



EJIDO LAND TENURE AND REGISTRATION SYSTEM: MEXICO CASE STUDY

Synthesis Report

SECURING LAND AND PROPERTY RIGHTS FOR ALL

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PREFACE

The Global Land Tool Network is a coalition of over 60 international partners working toward developing pro poor and gender responsive land tools. This work is part of an initiative to develop tools for promoting greater security and equity within customary tenure systems coordinated by GLTN and hosted by UN Habitat.


The report summarizes a case study of the Mexican ejido community tenure system. Mexico was selected for this case study because of the rich history and extensive scale of the country's community land tenure and registration systems. This community system covers 52% of the area of Mexico, roughly equivalent to the size of Egypt, and comprises over 30 000 communities. The ejido system emanated from the Mexican revolution (1910-1917) and represents a case where the customary system of land has been largely integrated into the statutory system. The case study is particularly relevant to countries which are trying to accommodate customary land systems within a formal land registration system.

Throughout most of the 20th century land in Mexico was titled to indigenous and peasant groups in the name of the community leaders, known as ejidatarios. While this can be regarded as communally held private property, it came with certain fundamental restrictions. The title land was inalienable (no land sales to outsiders), unencumberable (no mortgages) and not subject to adverse possession or prescription. The reform era came to an end in 1992 through a constitutional reform and the passing of new laws, most notably the Agrarian Law. This changed the fundamental rights within an ejido by allowing privatization of the ejido if a two-thirds majority of the ejidatarios voted in favor of doing this. Many observers at that time believed that this legal reform spelled the end of ejidos and the communities within

them. Despite the expectation that the 1992 reforms would be the demise of the ejido system, some 20 years later only an estimated 6-9% of all ejidos have privatized. The decision to privatize is driven primarily by steep increases in land values caused by urban expansion, infrastructure development and the growth in tourism areas.

The land governance system has structures and processes at both the state (equivalent to provincial) and community levels. Within communities the General Assembly, comprised of all ejidatarios, is the primary decision making body. There is also a 3-person Ejido Council (Comisariado), elected for a term of 3 years, which acts as the executive arm of the ejido. In addition, a 3-person Vigilance Council acts as a watchdog group ensuring that the Ejido Council follows the established laws and procedures. At the state (provincial) level, two agencies play a key role in land governance of ejidos. The National Agrarian Registry (RAN), with offices in each state capital, records all certified use rights within an ejido and also provides technical norms and approvals for certain documents. In addition, the Agrarian Attorney's Office is responsible for defending the rights of people living in ejidos through counseling, arbitration and regularization services. Over a two year period (2008-2010) the Procuraduría Agraria was able to resolve 98% of the 64,256 requests submitted to their office. The services of both this office and the RAN are almost entirely free of charge.

Land tenure within an ejido is comprised of three different regimes. Individual use rights are allocated over agricultural parcels within the ejido. Undivided shares in common-use areas are assigned to each ejidatario in the ejido. Finally, ejidatarios have individual property rights to a housing lot within the urban zone of the ejido. A massive regularization and



certification project was carried out between 1993 and 2006 as a means of implementing the new legal framework. This project clarified and mapped the outside figures of ejidos as well as the parceled and common use areas and then issued use certificates to ejidatarios for their agricultural parcel and their share in the common-use area. It also issued titles to the urban lots. All of these certificates were recorded in the RAN. This process was voluntary and free of charge and to date an estimated 94% of all ejidos have gone through the process.

An active land market exists amongst those ejidos which have not privatized. These include extralegal land sales to outsiders, leases, and sharecropping. In some cases these may even have passed through and been approved by the General Assembly. Some ejidos have also internally parceled land without obtaining use certificates or going through the RAN.

There are several positive and negative lessons that emerge from this case study. The land titles of ejidos have provided a shell to protect them against invasions and land grabs, thereby allowing them to adapt at their own pace. Within the ejido sector Mexico has created a common governance structure which provides clear rules for land processes at the state

and community levels as well as between these two levels. This has simplified land dealings amongst a diverse set of communities. However, the large volume of transactions occurring outside the registry may be a sign that the state has over-reached itself and that internal transactions should perhaps be handled completely at the community level until such time as an ejido decides to privatize. Nevertheless, setting up a special registry for the reform sector has facilitated a pro-poor approach by making most transactions free of charge.

The *ejido* system is evidence that individual and communal rights can co-exist, further supporting the continuum of rights approach. However, two big challenges currently face this system. The continued existence of the *ejido* depends on successfully transferring rights and governance powers to a younger generation. The advanced age of *ejidatarios* indicates that this is not happening for a number of reasons, including a lack of interest in farming by the children of *ejidatarios* and the restrictions on leaving land to more than one person. The second challenge is the need to address gender biases. While 20% of *ejidatarios* are female, only 3% of *Ejido* Council presidents are female.

Population growth and increasing demand for land has made access to land, through either a statutory or customary system, a crucial factor in addressing poverty in developing countries. It is estimated that as much as 70% of land in developing countries is not registered within the formal legal system which means that these property rights are not always protected by law. In many cases these rights are administered under a customary tenure system that has been shaped by governance systems and rules that have evolved over centuries. This has often resulted in legal pluralism with a statutory legal system, typically founded in civil or common law, operating in parallel with a customary system based on local customs and institutions.

In this report we attempt to identify tools, mechanisms or approaches that have proved successful, or which have the potential, to facilitate sustainable land management by drawing on a case study of communities in Mexico. In particular, we are interested in those approaches that provide tenure security, promote equitable access to land and other resources, secure the rights of women and other vulnerable groups, and which address poverty in both urban and rural areas.

To achieve this, we focus on a case study of the community-based ejido land tenure system in Mexico. This work is part of an initiative coordinated by the Global Land Tool Network (GLTN) hosted by UN Habitat, which is designed to develop tools for promoting greater security within customary tenure systems.

It is estimated that as much as 70% of land in developing countries is not registered within the formal legal system which means that these property rights are not always protected by law. In many cases these rights are administered under a customary tenure system that has been shaped by governance systems and rules that have evolved over centuries.

The specific objectives of this case study are to:

- Describe the historical context of Mexico and the policy and legal frameworks that have shaped the development and evolution of the ejido system;
- Describe the processes and documentation required to formalize property rights within the community (customary) as well as in the formal registry (statutory) and explain the linkages between these two systems;
- Identify the continuum of property rights that are available to community members and how these have evolved over time;
- Describe users and uses of registry information and costs associated with registry services;
- Describe the process of privatization within communities and the perceived benefits or disadvantages of this transition;
- Analyze factors affecting tenure security;
- Reflect on pro-poor, gender sensitivity, sustainability and scalability aspects;
- Summarize lessons learned from the Mexican experience.

