included in management decisions. Furthermore, as discussed in greater detail below, policy makers should seriously consider permitting married couples or those in consensual unions to jointly hold land and membership rights. Such a change would grant women the right to vote and participate in the decision making process. Currently, because most women are not *ejidatarios* or *comuneros*

(unless they are female household heads), they do not have the legal right to vote or participate in the decision making process.⁴¹

Some *ejidos* and *comunidades* are quite good at working together to achieve common goals. As mentioned above, a few places visited have collaborated – in one case to sink wells and in another to purchase a truck. Others, however, bemoan the fact that they are not able to work for common goals as well as they once were and complain that no one comes to meetings anymore (indeed when we interviewed these members they were waiting for a meeting to start that was eventually cancelled due to lack of a quorum). In one case an *ejido* that had purchased tractors could not raise the money to maintain them because a few members had been using the tractors exclusively. Thus, when the tractors broke down the other members refused to pay for the repairs.

Ejidos and *comunidades* raise money through fines or service charges imposed on the use of common goods (like a well or tractor). Many *comisariado* members complain that they are never given money for projects by the government, while the municipalities are granted funds (*comisariado* members also complain that they are not paid a salary as the municipality workers are). The government should consider granting (or at least loaning) funds to *ejidos* and *comunidades* to take on specific projects that would result in long term improvements to *ejidal* or *comunidad* holdings, such as irrigation or reforestation projects.

All *ejidos* and *comunidades* raise funds to pay their federal tax obligation, which they either split equally among all recognized members or in proportion to the amount of land held per member (some members may hold more or less land because of family size or inheritance divisions).

C. Registration and Certification

1. Legal Framework

Linked with the 1992 reforms is a voluntary, no-cost registration process called the Program for the Certification of *Ejidal* Land Rights and the Titling of Urban House Plots. The program, best known by its acronym of PROCEDE, was established in 1993 and is jointly implemented by the *Secretaria de la Reforma Agraria, Procuradía Agraria, Registro Agrario Nacional*, and *Instituto Nacional de Estadística Geografía e Informática*.⁴² Both *ejidos* and *comunidades* can participate in PROCEDE, though the certificates issued to their respective members differ.

⁴¹ Recognized members can send a proxy to assembly meetings if a witnessed letter gives such authorization. AGRARIAN LAW art. 30.

⁴² Deininger *et al.*, *supra* note 32, at 10-11.

Before the PROCEDE process can begin there must be an external boundary assessment of the *ejido* or *comunidad* and any boundary disputes must be resolved. After this determination is made, the assembly is informed about the PROCEDE process, and then must vote, by simple majority, to go forward with the process. Once the assembly has voted to go forward, the *Instituto Nacional de Estadística Geografía e Informática* demarcates the different classifications of land within the *ejido* or *comunidad*, as well as individual arable plots in the case of *ejidos*. Maps are created and internal disputes are resolved through informal dispute resolution. Once the maps are prepared, they are presented to the assembly, which must approve the maps by a two-thirds majority.⁴³ This step also requires the presence of a *Procuradía Agraria* representative and a public notary.⁴⁴ As a final step the materials are forwarded to the *Registro Agrario Nacional*, which issues certificates for urban plots, individual parcels and share rights (denoted on a percentage basis) to common land.

These certificates are issued to the *ejidatario* or *comunero* individually (most often the male head of household), rather than to the entire family or jointly to husband and wife. The combined result of the 1992 reforms and this certification process has been to convert what was once thought of as a household resource into the individual property of the *ejidatario* or *comunero* alone.⁴⁵ Other family members have few legal rights over the *ejidal* or *comunidad* land rights. For example, if the *ejidatario* decides to sell the land (either within the *ejido* or to an outsider if the land is privatized), his family cannot stop him. His family only has the right of first refusal to purchase the land themselves from the *ejidatario* if they want to keep the land.⁴⁶ Furthermore, the *ejidatario* now also has the right to select the inheritor of his or her choice, whereas under previous law, the *ejidatario* had to transmit his or her rights to a member of his or her immediate family.⁴⁷ As a result, someone other than a family member can now inherit such land rights.

These provisions of the Agrarian Law conflict with the Mexican Civil Code.⁴⁸ The Civil Code requires married couples to select a joint or separate ownership marital property regime.⁴⁹ Depending on the specifics of a couple's joint marital property regime, the *ejidal* or *comunidad* land right may qualify as jointly owned marital

⁴³ AGRARIAN LAW art 27.

⁴⁴ *Id.* arts. 26-28.

⁴⁵ See DEERE AND LEÓN, *supra* note 37, at 153.

⁴⁶ AGRARIAN LAW art. 84. See sub-section D, "Transfer of Land and Privatization," *infra*, for a more detailed discussion.

⁴⁷ AGRARIAN LAW art. 17. See sub-section F, "Partition and Inheritance," *infra*, for a more detailed discussion of *ejidatarios'* right to bequeath their *ejidal* rights.

