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How Can the Adoption of the Voluntary Guidelines Improve Public Policy and Women's Access to Agricultural Land in Mexico, Guatemala, and Bolivia?

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Abstract: Rural women in Latin America continue to face serious obstacles in land tenure, especially in areas such as México, Guatemala, and Bolivia. Gender inequality in land access is related to male preference in inheritance legislation, male privilege in marriage and state programs of land distribution. Consequently, the activities implemented by governments have failed to take women into account. For this reason, the Food and Agriculture Organization of the United Nations (FAO) and several partner organizations developed a set of “Voluntary Guidelines” (VGs) on responsible governance of land tenure to reduce inequality. Therefore, the main objective is to determine the degree of governments’ commitment to the fight against inequality in access to land and the role of women regarding these rural areas of Latin America. For this, this research tests the compliance with the “Voluntary Guidelines” of the FAO in Mexico, Guatemala, and Bolivia.

Keywords: land tenure; women; women’s rights; public policies; gender equality; public administration



Citation: Sobrino-García, Itziar 2023. How Can the Adoption of the Voluntary Guidelines Improve Public Policy and Women's Access to Agricultural Land in Mexico, Guatemala, and Bolivia? *Laws* 12: 44. <https://doi.org/10.3390/laws12030044>

Academic Editor: Samantha Jeffries

Received: 9 March 2023

Revised: 25 April 2023

Accepted: 4 May 2023

Published: 8 May 2023



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1. Introduction

Land is a crucial source of capital, as it provides a social safety net and enables wealth transfer to future generations. The functions of land and natural resources are closely linked to the realization of multiple human rights. Rural communities rely on land to achieve an adequate standard of living, secure and dignified housing, optimal health, and cultural development. The challenges associated with agriculture and land use are significant and vital, depending on the context, and extend beyond economic considerations alone. Policies and legislation related to land use have a decisive impact on economic, social, cultural, and environmental development, and as a result, on the satisfaction of all human rights (Bizoza and Opio-Omoding 2021; Holden and Otsuka 2014; Melesse and Bulte 2015). In addition, access to land is essential for food production and, for this reason, its inclusion in public policies has a great impact on the security of the population (Ceddia et al. 2015; Munro-Faure and Palmer 2012).

In the literature analyzing the interrelations between land access, food sovereignty, women, gender, and feminism, critical scholars have pointed out that there is a conflict between the defense of family farming, which characterizes most of the peasantry, and the pursuit of gender equality (Calvário and Desmarais 2023). In this regard, some scholars have argued that the family serves as one of the oldest factors of patriarchy (Patel 2009). They have emphasized the lack of systematic attention afforded to intrahousehold inequalities and heteronormative relations, gendered divisions of agricultural labor and land allocation practices, unrecognized and unpaid care work carried out by women, and the intersection of oppressions, as women are not a homogenous group (Conway 2018; Park et al. 2018). Some authors have also asserted that family farms do not provide women with autonomy or the means to realize their full potential as farmers. The challenges faced by women in agriculture are deep-rooted and structural. Addressing these challenges requires redistributing productive assets such as land and inputs within peasant households in gender-equal ways and directing state services to better cater to the needs of female farmers,

including services related to credit, extension, training, information on new technology, field trials, input supply, storage, and marketing (Agarwal 2014). On the other hand, some studies have shown how global standards of gender equality have been applied at the legislative level. These analyses reveal that gender stereotypes are perpetuated in these regulations, and that the gender discourse is often oversimplified. The perpetuation of symbolic politics with the repeated reproduction of text and the proposal of abstract gender activities with restricted economic allocations in budgets further diminish the transformative potential of international norms on gender mainstreaming. These processes of norm domestication, enacted and naturalized; or favored patriarchal representations of reality over others; ultimately reduce the transformative potential of the international norms on gender mainstreaming (Acosta 2022).

International organizations have recognized gender inequality in land tenure as a major issue that needs to be addressed urgently. The Food and Agriculture Organization of the United Nations (FAO) has shed light on the fact that women and men working in agriculture may have different employment statuses. Women are more likely to be identified as contributing family workers, while men are more likely to be self-employed as income-generating workers (FAO 2020). However, when we consider percentages, the data may underestimate women's involvement in agriculture. The FAO's statistics on women's participation in the agricultural labor force may overlook women's work (Doss et al. 2018). Social norms often result in women reporting that they work at home, even when they are heavily involved in agriculture, as is the case in Latin America (Deere and Doss 2006). Additionally, work in kitchen gardens or tending small livestock or poultry is often not considered agricultural work. Achieving gender equality in land tenure requires a focus beyond land governance. Women's access to land and their rights to hold land do not only depend on land legislation but also on family law, such as laws governing marriage and inheritance (Deere 2001).