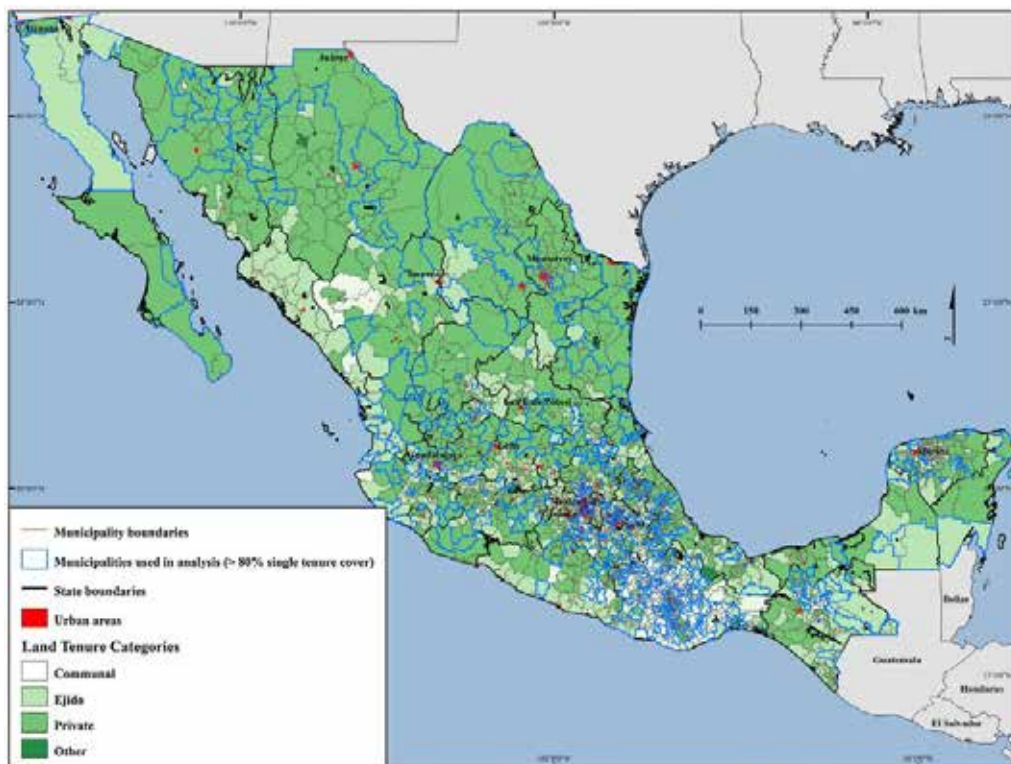
We carried out field work for this project over a two week period in May 2014, but we also drew extensively on our previous experience in Mexico.

02

WHY IS MEXICO RELEVANT?

The rich history and extensive scale of Mexico's system of community land tenure and land registration make it a worthy case study for other countries that are trying to deal with customary tenure issues. Mexico managed to perform the most successful land reform in Latin America and served as a model for the rest of that region. Beginning at the end of the Mexican revolution in 1920, community land titles were granted to groups of peasants and indigenous peoples. By the end of the land reform in 1992, over 30,000 *ejido* communities had been titled through this process. Today, over half the area of Mexico, equivalent to the size of Egypt, is held under *ejido* or community land tenure. This area is home to over five million people, mostly located in rural Mexico.

During the land reform period Mexico set up a special *ejido* land registry (RAN) with offices in each of the 31 states (provinces) and the federal capital. The majority of property transactions in this registry are free of charge. Documentation of land transactions also occurs at the community or *ejido* level. Many of these community transactions also have to go through the RAN for approval and the delivery of legal property documents. In other words, community land governance within *ejidos* is highly integrated into the statutory system, but also allows for some local variations. The state land registry system has been in place for almost 80 years, although its role has increased substantially since legal reforms in 1992 and the implementation of a massive national project which adjudicated and clarified boundaries and rights throughout the country, including the internal boundaries of *ejido* communities.



Distribution of Ejidos and Communities within Mexico © M.Bonilla-Moheno et al. (2011)

03

HISTORICAL CONTINUUM OF LAND RIGHTS

We describe Mexico's land tenure history below and summarize it using the continuum of land rights (adapted from UN-Habitat 2008) framework shown in Figure 1 below.

When the Spanish landed in Mexico in 1519, the country was populated by several indigenous polities. The Aztecs dominated the area around central Mexico, the Tarascan ruled in parts of western Mexico, the Zapotec and Mixtec kingdoms vied for power in the southwest, and the Maya empire controlled southern Mexico (Assies 2008). The communal origin of current day *ejidos* is often traced back to the indigenous communal tenure system, known as *calpulli*, which was spread across large parts of Mexico by the Aztecs (Flores 2008). However, the Spanish colonists all but destroyed these indigenous tenure systems as they set about reorganizing land and labor so that it served the purposes of the European conquerors.

The *encomienda*¹ and *repartimiento*^{2,3} tenure systems conveyed huge tracts of land, together with the inhabitants living on that land, to Spanish colonists.

Following independence from Spain in 1821, land became even more concentrated under the dictatorship of Porfirio Diaz (1877 to 1910) and by the end of this period large haciendas and ranchos covered an estimated 94% of the land area of Mexico.

By the beginning of the 19th Century the Mexican landscape was dominated by large land tracts, known as haciendas. Following independence from Spain in 1821, land became even more concentrated under the dictatorship of Porfirio Diaz (1877 to 1910) and by the end of this period large haciendas and ranchos covered an estimated 94% of the land area of Mexico. This land was held by 1.5% of the population (Assies 2008) and was one of the major reasons for the Mexican revolution. For example, the revolutionaries in the south fought under the banner of 'land and liberty' (*tierra y libertad*) and drafted a plan⁴ to return all lost land to communities and provide the landless with land to be taken from large *haciendas*.

Figure 1. Historical Continuum of Rights (adapted from UN-Habitat 2008)



1. Literally translates to entrustment or charge.
 2. In Mexico repartimientos were primarily applied to a feudal grant of indigenous people to work in the mines (McBride 1923, 43)
 3. Literally translates to distribution or share.