⁴⁸ The family law portion of the Mexican Civil Code only applies to the Federal District of Mexico City; however, all Mexican states have followed the Federal Code verbatim in drafting their own civil codes. Jorge Vargas, *Family Law in Mexico: A Detailed Look into Marriage and Divorce*, 9 SW. J. OF L & TRADE AM. 5 (2002/2003) at 20.

⁴⁹ MEXICAN CIVIL CODE (1996) (translated by Abraham Eckstein and Enrique Zepeda Trujillo) at ch. IV.

property, which both spouses have ownership and administration rights over.⁵⁰ Thus, the provisions of the Agrarian Code giving *ejidatarios* alone the right to dispose of the land right are in conflict with the marital property regime provisions provided by the Civil Code. Discussion of this topic is continued in the following section.

Once the PROCEDURE process is complete, future transfers must be registered with the *Registro Agrario Nacional*. The registration system is centralized by the state and has been computerized. The *Procuradía Agraria* has 32 local offices throughout the state of Oaxaca, which act as local registration offices, collecting and sending registration updates to the central state office.⁵¹

2. Research Findings

There are 1,539 *ejidos* and *comunidades* in Oaxaca, of which 715 had completed the PROCEDURE land certification and registration process. An additional 106 were anticipated to complete the PROCEDURE certification and registration process during 2002.⁵²

During the field research, all but three entities visited had completed PROCEDURE. Those that had not participated in PROCEDURE cited boundary conflicts or fear of government programs as the reasons. One *comunero* said that his *comunidad* was initially afraid of PROCEDURE because members had heard that the government would divide the land arbitrarily, such that some members would receive worthless, rocky patches of ground.

While some who have completed PROCEDURE report they do not see any resulting benefits, many others state that PROCEDURE has benefited them. Several farmers said that having a good survey of the land, including a good map, is beneficial as it will help avoid future disputes and keep others from encroaching onto their land. Others said that the good maps are helpful, but that they would prefer that the government devote its energy to creating better poverty alleviation and agricultural subsidy programs.

At the conclusion of PROCEDURE, certificates are given to each *ejidatario* or *comunero*. Each *ejidatario* receives a certificate that describes his or her parcel and contains an exact map of the parcel. Each *comunero* receives a certificate describing rights to a certain percentage of the *comunidad's* land. One complication with the *comunero* certificates (listing the percentage right they hold to the common land) is that any

⁵⁰ Couples may choose to hold all property, regardless of when acquired, as jointly held marital property. Alternatively, they may choose to hold only some of their formerly separate property as jointly held marital property; they are free to apply to joint or separate property regime as they wish. *Id.* art. 189.

⁵¹ Interview Lic. Juan A. Lopez Scherenberg, head of the *Registro Agrario Nacional* in Oaxaca State (March 2002).

⁵² Interview with Agrarian Engineer at the *Procuradía Agraria* office in Oaxaca City (March 2002).

change in membership also requires a change in all members' percentage rights.⁵³ An official of the *Registro Agrario Nacional* stated that this has been handled in three different ways. First, some *comunidades* left part of the percentage unassigned (i.e., less than 100% was assigned at the time of PROCEDE) so that future members could receive a percentage. Second, some plan to re-issue new certificates with new percentages when there is a change in membership number. Third, some will simply not allow additional members and new members will have to obtain rights through the death or withdrawal of an existing member.

The *Registro Agrario Nacional* official interviewed did not think there would be any trouble maintaining the accuracy of the new registration system. He said that through the PROCEDE process social sector farmers learned the importance of "having the piece of paper." However, the fact that the certificates issued to *comuneros* will in some cases require constant changes raises the question of how easy it will be to keep the new registration system up-to-date.

The complexity of assigning ever-changing percentage rights to common land will almost certainly create problems within the registration system that will have to be monitored and resolved. Perhaps a better solution would be to grant each member rights to common land that are equal to all other members without specifying the exact percentage. For example, instead of granting members a specific, fixed percentage, the certificates might state simply that each member has, "the right to a portion of the common land, equal to all other recognized members."

No *ejido* or *comunidad* members encountered in the research held joint use rights as husband and wife either to individual parcels or common land. As mentioned above, land rights and accompanying membership and voting rights belong to the *ejidatario* or *comunero* alone. As part of the reform process, what were once considered family rights are being converted into individual rights, which are usually held by the male head of household. This is occurring despite the multiple benefits that researchers have found can be gained by granting women rights to land either individually or jointly with their husbands.⁵⁴

First, holding land in her own name (or jointly with her husband) gives a woman a secure right to land if she separates from her husband, is deserted or becomes widowed. Second, landholding gives a woman legal control over, and a continuing right to, a major source of income. Connected to this benefit is a benefit to her children, as numerous studies have found that children directly

⁵³ In the *comunidades* visited, the expectation was that, even if percentage rights varied, that the actual size of the parcels members held long-term rights to (as recognized internally in the *comunidad*) would not vary. This is possible in the *comunidades* visited because as yet uncultivated common land was available.

