

ABATING MIGRATION OF MEXICO'S RURAL POOR: A LEGAL, PRACTICAL, AND TECHNICAL EXAMINATION

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Resumen

Muchos trabajadores Mexicanos de campo incluso a los que se les ha dado tierras por el sistema ejidatario, emigran a los Estados Unidos cada año en busca de trabajo. Los ejidatarios carecen de fondos y la tecnología para desarrollar sus tierras debido a la mínima asistencia Mexicana federal y porqué el sistema de ejidos es altamente regulado. A través del sindicato de trabajadores agrícolas de Arizona, los trabajadores hicieron la sociedad para desarrollo económico, patrocinado por patrones estadounidenses de trabajadores de sindicatos y apoyando proyectos de desarrollo en comunidades rurales Mexicanas. Cuatro proyectos de desarrollo son discutidos como haber contribuido a la reducción de migración.

INTRODUCTION

Faced with more than 50 percent inflation, substantial unemployment and underemployment, a declining economy,¹ and an 80 billion dollar national foreign debt,² many poor Mexicans migrate

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¹The New York Times, Aug. 23, 1983, at 1A. Although inflation was cut to 48 percent in the first six months of 1983, it stood at 100 percent in 1982. One million people lost their jobs that year, and the peso fell from 26 to the dollar to 150 to the dollar in the 18-month period from March 1982 to August 1983. This period of economic distress is particularly significant to the events discussed in this article.

²The New York Times, Aug. 18, 1983, at 1A.

to the United States out of dire economic need.³ Unfortunately, even those Mexicans who have land, obtained either privately or through government allotments of *ejido*⁴ grants, must migrate because they lack the technology or money to develop their land or because they possess land unsuitable for crop production.⁵

These migrant workers are the most industrious people of the poorest sections of Mexico and often the leaders of their communities.⁶ They migrate to the United States with the hope of saving sufficient dollars to improve their living conditions in Mexico, thereby eliminating the need for future migration. Oftentimes, however, one finds three generations striving to achieve this goal.

The purpose of this article is to examine the legal, practical, and technical aspects of abating migration through economic development of the rural agricultural areas of Mexico where undocumented workers reside before immigrating to the United States. Due to the highly regulated nature of the Mexican agricultural property system,⁷ such an analysis is important to an understanding of how economic development programs may be planned and implemented on local levels in rural Mexico.

The basis of this article is the development work which has been initiated by the Arizona Farmworkers Union, an organized group of Mexican migrant workers in Arizona. Through the negotiation of a unique clause in their collective bargaining agreements, these workers have collected money to finance economic development projects in Mexico.

The article begins with a discussion of the development work initiated by the members of the Arizona Farmworkers Union, as compared with the work being done by the Mexican government. A brief history of the nature of the Mexican agricultural lands prior to the Revolution of 1910 is then followed by an analysis of the Mexican Law of Agrarian Reform which has developed since the revolution and

³Karst, *Legal Institutions and Development: Lessons from the Ejido*, 16 UCLA L. Rev. 282 (1960).

⁴Mexican communal lands developed through agrarian reforms after the Revolution of 1910.

⁵Stone, *Mexican Agrarian Rights: Who Do They Benefit?*, 8 Cal. W. Int'l L.J. 130, 144 (1978).

⁶Romo and Sanchez, *Organizing Mexican Undocumented Workers on Both Sides of the Border*, working papers in U.S.-Mexican Relations Studies Series, Center for U.S.-Mexico Studies, University of California at San Diego, La Jolla, California, 1981.

⁷In Mexico, property ownership is no longer considered an absolute right allowing the owner to use his property in whatever manner he desires. It is regarded instead as an instrument for attaining social objectives considered best for the common good. Gutierrez Quiroz, *Investment in Real Property in Mexico*, 12 Ariz. L. Rev. 273 (1970).

which governs agricultural lands in Mexico today. Particular emphasis is placed on the law governing the *ejido* land grants, as their internal administration and legal capacity to deal with outside entities are highly regulated by Mexican law. The analysis also includes a discussion of the living law aspects of the internal administration of *ejido* lands, which varies from the formal law in several significant aspects. The discussion includes a case study of four of the communities now receiving development assistance as a result of union efforts. A report on the status of the various community development plans concludes the paper.

ECONOMIC DEVELOPMENT EFFORTS IN MEXICO

Mexican Government Efforts

Mexican peasants migrate to the United States because the Mexican government has failed to develop the rural sectors and to provide industrial employment for the rural migrants flooding the cities.⁸

During the Cárdenas presidency of 1934 to 1940, 45 percent of total Mexican federal investment was spent for the benefit of *ejidos* for loans, irrigation projects, and roads.⁹ However, after Cárdenas, agrarian development has been at a standstill. In 1940, the federal government almost completely abandoned the development of *ejido* lands by restricting its involvement in them to additional land distribution, while investing in even larger federal projects for the benefit of private owners of uncultivated land.¹⁰ This resulted in large, highly commercial, private landholdings designed mainly for agricultural production of fruit and vegetables for export.¹¹

[This] dual strategy for agriculture was advantageous because the policy of redistributing land in small parcels to millions of *ejidatarios* satisfied income security and distribution criteria essential to maintain political stability while the policy of public investment satisfied productivity criteria designed to spur the rate of growth of agricultural production.¹²

⁸Schumacher, *Agricultural Development and Rural Development: A Mexican Dilemma* 4, Working Paper, Center for Philosophy and Public Policy (1981).

⁹Stone, *supra* note 5, at 142.

¹⁰*Id.* at 143. See also Schumacher, *supra* note 8, at 3. Eighty-one percent of the small landholdings contributed 3.6 percent of the national agricultural production, while 3.3 percent of the largest commercial farms produced 81 percent of the total output.

¹¹Schumacher, *supra* note 8, at 2-3.

¹²C. Reynolds, *The Mexican Economy* 137 (1970).

These policies, while failing to develop agrarian sector services and infrastructure, were accompanied neither by the creation of related commercial and industrial jobs to cushion the resulting rural migration, nor by incentives to the export-minded agribusiness to produce basic foodstuffs.¹³ The results were unemployment, which by 1977 was at the same level that had prevailed in 1940,¹⁴ and a substantial decrease in production of such diet staples as corn, beans, and sugar, which the government then had to begin importing and subsidizing.¹⁵

In the early 1970s, the Mexican government, faced with mass migration to the cities and with a drastic decline in food production,¹⁶ began instituting a series of agrarian development programs with the help of the World Bank.¹⁷ However, these programs have not provided enough investment to spur agrarian development,¹⁸ and have ignored decades of neglect, official corruption of the *ejidos*, and the resultant isolation and distrust of government official and unofficial agencies by the *ejidatarios*.

¹³Schumacher observes:

During these decades, rural development in Mexico went through several contradictions: on the one hand achieving the best output of food production in Latin America and on the other hand, "setting in motion a process of pauperization . . . in the way of life of most rural people." Population growth, declining soils, and little technological development suitable for rainfed production resulted in "much of the rural poor [becoming] not only objectively poorer than in the immediately preceding decades . . . but also subjectively so."

Schumacher, *supra* note 8, at 3.

¹⁴The San Diego Evening Tribune, Jan. 26, 1977, at 6A.

¹⁵Stone, *supra* note 5, at 155. Basic grain prices climbed from 900 pesos a ton in 1970 to over 2,250 pesos in 1972 and 1973, but grain was sold at the first price in the Mexican market.

¹⁶Schumacher, *supra* note 8, at 4.

¹⁷The programs are: *Programa Integrado de Desarrollo Rural* [PIDER] (Internal Rural Development Program) instituted in 1973; *Convenios Unidos de Coordinación* [CUC] (Coordinated Development Agreement) started in 1977; *COPLAMAR* (Coordinating Program for Marginal Zones) initiated in 1977; *Distrito de Temporal* (Rainfed District Program) started in 1977; and *Sistema Alimenticio Mexicano* [SAM] (Mexican Food System) established in 1980.

¹⁸For example, PIDER, the first of the Mexican agrarian programs, constituted one percent of total public investment, while aid to private large landholdings sectors was 14 percent of total spending. By 1982, spending for agrarian development had climbed to only 10 percent of the overall federal investment while large private commercial agriculture aid remained at 14 percent. Schumacher, *supra* note 8, at 6-14.

Development programs are designed by official "experts" who expect immediate results¹⁹ and who have no regard for the thoughts and views of the communities involved. The projects are assigned and leadership to carry them out is centrally appointed. As a result, a general skepticism and lack of leadership pervades the agrarian sector.