4. Plan de Ayala which formed the basis for Article 27 in the 1917 Constitution.

The Mexican land reform granted land to communities of 20 or more members and ejidos typically comprised a mix of communal land, parcelized land to which individual use rights were assigned, and an urban zone where urban lots (solares) were held under individual use rights. Over the course of the 20th century this land reform conveyed more than half the land area of Mexico to ejidos

After a long and violent struggle the revolution eventually led to the reform of the Constitution of 1917. The new Constitution recognized the need to organize and expand the “social sector,” comprised of those living in *ejidos*, workers’ organizations, cooperatives, communities, and worker-owned companies (Art. 25).⁵ The 1917 Constitution did not, however, address in detail the type of tenure within the *ejido*. This was addressed in Circular 51 issued by the National Agrarian Commission in 1922, regarded by some legal scholars as the most important precedent shaping the collectivization of agriculture in Mexico (Cruz Campos nd, p. 53). Three years later in 1925 the Law of Family Patrimony in *Ejidos* (*Ley de Patrimonio Familiar Ejidal*) clarified for the first time the nature of *ejido* tenure. The title granted to *ejidatarios* was regarded as inalienable and

‘unencumberable’ (*inembargable*), which meant that sales, mortgages and land rentals were prohibited.

The Mexican land reform granted land to communities of 20 or more members and *ejidos* typically comprised a mix of communal land, parcelized land to which individual use rights were assigned, and an urban zone where urban lots (*solares*) were held under individual use rights. Over the course of the 20th century this land reform conveyed more than half the land area of Mexico to *ejidos*. This land reform was carried out over several decades with certain political administrations being much more active in titling *ejidos*. The speed with which this happened depended on the political administration in power. By 1992 there were approximately 30,000 *ejidos* across the country covering an area of approximately 92 million hectares.

In 1992, Mexican president Carlos Salinas introduced major reforms to the legal framework controlling *ejidos*. Land policy, and the country’s policy in general, had swung towards a more neo-liberal model which relied on the market place to produce reforms and economic growth. Within the land sector, neo-liberal policy suggested that it was necessary to remove the constraints on *ejido* property in an attempt to attract more investment in the rural sector. Justifications given for the reforms included:



Ejidatarios lining up to use the RAN in Xalapa -Veracruz © Grenville Barnes

5. Unless specified otherwise, all references to Articles refer to the Agrarian Law

- The lack of marketability of *ejido* land meant that much of the land was held by older (and less efficient) farmers making it difficult for a new generation of farmers to gain access to land;
- Local governments were unable to acquire *ejido* land for urban expansion, which encouraged the development of informal settlements;
- Capital investment in *ejidos* was substantially less than on surrounding private land and the blame was placed on the legal and administrative restrictions on *ejidos* (World Bank, 2001).

To address these and other economic problems, Salinas' administration pushed through a constitutional reform, which fundamentally changed the bundle of rights in *ejidos*. The substance of the tenure reforms passed by Salinas is contained in Article 27 of the Constitution and in the 1992 Agrarian Law.⁶

These reforms empowered *ejidos* to change their tenure regime to private property (*dominio pleno*) if two thirds of the *ejidatarios* voted in favor of this conversion. If *ejidos* chose to privatize, they could then sell land parcels to outsiders.

It also allowed *ejidos* to enter into joint ventures with outside companies and individuals and to sell the usufruct rights on individual agricultural parcels to other community members. This constitutional change and the passing of a new Agrarian Law signaled the end of the agrarian reform era as the power of the President to grant land was terminated and agrarian justice issues were shifted from the executive to agrarian tribunals. The focus shifted from land reform to land regularization—clarifying, measuring and certifying existing rights.

6. All subsequent reference to Articles in this report refer to the Agrarian Law unless stated otherwise.

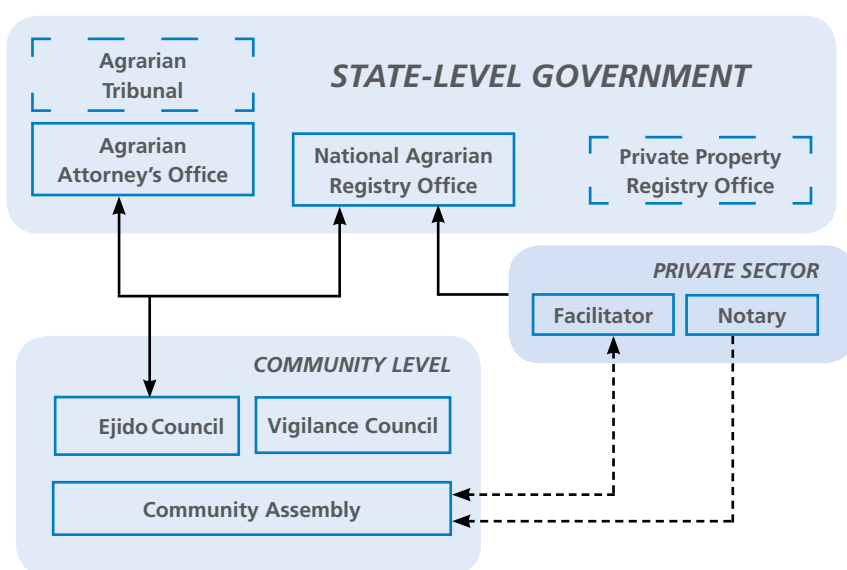
Community Governance: Although Mexico's *ejido* and indigenous lands system are quite diverse, all *ejidos* have the same fundamental governance and land administration structure. The *ejido* is governed by three internal entities (see Figure 2). The primary decision-making body is the General Assembly (*Asamblea General*), made up of all *ejidatarios*. Only *ejidatarios* have the right to vote in the Assembly and a majority vote is required to authorize decisions at the *ejido* level. The Assembly is charged with formulating and modifying internal regulations, which may differ from one *ejido* to the next. Most land transactions – sale of use rights, conversion to private property, and joint ventures with outside parties – must be approved by the Assembly. However, when making decisions on allocating land, the Assembly is required to follow the technical guidelines or norms issued by the RAN for delineating land within the *ejido* (Art. 56). The minutes taken at *ejido* Assembly meetings document

Although Mexico's *ejido* and indigenous lands system are quite diverse, all *ejidos* have the same fundamental governance and land administration structure.

the transactions and agreements reached and can be referred back to if uncertainty or disputes arise.

