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## Land Tenure, Titling, and Gender in Bolivia

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## LAND TENURE, TITLING, AND GENDER IN BOLIVIA<sup>1</sup>

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### I. INTRODUCTION

Land and landed property are important assets for the poor in developing countries, particularly for rural households that depend on agriculture for their livelihood.<sup>2</sup> Secure land rights can provide access to other productive factors such as credit,<sup>3</sup> and facilitate participation in social institutions such as family and community structures.<sup>4</sup> Formal titling and registration of land has been advanced as the best mechanism for ensuring tenure security for landholders, with expected positive development effects that include increased agricultural production (and consequently higher income for smallholder families) through improved access to factor markets.<sup>5</sup>

These economic and social benefits can accrue to women if they become titleholders. In addition, recent research suggests that property ownership increases a woman's bargaining power within the household and her status as a citizen in the community.<sup>6</sup> Women who have access rights to their families' land but do not have title to that land may find themselves at risk of losing the land if their relationship to the title holder (e.g., the husband) is broken.<sup>7</sup> In the same manner, wives without title have little assurance that the land they are

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1. This case study is based on research undertaken in 2004-2005 and financed by Gender and Rural Development Thematic Group (PREM/ARD) and the Land Policy and Administration Group (ARD) of The World Bank. The interpretations and conclusions are the responsibility of the author and not of the funding agency.

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2. KLAUS DEININGER, LAND POLICIES FOR GROWTH AND POVERTY REDUCTION 43-56 (2003).

3. *See generally* GERSHON FEDER ET AL., LAND POLICIES AND FARM PRODUCTIVITY IN THAILAND (1988).

4. Ruth S. Meizen-Dick et al., *Gender, Property Rights, and Natural Resources*, 25 WORLD DEV. 1303, 1303-15 (1997).

5. *See generally* FEDER ET AL., *supra* note 3.

6. Meizen-Dick et al., *supra* note 4, at 1303-15.

7. Susana Lastarria-Cornhiel, *Impact of Privatization on Gender and Property Rights in Africa*, 25 WORLD DEV. 1317, 1317-33 (1997).

using will not be sold, leased, or mortgaged without their consent, or that they will benefit from these transactions.<sup>8</sup>

Since the early 1980s, major donor and implementing development agencies have expanded their programs and activities in land policy and administration in an effort to formalize land rights.<sup>9</sup> Land policy and administration projects can contribute inadvertently not only to gender inequality but also to more general social inequality by supporting individuals who are already advantaged by wealth, power, or custom to the disadvantage of those who are poor and vulnerable.<sup>10</sup> Gender inequity can be diminished when women's rights are explicitly taken into account and when women participate in designing and implementing land policy and programs. In many cases increased gender equality can also lead to increased economic equality.<sup>11</sup>

These donor and implementing agencies have increasingly recognized the importance of women's land rights and the failure of land administration programs to protect them. In its 2003 Policy Research Report on land, for example, the World Bank recognized that past initiatives often failed to discern how control of assets, particularly land, is assigned within the household and argued that strengthening women's land rights is important both for potential gains to agricultural productivity as well as for household-level human capital investments such as nutrition and child schooling.<sup>12</sup> This policy research report recommended legal measures, education, and capacity building, as well as preferential treatment of women in public programs such as titling and land reform.<sup>13</sup> The U.S. Agency for International Development has also funded activities focused on improving women's legal land rights, improving enforcement of existing laws that protect women's legal rights, providing paralegal and legal literacy training, and supporting advocacy and awareness-

8. See SUSANA LASTARRIA-CORNHIEL & RENEE GIOVARELLI, U.N. HUMAN SETTLEMENTS PROGRAMME, SHARED TENURE OPTIONS FOR WOMEN: A GLOBAL OVERVIEW 3–5 (2005), [http://www.genderandenvironment.org/admin/admin\\_biblioteca/documentos/UNHABITAT.pdf](http://www.genderandenvironment.org/admin/admin_biblioteca/documentos/UNHABITAT.pdf).

9. In The World Bank, for example, the number of land administration projects in the rural sector increased almost six-fold over the period 1995-2005 from 4 to 23; the level of the total loan portfolio has also increased at a similar rate from U.S. \$172 million to U.S. \$1,037 million. In addition, the number of rural development projects with a land administration component has also increased from 51 to 74 (based on information from Malcolm Childress and Mukta Mahajani of The World Bank's Land Policy and Administration Thematic Group). THE WORLD BANK ET AL., GENDER IN AGRICULTURE SOURCEBOOK 165 n.1 (2009), <http://siteresources.worldbank.org/INTGENAGRLIVSOUBOOK/Resources/CompleteBook.pdf>.

10. ERIC SHEARER, SUSANA LASTARRIA-CORNHIEL, & DINA MESBAH, LAND TENURE CTR., LTC PAPER NO. 141, THE REFORM OF RURAL LAND MARKETS IN LATIN AMERICA AND THE CARIBBEAN: RESEARCH, THEORY, AND POLICY IMPLICATIONS 1, 41 (1991).

11. THE WORLD BANK ET AL., *supra* note 9, at 125.

12. See DEININGER, *supra* note 2, at 57–58.

13. *Id.* at 58–61.

raising campaigns.<sup>14</sup> Furthermore, in 2009, three major international development agencies published a detailed guide for integrating gender into agricultural programs in developing countries.<sup>15</sup> One chapter offers a methodology for protecting women's land rights and improving their participation in land administration programs, particularly in land titling and registration projects.<sup>16</sup>

This paper seeks to both broaden and deepen our understanding of how land policies affect women and men, utilizing a case study undertaken in Bolivia during 2004-05, with an aim to applying this knowledge in very practical ways to land projects. Following this brief introduction, Part II deals with the question of why gender matters for land policy and administration. Part III describes the Bolivian context when the land administration program began and Part IV presents the Bolivia case study, exploring gender-specific concerns at the various levels and stages of a land project. Part V assesses the impact of the land administration program on women's land rights. And finally, Part VI summarizes the lessons learned and puts forward policy recommendations.

## II. WHY DOES GENDER MATTER FOR LAND POLICY?

Gender and land rights as social constructs are very much intertwined. Gender identity and discrimination as well as land tenure systems are based on social relations constantly re-constructed through cultural norms and practices. As practices change, whether because of legal norms or social movements, cultural norms also change, re-defining gender identity and the land tenure system. In most customary land tenure systems, these cultural norms and practices have a strong gender dimension. Patrilineal kinship,<sup>17</sup> patrilocal marriage and residency patterns, and inheritance practices ensure that men maintain control over land and its resources and women as daughters, wives, or

14. U.S. Agency for International Development (USAID), Women in Development, [http://www.usaid.gov/our\\_work/cross-cutting\\_programs/wid/dg/property\\_rights.html](http://www.usaid.gov/our_work/cross-cutting_programs/wid/dg/property_rights.html) (last visited Feb. 24, 2010).

15. See generally THE WORLD BANK ET AL., *supra* note 9.

16. *Id.* at 125.

17. Customary tenure systems that are based on matrilineal kinship give women more rights to land than patrilineal societies—these rights, however, vary greatly across regions. *Id.* at 128–29. For example, women in some matrilineal societies in south Asia have more basic and direct rights to land than women in most matrilineal African societies. See generally Agnes R. Quisumbing & Keijiro Otsuka, *Land Inheritance and Schooling in Matrilineal Societies: Evidence from Sumatra*, 29 WORLD DEV. 2093 (2001) (setting forth an example from south Asia); Parker Shipton, *Land and Culture in Tropical Africa: Soils, Symbols, and the Metaphysics of the Mundane*, 23 ANN. REV. OF ANTHROPOLOGY 347 (2009) (discussing an example from sub-Saharan Africa).

sisters are excluded.<sup>18</sup> These norms and practices not only help define the land tenure system (how land rights are allocated and passed on), but also contribute to gender identification—part of male identity is control over land, part of female identity is exclusion from control over land and resources resulting in dependency.<sup>19</sup>

Another aspect of the relation between land and gender is citizenship. The right to landed property is an indication of citizenship or membership status—generally those who are allowed to hold landed property are considered members or citizens with a full and complete set of that society's rights (e.g., rights to utilize public resources, to vote, to hold office, to receive benefits).<sup>20</sup> Democratic governance is based on social equity and empowerment for all community members—in other words, no secondary citizens. Even in market-based societies, however, denial of the right to own property based on ethnic, social, or gender differences has been used to deny certain groups full citizenship.<sup>21</sup> As Herring so nicely put it: “[I]t seems clear from everything we know about oppression, exclusion and opportunity that redressing gendered inequalities in much of the world must include reform of property relations.”<sup>22</sup>

Related to this denial of property rights is the corollary that those who cannot own property themselves become the property of others.<sup>23</sup> This secondary status impacts social equity as evidenced by constraints placed on women's behavior and rights such as women's inability to enter into contracts (a husband or male relative must sign her contracts), to participate in the public arena, in women's vulnerability in dealing with public officials, and in

18. See generally Lastarria-Cornhiel, *supra* note 7 (discussing customary tenure systems in Africa and their impact on women).

19. See generally *id.*

20. Susana Lastarria-Cornhiel, Presentation at the Conference on Conflicts over Land and Water in Africa: Questions of Citizenship and Identity: Property Rights and Citizenship: Market Economy, Customary Tenure, and Gender (Nov. 28, 2002).

21. Sometimes groups or individuals have been denied these rights, generally for socio-political reasons (not economic). For example, restriction of property rights to Jews in Europe until the 20<sup>th</sup> century, to slaves in the U.S. prior to the 1860s, African-Americans after Emancipation and to Chinese and Japanese in the U.S. during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries.

22. Ronald J. Herring, John S. Knight Professor of Int'l Relations, Cornell Univ., Political Conditions for Agrarian Reform and Poverty Alleviation 30 (Aug. 16, 1999) (unpublished paper, on file with The World Bank), <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/DfID-Project-Papers/herring.pdf>.

23. A saying in Uganda, “Property cannot own property” refers to women's “non-capacity” to own land. Harriet Busingye, Coordinator, Uganda Land Alliance, Presentation at International Symposium on Communal Tenure Reform: Customary Land Tenure Reform in Uganda: Lessons for South Africa (Aug. 12, 2002).

women's susceptibility to abuse.<sup>24</sup> When individual women attempt to claim their land rights or groups of women struggle for recognition of women's rights to land, they are also confronting gendered structures and ideology. These movements may threaten male identity and power.<sup>25</sup>

#### A. *Economic Efficiency and the Social Safety Net*

Market economy and neo-classical economic theory is based on the assumption of voluntary exchange of goods (including land) between agents of equal legal standing.<sup>26</sup> Ideally, within market-based and democratic societies, all persons—women and men—are allowed to own landed property if they have the resources to acquire it.

The rising concern for gender equity among donor institutions promoting and funding titling and registration programs indicates their recognition of the importance and significance of land rights beyond economic efficiency.<sup>27</sup> After all, if economic efficiency were the only concern, the expectation would be that the market will distribute property rights to land to those who are most efficient and that land titling simply facilitates that trend. According to liberal economic theory, that would include efficient women producers.<sup>28</sup>

Equitable access to land, however, is a more basic concern than economic efficiency—it is a basic societal right.<sup>29</sup> That does not mean that individual private property is always and everywhere the only mechanism for securing land rights—land rights and land tenure systems evolve as society evolves.

24. See THE WORLD BANK, *ENGENDERING DEVELOPMENT THROUGH GENDER EQUALITY IN RIGHTS, RESOURCES, AND VOICE* 154–58 (2001); CTR. ON HOUSING RIGHTS AND EVICTIONS, *BRINGING EQUALITY HOME: PROMOTING AND PROTECTING THE INHERITANCE RIGHTS OF WOMEN* 23–24 (2004), <http://www.cohre.org/store/attachments/COHRE%20Bringing%20Equality%20Home.pdf>.

25. For a description of how this dynamic has played out in Zimbabwe since the 1990s, see generally ALLISON GOEBEL, *GENDER AND LAND REFORM: THE ZIMBABWE EXPERIENCE* (2005).

26. PETER DORNER & BONNIE SALIBA, *LAND TENURE CTR., LTC PAPER NO. 74, INTERVENTIONS IN LAND MARKETS TO BENEFIT THE RURAL POOR 1* (1981).

27. See Grenville Barnes, *Lessons Learned: An Evaluation of Land Administration Initiatives in Latin America Over the Past Two Decades*, 20 *LAND USE POL'Y* 367, 367–68 (2003).

28. See generally Christopher R. Udry, *Gender, Agricultural Production, and the Theory of the Household*, 104 *J. OF POL. ECON.* 1010 (1996).

29. See FREDERICK MARI VAN ASHBECK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND ITS PREDECESSORS* (1679-1948) 95 (E.J. Brill 1949); United Nations Convention on the Elimination of All Forms of Discrimination Against Women, art. 16, Sept. 3, 1981, 1249 *U.N.T.S.* 13; U.N. Office of the High Comm'r for Human Rights, Comm'n on Human Rights, *Women's equal ownership, access to and control over land and equal rights to own property and to adequate housing*, ¶ 3, U.N. Doc. E/CN.4/RES/2003/22 (Apr. 22, 2003) (affirming that discrimination in law against women with regard to land and property constitutes a violation of the human right to non-discrimination).

Equitable access to land means that all of society's members have equitable opportunity to access land (be it through private property ownership, communal access, or corporate membership), and that gender, ethnicity, status or any other ascribed attribute is not used to deny a person or group their land rights. Because land rights are such a basic societal right, their importance for the welfare of persons and groups is far-reaching.<sup>30</sup> Exclusion from property rights is not only an indicator of exclusion from other societal rights and benefits, but contributes, both materially and culturally, to a pattern of exclusion and secondary status.<sup>31</sup>

The value and meaning of land as a productive resource and as cultural heritage is universally recognized.<sup>32</sup> Its social and psychological values for both rural and urban families are also important and should not be ignored.<sup>33</sup> For many of the historically disadvantaged population groups, land rights are not primarily marketable assets but rather a secure base on which to shelter and nurture their families and to develop their livelihood strategies.<sup>34</sup> Although rural income in many countries has become less dependent on agriculture, land continues to be a crucial resource for the survival and reproduction of rural populations.<sup>35</sup> And as rural and urban households become more feminized, land as a secure place to raise families and as a base for diversified livelihood strategies becomes more important for women.<sup>36</sup> When members of rural families migrate to urban or industrial areas in search of wage labor, they continue to rely on the support of the family they left behind; when they are unemployed, the family home and land is often able to reabsorb them until they find wage work again.<sup>37</sup> Family land in town or in the village provides family members with a place where they belong and can always return to.<sup>38</sup> In

30. Meizen-Dick et al., *supra* note 4, at 1303.

31. For a discussion in terms of natural resources, see generally *id.* at 1303–15.

32. Bina Agarwal, *Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market*, in AGRARIAN CHANGE, GENDER AND LAND RIGHTS 184, 193–95 (Shahra Razavi ed., 2003).

33. *Id.*

34. Shahra Razavi, *Introduction* to AGRARIAN CHANGE, GENDER AND LAND RIGHTS 2, 16–20 (Shahra Razavi ed., 2003).

35. THE WORLD BANK, WORLD DEVELOPMENT REPORT 2008: AGRICULTURE FOR DEVELOPMENT 26–29 (2008).

36. See generally SUSANA LASTARRIA-CORNHIEL, RIMISP-LATIN AMERICA CTR. FOR RURAL DEV., FEMINIZATION OF AGRICULTURE: TRENDS AND DRIVING FORCES (2006), available at <http://www.rimisp.org/getdoc.php?docid=6489>.

37. CTR. ON HOUSING RIGHTS AND EVICTIONS, *supra* note 24, at 23–24; Ben Cousins & Aninka Claassens, Address at the International Conference on Les *Frontières* de la Question Foncière: Enchâssement Social des Droits et Politiques Publiques [At the Frontier of Land Issues: Social Embeddedness of Rights and Public Policy]: More than Simply “Socially Embedded”: Recognizing the Distinctiveness of African Land Rights (May 17, 2006).