Union Efforts

Through organizational efforts in Mexico and the United States, the Arizona Farmworkers Union won, in 1977, the first strike²⁰ and, in 1979, the first contract²¹ for undocumented workers in the United States. In addition to wages and working conditions, the union negotiated a clause in its collective bargaining agreements whereby the employing companies would pay 10 cents per hour per worker into a special fund called the Economic Development Fund (EDF). The purpose of the EDF is to finance economic development of the workers' home villages to avoid the need for future migration.²²

The EDF was organized by the workers through election of a board of directors composed mainly of migrants from different states in Mexico, plus a few company participants and Union officials. The EDF was incorporated in Arizona in 1979 as the Economic Development Corporation (EDC). Proposals for economic development are prepared by the workers themselves and presented to the board for approval.

Since the *campesinos* lack almost everything in their communities, the EDF divides its projects into need categories:

1. *Farming and irrigation development.* In addition to the need for new lands and enlargement of the lands already acquired, development needs include irrigation projects, water wells, pumps and pipes, terracing, improved drainage, water reservoirs, and roads from the farms to main highways.
2. *Marketing.* The *campesinos'* experience in commercialization of their crops is limited to the occasional sale or trade of their products with local merchants. There is a need for training in

¹⁹Schumacher, *supra* note 8, at 22, quoting L. Yates, *El Campo Mexicano* (1978):
Land and animals have rhythms of their own which by inherent nature of the agricultural production process have a much longer time-span than the processes of manufacturing industry, so that problems that superficially appear to be short-term in character require in reality long-term measures to deal with them.

²⁰The Arizona Republic, Oct. 4, 1977, at 1A.

²¹The New York Times, Feb. 4, 1979, at 3.

²²This proposal was made by a worker from the state of Nayarit and it was adopted immediately.

administration and development and for technical assistance in marketing on international and national levels.

3. *Community development.* In some villages, economic development can be brought about by collective farming. Others must continue to farm individually and set up alternative means of income such as consumer and livestock cooperatives.
4. *Services.* The *campesinos'* needs include adult training; schools for their children; and health, sanitation, fresh water, and electrical projects.

By the summer of 1980, the workers had accumulated \$45,000 in their Economic Development Fund which was deposited in bank accounts in Mexico.²³ Mexican President Lopez Portillo approved the project and ordered technical assistance to determine the best form of accomplishing the project's goals.²⁴ In the fall of 1981, a grant for \$190,000 was accepted from the Inter-American Foundation and the EDC was able to begin working on projects already approved by the board.

HISTORICAL AND LEGAL BACKGROUND

In order to help the reader understand the nature of the law governing Mexican agricultural property today, particularly the laws establishing the *ejido* and communal land, it is necessary to provide herein a brief outline of the history of Mexican agrarian lands before the Revolution.²⁵

Lands of the Anahuac

Pre-Colombian Mexico was called Anahuac and it was ruled by a triple alliance made out of the Mexica, Tepaneca, and Texcocano peoples. Their system of government was based on absolute monarchy and the supreme leader was called *tzin*.

The *tzin* was the absolute ruler and owner of all lands in the territory. He could either keep the land for his personal use or distribute it among his subjects, retaining the power to repeal any grant of land. The land kept by the *tzin* was called *tlatocallalli*. Grants of land called *pillalli* were distributed by the *tzin* to his palace principals, ministers,

²³Uno mas Uno, Sept. 1, 1980, at 1A.

²⁴*Id.*

²⁵See generally, S. Herzog, *El Agrarismo Mexicano y La Reforma Agraria* (1959); M. Chávez Padrón de Velázquez, *El Derecho Agrario en México* (1970); and Nunez, *El Problema Agrario de México* (1971).

and nobles who had helped him in the pursuit of war or politics. The *tzin* also parceled lands called *milchimalli* that were allotted to provide for the army in time of war and lands called *tleotlalpan* used to defray the expenses of the clergy.

There were two kinds of grants the *tzin* made to the people. The first type was the *altepetalli*, lands that were divided by neighborhoods in the towns. The products from these lands were for the public good. The *tlatocallalli*, *pillalli*, *milchimalli*, *tleotlalpan*, and *altepetalli* were worked by peasants who sometimes lived on the property, with or without rights, depending on the particular grant.

The second type of landholding allotted to the people was called *calpulli*. The nature of the *calpulli* property was very similar to the present *ejido*. The property was communally owned, belonging to the neighborhood for whose benefit it was granted. The *calpulli* was divided into parcels called *calpullec*. The parcels were allotted to individual families who enjoyed exclusive possession of the land so long as they farmed it.

The *calpullec* could not be sold or transferred but could be devised. Individual *calpullec* grantees had to be residents of the neighborhood settlement, had to remain residents, and had to work the land continuously to preserve exclusive possession and enjoyment of the land. The property was lost if the family did not farm the land for two consecutive agricultural cycles. Controversies arising out of the *calpulli* were heard by a council of elders.

Agrarian Organization of the Colony

When Europeans discovered the New World, the Papal Bulls of Alexander VI divided America between the Spanish and Portuguese Kingdoms. Mexico became a Spanish colony.

The Spanish Royal Patrimony was divided into properties used to defray expenses of the administration, order, and defense of the kingdom; properties used for the expenses of the Crown; and private properties of the King. The King made land grants for individual and for communal use.

The King made individual land grants to soldiers and settlers in the form of *mercedes*, *caballerias*, *peonias*, and *suertes*. Properties for individual private use could also be obtained from the Kingdom by purchases and by confirmation of prescription.

Lands that the Indians had held in common passed to Spanish hands either through fraud or force, in spite of royal decrees to the contrary. Some of the conquered land reverted to the Indians in the form of

composiciones, communal parcels of land owned by the Kingdom and obtained by payments to the King. Some of the Indians who met requirements of Christianity and loyalty to the Spanish Crown were allowed to retain their lands, a practice called *reducciones*.

In addition to the *composiciones* and the *reducciones*, the Spanish also instituted the *fundo legal*, lands in newly founded villages allotted to the Indians for farming and living. The *fundo legal* was designed primarily to colonize and to convert the Indians to Christianity. It consisted of 600 *varas* (yards) measured from each new church toward the four cardinal points.

The few Indians that were left with private lands were prohibited from selling or otherwise transferring their lands without permission from the authorities. The Indians had no property rights over the communal lands that they worked. Much of the property that the Indians were able to keep from the Spanish soldiers and settlers were lost to the Church through mortgages, gifts, and wills.

The *ejido* was a parcel of land located at the exit of the villages. Its purpose in New Spain was to keep Indian livestock separated from Spanish cattle. The word comes from the Latin *exitus*: exit. The phonetic evolution of the word was *exitus*, *exico*, *ejido*.

The *propio* was similar to the *altepletalli* land of the Mexicas, the products of which were used to defray public expenses.

Finally, there were communal lands held with the right to exclusive possession and administered by municipal governments. If the landholding was not properly worked it could revert to the municipality.

Agrarian Organization after the Mexican War of Independence (1821-1910)

Colonization Laws

After Mexico won its independence from Spain, the new Mexican government attempted to resolve the problem of unequal distribution of the lands by a series of colonization laws designed to promote the movement of workers confined to large landholdings of the Church or private individuals to new, uninhabited areas north and south of the new Republic. These laws did not yield their purported goal, but resulted in the institution of new, large, private landholdings and in the settlement of the border states.

1856 Decree of Desamortization and
Nationalization Law of 1859

By 1856 the Mexican government found itself with a large foreign debt, no revenues, and large portions of the national land held unworked and stagnant by the Church. In an attempt to correct this situation and to obtain revenues, the government ordered the sale of all agricultural lands owned by civil or ecclesiastical corporations. The decree, however, defined as corporations all religious communities of both sexes, confraternities, congregations, brotherhoods, parishes, municipalities, schools, and, in general, all establishments or foundations having the character of perpetual or indefinite duration. This was interpreted to include all communal property since those lands were considered civil corporations of perpetual or indefinite duration. However, the law explicitly excluded the *ejidos*. Regulations passed shortly after the decree included all indigenous parcels and communities in the definition of corporations.

The only real effect of the Decree of 1856 was the loss of all Indian communal land. The clergy did not lose its land because of fear of ex-communication by speculators.

Article 27 of the new Constitution of 1857 ratified the Decree of Desamortization of 1856 and deprived all the corporations of the legal capacity to acquire or administer real property. This was interpreted to include *ejidos* and all communal lands.

Indians were deprived of all their lands and of their capacity to contest the loss. Once property ownership was legally repealed, the Indians ceased to be a legal entity able to challenge the expropriation.

After the failure of the Decree of 1856, the government, facing political struggle between the Church and the State and the possibility of French intervention in Mexico, ordered the nationalization of all lands belonging to the Church.

The purpose of the Decree of 1856 and of the Nationalization Law of 1859 was the mobilization of otherwise stagnant land by distribution and sale to the landless. This was not achieved because large landholders and speculators bought or took possession of former church properties.