The second key *ejido* governance entity is the Ejidal Council (*Comisariado Ejidal*) which acts as the executive arm of the *ejido* and is comprised of a President, Secretary and Treasurer, elected by the Assembly for a period of 3 years. The *Ejidal* Council keeps a Registry Book (*Libro de Registro*) which contains the names and identification of all *ejidatarios*. Sales (*enajenaciones*)⁷ of individual usufruct rights are also documented in this Book (Art. 80(c)). Such transfers must be in writing, signed by both parties

Figure 2. Land Governance System



7. Although this word in Spanish means "alienation" which is generally accepted as a transfer of title, within the Mexican *ejido* context it is interpreted as the sale of usufruct rights.



City expansion into a previously rural ejido © Grenville Barnes

before two witnesses and ratified by a notary. Once approved, the *Ejidal* Council notifies the RAN which cancels the old certificate and issues new ones in the name of the new use right holder. Even though *ejidos* were not legally able to lease out land to third parties prior to the 1992 reform, this was apparently quite commonplace (Deiningner and Bresciani 2009). Within the current legal framework, *ejidos* deal with leases in different ways. Some *ejidos* do not allow it; others claim that the *Ejido* Council has to approve all leases and in some cases these leases are limited to two to three years (RDI 2004).

The third governance body in an *ejido* is the Supervisory Council (*Consejo de Vigilancia*), comprised of an elected president and two secretaries. Their main obligation is to oversee that the Ejidal Council and Assembly are carrying out their duties and obligations in accordance with the law (Art. 6). This council is based in the *ejido* and its members are elected ejidatarios who live in the community.

Every *ejido* is required by law to formulate internal regulations or local rules which are ratified by the Assembly and then submitted to the RAN for certification. These regulations deal with such issues as the economic and social basis of the *ejido*, the criteria for admitting new *ejidatarios*, the rules for using the

common-use areas, as well as any other requirements stipulated by the Agrarian law or deemed pertinent by the *ejido* (Art. 10).

State-level Governance: Land governance at the state (provincial) level is comprised of the National Agrarian Registry (RAN), the Agrarian Attorney's Office (Procuraderia Agraria) and, to a lesser extent, the Agrarian Tribunal (see Figure 2). The RAN was created in 1928 specifically to deal with the transfer and securing of property rights within the *ejido* sector. Currently, the RAN falls under the Agrarian, Territorial and Urban Development Secretariat (SEDATU). Although it has a central office in Mexico City, the operation of the registry system is done through 31 offices (*delegaciones*) located in each of the state capitals as well as the federal district. The RAN is financed through the central government and the total annual budget for the entire RAN system in 2013 was approximately US\$10 Million.⁸

Information on each *ejido* is registered in an Agrarian File (*Folio Agrario*). All records documenting the formation, modification, transfer, extinction and obligations of land rights within *ejidos* are recorded in this file. It also reflects the social and economic organization of the *ejido* and any individual rights within it.⁹ When the Assembly deals with the delimitation of land rights within an *ejido* or with a change in tenure regime, the minutes of the meeting must be legalized by a Commissioner of Oaths, signed by a representative of the Agrarian Attorney's Office (*Procuraderia Agraria*) and recorded in the RAN (Art. 31). All contracts between an *ejido* and a third party allowing that party to use *ejido* land must be legalized and registered in the RAN (Art. 46). The RAN also provides the technical norms or guidelines for delineating the different tenure regimes (urban, individual agricultural parcels and common-use areas) inside the *ejido* (Art. 56). The resulting plans are evaluated by the RAN and checked to see that they conform to the technical norms which focus primarily on surveying methods to be used and the specific information on social and natural characteristics of the

8. <http://www.redpolitica.mx/nacion/secretarias-reparten-presupuesto-de-gastos-para-el-2013>

9. Art. 38, Reglamento Interior del Registro Agrario Nacional

ejido. Once that is done, the RAN certifies the plan and issues land use certificates.

The primary users of the RAN are *ejidatarios* or their relatives. The most common transactions are:

- Inheritances
- Delineation and allocation of *ejidal* land,
- Sales of usufruct rights,
- Providing proof of registration,
- Issuing private titles,
- Rectifications,
- Assembly agreements for new residents, elections, and removals.

Mexico also has a private property registry but this is not dealt with here as it does not record any *ejido* rights.

The Agrarian Attorney's Office was created to defend the rights of "agrarian subjects," which includes *ejidatarios*, residents of *ejidos*, small private farmers and farm laborers. It is a decentralized organization under SEDATU with a central office in the federal capital, offices in each state (*delegaciones*), and additional offices (*residencias*) where needed. There are three levels of dispute resolution bodies, beginning with the *ejido* Assembly. If that is not effective at resolving the dispute, the matter is referred to the Agrarian Attorney's Office (PA)¹⁰ for conciliation. Finally, the dispute may be referred to the agrarian tribunal. Many disputes in *ejidos* were, however, resolved during the PROCEDE program which systematically adjudicated all *ejidos* electing to join the program (see section below). The Agrarian Attorney's Office also provides several types of legal

services, including legal counseling, arbitration and legal representation, conciliation and regularization of property rights.

Like the RAN, the services of the Agrarian Attorney's Office are free of charge and they have often been characterized as playing an ombudsman role (e.g. López Aguilar 2013). In the two year period between April 2008 and September 2010, the Procuraduría Agraria received 64,256 requests to intervene in conflicts within Mexico's *ejido* sector. They were able to resolve close to 63,000 conflicts (98%) involving more than 375,000 people. A small share of those cases (5,701) involved indigenous communities (Procuraduría Agraria, 2011).

The Agrarian Tribunal is the highest level of authority for conflict resolution in all issues involving the *ejido* sector. Between July 1992 and December 2013, the Agrarian Tribunal received over 740,000 cases, of which they have settled almost 700,000 or 95% (Tribunal Superior Agrario, 2013).

Finally, there is a state-level agency called CORRETT which is charged with addressing tenure issues in informal settlements to promote secure property rights within *ejidos* and communities. It focuses primarily on the urban sector of *ejidos*, typically those located on the periphery of rapidly expanding urban centers. Prior to the legal reforms of 1992, CORRETT was the only agency that could regularize land on the urban periphery. Through the Agrarian Law, that power was also decentralized to the *ejido* Assembly which may regularize land in the urban zone of its *ejido*.

10. <http://www.pa.gob.mx/>

The original titles that created *ejidos* during the land reform era were accompanied by a plan showing the outside figure of the *ejido* and in some cases the areas where agricultural parcels and the *ejido*'s urban zone were located. In general, one can expect to find three different kinds of tenure rights within an *ejido* (see Figure 3):

- (a) usufruct rights to the commons within an *ejido*,
- (b) usufruct rights to an individual parcel usually used for agriculture, and
- (c) private rights to a housing lot within the urban zone of the *ejido*.