⁵⁴ For an extensive discussion of the benefits of granting land ownership to women, see DEERE AND LEÓN, *supra* note 37 and BINA AGARWAL, *A FIELD OF ONE'S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA* (1994) at 27-44.

benefit from improvements to their mother's income to a much greater extent than they do from improvements to their father's income.⁵⁵ Third, land rights may enhance a woman's ability to access credit by gaining an asset that can be used as collateral. Fourth, land rights can increase a woman's respect and leverage within her family. Fifth, holding the right to land jointly will allow women to more easily access any benefits under government programs and otherwise to manage the land they work. This last benefit is particularly important in the context of Oaxaca where many men migrate for work, leaving women with greater responsibilities over the land. Currently the wives of these men must apply for credit and government assistance on behalf of their husbands, which may or may not be acceptable to lenders or government agencies.⁵⁶

These multiple benefits possible from granting women land ownership, along with the legal conflict between the Agrarian Law and Civil Code, suggest that the federal government should seriously consider amending the Agrarian Law and certification process to permit married couples or those in consensual unions⁵⁷ to jointly hold *ejidal* or *comunidad* rights.

Moreover, it may be feasible to retroactively recognize women's *ejidal* or *comunidad* land rights. In Vietnam, Land Tenure Certificates (LTCs), documenting a household's long-term use rights to land,⁵⁸ were originally issued only in the name of the head of the household, almost always a man.⁵⁹ This was despite the fact that such land use rights in Vietnam belong to the entire household and also constitute the co-owned marital property of both spouses.⁶⁰ One study revealed some of the problems that arose as the result of LTCs only being issued in the name of the head of household.⁶¹ This study discovered cases of husbands transferring the household's land use right without the consent of their spouses.⁶² The Vietnamese government, recognizing these problems,

⁵⁵ See, for example, AGNES R. QUISUMBING ET. AL., WOMEN THE KEY TO FOOD SECURITY (Food Policy Report; The International Food Policy Research Institute 1995), which surveys the current research on the strong association between increases in women's income, as contrasted with men's income, and improvements in family health and nutrition.

⁵⁶ Elizabeth Katz, Gender and Ejido Reform (December 22, 1999) (Draft Report Prepared for the World Bank Ejido Study, on file with the Rural Development Institute).

⁵⁷ In rural areas of the country consensual unions rather than marriages, are widely prevalent. Couples in consensual unions in Mexico have similar rights to married couples. DEERE AND LEÓN, *supra* note 37, at 75.

⁵⁸ In Vietnam, documents detailing land rights (called Land Tenure Certificates or LTCs) are issued to signify long-term secure use rights. The government began issuing LTCs in the early 1990s and now LTCs have been issued to most agricultural land. Tran Thi Minh Ha, Pilot Study Report: Issuance of Land Tenure Certificates Bearing the Names of Both Husband and Wife in the Rural Areas (World Bank Gender and Law Thematic Group Innovation Grant June 2002) at 13.

⁵⁹ *Id.* at 29, citing Circular No. 1991/2001/TT-TCDC (Vietnam).

⁶⁰ *Id.* at 30, citing Law on Marriage and Family (1986) art. 27 (Vietnam).

⁶¹ *Id.*

⁶² *Id.* at 48-49.

recently declared that all co-owned marital property, including land use rights, must be registered in the names of both husband and wife.⁶³ The government has also facilitated a successful pilot project to retroactively add women's names to LTCs, which will likely be implemented nation-wide.

In Mexico, such a retroactive change may face legal obstacles due to the constitutional limitation to retroactive legal acts.⁶⁴ A strong alternate solution would be to clearly recognize, through an amendment to the Agrarian Law, that *ejidal* and *comunidad* property rights are subject to marital property rules like any other property. In the case of a joint marital property regime this would render *ejidal* and *comunidad* rights to be jointly owned and administered.

D. Transfer of Land and Privatization

1. Legal Framework

*Ejid*os that have completed PROCEDE can opt to allow privatization of *ejidal* land. A *comunidad* cannot privatize unless it first converts to an *ejido*, which is legally permitted.⁶⁵

*Ejid*os can privatize in one of two ways. The first, privatization in full, is accomplished by disbanding the *ejido* and granting all *ejidal* lands in private ownership to members.⁶⁶ Under the second option, partial privatization, the *ejidal* assembly votes to allow members who wish to privatize their parcels to do so. Members wishing to exercise this option must apply to the *Registro Agrario Nacional*, which issues a deed of ownership, which is then recorded in the Public Register of Property.⁶⁷ The first time such privatized parcels are sold, members of the *ejidatario's* family, other *ejidatarios*, and residents of the *ejido* population center have the right of first refusal to purchase the plot.⁶⁸

Both partial and full privatization require a quorum of 50%, a two-thirds majority vote of those attending, and the presence of a representative of the *Procuradía Agraria* and a public notary.⁶⁹ Only recognized members can vote on major

⁶³ All documents registering family assets, including land use rights to be registered with names of both husband and wife. Government Decree No. 70/2001/ND-CP on the Implementation of the Law on Marriage and Family (2001) art. 5 (Vietnam). Married couples can apply for new LTC containing both of their names. Furthermore, Vietnam has undertaken a pilot project to determine the feasibility of reissuing all LTC.