Laws of Colonization and Unoccupied Lands

From 1863 to 1894, a series of laws were passed allowing the patenting of unoccupied lands (Indian lands were considered unoccupied) and authorizing surveying companies to receive up to

one-third of all the land surveyed by them. These survey companies, in addition to acquiring unoccupied and unsurveyed land, also acquired Indian communal properties.

Property Distribution on the Eve of the Revolution

By 1910, 72 million hectares were owned by surveying companies, another 46 million hectares were in the hands of 276 property owners, and 168 million hectares were owned by the Spanish and French descendants. Together, these holdings constituted three-fourths of the entire nation, leaving only 32 million hectares unoccupied.

Of the 15 million people that lived in Mexico in 1910, about 10 million were agricultural workers or their dependents.

CONTEMPORARY MEXICAN LAW GOVERNING AGRICULTURAL PROPERTY

Constitutional Provisions

Article 27 of the Mexican Constitution of 1917 was a political and legal compromise to the on-going revolutionary demands for the breakdown of large landholdings and for the restitution of the lands formerly owned by the indigent population and confiscated during the Spanish Colony, under the reform laws of 1856 and 1857, and by the Diaz Regime.²⁶ Article 27 established:

²⁶The essence of Article 27 was first proposed by the jurist Luis Cabrera in 1912 in a speech calling for the expropriation of large landholdings and the institution, through land grants, of new *ejidos* and communal lands to be parceled out to the peasants as a matter of public policy. A decree giving effect to this proposal was not issued until the forces of Emilio Zapata, Francisco Villa, and other peasant revolutionaries made it imperative through armed struggle. The decree was issued by President Venustiano Carranza in 1915, declaring null and void all transfers of communal lands made under the laws of 1856 and 1857; all transfers, concessions, and sales of lands made by the government after 1870; and all surveys by the federal, state, and local governments and by surveying companies if they illegally invaded communal lands and towns. The land was to be returned to the peasants through land petitions made to the governors or the military chiefs. To oversee land redistribution, a local agrarian commission and executive committee for each state and a National Agrarian Commission were to be created. Four months after Carranza's decree, Villa issued another decree which also called for the extinction of large landholdings, but instituted the distribution of small private parcels instead of communal and *ejido* lands. Both concepts were included in Article 27. M. Chávez Padrón de Velázquez, *El Derecho Agrario en México* (1970) and S. Herzog, *Breve Historia de la Revolucion Mexicana*, tomo 11 (1969).

1. the institution of state action to regulate the distribution of land, and to impose on private property the character that the public interest requires (Paragraph 3);
2. an affirmative duty to parcel out and make land grants to centers of population that need them (Section X, Paragraph 3); and
3. an affirmative duty on the state and federal governments to limit and break down large landholdings (Section XVII, Paragraph 3).²⁷

To avoid past abuses and the accumulation of large landholdings, Article 27 prohibits all churches from owning, holding, administering, or mortgaging real property.²⁸ It also applies the same prohibitions to commercial stock companies which can only own or administer those lands necessary for their own buildings or services as determined by the President of the Republic or by the state governors.²⁹ Banks may hold urban or rural mortgages, but may not own more property than needed for their direct purposes.³⁰

Section VII grants communal lands, whether established by law or de facto,³¹ the "legal capacity to enjoy common possession of the lands, forests, and waters belonging to them or which have been restored or may be restored to them."³² Section VII also gives federal jurisdiction to controversies arising between communal villages,

²⁷Paragraph 3 of Article 27 provides:

The Nation shall at all times have the right to impose on private property such character as the public interest may demand, as well as the right to regulate the utilization of natural resources which are susceptible to appropriation, in order to conserve them and to ensure a more equitable distribution of public wealth. With this in view, necessary measures shall be taken to divide up large landed estates; to develop small landed holdings in operation; to create new agricultural centers, with necessary lands and waters; to encourage agriculture in general and to prevent the destruction of natural resources, and to protect property from damage to the detriment of society. Centers of population which at present either have no lands or water or which do not possess them in sufficient quantities for the needs of their inhabitants, shall be entitled to grants thereof, which shall be taken from adjacent properties, the rights of small landed holdings in operation being respected at all times.

The character imposed on private property, *modalidades*, is the variable and determined form that may or may not be received by a thing or a being. This has been interpreted to mean that the right to property can be modified for its benefit or its restriction. Chávez de Velázquez, *supra* note 25, at 297-300.

²⁸Article 27, Section II.

²⁹Article 27, Section III.

³⁰Article 27, Section IV. *Ejid*os and communal lands cannot be mortgaged; see *infra* text accompanying note 77.

³¹That is, with legal title granted by the government, or without it; see *infra* note 48.

³²Article 27, Section VII.

authorizing the President to propose settlements which are appealable directly to the national Supreme Court.³³

Section VIII incorporates the 1915 annulment of the laws of 1856³⁴ as well as the voiding of all transfers of communal lands made after 1856 by the federal government,³⁵ and of all transfers of communal properties made by surveying companies, the federal government, or the state governments.³⁶

As a reinforcement to some of the Paragraph 3 provisions, Section X of Article 27 establishes an affirmative duty to grant, through expropriation, land and water to centers of population in need of the resources:

Centers of population that lack communal lands or which are unable to have them restored to them due to lack of titles,³⁷ impossibility of identification,³⁸ or because they have been legally transferred,³⁹ shall be granted sufficient lands and waters to constitute them, in accordance with the needs of the population; but in no case shall they fail to be granted the area needed, and for this purpose the land needed shall be expropriated, at the expense of the federal government, to be taken from lands adjoining the villages in question.⁴⁰

Centers of population which seek restitution of lands or grants of new lands must form, through elections, private executive committees⁴¹ and submit land petitions directly to the state or territorial governor.⁴² The governor refers the petition to a mixed commission operating in each state and composed of an equal number of representatives of the federal and state governments and one representative from the peasants.⁴³ Upon review, the mixed commission reports its decision to the governor, who approves, modifies, or rejects the commission's report⁴⁴ and submits it to the President for final decision.⁴⁵ Before the President, who is the "supreme agrarian authority,"⁴⁶ issues his final

³³*Id.*

³⁴Article 27, Section VIII(a).

³⁵Article 27, Section VIII(b).

³⁶Article 27, Section VIII(c). *See also* note 25.

³⁷Reference to the annulments of Section VIII.

³⁸*Id.*

³⁹*Id.*

⁴⁰Article 27, Section X.

⁴¹Article 27, Section XI(d).

⁴²Article 27, Section XII.

⁴³Article 27, Section XI(c).

⁴⁴Article 27, Section XII. If the commission fails to act within the prescribed time, the governor may act as he deems appropriate.

⁴⁵*Id.* Whenever the governor fails to act within the time set by law, the petition is assumed rejected and is referred to the President.

⁴⁶Article 27, Section XIII.

decision, a "direct agency of the federal executive"⁴⁷ and an advisory board appointed by the President⁴⁸ review the reports from the mixed commission and the governor.⁴⁹

Landholders whose lands have been expropriated or restored to the communities, or whose lands are threatened by expropriation, have no "ordinary legal right or recourse and cannot institute *amparo*⁵⁰ proceedings,"⁵¹ but they have the right to apply for indemnity to the federal government. This right must be exercised within one year from the date of publication of the action in the *Diario Oficial* (official register).⁵²

Lands classified as small agricultural or livestock properties in operation⁵³ are not subject to expropriation, and the owners of such

⁴⁷Article 27, Section XI.

⁴⁸*Id.*

⁴⁹Article 27, Section XIII. There is no time limit for the President to reach his final decision. Upon approval by the executive, the *ejidatarios* are issued a *dotacion ejidal* which constitutes the title certificate or patent for use and enjoyment of the land. Title certificates are issued individually, i.e., to each person granted land, as well as to the *ejido* as a whole. Few of the *ejidos* have been issued title certificates. Karst points out that the failure to issue title certificates may be due to an intentional effort on the part of the Mexican government to perpetuate insecurity of tenure, thereby perpetuating the *ejidatarios'* dependency on the governmental agencies, and perpetuating political support. Karst, *supra* note 3, at 293-297.

⁵⁰A process used as injunction and habeas corpus.

⁵¹Article 27, Section XIV. This section was incorporated by amendment in 1934 because of the government's inability to proceed with land distribution due to pending *amparo* proceedings. For an analysis of the Mexican's constitutional due process and other consequences of this provision, see F. Rodriguez, *Efectos Juridicos y sociales producidos al ejecutarse la fraccion XIV del Artículo 27 constitucional*, Tesis U.N.A.M. (1973). Rodriguez states that the provision applies only to lands officially ordered expropriated by a governmental agency. *Id.* at 38.

⁵²*Id.*

⁵³The limitation that the lands must be "in operation," that is, worked or used for agricultural purposes, is also used in Paragraph 3 of Article 27. "Small agricultural property" is defined in Section XV as follows:

Small agricultural property is that which does not exceed one hundred hectares of first class moist or irrigated land or its equivalent in other classes of land under cultivation.