38. See *id.*

economies where employment is unstable, unemployment and underemployment is high, and where industries come and go, this point of stability is materially, socially, and psychologically important.<sup>39</sup>

#### B. Formalization of Land Rights and Gender

As part of the effort to modernize out-dated state land administration systems and customary tenure systems and, it is hoped, stimulate market economy activities, many countries have established programs to formalize private property.<sup>40</sup> The objective of these programs is to update land records and to legalize and privatize land rights held informally (i.e., no legal title), under customary tenure to individuals, or state and collective land privatized to individuals.<sup>41</sup> Since the early 1980s, there has been a wave of titling and property registration programs as governments and international donor agencies promote the privatization of public and customary land and the formalization of land rights.<sup>42</sup>

Land titling and registration<sup>43</sup> has been promoted for a number of reasons: titling not only protects a person's access to and control of land against other claimants, but also facilitates access to credit, agricultural resources, and services.<sup>44</sup> Formal titling and registration of land has thus been advanced as the best mechanism for securing landholders' property rights, with expected positive development effects that include increased agricultural production (and consequently higher income for smallholder families) through improved access to factor markets.<sup>45</sup>

Most countries have legislation that recognizes private property and stipulates who may hold private property and how it can be acquired. And the market economy often prods along the actual process of individualizing property by buying and selling land or leasing it out at market value. The formalization of property rights through land titling programs can be thought

39. *See id.*

40. Grenville Barnes et al., *Land Registration Modernization in Developing Economies: A Discussion of the Main Problems in Central/Eastern Europe, Latin America, and the Caribbean*, 12 URISA J. 33, 33 (2000).

41. *Id.* at 34–35.

42. *See generally* Barnes, *supra* note 27.

43. A land title states legally and formally who holds property rights to a particular piece of land and registration eliminates risk of alienation by a third party. John W. Bruce, *Review of Tenure Terminology* 1 TENURE BRIEF 1, 4 (July 1998), available at <http://minds.wisconsin.edu/handle/1793/22013>. Tenure security will depend, however, on the ability of state institutions to enforce observance of rights acquired under titling. *Id.* at 2, 7.

44. FEDER ET AL., *supra* note 3, at 10–11.

45. *See generally* HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* (2000) (discussing a full explanation of the theorized link between land title, on the one hand, and access to capital and increased productivity, on the other); DEININGER, *supra* note 2, at 43–56.



of as the state's (and donors') attempt to either legalize existing individual private property<sup>46</sup> or to transform non-individualized property into private freehold property.<sup>47</sup>

This formalization of private property, however, is not without its tensions. Two different sets of critiques have emerged from this unprecedented effort to draw up a legal document and geo-referenced survey plan for every parcel of land. One set questions the fundamental need and effectiveness of titling—the contention is that in many areas there is no need for formalization of rights and that in many cases their national governments are not capable of providing the infrastructure to enforce these legal property rights anyway.<sup>48</sup> Critics point out that land grabbing by elites, authorities, and the well-connected when privatization and titling programs are implemented is not uncommon.<sup>49</sup> In addition, a few years after titling and registration, property records begin to become out-dated because buyers and sellers ignore land administration institutions.<sup>50</sup> And quite a few studies have shown that low-income households and smallholder families, in whose names these programs were put forward, are not able to access the benefits that justified the costs of titling and registration: they do not have greater access to credit,<sup>51</sup> are not more able to buy land,<sup>52</sup> and are not more likely to invest in their properties.<sup>53</sup> The other set

46. This is the case for most land administration programs in Latin America and South Asia. See SHEARER, LASTARRIA-CORNHIEL & MESBAH, *supra* note 10, at 45–47; see also FEDER ET AL., *supra* note 3, at 44–49.

47. This transformation is the motivation for land administration programs in most of Eastern Europe and Central Asia. See Peter C. Bloch, Susana Lastarria-Cornhiel & J. David Stanfield, *The Contribution of Foreign Assistance to the Development of Land Markets and the Strengthening of Property Rights: The Case of USAID*, in *THE ROLE OF THE STATE AND INDIVIDUAL IN SUSTAINABLE LAND MANAGEMENT* 114, 126 (Robert W. Dixon-Gough & Peter C. Bloch eds., 2006).

48. See Daniel W. Bromley, *Property Relations and Economic Development: The Other Land Reform*, 17 *WORLD DEV.* 867, 868–69 (1989); see also Michael R. Carter et al., *Tenure Security for Whom? Differential Effects of Land Policy in Kenya*, in *SEARCHING FOR LAND TENURE SECURITY IN AFRICA* 141, 159–65 (John W. Bruce & Shem E. Migot-Adholla eds., 1994).

49. See Franz von Benda-Beckmann, *Mysteries of Capital or Mystification of Legal Property?*, 41 *FOCAAL - EUR. J. ANTHROPOLOGY* (2003) (reviewing DE SOTO, *supra* note 45).

50. See Barnes, *supra* note 27, at 369.

51. See generally EDGAR G. NESMAN & MITCHELL A. SELIGSON, *LAND TITLING IN HONDURAS: AN IMPACT STUDY IN THE SANTA BARBARA REGION* (1988); EDGAR C. NESMAN & MITCHELL A. SELIGSON, *LAND TITLING IN HONDURAS: AN IMPACT STUDY IN THE COMAYAGUA REGION* (1989).

52. See ALEXANDER COLES, *LAND TRANSACTIONS AND THE LAND TITLING PROJECT IN HONDURAS* 20 (1989).

53. See David A. Atwood, *Land Registration in Africa: The Impact on Agricultural Production*, 18 *WORLD DEV.* 659, 665–66 (1990).

of critiques is related more directly to who benefits from formalization programs.<sup>54</sup> It is this issue that we will address in this paper.

Cultural norms and practices around land rights, being inherently complex, are often simply ignored by titling programs.<sup>55</sup> Titling experts and administrators are absorbed with problems of efficiency and technology, such as modernizing (digitizing) databases, speeding up registration processes, and refining surveying/cadastral methods.<sup>56</sup> The cultural aspects of property rights are not dealt with, resulting in two types of situations: one where certain groups (such as women and ethnic minorities) are disenfranchised of the land rights they hold under customary tenure, and another where the seeds for long-term program failure (such as outdated registration records) are sown.<sup>57</sup> Titling programs assume that property rights are everywhere the same: individualized private property (or freehold).<sup>58</sup> Assumptions are made about the meaning of land for smallholder communities, that land is simply an asset to be used, bought, and sold for economic efficiency or profit.<sup>59</sup> Minimal examination or recognition is made of the different meanings and values of land, and of how different rights to land are allocated, distributed, used, and passed on; this is particularly true of the secondary (or indirect) land rights held by women.<sup>60</sup>

As a result of this focus on efficiency, titling officials put only one name on the title document for land that belongs to a household and because of cultural gender norms, in the overwhelming majority of cases, that person is the male head of household.<sup>61</sup> Even though in many areas property rights are not strictly considered individual rights, titling programs assume individual ownership and simply issue titles to household heads or those persons who are registered in a local administrative structure, such as tax rolls, or who have

54. Susana Lastarria-Cornhiel, Senior Research Scientist, University of Wisconsin-Madison, Presentation at the International Conference on At the Frontier of Land Issues: Social Embeddedness of Rights and Public Policy (May 17, 2006).

55. SUSANA LASTARRIA-CORNHIEL ET AL., JOINT TITLING IN NICARAGUA, INDONESIA, AND HONDURAS: RAPID APPRAISAL SYNTHESIS 12–13 (2003), *available at* <http://minds.wisconsin.edu/handle/1793/22043>.

56. This assertion comes from the author's reading of numerous land administration project proposals and documentation in Latin America, Eastern Europe, and Asia.

57. Barnes, *supra* note 27, at 369, 373.

58. Franz von Benda-Beckmann, *Relative Publics and Property Rights*, in PROPERTY AND VALUES: ALTERNATIVES TO PUBLIC AND PRIVATE OWNERSHIP 151, 156 (Charles Geisler & G. Daneke eds., 2000).

59. *See generally* Lastarria-Cornhiel, *supra* note 20.

60. RENEE GIOVARELLI, SUSANA LASTARRIA-CORNHIEL, ELIZABETH KATZ & SUE NICHOLS, THE WORLD BANK, GENDER ISSUES AND BEST PRACTICES IN LAND ADMINISTRATION PROJECTS: A SYNTHESIS REPORT 26–27 (2005) [hereinafter GIOVARELLI ET AL.].

61. *Id.* at 26–27.

personal identification documents.<sup>62</sup> In this way, women (and some minority groups) have lost access or use rights to land as their fathers, brothers, and husbands are given individual private property rights to the land women cultivate and depend on.<sup>63</sup>

Deere and León, who studied the impact of land programs (land legislation, land reform, and land titling) on women's land rights in Latin America, have found that in spite of gender-neutral laws and even gender-sensitive legislation and land programs, the number of women obtaining rights to land are much lower than expected.<sup>64</sup> The recent edited volume by Razavi examined the complex cultural and social constructs surrounding women's rights to rural land in several different world regions.<sup>65</sup> This is done within the context of civil societies' response to neo-liberal economic onslaught on the welfare of rural and urban populations, as women, men, and households seek to diversify livelihoods.<sup>66</sup> A message to be derived from both volumes is the diversity of cultural norms and practices for gendered land rights, the very specific responses to changes brought about by neo-liberal economic policies, and the importance of context for understanding women's and men's priorities, options, and demands with regard to changes in land rights.<sup>67</sup>

The consequences of women not acquiring formal legal rights to their land is that they cannot enjoy the benefits of legal title and, more importantly, may even find that their customary rights are at risk.<sup>68</sup> Women who have access rights to their family's or husband's land but do not have legal rights may find themselves at risk of losing the land if their relationship to the title holder (e.g., the husband) is broken.<sup>69</sup> In the same manner, wives without title have little assurance that the land they are using will not be sold, leased, or mortgaged without their consent, or that they will benefit from these transactions.<sup>70</sup> In addition to security for women, research suggests that property ownership

62. Benda-Beckmann, *supra* note 58, at 165–67. For a specific case in Laos, see GENDER RESOURCE INFORMATION & DEV. CTR., *GENDER AND LAND DOCUMENTS: HOW DO SOCIETY'S PERCEPTIONS OF GENDER AFFECT WOMEN?* (2000).

63. See GIOVARELLI ET AL., *supra* note 60, at 5–10.

64. CARMEN DIANA DEERE & MAGDALENA LEÓN, *EMPOWERING WOMEN: LAND AND PROPERTY RIGHTS IN LATIN AMERICA*, 184–85, 192–208 (2001).

65. See generally Razavi, *supra* note 34.

66. *Id.*

67. See generally DEERE & LEÓN, *supra* note 64; Razavi, *supra* note 34.

68. See generally Lastarria-Cornhiel, *supra* note 7.

69. THE WORLD BANK ET AL., *supra* note 9, at 109, 129, 147.

70. See generally Perpetua W. Karanja, *Women's Land Ownership Rights in Kenya*, 1991 *THIRD WORLD LEGAL STUD.* 109 (1991).

increases a woman's bargaining power within the household and her status as a citizen in the community.<sup>71</sup>

Advocates of extending legal land rights to women have promoted issuing joint title to couples for the land they hold and work.<sup>72</sup> Recently, some programs are legally mandated to issue joint title to couples, particularly if the land being titled has been allocated by the state or if it was acquired by a couple during marriage.<sup>73</sup>

Ownership rights in land offers a number of economic benefits. First of all, it is one of the basic factors of production for agriculture. Land can also provide income when it is sold or rented out. And, land can be used as collateral to obtain credit for productive or consumption uses.<sup>74</sup> If women do not have legal property rights over land, they may not enjoy any of these economic benefits, particularly if the norms governing intra-household decision-making and income pooling are patriarchal; only independent or joint ownership can assure women access to control over land-based earnings.<sup>75</sup> For example, a random household survey study undertaken in Nicaragua and Honduras shows a positive correlation between women's property rights and their overall role in the household economy: women have greater control over agricultural income, higher shares of business and labor market earnings, and obtain credit more frequently.<sup>76</sup>

Land is a particularly critical resource for a woman in the event that she becomes a *de facto* household head as a result of male migration, abandonment, divorce, or death.<sup>77</sup> In both urban and rural settings, independent real property rights under these circumstances can mean the difference between dependence on natal family support and the ability to form a viable, self-reliant female-headed household.<sup>78</sup> Indeed, women's land rights within marriage may afford them greater claims on the disposition of assets upon divorce or death of their husband, as Fafchamps and Quisumbing found to be the case in rural Ethiopia.<sup>79</sup>

71. See Meizen-Dick et al., *supra* note 6, at 1304, 1306; ELIZABETH KATZ & JUAN SEBASTIAN CHAMORRO, *GENDER, LAND RIGHTS AND THE HOUSEHOLD ECONOMY IN RURAL NICARAGUA AND HONDURAS* (2002).

72. DEERE & LEÓN, *supra* note 64, at 8; see also LASTARRIA-CORNHIEL & GIOVARELLI, *supra* note 8, at 10–11; LASTARRIA-CORNHIEL ET AL., *supra* note 55, at 2.

73. Recent examples include Vietnam (2001), Nicaragua (1994), and Tanzania (1999). LASTARRIA-CORNHIEL & GIOVARELLI, *supra* note 8, at 22–24.

74. GIOVARELLI ET AL., *supra* note 60, at 3.

75. *Id.*

76. KATZ & CHAMORRO, *supra* note 71, at 15–17.

77. GIOVARELLI ET AL., *supra* note 60, at 3–4.

78. *Id.*

79. GIOVARELLI ET AL., *supra* note 60, at 4; see generally Marcel Fafchamps & Agnes R. Quisumbing, *Control and Ownership of Assets within Rural Ethiopian Households*, 38 J. DEV. STUD. 47 (2002).

In addition to the direct economic benefits of land ownership, property rights may serve to empower women in their negotiations with other household members, and with the community and society at large.<sup>80</sup> Intra-household economic theory suggests that the strength of spouses' "fallback positions" or "threat points" – how well they can do in the absence of economic cooperation with their partners – is an important determinant of their ability to shape household preferences and therefore resource allocation decisions.<sup>81</sup> Data analysis from Central America, for example, indicates that greater female landholdings are associated with modest increases in food expenditures and child educational attainment, controlling for other relevant household characteristics and unobserved preferences, with elasticities in the 0.01 - 0.05 range.<sup>82</sup> Quisumbing and Maluccio also find a positive relationship between the amount of assets (including land) that a woman possesses at the time of marriage and the shares of household expenditures devoted to food, education, health care, and children's clothing.<sup>83</sup>

Even beyond increasing bargaining power within the household, land rights may empower individuals to participate more effectively in their immediate communities and in the larger civil and political aspects of society. From a gender perspective, facilitating women's greater participation in these extra-household institutions has both the value of diminishing male dominance of community-level decision-making, and the benefit of building up women's organizational skills, social networks and social capital.<sup>84</sup> Women with property rights are more likely to be active members of their communities, and as a result community institutions themselves are more likely to be responsive to the needs of women.<sup>85</sup>

### C. *Data Collection and Analysis Methodology*

This case study draws on several sources of data and information to demonstrate whether women had the same opportunity to become legal owners of land as men within the regularization project undertaken after 1997. Secondary data and information were reviewed to collect data on formal and customary land rights and gender. Legislation consulted includes the 1994

80. GIOVARELLI ET AL., *supra* note 60, at 4; *see generally* Carmen Diana Deere & Cheryl R. Doss, *The Gender Asset Gap: What Do We Know and Why Does It Matter?*, 12 FEMINIST ECON. 1 (2006).