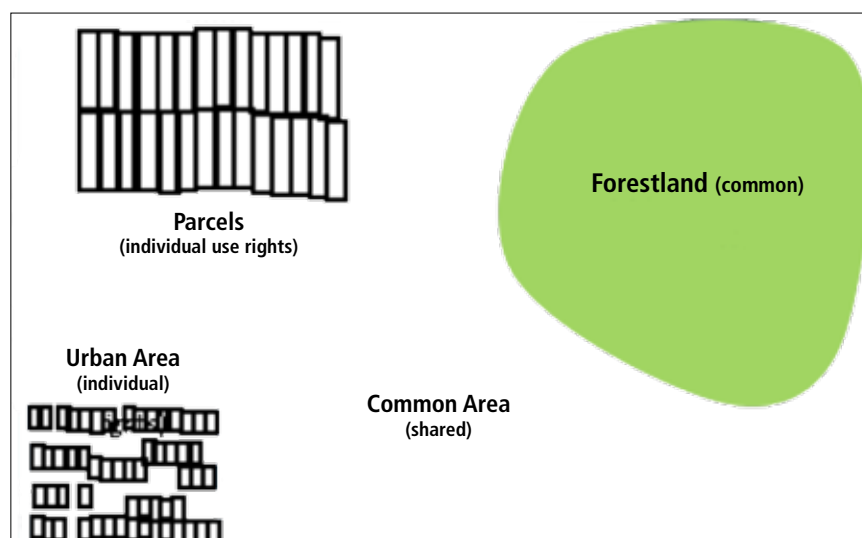
Data from the 2007 *ejido* census shows significant state and regional variation in the mix of land held individually and land in the common area. Across all *ejidos* nationally, 65% is under common-use, 32% is under individual tenure (parcels), and 3% is used for other purposes (including urban settlements). The tenure rules within the urban zone, commons and individually held agricultural zone differ quite substantially as explained below.



Main street of the Urban Zone of an *ejido* in Veracruz State
© Grenville Barnes

Urban Zone: In almost all *ejidos* community members live in a nucleated settlement which is divided into individual household lots (*solares*). The urban zone is usually located inside the *ejido*, but in some cases cities and towns have expanded and enveloped parts or all of an *ejido*. Urban lots may be privatized and individually titled. Once titled, titleholders are free to transfer the lot through sale, inheritance, etc. Decisions to expand or change the urban area are made in the community Assembly (see Section 4.4)

Figure 3. Land Tenure Regimes within an *Ejido*



Common Use Area: This is an area designated for collective use by *ejidatarios*. *Ejidatarios* are granted a certificate to common use areas (*Certificado de Uso Común*) that designates a certain percentage of the common use area to each member, without specifying any particular location. These rights can only be passed via inheritance to a single successor.

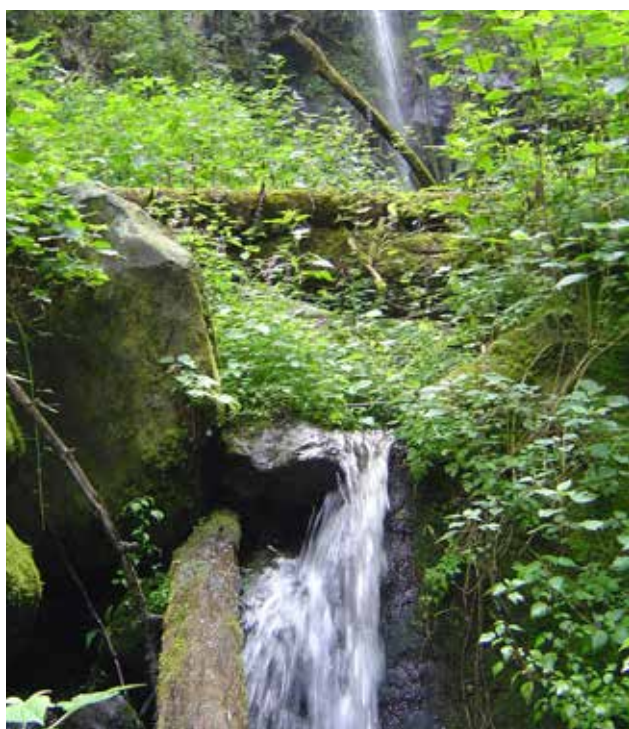
Common land under forest is further restricted in that it cannot legally be sub-divided, whereas non-forest land may be changed into individual use right units (parcels). Individuals may retain the right to extract resources from common use areas, including timber for domestic use (e.g. residential construction), as well as firewood and non-timber forest products for both domestic and commercial purposes. *Ejidatarios* may also vote to implement a collective forest management scheme in the common use area, or to determine rules regarding whether or not to allow shifting cultivation within these areas. Similarly, the *ejido* may decide via two-thirds majority vote whether or not to divide and obtain individual certificates within common use areas, which is the first step towards privatization. Common-use certificates only convey usufruct rights that are regarded as inalienable, imprescriptible (no adverse possession) and unencumberable (Art. 74). *Ejidatarios* may sell (*enajenar*) their rights to common

use land, but only to other *ejidatarios* or inhabitants living in the same *ejido* (Art. 80). However, they may form partnerships with outsiders to create for-profit (*sociedades mercantiles*) or not-for-profit (*sociedades civiles*) joint venture companies (Art. 75). In such cases, possession rights (*dominio*) can be transferred to these companies provided the venture is first evaluated by the Agrarian Attorney's Office and given the green light by them to proceed.

Individual Land Use Areas: In many cases, *ejidos* internally defined and distributed individual use rights to their members at the time the *ejido* was created. In other cases, parcels were distributed later to individual members. Prior to the 1992 constitutional reform, these individual parcels were not legally titled nor certified. The mechanisms for defining parcels varied between different *ejidos*. In some cases, *ejido* lands were sub-divided into equal parcels and then distributed by lottery system to members. In other cases, *ejidos* recognized and conveyed individual use rights to those who had been working particular areas of the *ejido* (*posesionarios*).

Ejidos with individual land parcels that are not yet surveyed or certified display a range of land tenure arrangements. In regions where shifting cultivation is the dominant agricultural practice parcels are relatively small and rights are usually granted by *ejido* authorities for short periods of time (3-5 years). In other cases, *ejidos* employ a more formal process by requiring that requests for temporary use rights be made to the *Ejido* Assembly. These usufruct rights do not necessarily convey the right to exclude others from entering the parcel and other *ejido* members can typically access these cultivated areas to collect firewood and other products.