To determine this equivalence one hectare of irrigated land shall be computed as two hectares of seasonal land; as four of good quality pasturage and as eight as *monte* (scrub land) or arid pasturage.

Also to be considered as small holdings are areas not exceeding two hundred hectares of seasonal lands or pasturage susceptible of cultivation, or one hundred fifty hectares of land used for cotton growing if irrigated from canals or by pumping; or three hundred, under cultivation, when used for growing bananas, sugar cane, coffee, henequen, rubber, coconuts, grapes, olives, quinine, vanilla, cacao, or fruit trees.

Small holdings for stockraising are lands not exceeding the area necessary to maintain up to five hundred head of cattle (*ganado mayor*) or their equivalent in smaller animals (*ganado menor*-sheep, goats, pigs) under provisions of law, in accordance with the forage capacity of the lands.

lands may obtain certificates of non-affectability to protect their property.⁵⁴

Finally, Section XVII establishes the methods by which the states and the federal government will expropriate property determined as excess from large landholdings and how affected owners will be indemnified.⁵⁵ It also provides that local laws shall determine and organize the family patrimony of the communal lands instituted, making them inalienable and not "subject to attachment of any kind."⁵⁶

Federal Law of Agrarian Reform

In order to regulate and enforce those provisions of Article 27 that deal with agricultural lands, the Mexican legislature passed a series of decrees, reforms, and codes which culminated in the promulgation of the Federal Law of Agrarian Reform of 1972.⁵⁷ The FLAR, *inter alia*, provides for the establishment of agrarian authorities, regulates the administration of *ejido* lands, and establishes laws for the promotion of agrarian development.

Agrarian Authorities

The Federal Law of Agrarian Reform lists the authorities governing agrarian land: the President of the Republic, the governors of the states and territories, the Department of Colonization and Agrarian Affairs,⁵⁸ the Secretary of Agriculture and Livestock, and the mixed agrarian commissions.⁵⁹

Wherever due to irrigation or drainage works or any other works executed by the owners or occupants of a small holding to whom a certificate of non-affectability has been issued, the quality of the land is improved for agricultural or stockraising operations, such holding shall not be subject to agrarian appropriations even if, by virtue of the improvements made, the maximums indicated in this section are lowered, provided that the requirements fixed by law are met.

Stone, *supra* note 5, at 136.

⁵⁴Article 27, Section XV.

⁵⁵Article 27, Sections XVI(a) to (f).

⁵⁶Article 27, Section XVII(g).

⁵⁷Ley Federal de Reforma Agraria, Editorial Porrúa (1972) [hereinafter cited as FLAR].

⁵⁸In accordance with Article 27, Section XI(a), the "Department of Colonization and Agrarian Affairs is the dependence [sic] of the federal executive in charge of applying the [agrarian laws] if the same are not expressly delegated to other authorities, and he [sic] will be appointed and removed by the President." FLAR, Article 3.

⁵⁹FLAR, Article 2.

The President is confirmed in the law as the "supreme agrarian authority,"⁶⁰ with power to take all necessary measures to reach the objectives of the law; his final resolutions cannot be modified.⁶¹ This provision defines final resolution as any final order of:

1. restitution, or grants of lands, forests, or waters;
2. enlargement of land restitutions or grants already made;
3. creation of new centers of population;
4. confirmation of property held communally;
5. expropriation of *ejidos* and communal lands;
6. dispossession of individual rights of *ejidatarios*;
7. establishment of *ejidal* and communal urban zones; and
8. all others required by law.⁶²

The governors are charged with, among other things, approving or rejecting petitions for land,⁶³ appointing representatives to the mixed agrarian commissions,⁶⁴ and officially appointing the members of the private executive committees elected by the petitioners for lands.⁶⁵

The Department of Colonization and Agrarian Affairs is the agency of the executive charged under Section X(a) of Article 27 of the Constitution with the "application and enforcement of the agrarian laws."⁶⁶ The Department's main duties include the execution of agrarian policies dictated by the President,⁶⁷ the formulation and execution of plans for agrarian rehabilitation,⁶⁸ and the jurisdictional duty of intervention and resolution of *ejido* elections and other agrarian controversies.⁶⁹ The Department is also charged with the economic duties of approving any contracts between collective *ejidos* and third

⁶⁰FLAR, Article 8.

⁶¹*Id.*

⁶²*Id.*

⁶³FLAR, Article 9, Sections I-III.

⁶⁴FLAR, Article 9, Section IV.

⁶⁵FLAR, Article 9, Section V.

⁶⁶FLAR, Article 3. The Agrarian Advisory Board, which is the other executive agency mandated by Article 27 of the Constitution, issues official orders approved by the President, and upon requests of the Department of Colonization and Agrarian Affairs, it also issues legal and regulatory opinions of policies formulated by the President. FLAR, Article 16.

⁶⁷FLAR, Article 1, Section III.

⁶⁸FLAR, Article 10, Section VI

⁶⁹FLAR, Article 10, Sections XI, XIII, XIV, and XVIII.

parties⁷⁰ involving produce, resources, or communal growth, and with promoting the development of rural industry.⁷¹

The Secretary of Agriculture and Livestock is charged with providing technical and scientific assistance,⁷² coordinating agrarian planning with the Department of Colonization and Agrarian Affairs,⁷³ and promoting conservation of soil, forest, water, and agricultural resources.⁷⁴

Finally, the mixed agrarian commissions review petitions and advise on actions to be taken on restitutions, grants, or enlargements of lands,⁷⁵ and they intervene in controversies involving agrarian rights and properties.⁷⁶

Laws Governing Ejido Lands

Nature of the Property

The constitutional provision of Article 27, Section XVII, establishing that the communal lands parceled out are inalienable and not subject to attachments of any kind, is incorporated in Article 52 of the Law of Agrarian Reform.⁷⁷ Thus, communal land may not be sold or mortgaged to raise money to finance crop production or other development projects.

⁷⁰FLAR, Article 10, Section VII. This is a very important provision because it does not authorize the Department to interfere with the contractual undertakings of *ejidatarios* who have not chosen to farm collectively. Most *ejidos* are individual, not collective. Karst, *supra* note 3, at 282.

⁷¹FLAR, Article 10, Section X. *But see* FLAR, Article 460. The Chief of the Department of Colonization and Agrarian Affairs may be sentenced to six months to two years in prison for falsely informing the President about the projects for resolution, for wrongfully denying land or water grants, or for proposing the expropriation of lands protected by the law.

⁷²FLAR, Article 11, Sections I-III.

⁷³FLAR, Article 11, Section II.

⁷⁴FLAR, Article 11, Section VI.

⁷⁵FLAR, Article 12, Sections I-III.

⁷⁶FLAR, Article 12, Section IV.

⁷⁷FLAR, Article 52, provides:

The rights that the centers of population acquire over agrarian land shall be inalienable, imprescriptible, unattachable, nontransferable and they will not, under any circumstance or in any form, alienate, deed, transfer, rent or lease, mortgage or encumber, in whole or in part. Such acts, contracts or operations that shall be executed or that, under pretense of abiding by this section, be contrary to it are declared nonexistent.

The *ejidatarios*, those in possession of communal *ejido* lands, are, however, entitled to the full enjoyment, possession, and use of the lands granted them to "exploit and profit"⁷⁸ communally or individually.⁷⁹

What is granted is an individual parcel of land, the right to use and enjoy the lands and water⁸⁰ resources owned in common by the *ejido*, and a site in the village to build a home.⁸¹ Common land includes grazing land, forest, scrub land, and a central square.⁸² Rights to common land and resources are generally inalienable as well.⁸³

The *ejidatario* can devise his rights to the land to his children, wife, or other persons who depend economically on him.⁸⁴ If he dies intestate, the law makes provisions for the transfer of the land either to the wife, children, or any other person who depended on him, in that sequence.⁸⁵ When there is no heir, the land reverts to the *ejido* for distribution to other peasants in need of the land.⁸⁶

An *ejidatario* may lose the rights to his land if he does not work the land for two consecutive agricultural cycles,⁸⁷ if he uses the *ejido* property for illegal purposes,⁸⁸ or if he is convicted of farming for narcotics use.⁸⁹

Economic sanctions may be imposed on those *ejidatarios* who borrowed money through the *ejido* and, during two consecutive cycles, did not invest the loan for the farming purpose for which the credit was obtained⁹⁰ and on *ejidatarios* who obtained credit through the *ejido* and who did not commercialize their agricultural production through the *ejido*.⁹¹ Any suspension of rights must be approved by the mixed

⁷⁸FLAR, Articles 66-67.

⁷⁹FLAR, Article 130.

⁸⁰FLAR, Articles 56-59. See also FLAR, Articles 229-240 for water distribution and restrictions. The restrictions of FLAR, Article 52 are applicable to water rights.