⁶⁴ Article 14 of the Mexican Constitution states that “no law shall have retroactive effect to the detriment of anyone.”

⁶⁵ To convert to an *ejido*, a *comunidad* must convene the *ejidal* assembly and approve of the change by a two-thirds majority. Such a decision must be registered with the *Registro Agrario Nacional*. AGRARIAN LAW art. 104

⁶⁶ *Id.* art. 29.

⁶⁷ *Id.* art. 82.

⁶⁸ *Id.* art. 84.

⁶⁹ *Id.* arts. 23, 26, 27, 28 and 82.

decisions, such as deciding whether to privatize. This limitation excludes most women from participating, because only recognized members of the *ejidatario* or *comunidad* with land rights can participate in decision making and vote.

Whether the *ejido* decides to allow full or partial privatization, *ejidatarios* are always able to transfer their land rights to other *ejidatarios* or residents from the same population center.⁷⁰ The *ejidatario's* spouse and children have the first right of refusal to claim such land.

Common lands, whether belonging to an *ejido* or a *comunidad*, can be transferred under limited circumstances. Specifically, an *ejido* or *comunidad* can decide by a two-thirds majority vote to transfer its common land to a mercantile or civil company of its creation in which the *ejido*, *comunidad* or their members participate.⁷¹ Other than this exception, common lands are inalienable.

2. Research Findings

None of the *ejidos* visited had disbanded and fully privatized. Privatization, if it was happening, was only occurring on those parts of *ejidal* land that touched growing urban edges. Transfers of *ejidal* land to outsiders were accomplished by two different methods. In some cases the *ejidatario* first converted the parcel into private property and then sold it to an outsider. In other cases the *ejidatario* first decided to sell and asked the *comisariado* for permission to sell to an outsider. In this case the buyer became a non-voting member of the *ejido* and the property remained social property unless the new owner decides to privatize it.

An example of an *ejido* that permitted partial privatization is San Raymondo Jalpa. This *ejido* privatized some parcels adjacent to a new major road, granting ownership to several *ejidatarios*. The new owners sold the land to outsiders for the development of a medical clinic and several hotels, pocketing the proceeds from the sales (the profit from the sale is not captured by the *ejido* as a whole).

In another *ejido* the assembly had not specifically permitted sales to external persons, but sales were occurring, to the bewilderment of the *ejidal* leadership. It was unclear how this was happening, but since the *comisariado* did not know how these transactions were possible, it seems likely that they were extra-legal transactions.

Ejidos who have not privatized were asked if they have considered privatizing. Some said they did not realize it was an option. Others said that they had considered it, but decided not to allow privatization because they feared that too

⁷⁰ *Id.* art. 80.

⁷¹ *Id.* arts. 75 and 100.

many members would sell their land, which would lead to land concentration as during the time of the large *haciendas*. Still others believe it is important to remain a united community, and felt that allowing privatization would destroy this sense of community. Finally, some said that their land was not worth anything as it was rocky or poor quality, so they had no incentive to privatize as no one would want to purchase their land.

It became evident through the field research that the only reason anyone would choose to privatize his or her land was for the purpose of selling the land. Farmers feel that the permanent use rights that certification affords them are secure and see little incentive to privatizing. The only reason for privatizing other than to sell land, would be an increased ability to access formal credit. An *ejidatario* with non-privatized land use rights can legally lease and mortgage his or her land; however, many complained that banks would not use their *ejidal* plot as collateral. Despite this, *ejidatarios* interviewed stated that they are not interested in privatizing for the purpose of increasing access to formal credit. Additionally, privatization entails much higher land taxes.⁷² Thus, it seems unlikely that many *ejidatarios* will privatize, with the exception of those holding land close to urban centers where land is valuable for development.

Prices for land were primarily gathered in a few areas outside of Oaxaca City where a land market was functioning. Private property costs between 20,000 to 100,000 pesos (\$2,200 to \$11,000) per hectare depending on the location and quality of the land.⁷³ *Ejidal* land in the same area costs an average of 80,000 pesos (\$8,800) per hectare. In one area near Oaxaca City *ejidal* land prices were 800,000 pesos (\$88,000) per hectare for land near the main road that would be used for non-agricultural purposes.

Transfers between members of *ejidos* do occur, but not very often. Some *ejidatarios* believe the *comisariado* must approve the terms of these transfer, but others believe that no approval is necessary. The law itself does not require approval for inter-*ejidal* transfers.

No *ejidos* or *comunidades* visited had opted to transfer their common land into the hands of a company.

⁷² Transaction costs will also be higher. However, the first transaction after privatization is free from taxes or federal duties. Subsequent transactions are treated like any other real property transaction. *Id.* art. 86.

⁷³ During March 2002, one Mexican Peso was equivalent to 0.110 U.S. Dollars.