Moreover, inequality between men and women in the rights of access to land implies a violation of one of the great principles of human rights: nondiscrimination. Indeed, this inequality is an international cross-border problem; consequently, many policies have been designed to strengthen women's land tenure (Doss and Meinzen-Dick 2020) in order to promote their empowerment and welfare (Paradza et al. 2020; Walker 2003). In this sense, female farmers play a crucial role in eradicating hunger, preserving biodiversity, and promoting agroecological practices for food production (Alpizar et al. 2020). Nevertheless, despite their significant contribution to agriculture, changes that favor women's access to land in Latin American countries are limited (Bose et al. 2017; Deere and León 2000). Generally, women control less land than men, the land they manage is of poorer quality, and their tenure is insecure. Moreover, the lack of equality between men and women goes beyond agrarian control over natural resources, as women do not usually control the economic activities of the sector. In the forestry sector, women and men have different tasks and responsibilities in production and product supply, even though many women have better knowledge of forests than men (Bose 2017; Molnar 2014). Nevertheless, the ambivalence between feminist knowledge and development practice sometimes makes it challenging to adopt policies that improve the situation of women (Cornwall et al. 2007).

On the international stage, the FAO and several partner organizations have developed a set of guidelines on responsible governance of land tenure to reduce inequality, hunger, and poverty. In 2012, the Committee on World Food Security (CFS) promoted and approved "the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" (VGs). These guidelines establish accepted principles and standards consistent with international and regional instruments, including the Millennium Development Goals, that are based on human and tenure rights. Gender equality is one of the ten guiding principles for the implementation of the VGs, closely linked to three other principles: human dignity, nondiscrimination, and fairness.

This research aims to determine women's access to agricultural land in Mexico, Guatemala, and Bolivia and how the VGs can be reconciled with each country's pub-

lic policies. This research also examines how the incorporation of the VGs may improve outcomes for women in each country's context. Three Latin American countries have been selected based on the following criteria: broader geographic scope and the representativeness of the land tenure system of each country. Furthermore, the distribution of agricultural land in Latin America is the most unequal in the world (De Ferranti et al. 2004) and its legal frameworks arise from the coexistence of several legal traditions and political and economic interests.

During the 20th century, Mexico, Guatemala, and Bolivia underwent agrarian reform processes aimed at redistributing rural lands and adapting the modalities of land transmission and acquisition (Deere and León 2003). In recent decades, these legal frameworks have been modified in response to various public policies and the ratification of international trade treaties. Thus, the selected countries are representative for three fundamental reasons: their land tenure systems, their legal and public policy renewal, and the gender inequality in access to land.

In this paper, we aim to address the following question: how can women's rights advocates utilize the VGs to enhance women's access to and control over agricultural land in Mexico, Bolivia, and Guatemala?

The initial thesis is that, despite the existence of legal frameworks and policies aimed at promoting gender equality and access to land for women in Mexico, Guatemala, and Bolivia, traditional customs and practices, as well as patriarchal power structures, continue to limit women's access to land. The creation of the FAO's Voluntary Guidelines offers an opportunity for these countries to improve women's access to land, but their voluntary nature limits their effectiveness.

For this, this paper is divided into four main sections. Section 3 provides a brief analysis and discussion of the FAO's Voluntary Guidelines. Section 4 covers the current land tenure system in Mexico, Bolivia, and Guatemala, and the final subsection summarizes the issues in the legislation of these countries that pertain to women's rights to land. Section 5 evaluates the incorporation of the FAO's "Voluntary Guidelines" into the land tenure regulations of each country to assess their level of adherence and efficacy in favor of women. Finally, in Section 6, we discuss the primary conclusions of the research.

This manuscript applies qualitative methodology of a doctrinal nature, i.e., "black letter law" (Boote and Beile 2005; Hutchinson and Duncan 2012), to review the laws on land tenure, as well as the previous literature to support the analyses (Ali et al. 2017). This approach favors critical assessment of the implications of these regulations, and it implies the identification of legal norms that refer to land tenure and women's rights. The analysis of individual rules leads to the identification of general legal principles to detect ambiguities, criticisms, and solutions according to the international and national scientific literature (Mark Hoecke 2014).