⁸¹FLAR, Article 93. The lots must not exceed 2,500 square meters.

⁸²FLAR, Articles 65 and 67. See also FLAR, Articles 138 and 222.

⁸³FLAR, Article 230. See also FLAR, Article 52.

⁸⁴FLAR, Article 81.

⁸⁵FLAR, Article 82.

⁸⁶FLAR, Article 84. This land distribution is done in accordance with FLAR, Article 72, which has an elaborate order of preferences.

⁸⁷FLAR, Article 85. The period is one year if the work is communally. FLAR, Article 87.

⁸⁸*Id.*

⁸⁹*Id.* A successor to an *ejidatario* can also lose his land if he undertakes to support a family and does not farm the land for one year.

⁹⁰FLAR, Article 88.

⁹¹*Id.*

commission⁹² and a final deprivation of rights can only be ordered by the President of the Republic.⁹³

Internal Authorities

The internal authorities which govern the *ejidos* and the communities in possession of land are:

1. General Assemblies;
2. *comisariados*⁹⁴ of the *ejidos* and communal properties; and
3. vigilance committees.⁹⁵

The General Assembly is the "maximum internal authority"⁹⁶ and the official gathering of the *ejidatarios* or communal owners on their respective *ejidos* or communal lands.

The main powers and obligations of the General Assembly are:

1. to formulate and approve internal rules for the development of properties held in common and for the assignment of collective tasks for the *ejido*;⁹⁷
2. to elect and remove the members of the *comisariado* and the vigilance committee;⁹⁸

⁹²FLAR, Article 89. The mixed commission is a state agency made up of representatives of the state and federal government and the peasants. There is one in each state or territory.

⁹³*Id.* The rights under U.S. property law most similar to Mexican agrarian rights are those acquired by mining claimants after location and discovery, but before the issuance of patent. 30 U.S.C. § 22. The locator obtains an exclusive possession of the land for its mineral development and incidents thereof, but title remains in the United States, and the locator must comply with the yearly requirements of assessment work to avoid a challenge to his possession. *Union Oil Co. v. Smith*, 249 U.S. 337 (1919). However, the communal aspects, village living, and economic development of the Mexican agrarian lands resemble most closely the U.S. laws governing Indian reservations. *See U.S. v. Jim*, 409 U.S. 80 (1972) and 25 U.S.C. § 4331.

⁹⁴Delegates. A three men dictatorship which includes the *ejido's* president, its secretary, and its treasurer.

⁹⁵FLAR, Article 22.

⁹⁶FLAR, Article 23. There are three kinds of assemblies: monthly ordinary, extraordinary, and for budget and programming. Ordinary assemblies are held the last Sunday of every month. Extraordinary assemblies may be called upon eight days written notice by the official or *ejidatarios* calling it, and government officials must be notified. Budget and programming assemblies are held at the end of each agricultural cycle or annually.

⁹⁷FLAR, Article 47, Sections I and IV. These tasks are called *tequios*, works that must be performed without pay by all the *ejidatarios* or *comuneros*. *Tequios* include clearing grazelands held in common, building schools, and building communal halls.

⁹⁸FLAR, Article 47, Section II.

3. to formulate programs and enact necessary regulations for the organization of work designed to increase individual and collective production of the *ejido*;⁹⁹
4. to authorize, modify, or rectify determinations of the *comisariado*;¹⁰⁰ and
5. to approve all contracts and agreements entered into by the authorities of the *ejido*.¹⁰¹

Legal Capacity

The *comisariado* is in charge of the execution of the agreements of the General Assembly¹⁰² and it is also empowered to: "Administer the property of the *ejido* . . . with the authority of a general manager for acts of control and administration, and the limitations established in [FLAR]; and to perform with third persons the operations and contractual obligations provided for in this law."¹⁰³

In addition, the *comisariado* can represent the *ejido* with the powers of a general agent before any authority,¹⁰⁴ and can bring to the General Assembly, in regular or in extraordinary meetings which the *comisariado* is authorized to call,¹⁰⁵ any proposals of organization or economic development that he "consider[s] convenient."¹⁰⁶

The law thus gives the *comisariado* broad powers to enter into contractual obligations or other agreements with third parties for the organizational or economic development of the *ejido*. But this power is limited by the authority of the General Assembly to approve, ratify, or change such agreements. It is a power tempered by the ability of the *comisariado* to convince fellow *ejidatarios* of the usefulness and/or profitability of the agreement or contract undertaken.

The General Assembly, on the other hand, has the absolute power to adopt into any specific or general policies, organization, or development and to require that the *comisariado* execute them.¹⁰⁷

⁹⁹FLAR, Article 47, Section III.

¹⁰⁰FLAR, Article 47, Section VI.

¹⁰¹FLAR, Article 47, Section VII.

¹⁰²FLAR, Article 37. All agreements must be made by consensus of the three members. FLAR, Article 48.

¹⁰³FLAR, Article 48, Section VII.

¹⁰⁴FLAR, Article 48, Section I.

¹⁰⁵FLAR, Article 31.

¹⁰⁶FLAR, Article 48, Section XIII.

¹⁰⁷FLAR, Article 31. Any member of the *comisariado* can be removed by the General Assembly for not complying with the agreements of the General Assembly.

Furthermore, the *ejidatarios* who vote in favor of a development or organizational policy must abide by it and personally work to maintain it as productive.¹⁰⁸

Forms of Economic Organization in Ejidos and Communal Lands

The Federal Law of Agrarian Reform establishes a series of rights, privileges, preferences, and forms of organization for the promotion of economic development of the agrarian communities. These rights apply equally to *ejidatarios*, communal residents, and small property owners.¹⁰⁹

In accordance with these rights, the *ejidatarios* and the *ejido* villages can organize themselves into associations, cooperatives, societies, unions, or mutual associations for economic gain so long as notice is provided by the *ejidatarios* to the General Assembly and by the *ejidos* to the National Agrarian Registry.¹¹⁰ The bylaws and regulations of these organizations are enforceable only for the economic objectives of the entities, the obligations that they incur, the authority of their representatives, and the form of distribution of its gains and losses.¹¹¹

The FLAR further establishes that two or more *ejidos* can associate to collaborate in production and to unite agricultural units that allow the investment of substantial capital. Such *ejido* unions will receive unsecured credit and technical assistance to aid their development from government banks, the Department of Colonization and Agrarian Affairs, and the Ministry of Agriculture and Livestock.¹¹²

Likewise, the *ejidos* and agrarian communities can join with other *ejidos* to form state, regional, or national associations to commercialize one or more of their agricultural products. Article 171 states that:

[s]uch entities shall be certified through the Department of Colonization and Agrarian Affairs and shall have the legal capacity to carry out their transactions and contract the obligations related to their social objective.¹¹³

¹⁰⁸FLAR, Article 137. The vigilance committee is composed of three persons whose jobs are to assure that the acts of the *comisariado* are in agreement with the mandates of the General Assembly and to make sure that fiduciary duties are not breached.

¹⁰⁹FLAR, Article 129.

¹¹⁰FLAR, Article 147.

¹¹¹*Id.* In effect, the law contemplates a strictly economical, non-political organization.

¹¹²FLAR, Article 146.

¹¹³This is a very important provision in view of the fact that most *ejidos* and *ejidatarios* that now farm fruits and vegetables for export to the United States do not share information and generally go through an intermediary, a U.S. buyer, who takes the

Organizations that associate for commercialization have the right to a representative in the public offices of national and international agricultural commercialization.¹¹⁴

The agrarian authorities also have right of preference in technical assistance, sufficient and prompt credit, the lowest interest rates, and long-term loans.¹¹⁵ Furthermore, the *ejido* has the legal capacity to contract as an entity or on behalf of the *ejidatarios* for credit with equipment or agricultural products as collateral for the development of their resources as needed.¹¹⁶

Finally, agrarian centers have the right to contract with third persons for development of forests, grazing lands, or other lands held communally,¹¹⁷ as well as for development of non-agricultural resources¹¹⁸ such as tourism, fishing, and mining.¹¹⁹

Mexican Court Decisions

Unlike the Anglo-American legal system, decisional law is not a formal source of law in Mexico.¹²⁰ In deciding a case before him, a civil law judge is generally not laying down rules for the future, but is simply deciding the case before him. Cases are decided primarily on principles of interpretation rather than factual situations, and Mexican judges do not set forth the relevant facts prior to writing the opinion.¹²¹ Often a reported decision will be a very brief statement

lion's share of the profits. Also, because of their lack of commercial knowledge, most workers think that they have no legal remedy when U.S. buyers breach contracts.

¹¹⁴FLAR, Article 174.

¹¹⁵FLAR, Article 148. *See also* FLAR, Article 155.

¹¹⁶FLAR, Article 156.

¹¹⁷FLAR, Article 138.

¹¹⁸FLAR, Article 185.