81. GIOVARELLI ET AL., *supra* note 60, at 4–5; *see* Elizabeth Katz, *The Intra-Household Economics of Voice and Exit*, 3 FEMINIST ECONOMICS 25, 29–33 (1997).

82. KATZ & CHAMORRO, *supra* note 71.

83. *See* Agnes R. Quisumbing & John A. Maluccio, *Resources at Marriage and Intrahousehold Allocation: Evidence from Bangladesh, Ethiopia, Indonesia, and South Africa*, 65 OXFORD BULL. ECON. & STAT. 283, 295 (2003).

84. GIOVARELLI ET AL., *supra* note 60, at 5.

85. *Id.*

Constitution, 1975 Civil Code, 1973 Family Code (amended in 1988), 1996 Ley INRA, and 2000 INRA Regulations. A number of studies on women's customary rights to land were also reviewed including several commissioned by INRA.

To assess how gender has been incorporated into the land administration project, administrative documentation on the titling process was collected, as well as statistics on the number of women who gained title.<sup>86</sup> In addition, key informant interviews were carried out during 2004 and 2005 with INRA directors and officials at both national and provincial levels, with titling brigade personnel at the titling zonal level, and with research centers and scholars.

And finally, focus group discussions were carried out with three groups of women and two groups of men in two different sites in September 2004. The sites chosen are in areas where INRA had recently made increased efforts to carry out its gender sensitivity training program with titling brigades and with the titling population. Ichilo is located in the provincial department of Santa Cruz and is a lowland, re-settlement (*colono*) area, where smallholders migrated from the Quechua-speaking highlands since the 1960s but are now mostly also Spanish speaking. The other site is Pocona in the provincial department of Cochabamba, an ex-latifundio area in an inter-Andean valley (mid-level in altitude, 2,500-3,000 meters above sea level) where smallholders received their land from the 1953 agrarian reform, and are mostly Quechua speakers, particularly the women.<sup>87</sup>

### III. LAND TENURE IN BOLIVIA

Bolivia is a landlocked country in the Andean region of South America. Geographically, it contains varied ecological regions ranging from high altitude plateaus to inter-Andean valleys to lowland rainforests. The highlands and mid-altitude valleys are the most densely populated areas, where historically the majority of pre-Columbian populations lived and worked and

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86. See generally DANIELA CAMACHO LAGUNA, DERECHO DE LAS MUJERES A LA TENENCIA LEGAL DE LA TIERRA [RIGHT OF WOMEN TO LEGAL POSSESSION OF LAND] (2003) [hereinafter CAMACHO, RIGHT OF WOMEN]; see generally DANIELA CAMACHO LAGUNA, INFORME DE LA EVALUACIÓN DE IMPACTO INCORPORACIÓN DEL ENFOQUE DE GÉNERO EN EL PROCESO DE SANEAMIENTO [ASSESSMENT REPORT ON THE IMPACT OF GENDER MAINSTREAMING IN THE PROCESS OF REGULARIZATION] (2003); see generally Alejandra Ramirez, Instituto Nacional de Reforma Agraria [National Institute of Agrarian Reform], Acceso Legal de la Mujer de los Valles de Cochabamba a la Tenencia de Tierra [Legal Access of Women to Land Tenure in the Cochabamba Valley], [http://www.inra.gob.bo/propiedad\\_agraria/pa\\_dm\\_Investigaciones.jsp](http://www.inra.gob.bo/propiedad_agraria/pa_dm_Investigaciones.jsp) (last visited Feb. 27, 2010).

87. Ramirez, *supra* note 86, at 31.

where the Spanish colonizers also settled.<sup>88</sup> Population movement into the lowlands is a more recent phenomenon, encouraged by state-induced land grants and settlement programs beginning in the 1950s.<sup>89</sup> Economic development and growth in the lowland areas has surpassed the economic significance of the highlands.<sup>90</sup> The majority of Bolivia's population, however, is still in the highlands and inter-Andean valleys, and a significant amount of the country's economic activity continues to take place there.<sup>91</sup> While agriculture represents only 15 percent of the country's GDP, 37 percent of the population live and work in rural areas.<sup>92</sup> At 38 percent, women represent a significant proportion of the total formal labor force.<sup>93</sup>

Bolivia is one of the poorest countries in the Latin America region. In 2008, its GNI per capita was U.S. \$1,456 compared to U.S. \$6,548 for Latin America and the Caribbean region,<sup>94</sup> and 63 percent of its population is below the national poverty line.<sup>95</sup> This poverty is also reflected in the quality of life of the population. Bolivia's life expectancy at birth (for the year 2009) is 66 years, considerably lower than the Latin American and Caribbean average of 73 years.<sup>96</sup> The maternal mortality rate of 420 (per 100,000 live births) is more than double the region's rate of 193, reflecting poor health services, particularly for low-income women and for rural areas.<sup>97</sup> Bolivia's literacy rate (year 2000) is also somewhat lower than the regional average (85 percent

88. DIEGO PACHECO & WALTER VALDA, *LA TIERRA EN LOS VALLES DE BOLIVIA: APUNTES PARA LA TOMA DE DECISIONES* [LAND IN THE VALLEYS OF BOLIVIA: NOTES FOR DECISION MAKING] 65–71 (2003).

89. See David Kaimowitz, *Factors Determining Low Deforestation: The Bolivian Amazon*, 26 *AMBIO* 537, 539 (1997).

90. See MIGUEL URIOSTE, *BOLIVIA: REFORM AND RESISTANCE IN THE COUNTRYSIDE* (1982-2000) 8–11 (2001).

91. See Bolivia Information Forum, People, <http://www.boliviainfoforum.org.uk/inside-page.asp?section=2&page=43> (last visited Feb. 27, 2010).

92. The World Bank, *Bolivia at a Glance*, [http://devdata.worldbank.org/AAG/bol\\_aag.pdf](http://devdata.worldbank.org/AAG/bol_aag.pdf) (last visited Feb. 27, 2010).

93. The World Bank, *Genderstats*, <http://go.worldbank.org/0DWNXIQ30> (last visited Feb. 27, 2010).

94. International Finance Corporation, *Economy Characteristics*, <http://www.doingbusiness.org/ExploreEconomies/EconomyCharacteristics.aspx> (last visited Feb. 27, 2010).

95. Central Emergency Response Fund, *Bolivia - Facts and Figures*, <http://ochaonline.un.org/CERFaroundtheWorld/Bolivia2008/tabid/3697/Default.aspx> (last visited Feb. 27, 2010).

96. KATHERINE E. BLISS, CSIS GLOBAL HEALTH POLICY CTR., *HEALTH IN LATIN AMERICA AND THE CARIBBEAN: CHALLENGES AND OPPORTUNITIES FOR U.S. ENGAGEMENT* 10 (2009), [http://csis.org/files/media/csis/pubs/090422\\_bliss\\_healthlatinamer\\_web.pdf](http://csis.org/files/media/csis/pubs/090422_bliss_healthlatinamer_web.pdf).

97. UNICEF, *The Situation of Women in Bolivia*, [http://www.unicef.org/bolivia/children\\_1538.htm](http://www.unicef.org/bolivia/children_1538.htm) (last visited Feb. 27, 2010).

compared to 89 percent), but the illiteracy rate for women is much higher than for men.<sup>98</sup>

Politically, Bolivia has experienced great uncertainty and sudden changes of government since independence in 1825.<sup>99</sup> More recently, after several decades of mostly military governments from the 1960s to the early 1980s, democratically elected governments have been the norm since 1982.<sup>100</sup> This has not meant political stability, however. Mr. Gonzalo Sanchez de Losada, elected in June 2002, was forced to resign in October 2003 after strong popular movements and protests against his policies and his Vice-President, Mr. Carlos Mesa, took over the presidency.<sup>101</sup> President Mesa also experienced popular opposition, however, and resigned in June 2005 after repeated street protests and roadblocks by political parties and civil groups over his petroleum policies and local control over natural resources.<sup>102</sup> The acting president organized elections in late 2005 in which the current president, Evo Morales, was elected.<sup>103</sup>

#### A. *Historical Development of Land Tenure Systems*

Bolivia's land tenure history has been a combination of *latifundio* and indigenous customary systems.<sup>104</sup> The Spanish colonial officials were primarily interested in Bolivia's rich silver, tin, and gold mines, worked by forcefully recruiting indigenous people.<sup>105</sup> Agriculture was initially developed to provide food for colonial government officials, colonizers, and mine

98. EDUCATION FOR ALL (EFA), GLOBAL MONITORING REPORT 2003/4: REGIONAL OVERVIEW: LATIN AMERICA AND THE CARIBBEAN 3 (2003), [http://www.unesco.org/education/efa\\_report/zoom\\_regions\\_pdf/laamcari.pdf](http://www.unesco.org/education/efa_report/zoom_regions_pdf/laamcari.pdf) ("Gender disparities are significant in Bolivia . . . where fewer than 80 women are literate for every 100 men.").

99. See LIBRARY OF CONGRESS, COUNTRY PROFILE: BOLIVIA 2-7 (2006), <http://memory.loc.gov/frd/cs/profiles/Bolivia.pdf>.

100. See *id.* at 4-7.

101. *Revolt of the Poor in Bolivia*, N.Y. TIMES, Nov. 3, 2003, at A20; *Bolivia's Pipeline Dreams*, N.Y. TIMES, July 17, 2004, at A12.

102. LIBRARY OF CONGRESS, *supra* note 99, at 7.

103. Juan Forero, *Bolivia Congress Names New President, Setting Stage for Elections*, N.Y. TIMES, Jun. 10, 2005, at A9; Juan Forero, *Coca Advocate Wins Election for President in Bolivia*, N.Y. TIMES, Dec. 19, 2005, at A3.

104. *Latifundios* in Bolivia were agricultural and/or livestock estates worked initially by labor tenants and later by a combination of labor tenancy and sharecropping arrangements. For a recent account of Bolivia's pre-reform land tenure system, see Into A. Goudsmit, *Exploiting the 1953 Agrarian Reform: Landlord Persistence in Northern Potosí, Bolivia*, 13 J. LATIN AM. & CARIBBEAN ANTHROPOLOGY, 361, 365 (2008).

105. Harry Sanabria, *Resistance and the Arts of Domination: Miners and the Bolivian State*, 27 LATIN AM. PERSP. 56, 59 (2000).



workers.<sup>106</sup> This settlement by Europeans in the 16<sup>th</sup> and 17<sup>th</sup> centuries resulted in a large amount of land populated by indigenous groups coming under the control of the Spanish colonial administration.<sup>107</sup> These lands eventually became the private property of individual European and *mestizo* families and corporate groups such as the Catholic Church.<sup>108</sup> Some indigenous groups were able to maintain their lands and territories, particularly in the lowlands where the colonial administration had little interest.<sup>109</sup>

This land tenure system resulted in an extremely concentrated land distribution structure in the highland and valley regions: “approximately 9.6 percent of landholdings were farms of 200 hectares (one hectare equals 2.46 acres) or more, representing 74 percent of the total area,” while at the other extreme, 61 percent were smaller than 5 hectares, representing 0.28 percent of the total area.<sup>110</sup> After long and violent peasant movements against extremely harsh *latifundio* working conditions, a relatively radical land reform program was begun in the 1950s.<sup>111</sup> Four-fifths of the existing farmland in the western highlands and inter-Andean valleys was re-distributed to about three-fourths of the smallholder rural population.<sup>112</sup>

At the same time, the Bolivian state encouraged the movement of the rural population from the densely populated highland and valley regions to the relatively unoccupied lowland region.<sup>113</sup> The Instituto Nacional de Colonización (INC) granted modest amounts of land to peasant families who were willing to move to the lowlands.<sup>114</sup> The state, however, also gave away large (and sometimes extremely large) areas of lowland to the highland oligarchy and politically connected families.<sup>115</sup> Thus, one could say that the

106. See BROOKE LARSON, *COCHABAMBA, 1550-1900: COLONIALISM AND AGRARIAN TRANSFORMATION IN BOLIVIA* 46 (Duke University Press 1998) (1988).

107. See *id.* at 33–35.

108. See GEORGE MCCUTCHEN MCBRIDE, *THE AGRARIAN INDIAN COMMUNITIES OF HIGHLAND BOLIVIA* 7–11 (1921).

109. *Id.* at 11–23.

110. Ronald J. Clark, *Land Reform and Peasant Market Participation on the North Highlands of Bolivia*, 44 *LAND ECON.* 153, 153 (1968).

111. See Edmundo Flores, *Land Reform in Bolivia*, 30 *LAND ECON.* 112, 113–19 (1954).

112. PETER DORNER, *LATIN AMERICAN LAND REFORMS IN THEORY AND PRACTICE* 34 (1992).

113. Ronald J. Clark, *Agrarian Reform: Bolivia*, in *LAND REFORM IN LATIN AMERICA: ISSUES AND CASES* 129, 129–64 (Peter Dorner ed., 1971).

114. J. Valerie Fifer, *The Search for a Series of Small Successes: Frontiers of Settlement in Eastern Bolivia*, 14 *J. LATIN AM. STUD.* 407, 415 (1982).

115. Miguel Urioste F. de C., *La Reforma Agraria abandonada: valles y altiplano* [Agrarian Reform abandoned: valleys and high plains], in *PROCESO AGRARIO EN BOLIVIA Y AMÉRICA LATINA* [AGRARIAN PROCESS IN BOLIVIA AND LATIN AMERICA] 19–20 (John D. Vargas Vega ed., 2003), <http://bibliotecavirtual.clacso.org.ar/ar/libros/bolivia/cides/procesoagrario/procesoagrario.pdf>.

concentrated land ownership pattern was moved from the highlands to the lowlands.

After four decades of agrarian reform and resettlement, the distribution of farm families and land still reveals a highly differentiated and unequal structure. Farm holdings of less than 5 hectares represent 68 percent of farms but only 1.4 percent of farmland, while farms of over 100 hectares, representing 3.9 of farms, control 91 percent of farmland.<sup>116</sup>

### B. Legal Framework

Bolivia has recognized and guaranteed the right to private property since the liberal reforms of the 19<sup>th</sup> century. Because of the concentration of landed property and the accompanying poverty in the rural sector, agrarian reform legislation was passed in 1953 to redistribute land (state land and land not being directly used by *latifundio* owners) to landless and land-poor *latifundio* tenants and workers.<sup>117</sup> This agrarian reform legislation introduced the legal norm of the social function of land and has been the basis of land policy and programs in Bolivia for four decades.<sup>118</sup> Under this legislation, the two major programs mentioned above were carried out: the redistribution of *latifundio* land in the eastern highland and valley regions and the granting of state land in the eastern lowlands to peasant families, ex-*latifundio* owners, and politically-connected persons.<sup>119</sup>

By the mid-1980s, there was a recognized need to review existing land legislation to reflect the changing land tenure structure in Bolivia and the development of a market economy.<sup>120</sup> Extensive consultations with civil society, including NGOs and indigenous organizations regarding this legislation were undertaken, particularly the land market aspects of the proposed law and the implementation of titling methodologies.<sup>121</sup> A new land law (Ley No. 1715, Servicio Nacional de Reforma Agraria) was approved in

116. Danilo Paz Ballivián, *Medio siglo de Reforma Agraria boliviana* [Half a century of Bolivian Agrarian Reform], in *AGRARIAN PROCESS IN BOLIVIA AND LATIN AMERICA*, *supra* note 115, at 53–63.

117. *See generally* RENÉ CANELAS L., *REFORMA AGRARIA: DECRETO DE 2 DE AGOSTO DE 1953 Y DISPOSICIONES ANEXAS* [LAND REFORM: DECREE OF AUGUST 2, 1953 AND AUXILIARY PROVISIONS] (1968).

118. *See generally* Clark, *supra* note 113.

119. *Id.* at 135–37, 142.

120. Miguel Urioste and Diego Pacheco, *Land Market in a New Context: the INRA Law in Bolivia*, in *CURRENT LAND POLICY IN LATIN AMERICA: REGULATING LAND TENURE UNDER NEO-LIBERALISM* 259–68 (Annelies Zoomers & Gemma van der Haar eds., 2000).