Ejidatarios may sell their individual use rights to other *ejidatarios* or inhabitants of the same *ejido*, but first right of refusal is granted in the following order to: the spouse, common-law husband or wife, and then the children of the seller (Art. 80). The Agrarian Law restricts accumulation of *ejido* land by a single *ejidatario* to 5% of the total parceled land in the *ejido*, provided this does not exceed certain specified maximum sizes. These vary from 100 ha to 300 ha depending on the type of land use (Art. 117).



Ecosystem services -clean water- provided by rural ejidos
© Grenville Barnes

Typically three groups of *ejido* stakeholders are identified in an *ejido*. These are the community leaders (*ejidatarios*), possessors of use rights in land (*posecionarios*), and other inhabitants (*avecindados*) such as family members of *ejidatarios*. Their respective rights in the *ejido* are outlined in Table 1.

A second group of people, known as possessors, use the land and may even have bought the land from an *ejidatario* but they have never been accepted as *ejidatarios* and so have no voting rights in the community. They do, however, have a voice in the Assembly. According to the 2007 ejidal census, there were almost 1.5 million possessors in *ejidos* across

Table 1. Internal Stakeholders and Their Rights in the Ejido

Rights Right holder	Reside in <i>Ejido</i>	Hold Use Rights in Parceled Area	Hold Use Rights in Common Area	Rights to an Urban Lot	Voice in Assembly	Voting Rights in Assembly
<i>Ejidatario</i>	Yes	Yes	Yes	Yes	Yes	Yes
Possessor	Yes	Yes	No	Yes	Yes	No
Resident	Yes	No	No	Sometimes	No	No

The original *ejidatarios* are those who signed the title that created the *ejido*. With the passing of time, many of these individuals have passed on and *ejidatario* rights have been conveyed via inheritance to a single descendent. In 2007 there were over 4.2 million *ejidatarios* across the entire country with an average number of 134 *ejidatarios* per *ejido*. In our work in Mexico we have come across *ejidos* that have varied from a minimum of 25 to a maximum of 809 *ejidatarios*. Only 20% of all *ejidatarios* nationally were women in 2007, and of those a mere 2% served as the president of the *Ejido* Council. Another notable characteristic of *ejidatarios* is their advanced age. Various reports indicate that the average age is close to 60, but from the small sample that we observed in the RAN archives it was closer to 70.

Mexico. The remaining inhabitants who have lived in the community for at least one year are known as residents (*avecindados*). They do not have a voice or a vote in the Assembly nor any rights to land. Since the governance of the *ejido* is essentially limited to *ejidatarios*, the other two groups have little or no representation at community assemblies where all important decisions are made.

Throughout the years, many *ejidos* have increased their membership by voting in new members, oftentimes sons of *ejidatarios* or residents (*avecindados*). These new members receive a Certificate of Right (*certificado de derecho*) as evidence of this membership.

Box 1. Ejido Noh Bec – a Success Story

The ejido of Noh Bec was created in 1936 as part of the land reform. There are currently 219 ejidatarios and the entire population of the ejido is around 2000. Seventy-eight percent of the ejido's total area of 24100 hectares is forested and this is the source of most household's livelihood. The forest in the ejido was concessioned out to private companies by the government, but in 1986 a new Forest Law returned control of the forest to the ejido. In 2001 the ejido created a private company to handle the timber processing and marketing. This timber enterprise, which owns a sawmill, provides 90 permanent and over 100 seasonal jobs to the community. Noh Bec has won international awards for its forest management and its timber is certified by the Forest Stewardship Council. The enterprise has an annual turnover of US\$2.5 million and the ejidatarios who are all associates in the business each receive between US\$2500-3000 annually.

Noh Bec is renowned as the poster child of ejidos and numerous studies have tried to ascertain the secret to its success. It is fortunate to have extremely valuable forest on its land, but without good management this would not have automatically led to success. Perhaps its biggest advantage is that it has had consistently good community leadership and governance.



Ejidatarios working in their Forest - Veracruz State © Grenville Barnes

One of the justifications for the 1992 legal reforms was the assertion that there was a rampant informal land market within *ejidos*. Because selling land to outsiders was illegal prior to these reforms, it is difficult to find reliable data to confirm or rebut this assertion. However, by compiling sales data from a number of sources for different states and years we illustrate certain characteristics of this land market.

A study of land transactions that took place in Veracruz in 1997 (Escalante 2001) showed that there was an active market involving sales of certified parcels. But it also revealed other transactions, such as leases and sharecropping. A World Bank study in 2001 analyzed the land market following the 1992 reforms and concluded that “there is evidence that since the reform land purchases have decreased irrespective of the tenure status.” (World Bank 2001, 44). They attributed the drop off in the land market to the removal of government subsidies and trade liberalization through the North American Free Trade Agreement (NAFTA). The primary motive for sales according to another study in Veracruz is to pay for family health emergencies (Borquez and Quintana 2001). The *ejido* census of 2001 revealed that 58%

of all *ejidos* in the country had participated in the sale of *ejido* land to outsiders. While some of these may reflect sales that followed the legal procedure of first converting usufruct rights into full title, it is highly likely that the majority of these involved the sale of the usufruct right. Since this is contrary to the Agrarian Law, these transfers are not able to be registered in the RAN.

An extensive 2006 land market study of 25 *ejidos* in the northwest state of Sonora showed that the majority of purchasers lived outside the *ejido* and did not participate in the *ejido* (No Author 2006). A more recent study covering several states north of Mexico City showed that sharecropping and leasing are the most common mechanisms for accessing land in highly marginal areas (Palacio, Montesilla and Santacruz 2007). It is clear that land markets are arising in the same locations where there is growing demand for *ejido* privatization. Principally, this is around expanding urban areas. It is estimated that 5% of all *ejidos* are situated within Mexico’s largest cities and a much greater and increasing proportion are located on the urban periphery (USAID 2011).



Massive urbanization facing rural ejidos in the state of Mexico © Grenville Barnes

In the wake of the 1992 legal reforms, a massive nationwide land regularization and certification program was launched as a means of implementing the new land policy. The project, known as PROCEDE (Program for the Certification of *Ejido* Rights and the Titling of Urban Lots), was implemented through the cooperation of four government entities - the National Statistics and Geographic Information (INEGI), the Agrarian Reform Secretariat, the Agrarian Attorney's Office and the RAN. The Secretariat coordinated the program and dealt with policy level issues as well as the design of adjudication and conflict resolution procedures. INEGI was in charge of the technical surveying and mapping work which was done using modern technologies such as GPS and GIS. The Agrarian Attorney's Office played an important role in clarifying and defending the rights of beneficiaries in the communities and ensuring that the process followed the legal requirements. The RAN reviewed the technical and legal information from the field and then registered and issued legal titles and certificates (SRA/PA/INEGI/RAN 2006). The process was designed to be participatory and involved several community Assembly meetings.