2. FAO Voluntary Guidelines: Previous Analysis and Discussion

First and foremost, it is important to note that the Voluntary Guidelines follow the same format as other voluntary FAO documents that establish internationally accepted principles and standards for responsible practices, such as the Voluntary Guidelines on the Right to Food. These guidelines are considered international soft law instruments and offer detailed guidance on a range of governance issues for both state and nonstate actors. While they are relatively brief, they provide frameworks that can be utilized in the development of strategies, policies, laws, programs, and activities. To supplement these guidelines, a wide range of additional documents are available, including technical guidelines that provide further information on specific aspects, training and advocacy materials, and additional guidance to support implementation.

The "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" or "Tenure Guidelines" is a prominent global instrument that was unanimously endorsed by the Committee on World Food Security in 2012. The FAO organized the "International Conference on Agrarian Reform and Rural De-

velopment” in 2006, which provided new momentum in public efforts to improve and secure access to land and resources for the rural poor. Over the next few years, the FAO enhanced its normative work in this area and initiated the process to develop a voluntary international instrument on land and natural resource governance in 2009 (Seufert 2013). Although this initiative was not initially intended to address transnational land-related investments, it coincided with a surge in such investments and rapidly developing policy debates on the subject. This wave of land deals prompted social movements and nongovernmental organizations to mobilize, with positions ranging from advocating for an outright ban on “land grabbing” to seeking more effective international safeguards. Meanwhile, some businesses and their home-country governments saw value in establishing international standards that, if followed, would protect them from accusations of “land grabbing.” Many governments in low- and middle-income countries opposed the ban, viewing large-scale investment as a legitimate path to national development (Seufert 2014). Although an international instrument was viewed by many as part of the solution, the pathway was hotly contested. Between 2009 and 2010, the FAO organized extensive multi-stakeholder consultations, and on the basis of these consultations, the organization developed a draft zero of the instrument, which formed the object of an online consultation, in turn leading to the elaboration of a first draft. The first draft served as the foundation for intergovernmental negotiations among CFS member states, with the participation of civil society and the private sector. Finally, in 2012, the VGs were approved, becoming a significant pillar of international land and natural resource governance architecture (Cotula 2017).

The VGs represent the world’s first comprehensive instrument for land and resource governance, taking a more holistic approach than other international instruments. They cover fisheries, forests, and land, and explicitly link resource governance to realizing human rights and achieving food security. Two elements of this instrument are crucial. Firstly, “governance of tenure” refers to the way a society manages access to, control over, and use of land and natural resources. This includes recognizing, reconciling, and synergizing competing priorities and interests of various groups, as well as mitigating trade-offs (FAO 2012). Secondly, “tenure rights” are not defined in the VGs but are frequently referred to as a “bundle of rights” that include the rights to access, use, manage, exclude others from, withdraw, and alienate land and natural resources. The bundle of rights, as well as the obligations and responsibilities associated with tenure rights, can be shared or divided in a variety of ways among various stakeholders.

2.1. The Tenure Guidelines: Key Content

The first part of the VGs includes two sets of key principles. On the one hand, general principles essentially call on states to recognize, respect, protect, promote, facilitate, and enforce legitimate tenure rights, and affirm the responsibilities of nonstate actors, including business enterprises. On the other hand, a set of principles of implementation guide the application of these guidelines and cut across the detailed provisions. They include nondiscrimination, consultation and participation, rule of law, gender equality, transparency, accountability, and continuous improvement.

The remaining VGs provide guidance on a variety of tenure issues. A section on legal recognition and allocation of tenure rights and duties discusses topics such as public land management, indigenous peoples and people with customary rights, and informal tenure. A chapter on the transfer of tenure rights discusses, among other things, markets, investments, restitution, redistribution, and expropriation. Another chapter describes tenure administration, including topics such as tenure rights records, valuation, taxation, spatial planning, and dispute resolution. A separate section addresses tenure issues in the context of climate change and emergencies, and the final chapter addresses the VGs’ promotion, implementation, monitoring, and evaluation.

To that end, the VGs urge governments to acknowledge all legitimate rights to land, forests, and fisheries. However, the guidelines do not define the notion of legitimate tenure rights, partly in response to the diversity of contexts and situations. The VGs provide

procedural guidance on how to identify legitimate tenure rights in any given context, as well as affirming that a wide range of rights qualify as legitimate tenure rights (FAO 2012).