121. *Id.*

1996 and a preliminary set of regulations in July 1997.<sup>122</sup> Based on this law, a new agrarian reform institution, INRA,<sup>123</sup> was created.

This land legislation and the 1994 Constitution<sup>124</sup> recognize the right of every person to (individual or collective) private property and continue to

122. Ley [Act] No. 1715, Ley Del Servicio Nacional de Reforma Agraria [National Service Agrarian Reform Law] tit. 1, art. 17, § 4 (1996) (Bol.), <http://www.inra.gob.bo/uploads/documentos/DBL-1-1-379.pdf>.

123. *Id.*

124. CONSTITUCIÓN DE LA REPÚBLICA DE BOLIVIA 1967 CON REFORMA DE 1994 Y TEXTO CONCORDADO DE 1995 [CONSTITUTION OF THE REPUBLIC OF BOLIVIA WITH REFORMS OF 1994 AND AGREED TEXT OF 1995] art. 7 (Bol.) [hereinafter BOL. CONST.], available at <http://pdba.georgetown.edu/Constitutions/Bolivia/1967bolivia1994.html>. It reads:

Art. 7. Derechos fundamentales de la persona

Toda persona tiene los siguientes derechos fundamentales, conforme a las leyes que reglamenten su ejercicio:

- a. A la vida, la salud y la seguridad.
- b. A emitir libremente sus ideas y opiniones, por cualquier medio de difusión.
- c. A reunirse y asociarse para fines lícitos.
- d. A trabajar y dedicarse al comercio, la industria o a cualquier actividad lícita, en condiciones que no perjudiquen al bien colectivo.
- e. A recibir instrucción y adquirir cultura.
- f. A enseñar bajo la vigilancia del Estado.
- g. A ingresar, permanecer, transitar y salir del territorio nacional.
- h. A formular peticiones individual o colectivamente.
- i. A la propiedad privada, individual o colectivamente, siempre que cumpla una función social.
- j. A una remuneración justa por su trabajo, que le asegure para sí y su familia una existencia digna del ser humano.
- k. A la seguridad social, en la forma determinada por esta Constitución y las leyes.

[Art. 7. Fundamental Human Rights

Everyone has the following fundamental rights, conforming to the laws regulating this right:

- a. To life, health, and safety.
- b. To freely express their ideas and opinions, by any media.
- c. To assemble and to associate for lawful purposes.
- d. To work and engage in commerce, industry or any lawful activity, on the condition that it does no harm to the collective good.
- e. To receive education and acquire culture.
- f. To teach under the supervision of the State.
- g. To enter, remain in, travel, and leave the country's borders.
- h. To formally petition the government, either individually or collectively.
- i. To private property, individually or collectively, so long as it provides and fulfills a social function.

uphold the social function of land ownership.<sup>125</sup> One of the stated objectives of the 1996 land law is to continue the re-distribution of both state land and the under-utilized land of large estates.<sup>126</sup> The focus of the implementation, however, has been on another of its objectives: the regularization of legal property rights, particularly the land held by families in peasant and smallholder communities, and the modernization of the land administration systems and institutions.<sup>127</sup>

The 1996 law (commonly called the Ley INRA) recognizes several types of agrarian property, including communally-held land by indigenous communities and smallholder peasant communities,<sup>128</sup> and forbids the selling and mortgaging of communal land. With regard to individual private property rights, the Ley INRA guarantees the smallholder sector's rights to land and forbids the mortgaging of smallholder parcels,<sup>129</sup> as well as peasant homesteads.<sup>130</sup> It also recognizes the ownership rights of medium and large commercial farms as long as they fulfill their socio-economic function (*Función Socio-Economico*, FES); large latifundios are not legally recognized.<sup>131</sup>

One of the distinguishing features of the Ley INRA is the explicit recognition of equal rights to land by women as well as men. Article 3, Paragraph V, states that equity criteria will be applied in the distribution, administration, tenure, and use of land in favor of women, independent of their civil status.<sup>132</sup> The last phrase is important since it does not require that a

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j. A fair wage for work given, which will go to provide for himself and his family so that they can exist as dignified human beings.

k. To social security, as determined by this Constitution and laws.]

125. *Id.*

126. National Service Agrarian Reform Law tit. 1, art. 18, § 4.

127. *Id.*

128. *Id.* tit. 1, arts. 53, 72. In general, indigenous lands are titled as communal territories—called Tierra Comunitaria de Origen (TCO)—and no individual titles are issued. Some peasant communities consist of both individually-titled lands and communally-titled land.

129. Clark, *supra* note 113, at 135. The size of a small parcel (*pequeña propiedad*) varies according to geographic area and type of agricultural activities.

130. National Service Agrarian Reform Law tit. 1, art. 3, § 4.

131. *Id.*

132. *Id.* It states:

El Servicio Nacional de Reforma Agraria, en concordancia con el artículo 6 de la Constitución Política del Estado y en cumplimiento a las disposiciones contenidas en la Convención sobre la Eliminación de todas las Formas de Discriminación contra la Mujer, ratificada por Ley 11100 de 15 de septiembre de 1989, aplicará criterios de equidad en la distribución, administración, tenencia y aprovechamiento de la tierra a favor de la mujer independientemente de su estado civil.

[The National Agricultural Reform Act, in accordance with Article 6 of the Political Constitution of the State, and pursuant to the provisions found in the Convention on the Elimination of All

woman be head of household or married in order to be eligible for land rights. The law does not enter into more detail on women's rights to land and did not mention how Article 3 was to be implemented. The gender provisions of the INRA Law are supported by other Bolivian legislation such as the 1994 Constitution (Article 6)<sup>133</sup> and the ratification of CEDAW by the Bolivian State in 1990.<sup>134</sup>

Bolivia's 1979 Family Code states that spouses have equal rights and responsibilities<sup>135</sup> and that women have social and economic functions in the home that are protected by law.<sup>136</sup> On the other hand, the Family Code also

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Forms of Discrimination against Women, ratified into law on September 15, 1989, provides for equal distribution, administration, tenure, and land use for women regardless of marital status.]

133. BOL. CONST. art. 6. The Constitution "protects citizens' rights and freedoms without distinction of sex, origin, economic or social condition, or any other condition" [author's translation].

134. Grazia V. Smeall, *Bolivia: Women's Rights, The International Women's Convention and State Compliance*, in *WOMEN'S RIGHTS: A GLOBAL VIEW* 15, 17 (Lynn Walter ed., 2001). The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women, defining what constitutes discrimination against women and setting up an agenda for national action to end such discrimination. See also International Women's Rights Action Watch Asia Pacific, States Parties to CEDAW, <http://www.iwraw-ap.org/convention/parties.htm> (last visited Sept. 22, 2009).

135. Act No. 996, Código de Familia concordado de la República Boliviana [Bolivian Republic Family Code] tit. III, art. 96 (1988) (Bol.), available at <http://www.unhcr.org/refworld/docid/3db9287c4.html>. It states:

Art. 96 (IGUALDAD CONYUGAL).

Los esposos tienen, en interés de la comunidad familiar y de acuerdo a la condición personal de cada uno, derechos y deberes iguales en la dirección y el manejo de los asuntos del matrimonio, así como en la crianza y educación de los hijos. (Art. 194 Constitución Política del Estado Ley No. 1615- de 6 de febrero de 1995).

En defecto de uno de los cónyuges, el otro asume solo, las atribuciones anteriormente descritas, en la forma y condiciones previstas por el presente Código.

[Art. 96 (EQUALITY IN MARRIAGE).

Spouses have, in the interests of the community and according to the family and personal status of each spouse, equal rights and duties in directing and managing the affairs of the marriage and the upbringing and education of children. (Enacted on February 6, 1995). In the absence of one spouse, the other spouse assumes the legal attributes described above in the manner and conditions provided by this Code.]

136. *Id.* art. 98. It states:

Art. 98 (NECESIDADES COMUNES).

Cada uno de los esposos contribuye a la satisfacción de las necesidades comunes en la medida de sus posibilidades económicas. (Arts. 195, 196 y 197 Constitución Política del Estado. Ley N° 1615 de 6 de febrero de 1995).

dictates that the husband can restrict or forbid the woman from working outside the home for moral reasons or to prevent interference with her role in the home.<sup>137</sup> Provisions regarding marital property are included in the Family Code. They recognize as community property (property owned by both wife and husband) any property acquired during marriage by the couple with their income or labor.<sup>138</sup> While property inherited by a spouse or acquired before

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En caso de desocupación o impedimento para trabajar de uno de ellos, el otro debe satisfacer las necesidades comunes.

La mujer cumple en el hogar una función social y económicamente útil que se halla bajo la protección del ordenamiento jurídico.

[Art. 98 (COMMON NECESSITIES)

Each spouse is to contribute to the common necessities of the other spouse based on their ability to pay. (Enacted on February 6, 1995).

In the event of employment or disability to work, the other spouse is to meet these common needs.

A housewife has a social and economically useful function and is given legal protection.]

137. *Id.* art. 99. It states:

Art. 99 (EJERCICIO DE UNA PROFESION U OFICIO).

Cada conyuge puede ejercer libremente la profesión; u oficio que elija o haya elegido antes del matrimonio, salvo que uno de ellos obtenga, en interés de la comunidad familiar, una prohibición expresa, respecto al otro.

En particular el marido puede obtener que se restrinja o no se permita a la mujer el ejercicio de cierta profesión u oficio, por razones de moralidad o cuando resulte gravemente perjudicada la función que le señala el art. Anterior.

[Art. 99 (THE RIGHT TO WORK IN A PROFESSION OR TRADE).

Each spouse is free to work in any profession or trade of their choosing as they had been prior to marriage unless it is in the interest of the community, or it is expressly prohibited by law, that they not work in that trade or profession, or out of respect for the other.

In particular, the husband can restrict or forbid the wife from exercising her right to her profession or trade for morality reasons or if her work would impair her responsibilities inside the home.]

138. *Id.* art. 102. It states:

Art. 102 (REGULACIÓN DE LA COMUNIDAD Y PROHIBICIÓN DE SU RENUNCIA O MODIFICACIÓN).

La comunidad de gananciales se regula por la ley, no pudiendo renunciarse ni modificarse por convenios particulares, bajo pena de nulidad.

[Art. 102 (THE REGULATION OF COMMUNITY PROPERTY AND THE PROHIBITION AND MODIFICATION OF THAT PROPERTY).

Community property is regulated by law and cannot be waived or modified by private agreements. Any modification will be nullified.]

marriage is considered separate (not community) property,<sup>139</sup> the income from such property is considered community property.<sup>140</sup> Another relevant clause states that the disposition of community property requires the express consent of both spouses.<sup>141</sup>

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139. *Id.* art. 103. It states:

Art. 103 (BIENES PROPIOS POR MODO DIRECTO).

Son bienes propios de los esposos: 1) Los que cada uno tiene a tiempo del matrimonio; 2) Los que le vienen a cualquiera de los durante el matrimonio, por herencia, legado o donación.”

[Art. 103 (NON-COMMUNAL PROPERTY DIRECTLY ACQUIRED).

Private non-communal property can be acquired by either spouse by: 1) having owned the property before marriage; 2) obtaining the property during marriage through inheritance, a bequest, or a donation.]

140. Bolivian Republic Family Code tit. III, art. 111. It states:

Art. 111 (BIENES COMUNES POR MODO DIRECTO). Son bienes comunes:

1. Los adquiridos con el trabajo o industria de cualquiera de los cónyuges.
2. Los frutos de los bienes comunes y de los propios de cada cónyuge.
3. Los productos de la suerte, como loterías, juegos, rifas o apuestas, siempre que no se trate de los que provienen de sorteo o redención de valores o títulos pertenecientes a uno solo de los esposos.
4. El tesoro descubierto, aunque lo sea en bienes propios de cualquiera de los esposos.
5. Los que se obtengan por concesión o adjudicación del Estado.

[Art. 111 (COMMUNITY PROPERTY). Community Property is created when:

1. Either spouse acquires the property through their work or industry.
2. Through the common fruits of their labors.
3. As the result of chance including sweepstakes, games, raffles, or the like, but only if it is not the result of redeeming (liquidating) the other spouse’s valuables including securities, bonds, and investments.
4. A treasure trove even if it is found on private non-community property of a spouse.
5. Property obtained through the State via grant or an award.]

141. *Id.* art. 116. It states:

Art. 116 (DISPOSICION DE LOS BIENES COMUNES).

Para enajenar; hipotecar, gravar o empeñar los bienes comunes es indispensable el consentimiento expreso de ambos cónyuges dado por si o por medio de apoderado con poder especial. En caso de ausencia, incapacidad o impedimento de uno de los cónyuges, debe obtenerse la autorización judicial respectiva.

Los actos de disposición o de imposición de derechos reales de uno de los cónyuges respecto a los bienes comunes pueden anularse a demanda del otro cónyuge, salvo que éste prefiera reivindicar a título exclusivo la parte que le corresponda en el bien dispuesto, si ello es posible, u obtener el valor real de la misma.

In addition, the Family Code specifies that property acquired through grant or adjudication from the state forms part of the community property of the conjugal couple.<sup>142</sup> As we will see below, this stipulation has been interpreted by INRA to include land distributed through the agrarian reform and re-settlement programs.

Inheritance norms are found in the 1975 Civil Code and in general are not gender biased. Intestate property is to be divided equally among all children (daughters and sons), and the surviving spouse.<sup>143</sup> In addition, with regard to marital property, the surviving spouse retains her/his half of that property. The Civil Code also recognizes family patrimony and stipulates that it cannot be alienated (sold, mortgaged, rented out) while there are any minor children in the home.<sup>144</sup> In the regulations of the Ley INRA, family patrimony is interpreted as the homestead parcel where the farm family lives (see below).

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[Art. 116 (DISPOSING OF COMMUNITY PROPERTY).

In order to alienate, mortgage, encumber, or sell community property, express consent of both spouses or by an agent of a spouse is required. However, in the case of incapacity, disability, or absence of a spouse, judicial authorization must be obtained to dispose of community property.

If a spouse attempts to dispose of community property, or succeeds in disposing of community property without express permission of the other spouse, then that prior act can be annulled by the non-consenting spouse unless he or she elects to claim title to his or her fair share at the property's real value.]

142. *Id.* art. 111. Article 111(5) states: Community property is obtained when the property is obtained through the State via a grant or an award.

143. Decreto Ley [Law Decree] No. 12760, arts. 1094, 1103 (1976) (Bol.). It states:

Art. 1094 (SUCESIÓN DE HIJOS Y DESCENDIENTES).

1. La sucesión corresponde, en primer lugar, a los hijos y descendientes, salvo los derechos del cónyuge o del conviviente.
2. Los hijos heredan por cabeza y los nietos y demás descendientes por estirpe. Heredar por cabeza es suceder en virtud del derecho propio, y heredar por estirpe es suceder en virtud del derecho de representación.

Art. 1103 (CONCURRENCIA DEL CÓNYUGE CON HIJOS).

Cuando el cónyuge concurre con hijos o descendientes, el cónyuge tiene derecho a una cuota igual de herencia que cada uno de los hijos.

[Art. 1094 (SUCCESSION OF CHILDREN AND THEIR DESCENDANTS).

1. The following sequence applies to the children and descendants, but not affecting the rights of the spouse or cohabitant companion.
2. Children inherit per head while grandchildren and their descendants inherit per stirpes. Inheritance occurs under the right of representation.

Art. 1104 (CONCURRENCE OF SPOUSE WITH CHILDREN).

If the spouse concurs with the children or their descendants, the spouse is entitled to an equal share of inheritance to each of the children.]