E. Leasing Land

1. Legal Framework

Before 1992 *ejidatarios* could not legally lease out their land. They were required to cultivate the land personally and if they did not directly work their parcel for a period of two years they could lose their use right, which would revert to the *ejido*. The 1992 reforms, however, permitted leasing and sharecropping of *ejidal* parcels.⁷⁴ Prior permission from the *comisariado* is not necessary and lease terms can extend up to 30 years.⁷⁵ The restriction on leasing remains on land held by *comunidades*.⁷⁶

The reasoning behind this liberalization of the land lease market was that it would increase access to agricultural land for the landless rural poor, which would in turn reduce poverty. It was also hoped that leasing would increase production, as those who were not able to farm their land productively (due to age, lack of family labor, etc.) would lease out their land to others who could more productively use the land. A study conducted in Mexico found that these anticipated benefits were occurring: the level of leasing had increased, which was found to both help the rural poor through increased land access and to increase productivity.⁷⁷

2. Research Findings

There was a great deal of confusion within *ejidos* visited regarding the legality of leasing land. Some *ejidos* claim that the *comisariado* has to approve of all leases beforehand, although the law does not require this. Others claim that the law does not permit leasing under any circumstances. Some *ejidos* allow leasing, but only for short terms of two or three years. In the small sample of villages visited in Oaxaca, the level of leasing appeared unchanged from the levels of illegal leasing occurring before the 1992 changes. As mentioned above, researchers found that the liberalization of leasing led to increased leasing nationally, which resulted in increased productivity and benefits to the rural poor. For these benefits to be felt in rural Oaxaca it is imperative to educate *ejido* members about their current legal ability to lease out their land. Accurate information on leasing could be easily disseminated by the Agrarian Visitors at general assembly meetings. While other impediments to leasing in addition to legal misinformation

⁷⁴ AGRARIAN LAW art. 79.

⁷⁵ *Id.* art. 45.

⁷⁶ Interview with Dr. Magdiel Hernandez Caballero, Head of the *Secretaria de la Reforma Agraria* in Oaxaca City (March 2002).

⁷⁷ See e.g. Pedro Olinto and Klaus Deininger, Land Property Rights, Rental Markets and Rural Poverty: Theory and Evidence from the Mexican Ejido (February 2002) (draft paper on file with the Rural Development Institute, also available on the web at <www.aec.msu.edu/egecon/seminars/landpropertyrights.pdf>).

may remain, providing proper information would at least permit those *ejidatarios* interested in leasing out land the opportunity to do so.

The leases that were encountered were usually sharecropping arrangements, not fixed rent leases. Sharecroppers and landholders share the crop equally. If the sharecropper provides the inputs, he or she can also keep all corn stalks, which are used as animal fodder. If the landholder provides the inputs then he or she receives half of the corn stalks in addition to half of the crop.

F. Partition and Inheritance

1. Legal Framework

Upon the death of an *ejidatario*, only one person can inherit his or her land right. Prior to 1992, *ejidatarios* were legally required to leave their land right to their spouse or one of their children.⁷⁸ Now an *ejidatario* can designate whomever he or she wishes to inherit the parcel.⁷⁹ The *ejidatario* must draw up a list of succession detailing his or her order of preference. If the *ejidatario* has not drawn up a list of succession, the land passes according to the following order of succession: spouse, concubine or companion, one child, one parent, and finally to any other person economically dependent on the deceased *ejidatario*.⁸⁰ If there are no successors, the ejido land right is sold by auction to another *ejidatario* or resident of the population center.⁸¹ Resulting sales proceeds belong to the *ejido*.⁸²

Ejido parcels cannot be legally subdivided (now or at any time in the past), but in practice most *ejidatarios* have been dividing their parcels among multiple successors. In implementing PROCEDE, whatever division of land currently exists is being recorded and accepted by RAN, the registration authority, but once the PROCEDE certificates are issued, RAN does not intend to permit further partitions.⁸³ However, if an *ejidatario* makes the switch to private property, he or she can subdivide further, as there is no privately held land-division restriction or land area minimum.

⁷⁸ DEERE AND LEÓN, *supra* note 37, at 71. In the absence of a spouse or child the land could be left to an economically dependant partner. *Id.*

⁷⁹ AGRARIAN LAW art. 17.

⁸⁰ *Id.* art. 18.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Interview with Lic. Juan A. Lopez Scherenberg, head of the *Registro Agrario Nacional* in Oaxaca State (March 2002).

2. Research Findings

It is the general practice in every *ejido* visited, save for one, to subdivide land among all of the *ejidatario's* sons. In one *ejido* interviewees said that a member can only leave his or her parcel to a maximum of two people, but no one claimed that they were not permitted to subdivide at all. Most *ejidatarios* and *comuneros* report the general practice is to split the parcel among all sons, even if the resulting parcels are very small.