¹¹⁹FLAR, Article 144. Articles 112 through 127 of the FLAR give the President the power to expropriate *ejidos* for a "public utility cause," which is defined in the nine sections of Article 112 as mainly for purposes of state use. Section VI of the definitions, however, provides for expropriation for the "creation, or betterment of population centers and their own sources of life." If expropriation is done pursuant to this section, the *ejidatarios* are entitled to 20 percent of the gross profit of the housing development. The Mexican government has appropriated some *ejido* land located along beaches for construction of tourism centers with profit to be made through "direct commercialization of housing lots to small and large investors."

¹¹⁹Gutierrez Quiroz, *Investment in Real Property in Mexico*, 12 *Ariz. L. Rev.* 273 (1970)

¹²¹"Facts and Law are frequently so inextricably interwoven that often the best an analyst can do in reconstructing the events . . . is to guess what took place." Kozolchyk, *The Mexican Land Registry, A Critical Evaluation*, 12 *Ariz. L. Rev.* 308, 341 (1970).

similar to those United States case summaries which appear in the reported decisions prior to the headnotes, but with less emphasis on the facts.

Court decisions may, however, be binding upon lower courts if a particular rule is repeated five consecutive times by the Supreme Court.¹²² In addition, appellate court decisions can be at least somewhat indicative of certain rule-making trends and can become significant when there is a gap or uncertainty in the formal written law.¹²³

Mexican court decisions addressing issues facing administration and exploitation of the *ejido* are generally very short, state few, if any, facts, and generally reiterate well-recognized principles found in formal written law. Nevertheless, an examination of decided cases does provide some insight into the unique nature of *ejido* land and the way in which the *ejido* may operate as a collective commercial entity.

Regarding the restriction against alienation of *ejido* property by sale or mortgage,¹²⁴ one court held this principle applied to prevent the mortgage of a harvest.¹²⁵ This ruling is of great importance to the *ejidatario* since it precludes a means which could be used to finance a crop or improvement of farming methods. Similar reasoning was used in another case to invalidate a mortgage made by the wife of an *ejidatario*.¹²⁶

Ejidatarios have the right to contract for the commercial exploitation of *ejido* land for tourist purposes and the Department of Colonization and Agrarian Affairs does not have the authority to void these contracts.¹²⁷ The Department may, however, challenge them in court before judicial authorities under the doctrine of relative nullity.¹²⁸

¹²²*Id.* See Ley de Amparo, Articles 192 and 193. See also Constitution, Article 107, Section XIII, Paragraph 1.

¹²³According to *licenciados* (lawyers) in Hermosillo, Sonora, court decisions are not used much, if at all, by Mexican lawyers, but according to Miguel Acosta Romero, Dean of the Law School in Mexico City, these decisions are used more and more frequently by lawyers. Discussions (1984).

¹²⁴FLAR, Article 52.

¹²⁵Suprema Corte de Justicia, Semanario Judicial de la Federación. 3d Sala, Sexta Epoca, Volumen CXXXII, Cuarte Parte, p. 42. (1969) [hereinafter cited as *Suprema Corte*].

¹²⁶Semanario Judicial de la Federación. Sala Auxiliar, Septima Epoca, Volumen V, Septima Parte, p. 29.

¹²⁷Semanario Judicial de la Federación. Informe 1973, Tercera Parte, Sala Auxiliar, p. 44.

¹²⁸*Id.*

Documents or contracts with third-party entities outside the *ejido* must be signed by the *comisariado ejidal* and must contain the signatures of the president, secretary, and treasurer.¹²⁹ Contracts with third parties are good only for one year and can only be renewed for one year.¹³⁰

The *comisariado* can legally confer powers for initiating lawsuits and collecting debts on behalf of the *ejido*.¹³¹ The *comisariado* may not, however, represent an individual *ejidatario*; *comisariados* have only the legal capacity to represent collective agrarian rights.¹³² Nor may the *comisariados* prevent a meeting of the General Assembly for the purpose of deliberation and resolution on their removal from office.¹³³

The principle that *ejidos* are not subject to export taxes is also recognized by the judicial authorities.¹³⁴ To qualify for the tax exemption, the *ejidatarios* must prove their status as *ejidatarios* and obtain approval from either the Ministry of Industry and Commerce or from the Ministry of Agriculture and Livestock, depending on the project.¹³⁵

EDF ECONOMIC DEVELOPMENT PROJECTS

The EDF created by the Arizona Farmworkers Union has provided an alternative means of economic development for agrarian communities in Mexico. Projects are underway in 10 communities as a result of the efforts of the EDF. As a result, some villagers are no longer migrating, and it is hoped that most will no longer have the need to migrate.¹³⁶ What follows is a description of four of the areas where economic development projects are currently underway.

La Caja, Guanajuato

La Caja is an *ejido* located on the outskirts of Irapuato, Guanajuato, about 150 miles northwest of Mexico City. The *ejido*, granted during

¹²⁹Semanario Judicial de la Federación. 2d Sala, Séptima Época, Volumen I, Tercera Parte, p. 37.

¹³⁰Semanario Judicial de la Federación. Tesis 2, Apéndice de Jurisprudencia 1917-1965, Sexta Parte, p. 21.

¹³¹Seminario Judicial de la Federación. Informe 1972, Segunda Parte, p. 64.

¹³²Semanario Judicial de la Federación. Séptima Época, Primera Sala, Volumen Administrativo 1-6, Primer Volumen, p. 608.

¹³³Semanario Judicial de la Federación. Informe 1970, Segunda Parte, p. 56.

¹³⁴Semanario Judicial de la Federación. Informe 1971, Segunda Parte, p. 71.

¹³⁵The exemptions are made pursuant to FLAR, Articles 106, 107, and 103.

¹³⁶Interviews with Mexican migrant workers of the Arizona Farmworkers Union, June 1983, by Jesus Romo and Lisa Weseman.

the Cárdenaz presidency, pursuant to the Agrarian Reform Law,¹³⁷ is home to 168 families who own 2,700 hectares¹³⁸ of some of the richest soil in Mexico.

The *ejidatarios* of La Caja are former *peons*¹³⁹ or the descendants of workers of the *hacienda*¹⁴⁰ from which the land was expropriated. Upon expropriation, the owner of the *hacienda* was allowed to keep the *hacienda* house, 350 hectares for his own use, and all of the water pumped by the three wells on his property.

Even though La Caja *ejidatarios* possess rich and fertile land with an abundant supply of underground water, the *ejidatarios* had not been able to develop the land for lack of money and for lack of technical assistance to drill wells and irrigate the land. As a result, harvesting efforts had been confined to seasonal irrigation, producing one crop per year at most. Because the harvest was so poor, it could be used only for subsistence purposes. Thus, the *ejidatarios* farmed only corn to meet household needs and to feed the *ejido's* livestock.

The *ejido* has a *fundo legal*¹⁴¹ as well as other lands held in common and used for grazing and for community affairs. It also had a church, two stores, adobe housing, dirt roads, and electricity. However, it had no sewer and no water. Water for household needs came from wells belonging to the *hacienda* owner and was paid for with services.

The *hacienda* house, visited by the owners only occasionally, is a fortress-like two-story house sitting on a five-acre lot and enclosed by a ten-foot wall with barbed wire at the top. In contrast to the *ejidatario's* harvest, the 350 hectares owned by the *hacienda* and irrigated by its three wells produce at least two abundant harvests of tomatoes, onions, and other vegetables annually.

During the droughts of the 1950s and 1960s, the *ejidatarios* and their families migrated *in toto* to the cities in search of work. In years of poor yield, only the able adult males migrated, leaving the women, children, and elderly on the *ejido*.

During the early 1970s, only a few *ejidatarios* went to Arizona as undocumented migrant farmworkers. Later, all of the able men of La Caja began a seasonal migration that continues to this day. The

¹³⁷Ley Federal de Reforma Agraria, Editorial Porrúa (1972).

¹³⁸One hectare is 2.471 acres.

¹³⁹Workers who, as in the feudal system, were residents of the estate and worked for its owner in exchange for a share of the harvest and shelter.

¹⁴⁰The *hacienda* is a large landholding with a main large house and additional housing for the workers. The *haciendas* generally had stores to which the workers were perpetually indebted.

¹⁴¹A square owned communally.

workers return home every year to till their land with their families. While the men are gone, the women harvest the land and work as hired hands for the *hacienda*.¹⁴²

The *ejidatarios* from La Caja stressed the richness of the land and the known underground aquifer in asking for the drilling of nine wells¹⁴³ to bring their land into production. They proposed to farm the land collectively and to pay the EDC back with profits made with the irrigated land. Their produce would be vegetables for export and, eventually, citrus for export. One of the major growers of Maricopa County, Arizona, expressed interest in joining their venture either in the planting of citrus or in marketing citrus products to Japan.

The EDC decided that it would be less expensive and more profitable to buy a well-drilling rig in the United States, export it to Mexico, and train the *campesinos* to drill the wells themselves, and use the rig on other lands as needed.