144. *Id.* art. 1237. It states:



In May 2000, the definitive set of regulations for the Ley INRA was approved and these included several articles and clauses related to gender considerations. There were, however, no explicit gender procedural or monitoring guidelines.<sup>145</sup> Article 146 mentioned that both men and women were guaranteed equal participation in the *saneamiento* process,<sup>146</sup> and Article

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Art. 1237 (BIENES CONSTITUIDOS EN PATRIMONIO FAMILIAR).

1. En la división de bienes hereditarios no se pueden comprender los bienes constituidos en patrimonio familiar hasta que el último de los beneficiarios menores llegue a la mayoría de edad.
2. El juez, a pedido de parte interesada, puede otorgar se indemnice por el aplazamiento de la división a aquellos que no habitan la casa o no se benefician de los bienes.
3. Sin embargo, si muerto el cónyuge que constituyó el patrimonio, los bienes que en él se integran pasan a formar parte de la legítima de los hijos mayores de edad, el juez, cuando existen necesidad y utilidad evidentes para éstos, puede disponer la división de los bienes a fin de que obtengan la cuota de legítima que les corresponde.

[Art. 1237 (INHERITED PROPERTY INVOLVING HOMESTEAD PARCEL).

1. In instances in which homestead property exists, that property cannot be alienated until minor children leave the home.
2. Upon request of an interested party who is not living at home and is not currently receiving any benefit from that property, a judge may award compensation for the postponed alienation of that property.
3. However, if the spouse who holds title to the inherited property dies, then those legitimate children who are of age can ask a judge, when need and usefulness is proven, to divide the property in order for each child to receive their legitimate share.]

145. See Reglamento De La Ley No. 1715, Del Servicio Nacional De Reforma Agraria [Regulation of Act No. 1715, National Service Agrarian Reform] (2000) (Bol.), <http://www.bvsde.paho.org/bvsacd/cd38/Bolivia/DS25763.pdf>.

146. *Id.* art. 146. It states:

Art. 146 (TRANSPARENCIA Y PARTICIPACION EN EL PROCEDIMIENTO DE SANEAMIENTO).

1. Se garantiza la transparencia en la ejecución de los procedimientos de saneamiento, en virtud de la cual toda persona podrá solicitar en cualquier momento información relativa a los mismos. El acceso a documentación en la ejecución del procedimiento de saneamiento, procederá previa acreditación del interés legal.
2. La participación en la ejecución de los procedimientos de saneamiento está abierta y garantizada por igual a hombres y mujeres.

[Art. 146 (TRANSPARENCY AND PARTICIPATION IN REGULARIZATION PROCEEDINGS).

1. Regularization proceedings include transparency which allows any person to request information related to them at any time. With regards to regularization proceedings, access to documentation ensures that a person's legal interests are met.
2. Regularization proceedings includes the opportunity for equal and open participation by both men and women.]

231(c) specifies that titles are to be issued without regard to gender.<sup>147</sup> The most useful provision to date, however, appears to be Article 28 (g) which gives the INRA Director (and provincial INRA directors) the responsibility

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147. *Id.* art. 231. It states:

Art. 231 (ALCANCE DE LA TITULACION).

1. La tierra objeto de procesos agrarios en trámite se titulará de acuerdo a la clasificación de la propiedad agraria establecida en el artículo 41 de la Ley No. 1715.
2. La titulación de procesos agrarios en trámite a favor de sus beneficiarios, se sujetará a las siguientes reglas:
  - a. Cuando una comunidad sea beneficiaria de un predio, se otorgará derecho de propiedad colectiva en su favor, previa acreditación de su personalidad jurídica conforme a lo dispuesto en el párrafo II del artículo 75 de este reglamento, sin relación de miembros de la comunidad;
  - b. Cuando varias personas sean beneficiarias de un mismo predio, se otorgará derecho en copropiedad a favor de todas ellas, con relación de beneficiarios;
  - c. Cuando una persona individual o jurídica sea beneficiaria de un predio se otorgará derecho de propiedad individual en su favor, sin discriminación de género; y
  - d. Cuando una Colonia o Sindicato Agrario sea beneficiario de un predio, se otorgará derecho de propiedad colectiva en su favor como comunidad, previa acreditación de su personalidad jurídica y sin relación de beneficiarios; derecho en copropiedad a favor de todos sus miembros, con relación de beneficiarios o derecho de propiedad individual.
3. La titulación de procesos agrarios en trámite que cuenten con resolución ratificatoria, confirmatorio o modificatoria solo procederá sobre las superficies que cumplan la función social o económico-social en relación a sus beneficiarios, subadquirentes, o la sucesión indivisa.

[Art. 231 (THE SCOPE OF TITLE OR OWNERSHIP).

1. Agricultural land subject to the pending proceedings will be given title according to the classification of agricultural property as stated in Article 41 within Law Number 1715.
2. Title or ownership of agricultural land is given to beneficiaries but are subject to the following rules:
  - a. When a community is a beneficiary of an agrarian estate, it becomes a collective property right but only upon certification of legal status as provided in Article 75, paragraph two, without regard to specific community members.
  - b. When several people receive the same property, ownership rights are granted to each person which can be later given to their beneficiaries;
  - c. When an individual or legal person is the beneficiary of an estates, they gain property rights on the basis that no gender discrimination is involved;
  - d. When an agrarian colony or union is the beneficiary of an estate, that entity is given collective community property rights, provided that it is a legal entity, that co-ownership rights are given to all its members, and that land can be given to beneficiaries or as individual property rights.
3. The titling or ownership process of agricultural land that have ratification, confirming, or modifying resolutions will only proceed over that land that has an economic or social function for its beneficiaries or those in an undivided succession.]

(*atribución común*) to ensure that legal gender rights are observed in the implementation of the INRA Law.<sup>148</sup>

The regulations for the Ley INRA also adopted a safeguard for families that protects, at a minimum, women's access rights to family property. Based on the Family Code,<sup>149</sup> the rural family homestead is considered family

148. *Id.* art. 28. It states:

Art. 28 (ATRIBUCIONES COMUNES).

El Director Nacional y los Directores Departamentales del Instituto Nacional de Reforma Agraria, dentro del ámbito de sus circunscripciones territoriales y su jerarquía, tienen las siguientes atribuciones comunes: . . .

g. Velar por el debido cumplimiento de la normatividad jurídica vigente, especialmente la referida a asuntos de género; . . .

[Art. 28 (COMMON POWERS).

The National Director and the departmental directors of the National Agrarian Reform Institute, within the scope of the national territory, have the following common attributes or powers: . . .

g. Ensure enforcement of legal norms, particularly in relation to gender matters; . . .]

149. Act No. 996, Código de Familia [Family Code], arts. 30, 32, 35, 36 (1988) (Bol.). These state:

Art. 30 (CONSTITUCIÓN Y UNIDAD).

El patrimonio familiar se constituye por resolución judicial y a pedido de uno o más miembros de la familia.

El establecido por leyes especiales, se rige por lo que éstas disponen.

En ningún caso puede constituirse más de un patrimonio familiar en beneficio de los miembros de una familia.

Art. 32 (CARÁCTER INALIENABLE E INEMBARGABLE).

Los bienes que constituyen el patrimonio familiar son inalienables e inembargables. (Art. 179 Código de Procedimiento Civil).

Art. 35 (EXTINCIÓN).

El patrimonio familiar se extingue:

1. Cuando muere el último de los beneficiarios;
2. Cuando el más joven de los beneficiarios menores de edad llega a su mayoría, si no hay otros beneficiarios;
3. Cuando los esposos se divorcian o se separan, siempre que no haya hijos menores y, si los hay, se estará a lo que dispone el artículo siguiente:
4. Cuando hay abandono o dejación de la vivienda, salvo las excepciones temporales que por motivos justificados puede conceder el juez;
5. Por reivindicación, expropiación o destrucción total de inmueble, salvo en estos dos últimos casos, lo que se dispone en el artículo 38.

La extinción se declarará a petición de parte interesada o del fiscal, ordenándose su inscripción en el registro. En los casos de expropiación y reivindicación, la extinción se produce por efecto del

auto y sentencia dictados dentro de los respectivos procesos, debiendo diligenciarse también su inscripción.

Art. 36 (DIVORCIO O SEPARACIÓN).

Si hay divorcio o separación, el juez designa al progenitor y, en su defecto, al tutor que ha de quedar con los hijos menores en el patrimonio familiar hasta que éstos lleguen a su mayoría, de acuerdo a lo dispuesto por el artículo 145 del presente Código.

En caso de que se distribuya la guarda de los hijos entre ambos cónyuges o entre uno de éstos y un tutor, el juez puede adoptar la determinación que corresponda y, en último extremo, declarar la disolución del patrimonio familiar, según convenga más al interés de los hijos.

Se considerarán las proposiciones que hagan los padres y se escuchará la opinión del fiscal.

[Art. 30 (CONSTITUTION AND UNITY).

The homestead can be established through a court order and by a request from one or more family members. Special laws can be established to benefit the offspring of these family members. In no instance, can the homestead be established as anything but a homestead for family members.

Art. 32 (INALIENABLE AND INDEFEASIBLE CHARACTERS).

The assets that constitute the family homestead are inalienable and indefeasible. (Art. 179 Code of Civil Procedure).

Art. 35 (EXTINGUISHING THE HOMESTEAD PROPERTY).

The homestead property ceases to exist when

1. The last beneficiary dies;
2. When the youngest of the child beneficiaries becomes of age and there are no other beneficiaries;
3. When a husband and a wife divorce or separate, and have no minor children;
4. When there is neglect or abandonment of the homestead but not including temporary exceptions which can be granted by a judge;
5. Condemnation or destruction of property, except in the latter two cases, as provided for in Article 38.

The termination of the homestead property must be declared as the result of an interested party, or a prosecutor ordered the termination. In cases of expropriation and claims, termination is automatic.

Art. 36 (DIVORCE AND SEPARATION).

If divorce or separation occurs, and a judge appoints a parent or, in the absence of a parent, a guardian, that person can care for the minor children on the homestead property until all the children come of age, in accordance with the provisions found in Article 145 in this code.

If child custody is distributed to more than one parent or guardian, then a judge can make a determination and declare the dissolution of the homestead if it is determined to be in the best interests of the children.

The consideration of propositions is done based on requests from parents and the opinion of the prosecutor.]

patrimony and may not be sold, mortgaged, or subject to foreclosure while there is a minor child residing in the home.<sup>150</sup>

### C. *Gender and Land*

As we have seen, Bolivia's formal legal system recognizes equal rights for both women and men, including the right to own property, to inherit, and to marital property (community property).<sup>151</sup> Customary norms and practices, however, show a strong bias against women owning land.<sup>152</sup> Husbands control household land and if that land is formally titled, generally only the husband's name appears on the documents.<sup>153</sup> At the time of inheritance, the land usually passes from father to sons, although widows are permitted to remain on the property.<sup>154</sup> Daughters may inherit a small share of the land.<sup>155</sup> Unfortunately, the majority of rural women are not aware of their legal rights and are therefore often dispossessed in case of separation or abandonment.<sup>156</sup>

While the 1953 agrarian reform law stated that all Bolivian farmers 18 years and older, without distinction of sex, were entitled to benefit from agrarian reform and land settlement programs, in practice the only women who received land were single female heads of household such as widows with

150. Decreto Supremo [Supreme Decree] No. 25763, art. 389 (2000) (Bol.). It states:

Art. 389 (PATRIMONIO FAMILIAR EN EL REGIMEN AGRARIO).

El carácter de patrimonio familiar del solar campesino y la pequeña propiedad agraria, no necesitan de declaratoria judicial, para su reconocimiento, de conformidad a lo establecido por los artículos 169 de la Constitución Política del Estado y 41, parágrafo I, numerales 1 y 2 de la Ley No. 1715. La Mediana Propiedad y la Empresa Agropecuaria, para su declaratoria como patrimonio familiar, se sujetan a las normas previstas en el Código de Familia.

[Art. 389 (HOMESTEAD PROPERTY IN AN AGRICULTURAL SYSTEM).

The character of homestead for a family farm and small peasant land owners does not require judicial declaration so long as it is recognized or conforms to Article 169 of the Political Constitution of the State, and Article 41, paragraph 1, number 1 and 2 of the Legal Act 1715. The central property and agricultural business property can be declared homestead property subject to the rules found in the Family Code.]

151. *See supra* Part III.B.

152. *See generally* Social Institutions & Gender Index, Gender Equality and Social Institutions in Bolivia, <http://genderindex.org/country/bolivia> (last visited Mar. 9, 2010); UN COMM. ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW), COMBINED SECOND, THIRD AND FOURTH PERIODIC REPORTS OF STATES PARTIES, BOLIVIA 50 (2006), available at <http://www.unhcr.org/refworld/docid/4537783f0.html>.

153. JAVIER FLORES SILES, SISTEMATIZACIÓN DE LA TRANSVERSALIZACIÓN DE GÉNERO: SANEAMIENTO Y TITULACIÓN DE LA PROPIEDAD RURAL [SYSTEMIZE GENDER MAINSTREAMING: REGULARIZATION AND CERTIFICATION OF RURAL PROPERTY] 40 (2004).

154. ROSARIO SALAZAR, TIERRA EN LA TIERRA, ¿DÓNDE ESTÁN LAS MUJERES? [LAND ON EARTH, WHERE ARE THE WOMEN?] 10–14 (2004).

155. *Id.* at 15.

156. *Id.* at 34.

small children.<sup>157</sup> Nevertheless, 17 percent of the beneficiaries between 1956 and 1994 were women.<sup>158</sup> This unexpectedly high proportion of women beneficiaries appears to reflect the high number of titled women in the Beni (46.9 percent) and Santa Cruz (15.6 percent) lowland regions where large landowners during the 1970s attempted to hide the extent of their landholdings by titling some of their land in the name of their wives.<sup>159</sup> The number of women who received land in the indigenous highland and valley regions was very low: Chuquisaca (4.1 percent), Cochabamba (3.6 percent), La Paz (6.4 percent), Oruro (2.1 percent), and Potosí (5.7 percent).<sup>160</sup>

Under the current regularization program (issuing first or initial titles where necessary and/or updating registration records), the legal context for improving women's land rights is more favorable than under the previous agrarian reform. The gender language of the 1996 land legislation and the development of pro-active gender guidelines and procedures should have significantly increased the percentage of women holding land titles.

#### IV. GENDER AND THE LAND TITLING REGISTRATION PROGRAM

The World Bank and other international donors (such as FIDA, Inter-American Development Bank, the Nordic Fund, Danish Cooperation, Dutch Kadaster, World Wild Life, Swiss COSUDE, and the European Community) have provided a significant proportion of the financing for Bolivia to modernize and update its land administration records and institutions under the 1996 Ley INRA.<sup>161</sup> Because of INRA's institutional and financial limitations, most of its implementation activities, such as titling and surveying, have responded to objectives and action plans set by these international donors.<sup>162</sup>

In this section, we describe the titling and registration program being implemented in Bolivia and review the procedures and guidelines related to gender. We then assess specific interventions with regard to safeguarding and improving women's rights to landed property financed by the World Bank and COSUDE, a Swiss development agency.

157. DEERE & LEÓN, *supra* note 64, at 73–74.

158. *Id.* at 75.

159. *Id.* at 75–76.

160. *Id.* at 76.

161. By 2003, a total investment of US \$65 million of which US \$48.3 million has been provided by international donors and US \$17.1 million by the Bolivian government. RAFAEL E. DIEZ & KEVIN BARTHEL, *RAPID AND MASSIVE AGRARIAN LAND TITLING PROJECT IN THE TROPICS OF COCHABAMBA* 3–4 (2003).

162. *Id.* at 2; Pilar Domingo, *Weak Courts, Rights and Legal Mobilisation in Bolivia*, in *COURTS AND SOCIAL TRANSFORMATION NEW DEMOCRACIES: AN INSTITUTIONAL VOICE FOR THE POOR?* 223, 253 n.45 (Robert Gargarella, Pilar Domingo & Theunis Roux eds., 2006); Act No. 1715, Marco Institucional [Institutional Framework], tit. II, arts. 6, 17–23 (1996) (Bol.), <http://www.inra.gob.bo/uploads/documentos/DBL-1-1-379.pdf>.