2.2. Principles of Implementation: Gender Equality

The VGs propose ten implementation principles that contribute to responsible governance of tenure of land, fisheries, and forests, which include human dignity, nondiscrimination, equity and justice, gender equality, a holistic and sustainable approach, consultation and participation, the rule of law, transparency, accountability, and continuous improvement. However, this paper focuses on women's access to agricultural land and how the VGs can be reconciled with public policies, and therefore, only the fourth principle, which is related to gender equality, will be discussed. This principle aims to ensure that men and women have equal access to all human rights, while acknowledging gender differences and taking specific measures to accelerate de facto equality when necessary. States should ensure that women and girls have equal access to land, fisheries, and forests regardless of their civil or marital status (FAO 2012). The inclusion of gender in the VGs is critical for three primary reasons: Firstly, it recognizes that women and men participate in all aspects of the governance of tenure of the land value chain worldwide, often in economically and culturally distinct ways. Secondly, it is essential to understanding the centrality of gender to other intersecting issues, particularly human rights, wellbeing, and food security. In many countries, land tenure is based on social and cultural gender systems, perpetuating disparities in wellbeing between men and women and introducing vulnerability into ecological and social change processes (Hill 2003). Consequently, gender is a crucial determinant in comprehending and enacting change in these systems. Finally, it emphasizes how gender inequalities in power and decision-making exist in land tenure situations and how these differences influence representative, fair, and sustainable governance.

Inclusion of gender in development policy can be a long-term and challenging task, complicated by the notion that it is superfluous, peripheral, or has already been solved (Mukhopadhyay 2007). Working with policy, society, and culture in the context of addressing core causes of inequality is necessary for meaningful change in terms of gender equity and equality.

2.3. The Legal Significance of the VGs

These tenure guidelines do not create legal obligations; they are voluntary. The VGs are described as an international soft law instrument designed to provide guidance to states on how to align resource governance with international best practices (Cotula et al. 2016). The VGs represent a distinct claim to power and a different approach to promoting reform. They derive their legitimacy from the consultative and participatory processes that led to their creation, as well as from the political support they have received, rather than from formal adoption and ratification processes. However, instead of imposing legally binding (but not necessarily enforceable or honored) duties, the VGs aim to promote change by fostering political consensus among states and nonstate actors and by providing authoritative guidance based on best practices. Aside from their political legitimacy, the VGs may have legal importance in at least two ways, relating to national and international law (Cotula 2017). They are explicitly founded on international human rights law in terms of international law, and they are also consistent with existing international norms. The VGs call for states to recognize, respect, and protect socially legitimate tenure rights, including those "not currently protected by law," (FAO 2012). This is consistent with the jurisprudence developed by regional human rights courts on the human right to collective property, which has provided protection to collective, customary rights to land even where national law has not recognized those claims. Soft law instruments can provide authoritative guidance on how to interpret and apply binding norms. On the other hand, the second dimension concerns the VGs' relation to national law, as they refer to national law reform, at least implicitly. Domestic courts, such as international tribunals, may be able to use the guidelines to interpret confusing national law standards, depending on

applicable national law. Such an approach would be consistent with VG provisions stating that “States bear responsibility for its implementation”; the court, as a state entity, arguably bears some of that responsibility.

3. Analysis of Land Tenure Legislation in Mexico, Bolivia, and Guatemala

Once the VGs and their incidence in the legal context have been explained, in this section, we describe the current legislation of Mexico, Bolivia, and Guatemala on land tenure and gender equality (see Table 1).

Table 1. A table summarizing the key elements of the three countries’ legislations.