Because *ejidatarios* still believe they can continue to subdivide their land, problems may arise in the registration system. Once farmers learn that they are no longer permitted to subdivide, they may simply start informally subdividing the land (as they did for generations before, when it was also illegal) and not update the registration records. If the government intends to stand by its position that further subdivision will not be permitted, education on and monitoring of this restriction will be necessary. We recommend, however, that the restriction on subdivision be lifted. Such subdivisions are already occurring and lifting the restriction would help ensure that registration records would reflect the ground reality.

The *comuneros* generally split up their parcels on paper or verbally. Among the *comuneros*, if parents do not leave a child land, that person is free to claim and begin cultivating a new plot out of the common land.

G. Credit

1. Legal Framework

Previously *ejidatarios* were not permitted to use their parcels as collateral for loans. The 1992 reforms legalized the use of *ejidal* parcels as collateral.⁸⁴ *Comunidade* land still cannot be used as collateral.

One of the hopes of the PROCEDE process was that certifying *ejidal* land would allow *ejidatarios* to access credit, using their accurately demarcated parcels as collateral. This, in turn, would allow *ejidatarios* to improve their agricultural productivity by investing in their land without the need for additional government assistance.

2. Research Findings

Despite the fact that it is now legal to use land as collateral, no one interviewed had acquired formal credit in this way. The availability of formal credit was virtually non-existent. In some places groups of farmers would approach a bank to take a loan (not using land as collateral, however), but individuals did not

⁸⁴ AGRARIAN LAW art. 45.

generally get bank loans. Also, in several places farmers told us that banks simply did not accept *ejidal* plots as collateral. This is likely because if foreclosure occurs, banks would only be able to sell an unprivatized *ejidal* parcel to another *ejido* member (or resident of the population center). This limitation quite likely reduces the value of land for resale purposes.

Thus, at least in the areas of Oaxaca visited, the government's hope that allowing the mortgage of *ejidal* land would increase access to credit which would in turn spur investment, is not occurring. Other researchers have also suggested that secure use rights alone may not be sufficient collateral and that farmers might more easily use their parcels as collateral if they were privatized.⁸⁵ However, these researchers also followed up by stating that a 1997 survey found that less than 20% of households were interested in privatizing their parcels for the purpose of accessing credit. As mentioned above, one reason *ejidatarios* gave for not privatizing was the increase in land taxes that privatization entailed. If, after additional research, it is determined that privatizing land would enhance the rural community's ability to access credit, then privatization incentives, such as a land tax exemption, may be justified.

Those interviewed who had obtained informal credit had done so through friends or family members. In arranging these loans, an informal document was often drafted stating that the *ejidal* or *comunidad* parcel was security for the loan. No person interviewed had lost his or her pledged land through the default of an informal loan. Informal loans using social sector land as collateral were occurring prior to the 1992 reforms. The interest for these loans ranges from five to ten percent. Alternately, in lieu of interest, the borrower may grant the lender possession and use of the landholding for the term of the loan.

H. Conflicts and Dispute Resolution

1. Legal Framework

The 1992 reforms established a separate court system with jurisdiction to resolve conflicts over *ejidal* and *comunidad* lands.⁸⁶ The revised Agrarian Law provides for the establishment of 42 *Tribunales Agrarios Unitarios*, as well as one *Tribunal Superior Agrario*. From 1992 to 1999, these tribunals resolved 350,000 conflicts nation-wide.⁸⁷ Agrarian Tribunals are responsible for resolving most disputes relating to *ejidal* and *comunidad* land, including disputes over boundary limits, succession of *ejidatario* and *comunero* rights, and tenancy conflicts.

⁸⁵ Deininger *et al.*, *supra* note 32.

⁸⁶ AGRARIAN LAW arts. 163-169.

⁸⁷ Deininger *et al.*, *supra* note 32, at 10.

Ejidos, comunidades and their members can seek advice and legal representation from the *Procuradía Agraria*, which is charged with “the defense of the rights of the *ejidatarios, comuneros, successors of ejidatarios or comuneros, ejidos, comunidades, small property owners, residents and agricultural laborers.*”⁸⁸

Moreover, in Oaxaca a special *Junta de Conciliación Agraria* was established to resolve the large number of land boundary conflicts in the state, and its sole purpose is to resolve disputes between separate *ejidos* or *comunidades*.

2. Research Findings

Conflicts between separate *ejidos* or *comunidades* are common.⁸⁹ Often the conflicts originated because the original maps were in conflict or the boundary markers that were used (tree, rock, stream) had shifted. The disputes generally involved uncultivable common land. Fortunately, many of these disputes have been addressed recently as part of the PROCEDE process.

In practice the *Procuradía Agraria* is generally the first agency to step in and try to solve disputes. The Agrarian Visitor assigned to an *ejido* or *comunidad* will initially try to resolve a conflict through negotiations or through a ground survey of the land.