### A. *Land Titling and Registration (Saneamiento)*

The principal objective of the *saneamiento* process is to formally title and register land parcels that were distributed through the 1953 agrarian reform law and to update the registration of already titled land.<sup>163</sup> The government agency charged with carrying out the *saneamiento* program is the Instituto Nacional de Reforma Agraria (INRA).<sup>164</sup>

Many rural families that received land through the land re-distribution program in the highlands and valleys and through the re-settlement program in the lowlands have been working parcels that are not legally titled. In addition, persons engaging in land transactions, particularly smallholders, have not completed the legal transfer of land rights nor have they recorded the transactions in the land registry. Thus, while the persons participating in the *saneamiento* process have many different origins and characteristics, the majority of them consist of individuals and families that:

- received land from the 1953 agrarian reform law (1953 through 1980s)
- received land from the re-settlement program (1950s through 1970s)
- purchased land but have not legalized the transfer
- live in indigenous communities whose lands are not legally recognized
- are occupying land that was never legally titled.

### B. *World Bank Project Intervention*

The World Bank has funded two projects between 1995 and 2005 related to this recent land administration reform for a total of U.S. \$34.7 million.<sup>165</sup> The overall objective of both projects is to achieve a more efficient and transparent land administration system through legal and institutional reforms, land regularization and titling, and the modernization of the land registry.<sup>166</sup> These legal and institutional reforms together with Bolivia's recognition of international gender conventions resulted, among other things, in the explicit inclusion of women and gender concerns in the 1996 Ley INRA (No. 1715) by stipulating the "application of criteria of equity in the distribution,

163. Domingo, *supra* note 162, at 223, 253 n.45.

164. Act No. 1715, National Service Agrarian Reform Law tit. 1, § 4, art. 17 (1996) (Bol.).

165. The World Bank, Report No. PID10586, Bolivia - National Land Administration Project: Project Information Document 4 (July 27, 2001) (unpublished report, on file with The World Bank), [http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2001/08/04/000094946\\_01080304114975/Rendered/PDF/multi0page.pdf](http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2001/08/04/000094946_01080304114975/Rendered/PDF/multi0page.pdf).

166. The World Bank, Report No. 36607, Bolivia - National Land Administration Project: Implementation Completion and Results Report 2 (June 28, 2006) (unpublished report, on file with The World Bank), [http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2006/07/25/000090341\\_20060725162814/Rendered/PDF/36607.pdf](http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2006/07/25/000090341_20060725162814/Rendered/PDF/36607.pdf).

administration, tenure and use of land with respect to women, regardless of their civil status” [author’s translation].<sup>167</sup>

With regard to land regularization and titling, from 1996 to 2001 the project supported the development and testing of a participatory methodology for the regularization and titling of 1.9 million hectares (including 12,151 smallholders, 800 medium/large holders) and one Communal Indigenous Land (Tierra Comunitaria de Origen, TCO), all in the eastern lowland region. In response to demands from peasant and indigenous groups, the follow-up project extended activities to conduct land regularization and titling of smallholders in the highland and valley Departments of La Paz and Cochabamba as well as lowland Santa Cruz, and the titling of Tierra Comunitaria de Origen (TCOs) in the highland Departments of La Paz and Potosí.<sup>168</sup>

Finally, the modernization of the Land Registry (Registro de Derechos Reales) consisted of the design and installation of a computerized registry (TEMIS), the integration of legal records with geographical and cadastral information, and the installation of the new system in nine departmental and twelve regional land registry offices.<sup>169</sup>

This case study will focus on INRA’s activities related to the land regularization and land titling component of this land administration project in Santa Cruz and Cochabamba. It should be noted that INRA has contracted out the implementation of the fieldwork for both the initial titling and the regularization of title processes to private firms. While INRA does have titling brigades, most of the fieldwork is done by these private firms.

167. National Service Agrarian Reform Law tit. 1, art. 3, ch. V. It reads:

El servicio Nacional de Reforma Agraria, en concordancia con el artículo 6° de la Constitución Política del Estado y en cumplimiento a las disposiciones contenidas en la Convención sobre las Eliminación de todas las Formas de Discriminación contra la Mujer, ratificada por Ley 1100 de 15 de septiembre de 1989, aplicará criterios de equidad en la distribución, administración, tenencia y aprovechamiento de la tierra en favor de la mujer, independientemente de su estado civil.

[The National Agricultural Reform Act, in accordance with Article 6 of the Political Constitution of the State, and pursuant to the provisions found in the Convention on the Elimination of All Forms of Discrimination against Women, ratified into law on September 15, 1989, provides for equal distribution, administration, tenure, and land use for women regardless of marital status.]

168. National Agrarian Reform Institute, Report No. PID541, Bolivia National Land Administration Project 3–4 (July 27, 2001), [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2001/08/04/000094946\\_01080304115476/Rendered/PDF/multi0page.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2001/08/04/000094946_01080304115476/Rendered/PDF/multi0page.pdf).

169. CAMACHO, RIGHT OF WOMEN, *supra* note 86, at 37; R.S. Dzur, *Challenges of Land Administration and Bolivian Colonization: Beyond Technical Cadastral Mapping*, 25 COMPUTERS, ENV’T. & URB. SYS. 429, 431 (2001).



### C. *Incorporation of Gender in the Saneamiento Process*

In spite of gender-sensitive agreements and recommendations contained in project documentation, it appears that during the first few years of the *saneamiento* program INRA did not take any measures to ensure (1) that women are made aware of their legal rights, (2) that women participate in the *saneamiento* process, nor (3) that its personnel and the titling brigades receive gender training with regard to women's land rights. As *saneamiento* advanced, it was evident that very few women were being titled, either as individuals or as co-owners.<sup>170</sup>

At the same time, a working group of seven NGOs was formed to discuss the issue of women's rights to land.<sup>171</sup> The objective was to promote the effective application of the new law's gender provision by proposing mechanisms to facilitate its application through a series of discussions among both state and civil society groups. The principal proposal that came out of this working group was the issuing of joint titles during the *saneamiento* process.<sup>172</sup>

Beginning in 2001, INRA realized that the May 2000 regulations of the law did not include sufficient procedural guidelines to assure gender equity in the *saneamiento* process.<sup>173</sup> INRA, therefore, took advantage of Article 28 (g) of the regulations that gave the director of INRA the authority to make administrative changes in implementing *saneamiento*, in order to modify its activities and procedures with the objective of including more women in the process and to grant land rights to more women.<sup>174</sup>

A number of internal memorandums (*comunicación interna*) and administrative resolutions (*resolución administrativa*) were issued. A review of these memorandums and directives reveals the need to be explicit and specific when attempting to extend gender equity in land rights.

In August 2001, an internal memorandum from the INRA director directed that:<sup>175</sup>

170. RENEE GIOVARELLI & SUSANA LASTARRIA-CORNHIEL, U.S. AGENCY FOR INT'L DEV., STUDY ON WOMEN AND PROPERTY RIGHTS: PROJECT BEST PRACTICES 21–22 (2006) (citing DEERE & LEÓN, *supra* note 64, at 73–76); SALAZAR, *supra* note 154, at 5.

171. The NGOs are QHANA, CIPCA, Fundación Tierra, ILDIS, RED-ADA, Secretariado Rural, and UNITAS. FUNDACIÓN TIERRA [LAND FOUNDATION], LA FUNDACIÓN TIERRA EN BOLIVIA: 12 AÑOS PROMOVRIENDO EL DESARROLLO RURAL 1991-2003 [LAND FOUNDATION IN BOLIVIA: 12 YEARS PROMOTING RURAL DEVELOPMENT 1991-2003] 93–94 (2004).

172. GIOVARELLI & LASTARRIA-CORNHIEL, *supra* note 170, at 22; SALAZAR, *supra* note 154, at 5.

173. GIOVARELLI & LASTARRIA-CORNHIEL, *supra* note 170, at 22; SALAZAR, *supra* note 154, at 5.

174. Interview with Daniela Camacho Laguna, INRA gender specialist (July–Sept. 2004).

175. CAMACHO, RIGHT OF WOMEN, *supra* note 86, at 11–12; Comunicación interna 86/2001 (Aug. 9, 2001), stating:

- When a legal title or a regularization certificate is issued to a couple, regardless of their civil status (married or consensual), both names must be included in the space provided for the titleholder, recording the woman's name first and then that of the man.
- The field appraisals by the titling brigades must verify effective possession regardless of civil status (married, divorced, separated, single, widowed) or gender.<sup>176</sup>

An administrative directive in November 2001 went out to the provincial INRA offices and was to be observed by both INRA personnel and by the titling brigades contracted by INRA.<sup>177</sup> This directive included a number of instructions:

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Cuando se trate de la emisión de un Título Ejecutorial o Certificado de Saneamiento, a favor de una pareja (mujer y varón), independientemente de su situación legal (casados o concubinos), se deberá incluir ambos nombres en el espacio correspondiente, registrándose primero el nombre de la mujer y luego del varón. . . . En la etapa de pericias de campo a cargo de brigadas o empresas, se deberá verificar la posesión efectiva de las personas, independientemente de su estado civil o de la situación de género.

[In instances where a legal title or a certification of regularization is issued to a couple (a man and a woman), regardless of their legal status (i.e., married or cohabitation), the certificate or title should include both names in the space provided by recording the woman's name first followed by the man's. . . . With regard to titling teams that do the fieldwork, they should verify the effective possession of those persons, regardless of their marital status or gender.]

176. GIOVARELLI & LASTARRIA-CORNHIEL, *supra* note 170, at 21–22.

177. *Id.* at 12–14; Resolución Administrativa 160/2001 (Nov. 22, 2001), stating:

La campaña y exposición pública de resultados, deberán enfatizar y explicar la invitación para la participación de mujeres en el proceso de saneamiento.

El informe de campaña pública deberá incluir el número de mujeres en los talleres y reuniones realizados. . . .

Durante las Pericias de Campo, tiempo de llenado de la ficha catastral, si corresponde, se deberá incluir en el anexo de beneficiarios el nombre del cónyuge o conviviente – sin distinción de género – para fines estadísticos y el cumplimiento de Comunicación Interna No. 0086/2001. . . .

Cuando se tenga conocimiento de costumbres y prácticas ancestrales en comunidades campesinas indígenas y originarias que tengan que ver con acceso de las mujeres a la tierra, se deberá tomar nota de las mismas y realizar un informe final al respecto, con el objeto de contribuir a investigaciones sobre usos y costumbres en esta temática.

[Information campaigns and public expositions should publicize, emphasize, and explain the invitation and encourage women to participate in the regularization process.]

The public campaign report must include the number of women in those workshops and meetings. . . .

- Women were to be explicitly invited to participate in the information campaigns, workshops, and exhibition events of the *saneamiento* process.
- Reports submitted by the titling brigades and INRA on these events should include the number of women who attended.
- The name of the spouse (legal or consensual) of the landholder should be included in the cadastral form (*ficha catastral*) filled out during the fieldwork.
- Gender aspects of customary and indigenous land tenure practices should be taken note of and written up in a report.<sup>178</sup>

Another internal memorandum in June 2003 further insisted on including women by instructing that women's names be included on the different forms filled out during the *saneamiento* process and leading up to approval of title.<sup>179</sup> These included the six key titling documents: Invitation to Attend Meeting (Carta de Citación), Memorandum of Notification (Memorandum de Notificación), Conciliation Record/Minutes (Acta de Conciliación), Boundary

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For statistical and compliance purposes with Internal Communication Memo No. 0086/2001, when filling out cadastral sheets and when applicable, include the names of the spouse or partner who are beneficiaries without regard to gender. . . .

With regards to ancestral customs and practices in indigenous and native peasant communities that deal with women's access to land, take note of these customs and practices in the final report in order to contribute to the research of customs and traditions in this field.]

178. GIOVARELLI & LASTARRIA-CORNHIEL, *supra* note 170, at 21–22.

179. On June 17, 2003, Comunicación Interna 36/2003 instructed titling teams:

[A]cuuerdo a la previsiones del artículo 3 párrafo V, de la Ley 1715 y los artículos 28, inc. G) y 146 párrafo II, de su Reglamento, tengo a bien instruir a ustedes que a partir de la fecha, en lo que respecta a:

- Carta de Citación
- Memorandum de Notificación Acta de Conciliación Acta de Conformidad de Linderos Carta de Representación Fecha Catastral A y B y Anexo de Beneficiarios(as)

Se deberá incluir el femenino (a/as) donde corresponda, como en los modelos que se adjuntan a continuación.

[[A]ccording to the provisions found in Article 3, paragraph 5, of the Act 1715, and Articles 28, and Article 146, paragraph 2 of the Rules, I have to instruct you that, as of this date, in relation to the:

- Summons Letter
- The Memorandum of Notification Act, the Conciliation Record, the Boundary Agreement Record, the Representation letter, the Cadastral Record, with Annex of Beneficiaries:

It should include the feminine (a/as) where appropriate, as in the model examples listed below.]

Agreement Record (Acta de Conformidad de Linderos), Carta de Representación, and the Cadastral Record (Ficha Catastral A y B) with Annex of Beneficiaries (Anexo de Beneficiarios (as)).

In February 2004, in recognition that the level of women participating in the *saneamiento* process and receiving titles continued to be low, an internal memorandum was issued insisting more specifically on the following procedures:<sup>180</sup>

- Land parcels that are to be titled for the first time, whether smallholder parcels or medium properties, are to be titled to the couple, not only to the head of household.
- Titling brigades (including both INRA and private firms) and supervisors are to follow legal norms and gender procedures when carrying out their activities.

The basic legal basis cited for this instruction is Article 111 of the Family Code stipulating that assets obtained through grant (*concesión*) or adjudication from the state are community property.

In May 2004, the instructions outlined in the No. 86/2001 internal memorandum (see above) were legally upgraded to administrative resolution.<sup>181</sup>

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180. On February 19, 2004, Comunicación Interna 10/2004 was circulated instructing that:

Cuando los antecedentes legales de un predio o sindicato sean de posesión legal, se registran en fichas catastrales y libros de saneamiento interno a la pareja que cumpla función social en el solar campesino y pequeña propiedad (art. 237 R) y no solo al jefe de familia.

De igual manera se deberá proceder en caso de posesión legal de medianas propiedades que cumplan la función económico-social (art. 238 p. II).

[When the legal ownership is given to an estate or property for the first time, it must be recorded in cadastral records and internal regularization books under the couples' names and not under the head of the family for small and medium parcels of property.

Likewise, this should be done for medium properties that meet economic and social functions.]

181. On May 24, 2004, Resolución Administrativa 52/2004 was issued specifying:

En el espacio donde se consigna a los beneficiarios en caso de ser a favor de dos personas, ya sea de una pareja (mujer y hombre) independientemente de su situación legal o de dos personas copropietarias independientemente de su género, se deberá incluir ambos nombres, registrándose primero el de la mujer; de acuerdo a lo verificado como resultado del proceso de saneamiento.

[In the space where a beneficiary is to be entered, and there is couple (a woman and a man), then independent of their legal status or whether they are co-owners, both of their names should be included with the women's name recorded first; this should be verified in the regularization process.]