Ahuacatlan de Guadalupe, Queretaro

This migration site is situated deep in the mountains of the Sierra Gorda de Queretaro in central Mexico. The region encompasses 28 communities and *ejidos*, and a population of about 10,000. The majority of migrants from Ahuacatlan are landowners. Some have *ejido* grants, others have private plots, and some have a combination of both *ejido* and private lands. The average property of 10 hectares is farmed with plows using terraces and other pre-Colombian methods. The land is either tilled by hired labor or by the owner upon his return from the United States.¹⁴⁴ The main crops are corn, *maguey* (American agave), and, recently, peaches. Some of the communities in this area had no electricity or fresh water, and the majority of the houses are made of wood and mud.

The majority of able men migrate to Arizona, Texas, and Florida. Some of the leaders of these villages have been migrating to the United States since the early 1950s.

¹⁴²The *hacienda* owner, like the rest of the landholders in the area, does not hire men because the minimum wage for men is higher than that for women.

¹⁴³The workers reached this number through studies that had been conducted by the Mexican government. The government had promised for a number of years that the wells would be drilled.

¹⁴⁴Most Mexican migrant workers travel yearly to the U.S. at the end of September and return to Mexico sometime between March and May of the following year.

Although it rains considerably in Ahuacatlan de Guadalupe, there is no underground water, and farming is seasonal. The rain runs off quickly because of the rocky character of the land. Twenty-five of the communities in the region sought to construct water reservoirs fed by pipes and improved drainage with EDC funds. In addition, plans for three cooperative pig farms, a sewing cooperative, a cooperative store, and a school were proposed and accepted.

Salto de Espejo, Guanajuato

Salto de Espejo is an *ejido* of about 40 families located in an isolated region of the State of Guanajuato. It had no water, no electricity, and rocky land unsuitable for plowshares. The *ejido* had no roads connecting it with any towns, and the *ejidatarios* were struggling with government bureaucrats to obtain electricity, fresh water, a road, and more land from contiguous property that does have water and is therefore more suitable for farming.

The most deplorable problem facing this *ejido* was health-related. Water for drinking was gathered from a wash that runs through the middle of the village; pigs, mules, domestic animals, and other livestock also drank from the same source.

Here, too, the majority of the able men of Salto de Espejo migrate yearly to Arizona, led by the leaders of the *ejido*.

This community solicited EDC funds for a pump to obtain fresh water and for the purchase of a corn grinding mill. In addition, the workers initiated a petition for land suitable for crop production.¹⁴⁵

Cubiri de Portelas, Sinaloa

Cubiri is located in the soil-rich valley of Culiacán, Sinaloa, next to Sinaloa de Leyva, a small village which was once the capital of the State of Sinaloa.

There are about 100 families living in Cubiri; some have private land, others have *ejido* land, and others are landless. The town is surrounded by large *latifundios* (large estates) that produce mainly vegetables for United States markets. Water is abundant due to rivers and a modern system of dams and irrigation canals constructed by the Mexican government. But, although irrigation water is used by all the major growers in the area, it is not available to the small farmers of Cubiri.

¹⁴⁵According to the constitutional mandate for the breakdown and redistribution of large landholdings, see *supra* text accompanying notes 30-56.

Cubiri has electricity, fresh water, and roads that connect its population with nearby towns and with the Pan-American Highway. Until rather recently, housing materials consisted of mud and desert wood.

The migrants from Cubiri solicited funds for a housing project and for the acquisition of land¹⁴⁶ to build a local consumer product center to house a tortilla factory, a butcher shop, and a milk-processing and cheese-producing facility. They also sought funds to buy tractors to bring virgin land into production and to establish a farm machinery cooperative.

"LIVING LAW" GOVERNING THE *EJIDO*

Through interviews with *ejidatarios* from the rural communities examined in this study,¹⁴⁷ much was learned about local customary laws governing the *ejidos*. This "living law" is developed by the *ejidatarios* in response to restrictive or nonexistent regulations which fail to address the needs and realities of the *ejidatarios*. The following are illustrations of circumventions and living law practices.

The formal laws preventing the sale, mortgage, or other alienation of rights to *ejido* land, and the mortgage of a harvest, were found to be very restrictive by the *ejidatarios*.¹⁴⁸ In response to these prohibitions, the *ejidatarios* have developed ways to circumvent the laws and to effect mortgages, sales, and transfers of water rights.

A type of mortgage and loan payment system used by one collective *ejido* provides each *ejidatario* proportional benefits from loans obtained for the collective and then requires the *ejidatario* to work the land to repay a fair share of the loan.¹⁴⁹ If the *ejidatario* works the land diligently and a common loss is suffered, he is excused from repayment for a time. If, however, a loss is sustained due to poor management and the *ejidatario* cannot repay, he risks losing his land to the collective, which will work the land until the account is paid.

Forbidden sales are effected through "simulations" or transactions which appear legal on their faces. If an *ejidatario* has made a deal with a buyer, he will appear to give up his land and allow it to revert

¹⁴⁶To this end they have formed a private executive committee pursuant to FLAR, Article 17. See *supra* text accompanying notes 66-74.

¹⁴⁷Interviews, *supra* note 136.

¹⁴⁸The *ejidatarios* interviewed did agree, however, that the prohibition against sale of the land probably protected them since, without the restriction, they would have sold the land to support the immediate needs of their families and would now have nothing.

¹⁴⁹*Suprema Corte*, *supra* note 125.

back to the *ejido* only to be redistributed by the General Assembly to another *ejido* member, the actual but undeclared purchaser.¹⁵⁰ Transfers of water rights which run with grants of *ejido* land are merely made *debajo del agua* (beneath the surface) for a price, but without any formal change of ownership.¹⁵¹ In this way, a secret form of ownership of water rights is created between the various grantees of land.

Another restrictive provision in the law calls for the divestiture of *ejido* land for failure to work it for two consecutive cycles.¹⁵² This is a major problem for migrant workers because they face losing their land by migrating to the United States each year. Some *ejidatarios*, particularly the influential leaders of the *ejido*, have avoided this loss by seeking special permission from the General Assembly to waive this law. Another way to avoid losing the land is to have someone work the land for the *ejidatario* in his absence.

According to code law and Mexican court decisions,¹⁵³ leaders of the *ejido*, as the General Assembly, make the decisions which may bind the *ejidos*, and the *comisariados* act as the general managers of the *ejido* to carry out these mandates.¹⁵⁴ While this formal process does exist, and it is true that the signatures of the *comisariados* are necessary to bind the *ejido*, there is a separate natural leadership of the *ejido* that exists outside of, and that really controls, formally made decisions.¹⁵⁵ The real leaders are often not the formal leaders, because by law the tenure of a formal leader is limited to three years.¹⁵⁶ Thus, what happens in practice is that elected leaders are pre-selected by natural leaders who control the outcome of the elections.¹⁵⁷

DEVELOPMENT PROJECTS AND THE *EJIDO* LIVING LAW

It is interesting to note that the success of the EDC project is, in large measure, predicated on its reliance on *ejido* living law transactions.

¹⁵⁰*Id.*

¹⁵¹*Id.*

¹⁵²FLAR, Article 85.

¹⁵³*Suprema Corte, supra* note 125.

¹⁵⁴*See supra* notes 96-101 and accompanying text.

¹⁵⁵*Suprema Corte, supra* note 125.

¹⁵⁶FLAR, Article 44.

¹⁵⁷*Suprema Corte, supra* note 125.

La Caja, Guanajuato

For example, the EDC gave the approval to the *ejidatarios'* request for assistance to drill wells to bring their rich land into production. They decided to buy a well-drilling rig in the United States and export it to Mexico, to train the *campesinos* in its use so they could drill the wells themselves, and to use the rig on other lands as needed.

Once the decision was made by the EDC, the *ejidatarios* from La Caja, pursuant to the agrarian laws, held a General Assembly in their *ejido*, approved the project,¹⁵⁸ and instructed the *comisariado* to give power of attorney to the EDC lawyer in Mexico to import the rig.

Since *ejidatarios* are exempted from payment of import duties for agricultural or industrial equipment needed for the "farming and development of their lands or for the industrialization of the products they obtain from the same,"¹⁵⁹ they were not required to pay import duties on the rig.¹⁶⁰

To qualify for the tax exemption, the *ejidatarios* had to prove their status as *ejidatarios* and had to obtain approval from either the Ministry of Industry and Commerce or the Ministry of Agriculture and Livestock.¹⁶¹ To obtain the import permit, the *comisariado* of La Caja had to ask for import approval from the Ministry of Treasury (*Secretaria de Hacienda*), and then had to obtain the import forms from the Ministry of Commerce.