If the Agrarian Visitor cannot solve the dispute, it is referred to an Agrarian Attorney, a legal advocate and advisor for social sector farmers working in the *Procuradía Agraria*. The Agrarian Attorney may again try to resolve the dispute by explaining the law to the parties and through conciliation. However, if this does not work the Agrarian Attorney will plead the case to the Agrarian Tribunal on behalf of the side that first contacted the office. Agrarian Attorneys of the *Procuradía Agraria* can only represent one side of a dispute; the other side may seek representation by a private attorney or other legal aid body.

In addition to land boundary disputes, other common disputes that Agrarian Attorneys handle include disputes over the succession of *ejidal* or *comunidad* rights (disputes among heirs) and disputes over membership status.⁹⁰

An alternate path to resolve boundary conflicts is through the Oaxaca State *Junta de Conciliación Agraria*. Oaxaca’s Governor formed the *Junta de Conciliación Agraria*

⁸⁸ AGRARIAN LAW art. 135.

⁸⁹ Violent conflict over boundaries in Oaxaca within the past few years has resulted in multiple deaths, such as the death of 26 farmers in a dispute over boundaries in 2002. Tim Weiner, *26 Peasants are Killed in Ambush on Rural Mexican Road*, N.Y. TIMES, June 2, 2002, at Section 1, Column 1.

⁹⁰ Interview with Lic. Lucina Yadira Rodríguez Mtz., Agrarian Attorney at the *Procuradía Agraria*, Oaxaca City (March 2002).

because of the high number of land conflicts.⁹¹ This body brings the feuding parties together to discuss the dispute. Sometimes this requires two or three meetings, while other times it requires ten to twenty meetings; the *Junta* has no limit on the amount of time it takes to resolve the dispute. After conciliation the parties create a written agreement. This often requires the *ejido* or *comunidad* members to visit the field to specify the new boundary. Then both groups sign the covenant, which is then sent to the Agrarian Tribunal to give it judicial effect. Once an agreement is reached the towns usually abide by it because they reached the agreement themselves and feel strongly about the importance of “keeping their word.”⁹²

In order not to duplicate efforts, if either the *Junta de Conciliación Agraria* or *Procuradía Agraria* detects a problem, the Inter-Institutional Commission of the Agrarian Sector oversees the different agencies’ involvement in the conflict. The Inter-Institutional Commission may also encourage feuding parties to keep their promises by offering each party a development project in return for resolving the conflict.

⁹¹ Interview with Lic. Mario Artutro Perez Brena, *Junta de Conciliación Agraria*, Oaxaca City (March 2002).

⁹² *Id.*

IV. CONCLUSION

The result of the 1992 reforms in the areas of Oaxaca State visited has been mixed. Positively, the reforms have had a noticeable impact on resolving boundary disputes and generally increasing tenure security. Many farmers value the certificates that they received through the PROCEDA process because they believe the new accurate measurements and maps will prevent future encroachments and disputes. Also notable, this process has been the driving force behind resolving many long-standing land boundary disputes in Oaxaca.

Negatively, the reforms have eroded women's land rights, who now (unless they themselves *ejidatarios* or *comuneros*) have no administration or disposal rights over *ejidal* or *comunidad* land rights. Other anticipated results of the reforms have not occurred on a wide-scale. Few *ejidos* have decided to privatize, save for the *ejidos* very near the city of Oaxaca where land is valuable for non-agricultural purposes. None of the *ejidos* or *comunidades* visited had entered into partnerships with the private sector. The level of land leasing may have risen slightly, but is not substantially higher than levels of illegal leasing before 1992. Also, *ejidal* farmers have not been able to use their parcels to secure credit because banks are not readily accepting *ejidal* parcels as collateral.

Several problems with the implementation of the 1992 reforms were observed during the research in Oaxaca. Below, possible solutions to these problems are offered, along with suggestions on areas where further research is needed to determine more concrete solutions:

Exclusion of women from land rights and decision-making: Women can legally become *ejido* or *comunidad* members with land and voting rights, but generally only do so if they are the female head of household. Women have access to land that their husband holds use rights to, but no voting rights and no legal rights to keep their husbands from leasing or selling land. They do have the right of first refusal to purchase such land, but this right is of little utility, as raising such funds would be difficult. Lack of *ejidal* or *comunidad* rights also limits a woman's ability to manage the land in her husband's absence, which may be a growing problem due to the increasing numbers of men migrating for work.

The federal government should seriously consider amending the Agrarian Law and altering the certification process to permit married couples or those in consensual unions, to jointly hold *ejidal* or *comunidad* rights. Ideally, such a policy would be implemented retroactively. In Mexico, however, such a change may face legal obstacles due to the constitutional limitation on retroactive legal acts. A strong alternate solution would be to clearly recognize, through an amendment to the Agrarian Law, that *ejidal* and *comunidad* property rights are subject to marital property rules like any other property. In the case of a joint marital property

regime this would render *ejidal* and *comunidad* rights jointly owned and administered.