And finally, in September 2004, the INRA director, via an internal memorandum,<sup>182</sup> reminded INRA offices to comply with a 2001 administrative resolution:

- Announcements and invitations to participate in the public campaigns regarding the *saneamiento* process should explicitly include women.
- Women can participate, without restrictions, in the public campaigns.
- Women who attend these events should be registered in the participant lists.
- A couple does not have to be legally married for the woman to be considered a co-owner.
- Spouses or siblings can be listed as co-owners, not children.<sup>183</sup>

This internal memorandum also repeats specific gender clauses in the INRA Law and its Regulations and concludes by stating that non-compliance to these instructions will have legal implications.<sup>184</sup>

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182. On September 6, 2004, the INRA Director issued Internal Memorandum 72/2004:

Con el objetivo de uniformar la aplicación de criterios legales sobre la equidad de género durante el proceso de saneamiento, tiene a bien instruir lo siguiente:

- Elaboración de convocatorias explícitas para la participación de las mujeres en las campañas públicas.
- Participación irrestricta de las mujeres en la campaña pública.
- Registro de las mujeres en las listas de participantes.
- No es requisito el certificado de matrimonio para que la mujer sea registrada en el anexo de beneficiarios/as como co-propietaria del predio.
- En la depuración de la información de la ficha catastral sólo se tomará en cuenta a los jefes de hogar (hombre/mujer), no se tomará en cuenta a los hijos o hijas; en caso de hermanos/as, se tomará en cuenta sólo si acreditan la documentación pertinente para su inclusión en el proceso de saneamiento.

[In order to standardize the application of legal standards for gender equity purposes during the regularization process, see fit to instruct the following:

- The development of explicit summons within public campaigns for the participation of women.
- Women can participate without restrictions in these public campaigns.
- Register women in the participation lists.
- It is not a requirement that a woman be legally married in order to be listed as a beneficiary in the beneficiary annex as a co-owner.
- When cleaning up the information on the cadastral sheet, only include household heads (woman/man) but not sons or daughters; if siblings exist, they can be considered if they can provide proper documentation that they should be included in the regularization process.]

183. *Id.*

These repeated instructions by the head INRA office to its departmental and field offices reveal the difficulties that the titling brigades experienced in carrying out the instructions, originating from both government agencies and community members. Among the former, the Land Registry, for example, refused to register co-ownership titles (as community property) to consensual couples, insisting that only legally married couples were recognized as legitimate spouses.<sup>185</sup> As a result, titles to couples without an accompanying marriage certificate were being rejected by the Land Registry and titling brigades were therefore reluctant to issue such titles.<sup>186</sup> Titling brigades were also experiencing resistance from some male household heads and from some community authorities to include women in the *saneamiento* process and on the land titles.<sup>187</sup>

In late 2001, COSUDE provided two-year funding<sup>188</sup> to INRA to improve the application of Article 3 of the Ley INRA through the increased participation of women in the titling process. Among the activities carried out through this funding were improvement of the procedural norms to include women, gender training, dissemination of women's legal land rights, and the disaggregation of titling data by gender. INRA's computerized database (SIST) is now able to report the number of titles issued to individual men, individual women, couples (joint titles), and legal entities.<sup>189</sup>

### 1. Gender Training

Initially, INRA hired a gender specialist to organize and implement a gender sensitivity training program. This training program consisted of (1) gender sensitivity training for departmental INRA offices (from the Director down to all the personnel) and for titling brigades and supervisors, and (2) training/education workshops on gender and land rights in the local language (Quechua, Aymara, or Spanish) for rural women organizations (such as CIDOP, CEMIB, and CIMTA) and (3) informational campaigns throughout Bolivia.<sup>190</sup> Initially, these informational campaigns and gender training workshops were not directly linked to INRA's titling process.

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184. "El incumplimiento al contenido de la presente genera responsabilidad de orden legal." *Id.*

["Failure to comply with these instructions will lead to legal consequences."]

185. Interview with key informants, INRA La Paz office (July 2004).

186. *Id.*

187. Interview with key informants, Staff and Titling Brigade Teams, Ichilo, Santa Cruz (Sept. 2004).

188. COSUDE, Proyecto Derecho de la Mujer [Women's Law Project] (Sept. 2001-Dec. 2003) (unpublished report).

189. CAMACHO, RIGHT OF WOMEN, *supra* note 86, at 37.

190. Interview with key informant, *supra* note 174.

As the gender program progressed, the gender specialist suggested that her work be more closely tied to the titling process by reviewing the legislation regarding women's rights to land (e.g., inheritance, marital property) and preparing a legal framework for INRA's titling process and its titling personnel. She also suggested that the data on attendance of community meetings and informational workshops collected by INRA be disaggregated by gender, and that the gender sensitivity training be focused on those areas where the titling process is occurring. All of these suggestions were approved and authorized by INRA's director. With regard to gender training of the beneficiary population, priority has been placed on smallholder peasant and settler communities and indigenous communities. In other words, commercial agricultural enterprises have not been targeted.<sup>191</sup>

The gender media campaigns that accompany the titling efforts consist of printed materials such as pamphlets and graphic booklets, videos for women, posters, and calendars. All of these materials are adapted to the geographic zone, the local language, and cultural norms.<sup>192</sup>

The gender sensitivity training of departmental INRA personnel and titling brigades (both INRA and private firm brigades) consisted of a half-day program that outlined the objectives of the gender program, emphasized that women should participate in the titling process, reviewed the legal rights of women (not only in titling, but also in other property issues such as inheritance), and discussed the problems that women encounter, such as monolingualism and lack of personal identification cards.<sup>193</sup>

One problem was a high turnover rate in the titling brigades and among the INRA personnel. Because the external funding for the gender sensitivity training programs ended and because of time exigencies, the half-day gender training workshops were not repeated. Only written instructions on how to deal with gender issues are now given out to the titling brigades.<sup>194</sup>

The COSUDE project ended at the end of 2003, and the gender specialist's services were continued through funding from the World Bank project to work exclusively in two titling areas: Ichilo (in Santa Cruz) and Pocona (in Cochabamba) until late 2004. In these two areas and in Chuquisaca,<sup>195</sup> titling brigades have been informed that by law, the names of both spouses have to be put on a title when land is being titled for the first time. INRA's new

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191. *Id.*

192. Materials were available at INRA local offices and titling offices and seen and heard by author over the period of July through September 2004.

193. Interview with key informant, *supra* note 174.

194. *Id.*

195. The *saneamiento* process in the department of Chuquisaca has been funded and implemented by Kadaster of the Netherlands. See SILES, *supra* note 145 and accompanying text.

computerized database system (SIST), updated frequently, is able to monitor whether this is being done.<sup>196</sup>

Gender training within the *saneamiento* program is a development of recent years, promoted by INRA and donating institutions. It can be said that in the initial years, there was no concern about women's participation or their acquisition of land titles. Now, even though INRA has taken measures to include women in the *saneamiento* process, gender training for the population and for the *saneamiento* brigades has not extended to all areas where the program is being implemented.<sup>197</sup>

*Saneamiento* within the World Bank project was being carried out in the areas of Ichilo and Pocona. Gender training in the two areas followed different paths. In Ichilo, training sessions were carried out both with the brigades as well as directly with the women. Specific workshops on gender and property rights were carried out with groups of women in most communities. In Pocona, on the other hand, only the brigades received gender training from INRA, but the brigades themselves are very proactive in implementing standards that include women in the *saneamiento* process. The firm carrying out the *saneamiento* in this area developed a verbal and written campaign that greatly emphasizes women's rights and the importance of their participation at all levels of *saneamiento*. Additionally, they included a female technician in each *saneamiento* brigade and requested that all internal *saneamiento* community committees include at least one woman.<sup>198</sup>

## 2. Saneamiento Interno

As a result of concerns regarding the *saneamiento* process by organizations of smallholders in the highlands, valleys, and lowlands, an "internal *saneamiento*" process was developed. These concerns included the very lengthy *saneamiento* process and the intervention of outsiders (INRA and titling brigade personnel) in community land disputes.<sup>199</sup> In February 2000, INRA issued an Administrative Resolution (No. 25/2000) recognizing a rural community's capacity to resolve land boundary disputes within the community through customary methods (e.g., conciliation); this is called *saneamiento interno*. This administrative directive was made into law in March 2002 (Supreme Decree No. 26559).<sup>200</sup>

Many communities have extended the interpretation of the law to mean that the community does the parcel measurements (INRA measures the perimeter of the community) and determines who the legal owners of the

196. CAMACHO, RIGHT OF WOMEN, *supra* note 86, at 37.

197. Interview with key informant, *supra* note 174.

198. *Id.*

199. DIEZ & BARTHEL, *supra* note 161, at 18.

200. *Id.*



parcels are.<sup>201</sup> A methodology was to be produced by INRA to determine exactly what *saneamiento interno* means, what activities it covers, what the legal norms are, to what extent INRA can delegate its authority to title, and how INRA and communities can cooperate in the regularization process.<sup>202</sup> By mid-2005, this methodology had not been finalized.

From discussions with titling brigades and with communities during field trips to the Ichilo area (Santa Cruz department), it appears that the *saneamiento interno* process involves the following steps:<sup>203</sup>

- INRA or the titling brigade determines the outer limits of the community.
- Community authorities (sometimes working together with other selected community members who have received some training<sup>204</sup>) determine the boundaries between parcel holders and draw up a list of parcel owners.
- The information is written down in the *Libro de Saneamiento Interno* (Internal Regularization Book).
- The titling brigade then surveys the parcel boundaries for the cadastral maps and verifies the parcel owners by filling in the *ficha catastral*.<sup>205</sup>

An important advantage of this *saneamiento interno* is that most boundary conflicts are more quickly and easily resolved by community authorities.<sup>206</sup>

From interviews with INRA personnel<sup>207</sup> and with titling brigade personnel,<sup>208</sup> as well as with focus group participants in Ichilo, one obtains the impression that *saneamiento interno* process is an *ad hoc* process. The norms and regulations for *saneamiento interno* were not established, nor were *saneamiento* personnel properly trained. While SANEA (the titling brigade firm in the Ichilo area) was training two facilitators in each community doing *saneamiento interno*, a paralegal and a measurement *tecnico*, this training appeared to be insufficient. As a result, some communities are doing *saneamiento interno* according to their own rules, whether these rules are in accord with Bolivian legislation or not.<sup>209</sup> It appears that in some

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201. INRA is not in total agreement with this interpretation. Interview with Dr. Martín Burgoa, Director de Saneamiento, INRA, in La Paz, Bol. (Sept. 2004).

202. *Id.*

203. *Id.*

204. These persons usually consist of a paralegal trained in the legal aspects of land rights and titling and another person trained in boundary delineation.

205. Interviews with key informants at Ichilo (Santa Cruz) titling office.

206. *Id.*

207. In the La Paz, Santa Cruz, and Buena Vista Offices.

208. Sanea S.R.L. (a private surveying firm) personnel in Buena Vista.

209. Interview with key informants, *supra* note 205.

communities, the leaders or authorities are influencing the process based on criteria other than legal ones.<sup>210</sup>

While *saneamiento interno* is potentially important in the sense that it involves community members who are then more invested in the *saneamiento* process, it would appear that it has been adopted by INRA without thinking out how it should work. In addition (or perhaps as a result), titling brigades are receiving inadequate training in *saneamiento interno*, and are providing minimal training of community facilitators.

Focus group participants (both men and women) recounted cases of persons and families being denied ownership rights to the land they felt was rightly theirs. They were anguished because they felt that they had no other recourse (right to appeal). It would appear that members of communities who decided to do *saneamiento interno* were not informed of how the appeal process works and that, consequently, community leaders were able to ultimately determine the outcome of contentious land disputes.<sup>211</sup>

#### D. Problematic Issues in the Titling Process

As INRA and the titling brigades stepped up efforts to include women in the titling process, a number of obstacles beyond what is usually considered land administration “territory” have been encountered. These include illiteracy, monolingualism, and lack of personal identification documents.<sup>212</sup> The *saneamiento* process has attempted to deal with these obstacles with varied success. It should be noted that these issues are not unique to Bolivia, but rather have been found in land projects in many countries.<sup>213</sup>

The adult illiteracy rate for women (21 percent) is almost three times that of men (8 percent).<sup>214</sup> These rates increase in the rural areas, particularly among low-income families. Communication with women, therefore, is limited to oral and visual means, such as posters, graphic pamphlets, radio, and television. The gender person that worked with INRA for a number of years developed such oral and visual materials, adapting them to different geographical and cultural areas.<sup>215</sup> The difficulty women face in obtaining information through the written word also emphasizes the importance of their presence in the informational meetings and workshops organized by INRA and the titling brigades.

210. GIOVARELLI ET AL., *supra* note 60, at 51.

211. *Id.*

212. SALAZAR, *supra* note 154, at 29–31.

213. A sampling of countries where some or all of these restraints are found are Peru, Ecuador, Brazil, India, Guatemala, and Honduras.

214. The World Bank, *supra* note 93.

215. Interview with key informant, *supra* note 174.

Related to literacy is the issue of monolingualism.<sup>216</sup> Bolivia, like many countries, is a multi-lingual country. Besides Spanish, a number of indigenous languages are spoken, the principal ones being Quechua and Aymara. Since Spanish is the language in which official documents are written and most official procedures are done, those who speak only indigenous languages have difficulty engaging in official processes, such as land titling. As with illiteracy, many more women than men do not speak Spanish, heightening their inability to participate fully. INRA's oral communication materials (radio and television) focused on women's land rights, as well as gender workshops with women are done both in Spanish and in the local indigenous language.<sup>217</sup> Some titling brigades also make an effort to have persons on their team with local indigenous language skills.<sup>218</sup>

Another major obstacle for many rural women is the lack of personal identification documents.<sup>219</sup> Official personal documents begin with a birth certificate, and when one reaches majority age, include the national identification card which gives the person the right to vote. The national identification card is also necessary for many other official processes and transactions such as social security and bank loans. Women from land-poor households are less likely to have national identification cards than men for several reasons. The cost of processing official documentation such as birth registration and identification cards are high for low-income families, particularly those living in isolated rural communities. Families are more likely to incur these costs for their sons and not their daughters. Without a birth certificate, it is expensive and difficult for an adult to obtain an identification card. This becomes particularly difficult for rural women who are more likely to be illiterate than men. When the titling brigade is determining who the parcel owners in a household are, one requirement for inclusion in a title is official citizen status shown by possession of an identification card.

INRA has attempted to temporarily resolve this problem by allowing undocumented persons to be included on the forms, such as the *ficha catastral*, filled out during the adjudication and parcel measurement processes.<sup>220</sup> The understanding is that while the titling process grinds its wheels, these persons will have the opportunity to obtain their personal identification documents before titles are actually issued. While some persons are able to do this, many more do not have the economic means to pursue this legal process, particularly if they do not have a birth certificate. Facilitating the process for women (and

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216. SALAZAR, *supra* note 154, at 29–31.

217. Interview with key informant, *supra* note 174.

218. Interview with titling brigades in Ichilo, Santa Cruz (Sept. 2004).

219. SALAZAR, *supra* note 154, at 29–31.

220. Interview with key informant, *supra* note 174.

men) to obtain these identification cards would increase the likelihood that women become titleholders. Land administration programs in some areas may want to consider including, as part of the titling process, a program to obtain personal identification documents for targeted populations. This side benefit may even increase communities' collaboration with titling programs.

#### V. ASSESSMENT OF IMPACT OF LAND ADMINISTRATION INTERVENTIONS

After an initial neglect of gender issues and disregard for whether women's rights to land were being protected through the *saneamiento* process, in 2000 INRA began to take seriously the legal proscriptions in a number of Bolivia's laws, Constitution, Family Code, Civil Code, and Ley 1715 (land law and its regulations). INRA's national office instituted a number of procedural changes and directives to INRA departmental offices and to titling brigades that exhorted them to encourage the participation of women in the *saneamiento* process. That office also contracted a gender specialist to organize and implement gender training workshops (for INRA personnel, titling brigades, and beneficiaries) and to develop gender-oriented informational materials.<sup>221</sup>

While this change in sensibility to gender issues appears to have had some effect on women's knowledge of their land rights and on the level of titles with women's names on them,<sup>222</sup> placing responsibility for all of these activities on one person necessarily limits the scope of coverage.<sup>223</sup> In addition, as of mid-2005 INRA had still to develop a set of gender guidelines to integrate the objectives and goals with regard to women's participation in the *saneamiento* process.<sup>224</sup>

In this section, we will examine the effect of INRA's gender program, as it has evolved since 2000, on the number of women titled and on their knowledge and perceptions regarding land rights and land titles. We will also examine the effects of gender training on women's knowledge regarding land rights and their perception of the benefits of having a land title in their name. The level of success in titling women will be determined by looking at the percentage and types of land titles that have been issued to women and the amount of land these titles represent. These include both titles issued to women individually and those issued as joint titles to spouses.