In spite of the exemption from import and export duties, the *ejidatarios* must pay sales taxes. The EDC, however, was able to get a special exemption to avoid sales tax payments.¹⁶²

The EDC acquired the rig in New Mexico and transported it by rail to Guanajuato in August of 1982. The three members of the *comisariado* were present at the border to receive the rig. The National Agricultural University of Chapingo started setting up the rig and training the *ejidatarios*¹⁶³ to drill the wells in September. That fall, one well was completed, and work was begun on a second.

The EDC is also providing midwife training to women from La Caja to reduce death and to promote sanitation. The training, which is provided by a group of midwives from the El Paso Maternity Center, is also provided at other *ejidos* and communities, and some women are flown to El Paso for advanced training.

¹⁵⁸See *supra* text accompanying note 107.

¹⁵⁹Oficio Circular #301-85916 (1975) (Customs circular).

¹⁶⁰The exemptions are made pursuant to FLAR, Articles 106, 107, and 103.

¹⁶¹*Id.*

¹⁶²Direccion General Technica Subdireccion General, Num. 361-A-31942 (1982).

¹⁶³The *ejidos* have the right to free technical assistance from the University and the Technical Schools. See FLAR, Article 189.

Ahuacatlan de Guadalupe, Queretaro

This vast area of 28 communities is involved in several projects. Although there is considerable rain in the Sierra Gorda de Queretaro, it washes away quickly because of the rocky character of the land. To correct this, 25 of the communities from this region agreed to construct water reservoirs fed by pipes and to improve drainage. The EDC is providing the materials (cement, sand, irrigation hose, etc.) while the *campesinos*, in the tradition of the *tequios*,¹⁶⁴ are providing communal labor for the construction. The EDC and federal officials are providing technical assistance for the project.

There are 100 reservoirs projected, and 58 of them had been built by late 1982. It is expected that 5,000 acres will benefit from the construction during the brief dry period of February and March. During the rest of the year, the water will be used for domestic purposes and livestock.

Although all the *campesinos* with land or animals will benefit from the reservoirs, the main beneficiaries will be the members of a recently organized fruit growers association. The association was formed through the learning experiences of undocumented migrants. Its leaders are former strike leaders of the first organized labor efforts of undocumented workers in Arizona. The association grew from six members in 1980 to 156 members in 1983 and expects to grow to 700 members.

The landholders are currently farming 350 hectares, and they plan to increase production to 1,500 hectares within the next two years. Forty thousand fruit trees have been planted, with 500,000 projected in the near future.

This group is involved in the production of peaches which, because of the early harvest in this mountainous community,¹⁶⁵ can be sold at top prices in the Mexico City markets. The harvest is packed in packing sheds constructed each year, and taken to Mexico City by truck to be sold in bulk. No contracts are made for these sales.

Most members of the fruit growers association are now too involved with the improvement of their land and in their efforts at marketing and administration to migrate to the United States.

Three of the communities, involving 60 migrants, have started pig farms for local sale of pork. The farms are administered as cooperatives. A chicken cooperative has also been started with nine

¹⁶⁴FLAR, Article 48, Section I.

¹⁶⁵Three to four weeks before the rest of the country.

members. The EDC is also financing a sewing cooperative with a loan which the cooperative will pay back, interest free, to the EDC. A consumer cooperative has been completed on land bought with EDC funds and has attracted more than 100 members.

In 1981, EDC members in Ahuacatlan, one of the largest communities in the area, obtained a \$2,000 grant from the EDC board to establish a nighttime secondary school, using donated time from elementary school teachers. Enrollment grew from 50 to 150 students within one year. The migrants bought land to build a new school and have convinced the federal government, through meetings with the Secretary of Education in Mexico City, to provide funds for teachers and school materials.

Salto de Espejo, Guanajuato

The EDC granted funds to the *ejidatarios* of this community for the purchase of a corn-grinding mill but the government's promised electricity has not arrived.

The EDC also provided help to obtain a pump for fresh water for the community and conducted physical examinations to determine health hazards from water contamination. After an initial study paid for with EDC funds, the workers petitioned the Mexican government for special funds from the PIDER program (*Programa Integrado de Desarrollo Rural*) to dig several wells and, as a result, two wells have been dug already.

In addition, the EDC has provided training for the *campesinos* of all four villages in administration, marketing, and agricultural production.

In August of 1982, EDC undocumented migrant members from 18 Mexican states met in Ahuacatlan, Queretaro,¹⁶⁶ and formed a national production cooperative pursuant to the Federal Law of Agrarian Reform.¹⁶⁷ But the cooperative remains unregistered and thus without legal capacity, even though there is no requirement for governmental agency approval other than notification by the *ejidatarios* to their General Assemblies¹⁶⁸ and in spite of assurances to that effect by then-President Lopez Portillo in a meeting with the EDC leadership in September, 1982.¹⁶⁹

¹⁶⁶Excelsior, Aug. 31, 1982, at 1A.

¹⁶⁷FLAR, Article 147.

¹⁶⁸*Id.*

¹⁶⁹Excelsior, Sept. 8, 1982, at 3A.

Cubiri de Portelas, Sinaloa.

A number of migrant workers from Cubiri lack land. They have asked for support and legal assistance in their attempts to obtain government authorization to occupy a 10,000 hectare landholding located close to their village.¹⁷⁰ To this end they have formed a private executive committee¹⁷¹ and have instituted a land petition to the Governor of Sinaloa.

In 1981, the EDC financed 20 percent of a housing project for 31 families in the village. Houses were built from adobe brick to replace existing housing, with 27 homes built by late 1982.

The EDC has also provided funding for the acquisition of land to build a local consumer product center. The workers planned to start a tortilla factory, a butcher shop, and a milk-processing and cheese-producing section. The tortilla factory is operating and has 42 workers who are mostly landless children of the *ejidatarios* of the *ejido* where the factory is located. Since the factory sits on *ejido* land, all the *ejidatarios* signed an agreement to get government approval for the required factory permit.

Landholders in the area have asked the EDC for funds to buy tractors to bring virgin land into production and to establish a farm machinery cooperative in the area. They estimate that more than 4,000 acres could be brought into production in one year and that they could save more than three million pesos per year if they could till the land with their own tractors instead of renting them.

CONCLUSION

Through economic development of poor rural sectors in Mexico, the need for the Mexican to migrate to the United States can be diminished.

In addition to the government's economic development program and the workers' Economic Development Corporation, there are a few other aid projects attempting to improve the agrarian communities in Mexico. The United States government has been channeling a limited amount of money through the Inter-American Foundation since

¹⁷⁰The Governor has the authority to order the breakdown for land distribution of large landholdings. The President can approve or veto the Governor's order and can also institute an expropriation on his own.

¹⁷¹Pursuant to FLAR, Article 17.

1972.¹⁷² The Ford Foundation is funding 15 to 20 small programs. Germany, Holland, and Belgium have a number of programs channeled mainly through religious organizations and churches in Mexico. Other aid programs include projects of Mexican unions and indigenous associations, some of which are linked to the government and others independent of it.

The Inter-American Development Bank has announced what the bank calls "small loan projects" (\$500,000) to private organizations working in Mexico. The loans are long-term, low-interest (30 years with two to three percent interest) and allow for a 10-year grace period before payments begin.¹⁷³ The problem with the Inter-American Development Bank loans is that they come wrapped in the same restrictions and trappings that have made other United States aid projects unworkable.

If they are able to make the quantum leap of establishing independent national production and commercial cooperatives, projects like the EDF could abate, at best, the exodus of some of the socially advanced, risk-willing, undocumented migrants. But there are still millions migrating to the United States as the Mexican economy worsens. If they find United States' employment closed to them, their demands on the Mexican government will become implacable. Thus, it is politically impossible for any government that rules Mexico to back away from agrarian reform.¹⁷⁴

The solution to the migration problem must lie either in the true regeneration of the agrarian sector and the institution of labor-intensive industry in Mexico, or in the free flow of Mexican migrants to the United States.

¹⁷²The Inter-American Foundation [IAF] was enacted by Congress in 1970 as an alternative to the much-resented government-to-government aid programs. Its purpose is to channel monies directly to institutions working with the *campesinos*. Mashek, *The IAF in the Making* (1981), quoting Senator Frank Church in Senate hearings as saying, "[O]ne objective is to reach around the government to government umbilical cord and to experiment with aid projects that involve private groups, labor groups, charitable foundations and the like in the Latin countries." The Foundation's budget is limited, and it can grant a maximum of \$500,000 per project, but total aid per country cannot exceed two million dollars annually. The Foundation's main recipient in Mexico has been the *Fundacion Mexicana*.

¹⁷³The EDC was recently offered this type of loan from the Inter-American Development Bank [IADB]. The acceptance and restrictions are being negotiated. Information obtained through IADB officials and IAF officials.

¹⁷⁴Nunez, *supra* note 25; Romero Espinoza, *La Reforma Agraria en México* (1968); Herzog, *supra* note 25.