Participation in PROCEDE was voluntary and without cost to the beneficiaries. The stated objective of the program was to provide greater security to rightsholders in *ejidos* so as to encourage increased investment via both credit and joint ventures with outsiders. However, many viewed the program as a mechanism for subdividing, privatizing and ultimately eliminating *ejidos* (Tequio Jurídico A.C. 2009). While

the certification provided by PROCEDE is a necessary step towards privatization, the certificates are not land titles but are a documentation of usufruct rights.

Three types of documents were issued: certificate to individual parcels; certificate to a share (expressed as a percentage, such as 1.5%) of the common area in the *ejido*; and individual title to the urban lot. PROCEDE also clarified and surveyed the external perimeter of the *ejido* as well as the boundaries of the urban area, the parcelized area and the common use area. PROCEDE was an ambitious and extensive program as it set out to regularize (including surveying, certifying, titling and registering) almost 30,000 communities covering over one million hectares and potentially impacting almost four million people (Reyes 2004). All of the information from PROCEDE can be found in the archives of the various RAN offices.

Although PROCEDE terminated in 2006, the RAN and CORRETT have continued the process in a more sporadic fashion. By August 2012, 94% of all rural *ejidos* covering an estimated 90% of the total *ejido* land area, had been regularized and certified (Salazar, 2014). Although participation in PROCEDE was voluntary, certification is a legal prerequisite for conversion to private property and it was expected that many *ejidatarios* would exercise this option. Responses to PROCEDE were for the most part positive, but in certain areas (the more indigenous southern states) this program was not viewed as a benefit and *ejidatarios* decided not to participate in the process.

When the 1992 reforms were first passed many people thought that this was the death knell of *ejidos* and community-held property. They believed that once *ejidos* could privatize it was only a matter of time before all *ejidos* transformed to private individual properties. Twenty years have now passed which is sufficient time to observe whether or not this has occurred.

Statistics on the number of *ejidos* that have converted to private property vary, but there is general agreement that somewhere between 6-9% of *ejidos* have opted for private title (*dominio pleno*). The variation in these figures most likely stems from the different forms of privatization. Some *ejidos* have privatized only a part of the *ejido*, while others have converted the whole *ejido*. It is also probable that some of these statistics draw only on the dataset produced by PROCEDE which, as noted in the previous section, does not cover all *ejidos*. The most comprehensive dataset is the 2007 *ejidal* census, albeit

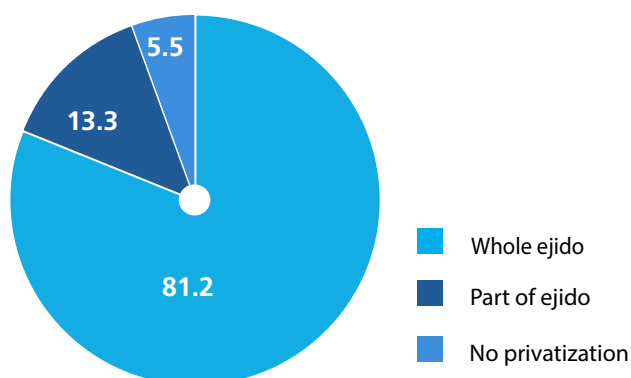
somewhat dated. The census data makes a distinction between these two modes of privatization and also quantifies the area that had been privatized by 2007 (see Figure 4).

When land parcels in *ejidos* are converted to private property, the RAN first sends the new titles to the municipal or state cadaster and then records them in the private registry before issuing individual titles to the new beneficiaries (Art. 81 Regulations).

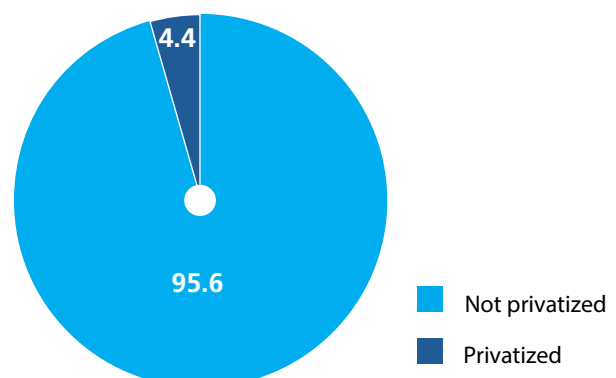
Urbanization and increasing land values appear to be the predominant driving forces of privatization. In the state of Quintana Roo only three *ejidos* have adopted private property, and these are in either urban centers or tourism areas where land values have increased exponentially since the 1992 reforms. In Veracruz state the privatization of *ejido* lands is more pervasive and appears to be driven mostly by urban growth (Benítez et al 2012). The population of the state capital, Xalapa, for example, increased

Figure 4. Number (a) and Area (b) of Ejidos that have Privatized


(a) Percentage of ejidos that have privatized



(b) Percentage area privatized



11. This was the figure mentioned by several speakers at the National Land Information workshop that was held in Mexico City on 20 May, 2014.



from 63,000 inhabitants in 1960 to over 430,000 in 2014 (Benitez 2014). As a result of the city's rapid expansion and subsequent housing crisis, surrounding *ejidos* have become the focal point of rising land values, land speculation, informal land transactions and new housing settlements (Benítez et al 2012). It is estimated that up to 50% of Xalapa's urban area is now made up of informal settlements, many formerly part of *ejido* lands. Urban land markets have a significant impact on the land prices of areas surrounding the urban area.. In one study the price

of urban land was found to be over one thousand percent higher than that of agricultural land (Palacio, Montesillo and Santacruz 2007)

Many *ejidos* with good agricultural land have increased the area under individual use rights without formally privatizing. When these use rights are sold to outsiders they become de facto private lands and some communities make no distinction between a private title and a certificate of use to a parcel.

The fundamental changes that occurred as a result of the Mexican Revolution (1910-1917) and the very successful land reform that followed provide a well-documented example of a customary tenure system that has been incorporated into the statutory legal system for almost a century. What positive and negative lessons can we learn from the Mexican experience that may be relevant to other countries which are trying to bridge between customary and statutory land system?