##### A. *Effects of Gender Training on Women's Knowledge*

The information gathered from the focus group discussions shows that gender informational materials and training increase women's knowledge

221. See generally CAMACHO, RIGHT OF WOMEN, *supra* note 86.

222. See *supra* Part IV.

223. The gender specialist resigned from INRA in mid-2005 and, as of 2006, it was not clear whether INRA would delegate her responsibilities to another person.

224. Interview with key informant (May 2005).

regarding their land rights and the potential benefits of a land title. It also seems to influence their attitude regarding the titling program.<sup>225</sup>

### 1. Knowledge of Land Rights

Comparing focus group discussions of women who had received some type of gender training with women who had not received gender training suggests that gender training reinforces their knowledge regarding women's land rights and motivates them to push for having their name included on the title. These women, for example, were certain of their right to be included on the title.

*"My husband had his name written in. I told him that I learned that both of us had to be on the title. If I had not heard, things would have stayed like that."*<sup>226</sup>

On the other hand, women who had not received gender training came to the focus group meeting with second-hand information and seeking confirmation and more information.

*"We have been told that the two names can be on it. We want to know if this is possible."*<sup>227</sup>

Men have also come to recognize and acknowledge that women have rights to land. One male participant from a community that had received gender training talked of including women on titles as inevitable.

*"Women have been trained in workshops. They are also preparing their papers. They will sign the community record books."*<sup>228</sup>

### 2. Participation in the Saneamiento Process

When asked specifically about the participation of women in the public campaigns and informational meetings regarding the *saneamiento* program, women recalled that specific mention was made of women's rights. They also commented on the fact that women were explicitly invited to participate in the process.

*"We participated in the public campaign and it's good that it's not like before when men put women aside."*<sup>229</sup>

Those women who did not receive gender training or information appear to have been marginalized from the *saneamiento* process, receiving information from other sources.

*"I have not gone to the workshops, but they [the men] gave me information at the sindicato."*<sup>230</sup>

225. GIOVARELLI ET AL., *supra* note 60, at 50.

226. Focus group participant, Pocona (Sept. 25, 2004).

227. Focus group participant, Ichilo (Sept. 19, 2004).

228. Focus group participant, Ichilo (Sept. 18, 2004).

229. Focus group participant, Pocona (Sept. 25, 2004).

### 3. Benefits of Titling

In all the focus group discussions, with both women and men, participants maintained that the principal benefit of titling women is the stability and security of the family, particularly when the husband/father is absent.

*“When married life ends, women have no one to support them. Now that women are owners, only the men leave and the land stays with the women and the children.”*<sup>231</sup>

One of the major frustrations mentioned by all the women is their marginalization by the men in community organizations. Men in focus group discussions insisted on the respect they have for their spouses and women in the community. But women spoke often and indignantly of how they are ridiculed when they attend and attempt to speak at community meetings.

*“When women speak, they [men] say: you don’t know anything, go deal with the pots and pans.”*<sup>232</sup>

They also spoke of the personal difficulty of attending such meetings because of their domestic responsibilities. Women, however, also spoke of positive effects on self-esteem and empowerment from having their name on the title.

*“Now, even if they kick us out, we stay and participate. I am an owner and I have a right to speak and participate, I tell them.”*<sup>233</sup>

### 4. When Women Do Not Receive Gender Training

The focus group discussion with women who had not received gender training suggests that men find ways to avoid joint titling. One young woman recounted that her father had the family land titled in the name of his sons, and that neither the mother’s nor the daughters’ land rights were recognized. This woman was uncertain with regard to the land rights of women and wives.

*“My dad has decided to have the plots registered to my brothers. My mother says this is all right, that we [the daughters] are going to get a part to build our houses.”*<sup>234</sup>

### 5. Land Inheritance

The response to questions about who will inherit their land, both men and women in all the focus group discussions said that sons and daughters will inherit land equally. In Pocona, women pointed out that in some areas, sons traditionally received more land than daughters, but that now they should be distributed equally. Many also said, however, that they prefer that their

230. Focus group participant, Ichilo (Sept. 19, 2004).

231. Focus group participant, Ichilo (Sept. 18, 2004).

232. Focus group participant, Ichilo (Sept. 18, 2004).

233. Focus group participant, Ichilo (Sept. 18, 2004).

234. Focus group participant, Ichilo (Sept. 19, 2004).

children receive an education and leave the farm to work in another line of work.

*“Education is the inheritance of the future.”*<sup>235</sup>

### B. Titling of Women

A review of the statistics prepared by INRA reveal that men, as individuals, have received over 50 percent of the titles issued since 1999, while women as individuals have received only 17 percent (see Table 1). Joint titles (to wife and husband), 20 percent of the issued titles, increase the percentage of women who received legal title to 37 percent; on the other hand, they also increase the percentage of men to 76 percent (see Table 1). Taking into consideration inheritance practices that give preference to sons over daughters (reflected in individual titles) and Bolivia’s marital property regime, these data appear to demonstrate that women may be more successful at acquiring land as spouses than as daughters through inheritance.

Table 1: Titles Issued & Land Titled by Gender (1999-2004)

Title Recipient	Number of Titles	Percentage	Land Titled (ha.)	Percentage	Average Parcel Size (ha.)
Women	1,918	17	99,590	2	52
Men	6,330	56	521,625	8	82
Joint	2,253	20	336,352	5	149
Legal entity	782	7	5,454,345	85	6,975
Total titles	11,283	100	6,411,912	100	568

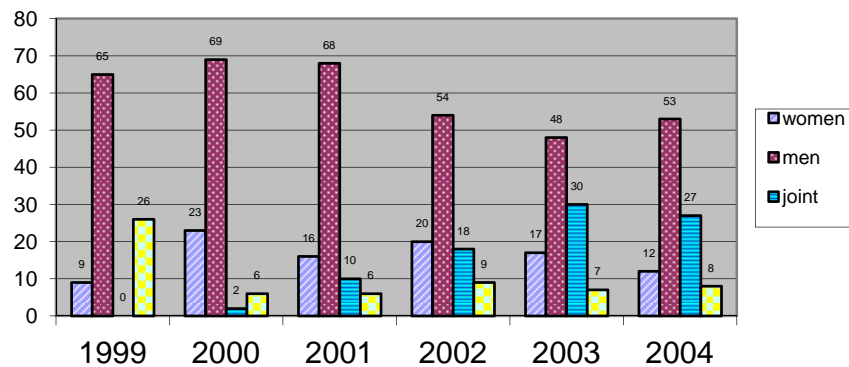
Source: [www.INRA.gov.bo](http://www.INRA.gov.bo) (data accessed May 2005).

If we look at the amount of land titled in the different categories, Table 1 reveals that the overwhelming majority consists of land belonging to legal entities; this includes TCOs (community titles) and agricultural enterprises. Again, we see that women as individuals received one-fourth of the amount of land that men received.

Breaking down this information by year, we can see that the percentages of joint titles particularly and titles issued to individual women have increased significantly between 2000 and 2004 (see Graph 1). However, it is also evident that individual men continue to receive over 50 percent of titles.

235. Focus group participant, Pocona (Sept. 25, 2004).

Graph 1: Titles Issued by Gender and by Year (percentage)



If we disaggregate the information by type of farm, it appears that women are more likely to obtain title to smaller parcels of land. Table 2 shows that 23 percent of small homestead parcels (*solar*) were titled to women and 47 percent were jointly titled. As parcels increase in size and/or commercial nature, the percentage of women receiving titles either as individuals or with their spouse (joint title) decreases.

Table 2: Types of Titles Issued by Type of Farm<sup>236</sup>

	women		men		joint		legal entity*		total	
	number	%	number	%	number	%	number	%	number	%
solar	100	23	116	27	201	47	13	3	430	100
small	1,782	18	6,019	60	1,960	20	236	2	9,997	100
medium	22	10	140	65	32	15	22	10	216	100
empresa	13	14	50	56	15	17	12	13	90	100

\*Legal entity does not include community-titled land.

Source: www.INRA.gov.bo (data accessed May 2005).

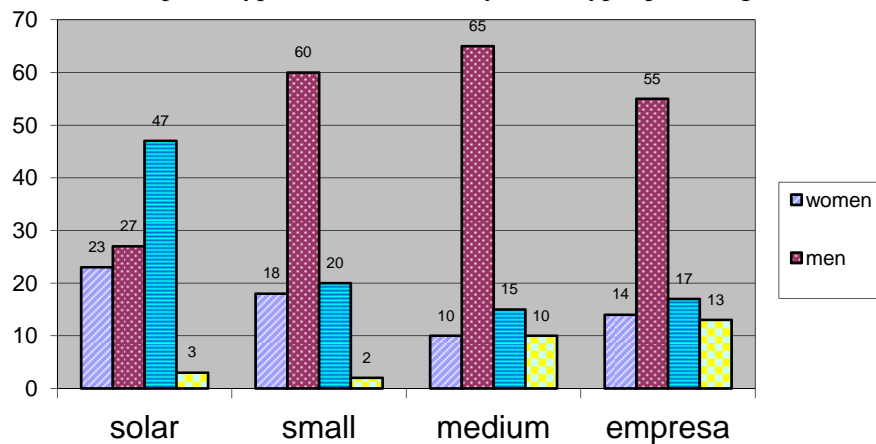
Graph 2 clearly shows that except for small homestead parcels (*solar*), individual men obtain the great majority of land titles, while women obtain a small percentage (between 10 percent & 18 percent) of titles for agricultural (small & medium) parcels and legally-registered commercial farms. Joint titles for agricultural (small & medium) parcels also decrease greatly. A tentative

236. The official designation of rural homestead (*solar*), small (*pequeña*), medium (*mediana*), and agricultural firm (*empresa*), is based on size of parcel and level/type of agricultural activity. The size also varies by region and, generally, parcels in the highlands are much smaller than in the lowlands. See generally NATIONAL INSTITUTE OF AGRARIAN REFORM, GUÍA PARA LA VERIFICACIÓN DEL CUMPLIMIENTO DE LA FUNCIÓN SOCIAL Y DE LA FUNCIÓN ECONÓMICO SOCIAL [MANUAL FOR VERIFICATION OF COMPLIANCE WITH THE SOCIAL FUNCTION AND SOCIAL ECONOMIC FUNCTION], <http://www.inra.gob.bo/uploads/documentos/DBL-35-62-9887.pdf>.



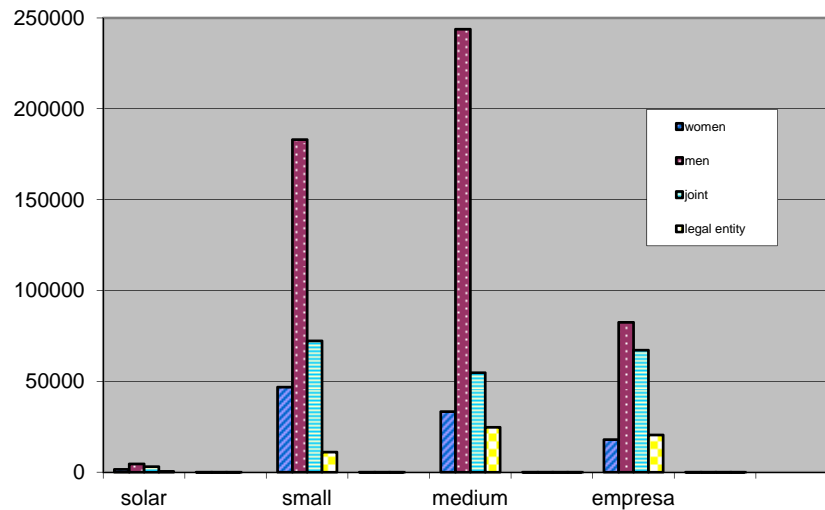
conclusion is that a great number of individual and joint titles being issued to women are for homestead parcels, not for agricultural parcels.

Graph 2: Type of Titles Issued by Farm Type (percentage)



This would suggest that the amount of land being titled to women is even smaller than the number of titles suggests. Graph 3 confirms this by showing that the amount of land being titled to men exceeds the amount titled to women as individuals and to women in joint titles in every category of farm, particularly among small and medium farms.

Graph 3: Land Titled by Gender and Farm Type (hectares)



## VI. CONCLUSIONS

This case study suggests a number of lessons learned that can be useful in designing land administration projects in Latin America and in other regions. These lessons relate to the legal framework, the land administration program design, and the implementation of the titling process itself.

### A. *Legal Framework*

Bolivia's basic legal framework is very positive with regard to women's land rights; this includes the Constitution, Civil Code, Family Code, and the 1997 land law (Ley INRA).<sup>237</sup> The set of regulations for the Ley INRA, however, was not specific with regard to gender issues or with guidelines for procedures that would safeguard the land rights that women have under Bolivian law. As a result, the first three to four years of the *saneamiento* process were implemented by INRA without regard for women's land rights and without monitoring of titles being issued to women either as individuals or as joint owners.

### B. *Land Administration Program*

INRA's land administration program did not, and continues to not have, any guidelines to safeguard women's legal rights to land. This would seem to indicate that in the design of the program, gender issues were not seriously considered, nor have they subsequently been incorporated as an integral aspect of its program. As a result, attempts to "catch-up", while laudable, appear to be *ad hoc* and not evenly effective across the program.

Where gender training has taken place, either with INRA staff and titling brigades and with beneficiaries, there does appear to be positive impact on women's knowledge and assertiveness with regard to their land rights. However, gender training has not reached all areas of the *saneamiento* program. The Bolivia case seems to indicate that when too little resources are allocated to gender concerns (one person was placed in charge of gender issues for the whole program), these gender initiatives are at risk and easily dropped.

Another problem with INRA's gender training program—and this is most likely true of most titling programs—is that training of INRA personnel and titling brigades is a one-time event. Even though the turnover of both these groups has been very high, particularly of field staff, the training of new staff has not taken place. This means that in a relatively short time, a high proportion of the staff has not received any gender training. Effective gender training should be an on-going and periodic activity so that all personnel are

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237. See *supra* Part III.B (laying out the basic legal framework in Bolivia that ensures women's rights to land and property).

updated on new gender policies and procedures and new staff members are quickly brought up to speed.

### C. Titling Procedures

Initially, gender concerns did not guide or influence the design of titling procedures. The *saneamiento* forms did not include a place for more than one name as titleholder. Personnel were not instructed to correctly identify all landowners within the household. Women were not encouraged to attend public meetings and workshops regarding *saneamiento*, nor were they sought out when the titling brigade visited their land for adjudication and parcel measurement.

After several years and after critiques by civil society that the *saneamiento* process was dispossessing women of their land rights, INRA began to design and implement procedures to increase the participation of women in the process and on the titles. Gender training workshops were also implemented. As mentioned already, however, these changes have been done on an *ad hoc* basis and, apparently, with little monitoring. If these procedures had been in place from the beginning and formed an integral part of the program, the opportunity to train INRA staff and titling brigades would have been greater and possibly more effective.

### D. Monitoring And Evaluation

Monitoring of gender concerns since the beginning of INRA's implementation of the *saneamiento* program would have revealed at an early stage that the program lacked gender guidelines and appropriate procedures for including women. The fact that several years passed before INRA began to issue administrative directives to departmental offices and field staff to include women in the initial informational meetings indicates that program monitoring did not include such basic gender issues as gender disaggregation of beneficiaries participating in INRA activities. Thus, another lesson learned would be to include gender in the monitoring component so that corrective action can be taken to increase women's participation in the activities and benefits of the program.