Misunderstanding of current right to lease land: On nearly every *ejido* visited it was not understood that leasing and sharecropping are now legal for terms of up to 30 years and that the approval of the *comisariado* is not necessary. The infrastructure already exists to provide this information to *ejidos* and *comunidades* through the Agrarian Visitors of the *Procuradía Agraria*. The Agrarian Visitors should be alerted to this current misunderstanding and should give a high priority to explaining the right to lease at the general assembly meetings that they attend. This is especially important to undertake in Oaxaca if the benefits (reduced rural poverty and increased production) that other areas of Mexico have experienced as the result of increased leasing are to help Oaxacans.

Lack of access to credit: The current reforms were meant to increase *ejidatarios'* ability to access formal credit by allowing them to use their parcels as collateral even when not privatized. *Ejidatarios* in the areas of Oaxaca visited have not been able to access formal credit. It is likely that banks do not consider use rights to land to be adequate collateral, because of their low resale value. Privatized parcels may be more likely to be accepted by banks as collateral. If this is the case, then perhaps incentives are needed to privatize, such as a land tax exemption. At any rate, further research is needed to determine why *ejidatarios* are not able to use their parcels as collateral to access credit. This would involve interviews with financial institutions to determine why they are not accepting *ejido* parcels as collateral.

Lack of access to state funds: Both *ejidatarios* and *comuneros* complained about the lack of government funding and programs to help them with irrigation, marketing, and improved farming methods. As described above, the government has assisted private farmers with such projects for many years but has not concentrated this attention on the social sector. Initially, further research is needed to determine what projects would most help social sector farmers. This could be done by speaking with the social sector farmers themselves and also by talking to private farmers about projects that successfully enhanced their productivity. Pilot projects could then be conducted in select areas to work out the details of such programs.

Upkeep of registration system: Several factors might impair the upkeep of the registration system, which was only recently formalized and updated through the PROCEDE process. First, very few *ejidatarios* understand that they are no longer permitted to subdivide their land amongst multiple heirs. Once they try to partition and find that such partitions are not allowed they may simply informally partition the land (as they have done historically) and not update the register. Policy makers should consider allowing further sub-division of parcels if it is the

family's wish. Such partition is already occurring and legally permitting it would do away with a major disincentive to accurately update the land register.

Second, the complexity of assigning ever-changing percentage rights to common land, including all non-residential land on *comunidades*, will almost certainly create problems within the registration system that will have to be monitored and resolved. Perhaps a better solution would be to grant each member rights to common land that are equal to all other members without specifying the exact percentage. For example, instead of granting members a specific, fixed percentage, the certificates might state simply that each member has, "the right to a portion of the common land, equal to all other recognized members."

Lack of ability to collaborate: In a number of places visited *ejido* or *comunidad* members were successful in working together to install irrigation systems or purchase equipment. Not all *ejidos* or *comunidades* had this experience, however. When asked, some either had not considered such group projects or did not know how to go about making them happen. One idea for helping these groups is to bring members from *ejidos* or *comunidades* that had successfully implemented such project to the places that had not to talk about how they organized these joint improvements. The Agrarian Visitors could orchestrate these meetings. Such information could also be conveyed via television or radio, depending on the popularity of the medium in the area to be reached.

Recent Reports in the Rural Development Institute Series



- #119 **The Impact of Land Titling in Ukraine: An Examination of the Results from an 800 Person Random-Sample Survey**
Leonard Rolfes, Jr. (December 2003)
- #118 **Amending the West Bengal Land Reforms Act: Benefiting the Poor and the Marginalized**
Tim Hanstad and Jennifer Brown (May 2003)
- #117 **Land Reform in the 21st Century: New Challenges, New Responses**
Roy L. Prosterman and Tim Hanstad (March 2003)
- #116 **Women's Land Rights in West Bengal: A Field Study**
Jennifer Brown and Sujata Das Chowdury (November 2002)
- #115 **Allocating Homestead Plots as Land Reform: Analysis from West Bengal**
Tim Hanstad and Lokesh, S.B. (July 2002)
- #114 **Women's Access and Rights to Land in Karnataka**
Jennifer Brown, Kripa Ananthpur and Renée Giovarelli (May 2002)
- #113 **Larger Homestead Plots as Land Reform?: International Experience and Analysis from Karnataka**
Tim Hanstad, Jennifer Brown and Roy L. Prosterman (August 2001)
- #112 **Land Reform Law and Implementation in West Bengal: Lessons and Recommendations**
Tim Hanstad and Jennifer Brown (December 2001)
- #111 **Agrarian Reform and Agricultural Productivity in the Russian Far East**
Jennifer Duncan and Michelle Ruetschle (May 2001)
- #110 **Women and Land Tenure in China: A Study of Women's Land Rights in Dongfang County, Hainan Province**
Jennifer Duncan and Li Ping (April 2001)
- #109 **Land Reform in Mongolia: Observations and Recommendations**
Tim Hanstad and Jennifer Duncan (April 2001)

**Copies of RDI reports may be ordered from: Rural Development Institute
1411 Fourth Avenue, Suite 910
Seattle, WA 98101 - USA
Phone: 206.528.5880 - Fax: 206.528.5881 - Email: reports@rdiland.org
or visit our website at www.rdiland.org**