Land titles provide a protective shell: The initial titling of land in the name of the community leaders granted *ejidatarios* all rights typically associated with private property, except for the rights to sell to outsiders, mortgage or encumber their properties in any way. The outside “shell” that was provided through these legal titles has given communities across Mexico the protection to enable them to adapt to changing external and internal circumstances in their own time and without the threat of land grabbing (Alcorn and Toledo 1998). The same protections would not have existed by just providing rights to certain resources, such as is done with wildlife in the conservancy systems used in Southern Africa (Child and Barnes 2010).

A standardized governance structure simplifies land administration: Mexico has managed to create a common governance structure which provides clear rules for the relationship between state governance structures and those at the community level. Since each community creates its own internal regulations, there is some room for local variation and adaptation. While this simplifies land administration, from the perspective of the state, the deviation of de facto and de jure practices is an indication that the state is struggling with such wide coverage of land and that further decentralization of land functions should be considered.

Special registry for the ejido sector facilitates pro-poor approaches: The National Agrarian Registry or RAN deals primarily with land that was titled through the land reform. Separating this from the private property registry enables pro-poor approaches. This includes making transactions free of charge and relatively simple. It also allows for the development of nuanced technical approaches that accommodate the peculiarities of land tenure within communities, such as the existence of both individual and communal rights.

Communal and individual land rights can coexist: The Mexican experience shows that we should not think about land rights in a binary fashion, with the only options being communal or private individual tenures. Viewing land tenure as a continuum of land and property rights is a much more realistic approach to understanding community tenure systems like the ejido. In the ejido, land use has determined the type of tenure – agriculture is generally individual, while forests and pasture land is held communally in undivided shares.

Communal land has preserved natural resources that provide valuable environmental services: Common pool resources like forests, water, and fisheries are generally better managed as a community (Ostrom 1990). The large majority of Mexico’s forests are located on *ejido* land and the sustainability of these forests is crucial to the sustainability of urban areas where most people live. Clean water and air in cities depends on the continued existence and proper management of forests and other common pool resources.

Facilitate inter-generational transfer of land rights: Transfer of land rights between generations not only affects women’s access to land, but also determines the future adaptation of the land tenure



Interviewing ejidatarios in Mexico State © Grenville Barnes

system. The majority of *ejidatarios* in Mexico is approaching, or have past, the age of being able to carry out the hard labor required in rural areas. In our interviews several *ejidatarios* were skeptical about transferring or leaving their land to their children as they were not interested in living and working on the *ejido*. They do not share the “affection for the field” that underpinned the whole creation of *ejidos* during the land reform era.

Inheritance laws and practices must be carefully designed to be gender responsive and family oriented: The current law, and customary practices in some instances, requires that an *ejidatario*’s rights be inherited by a single person. This is problematic when an *ejidatario* wants to leave his/her land to several survivors and has even led to privatization of the land to avoid family tensions. In some situations *ejidatarios* have just transferred their land rights to several family members without fulfilling the legal requirements. Inheritance is the key mechanism for women to obtain land rights and past practices have led to significant gender biases. Even though the Agrarian Law in Mexico stipulates that spouses should

be first in the line of succession, this does not always happen in practice. Inheritance is not only key to securing women’s rights but also to the sustainability of the land tenure and administration system.

Need clear distinction between certificates of use and land titles: The extent of the informal land market in land use certificates, as well as information gleaned from interviews, clearly indicates that many *ejidatarios* and external buyers do not make a distinction between use rights and full land rights that accompany private titles. This raises the question as to the value of certifying use rights. Opponents to the 1992 reforms would argue that certification is just one step on the path towards private individual property. On the other hand, this does give landholders some tenure security and a step towards stronger rights if that is the path they wish to follow. For countries wrestling with titling communities, the best solution may be to just title the outside figure in the name of the community and to handle all internal use rights within the community. Such an approach averts the huge investment made on regularization and

certification in Mexico as the broader statutory system would focus only on the outside figure.

Registry services can be more accessible: In most countries, including Mexico, land registry offices are typically located in state capitals. De facto transactions outside the registry ultimately reduce the value of the registry information as it becomes more and more out of date. One solution to this problem includes taking the services to the people. This may be done through mobile units (vehicles) that provide itinerant services, or through opening temporary offices in districts where there is a high volume of land activity. Mexico has embarked on an itinerant service, but it is still too early to judge its impact. Making more services available through the Internet can also improve access, but often remote users do not have this option.

Linking customary and statutory land administration: Mexico has decentralized its first line registration functions by strengthening the role of the community and community assembly in boundary definition, changing land tenure regimes, allocating land rights, and land governance in general. This also includes central government recognizing the community's right to make local rules and formally accepting these within the registry system.

Community right to change tenure regime: The 1992 constitutional reform made it possible for a community to change from a communal regime to private property provided there was a two-thirds majority vote in favor of such a move. This means the power to make such a change lies with the community. This has been particularly relevant to those ejidos located around expanding urban areas where land values are increasing rapidly.

Possible to title extensive areas of land under customary tenure: The more indigenous ejidos still follow traditional customary practices and titling of the community has not terminated this. There is some evidence that current policies, together with other factors like labor migration and urbanization, are leading some ejidos members to believe that the dissolution of the ejido is inevitable. However, at this point more than 90% of the country's ejidos have chosen to remain under their current tenure situation.

Possible to operate a multi-level land registry system: The Mexican case illustrates that it is possible to operate a land registry system at the community, state (province) and central government levels and still maintain linkages between them. These linkages are clearly laid out in statutes providing a common template for land governance.

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ABOUT THIS PUBLICATION

This report describes a case study of the community-based land tenure system in Mexico. It forms one of several initiatives undertaken by the Global Land Tool Network (GLTN), hosted in UN Habitat, that are designed to develop tools for promoting greater security within customary tenure systems. It is estimated that as much as 70% of land in developing countries is not registered within the formal legal system which means that these property rights are not protected by law. In many cases these rights are administered under a customary tenure system that has been shaped by governance systems and rules that have evolved over centuries. This has often resulted in legal pluralism with a statutory legal system, typically founded in civil or common law, operating in parallel with a customary system.

With the growth in population and an increasing demand for land, access to land through either the statutory or customary system has become crucial to addressing poverty in developing countries. Because large areas of land are still administered under customary tenure, there has been increasing pressure on this land and on the institutions that govern it. The work in this report attempts to identify tools, mechanisms or approaches that have proved successful, or which have the potential, to facilitate sustainable land management. In particular, we are interested in those approaches that provide tenure security, promote equitable access to land and other resources, secure the rights of women and other vulnerable groups, and which address poverty in both urban and rural areas.

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