Mexico	Bolivia	Guatemala
(A) The ejido is the most important form of collective land property; it is an area of communal land mainly used for agriculture on which community members farm designated plots and collectively maintain communal holdings.	(A) The current Constitution of Bolivia recognizes a mixed economy of state, private, and communal property. In addition, it restricts private land property to a maximum of 5.000 hectares.	(A) Guatemalan land tenure policies are rooted in two relatively recent keystone documents: the 1985 constitution and the 1996 Peace Accords.
(B) The reform of Constitution article 27 regarding the privatization of social and collective property using agricultural certification programs began in 1992. Since then, programs such as PROCEDE or FANAR have appeared in order to divide land using property titles.	(B) The Bolivian Constitution defines three conditions for access to, acquisition of, and maintenance of land: the land must be productive, the land must fulfil a social and economic function, and the land cannot be exploited through debt-bondage.	(B) This country presents a constitutional basis on land tenure, although weak public policies in this matter have led to the absence of legislation and agrarian courts. Guatemala does not have a clear and integrated agrarian policy or land law. Guatemala uses the Civil Code in certain situations and the Penal Code to resolve critical situations.
(C) Four tenure types were established: private property; federal property; ejidal lands; and colonias. These changes have had gender impacts according to the previous literature, since the patriarchal organization system that exists in these communities favors men when it comes to land access.	(C) The Bolivian Civil Code governs property rights, including property, leasing, transfer, possession, and administration of land. Bolivia currently has INRA Act, which regulates the legal aspects related to the use, access, and possession of land. It includes a nondiscriminatory criterion for distribution.	(C) The Constitution recognizes the right to private property and states that everyone can freely dispose of their property, in accordance with the law. Guatemala lacks a basic land law that identifies specific tenure types, but, in practice, there are several tenure types.
(D) The Mexican Constitution establishes broad principles of gender equality, and the Federal Civil Code of 1928 regulates most legal aspects of property distribution within marriage and succession and determines that wives have equal authority to administer property. Currently, an ejidatario can designate whomever he or she desires to inherit the land.	(D) Bolivia recognizes women the legal right to own land, either as individuals or jointly and communally in a marriage, partnership, or as a member of the community. Wives have equal rights to the undivided entirety of community property during marriage; however, wives are third in line to inherit their partners, as their partners’ children and parents come first.	(D) The Constitution recognizes the equality of all human beings, and the Civil Code provides for marriage settlements and the distribution of marital property under several regimes. In addition, the institution FONTIERRAS defines and implements public policy related to access to land according to several principles such as gender equality.

Land and property rights are crucial for reducing hunger, ending poverty, and fighting inequality (Azadi and Vanhaute 2019). However, in Mexico, Guatemala, and Bolivia, some land rights and public policies are weak due to historical factors such as revolutionary processes or governments with little influence, and the overlap of rights and claims to land (Sarmiento et al. 2020).

All Latin American countries share the legacy of a civil law system, whether it be Roman or Napoleonic. Additionally, some countries in the region recognize some “pre-Columbian law” or indigenous elements in their legal systems (Dina 2018). The Roman private law regime that Latin America inherited from its colonizers was based on the

figure of the head of the family, and only the eldest male of a family could hold power over persons and possessions of the family. This legal regime was established within the ideological framework of the Napoleonic civil code of 1804, which was copied by all the post-colonial Latin American republics.

The Latin American civil codes distinguish between property and possession, with property being a real right to which a specific recognition is attributed, while possession can involve its own set of different rights, such as usucapion. In addition, the civil codes established the institution of the public registry and the property cadaster. According to these civil codes, men are the heads of the family, and only formal marriage entails the recognition of rights and obligations.

Despite the reforms implemented in the 20th century, these legal concepts persist in the regulation of the current Latin American civil codes, which has led to discrimination against women in terms of access to and management of land. In Mexico, for example, the reform granted privileges to heads of the family, who were mostly men. As a result, rural women demanded to receive land regardless of their marital status, but even with a 1970 reform that included other family members, many women remained excluded. In Bolivia, the status of beneficiary of land allocations derived from the land reform was limited to mothers and widows, but the majority of indigenous women did not benefit from the distribution of land, as they were not seen as heads of household or farmers (Hvalkof 2008).

The structure of land tenure in Latin America is characterized by two types of property: the concentration of private agricultural land in the hands of few owners and communal land in the hands of peasant communities and indigenous groups (Escobar 2016). The Constitutions of Mexico, Bolivia, and Guatemala recognize the right to land for their populations, as they rely on it for their subsistence. Mexico was the first country to attribute a social function to property in its 1917 Constitution, but subsequent amendments represented a considerable regression. While these national constitutions provide specific regulations on the rights to land of particular groups, such as indigenous people, they still do not fully support the female collective, despite being part of the main international and regional human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), or the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), among others.

The constitutions recognize that land resources are vital, and the need for the state to regulate their access. The most recent constitutions promote the consecration of food security and sovereignty. These countries have approached the land question in different ways in terms of legislation and public policies. Some measures treat land as a human rights issue guided by public policies, while others combine state intervention with market policies. However, there is a trend towards inconsistent application of land access policies (Coronado 2010). Moreover, the application of agrarian reform has depended on the model and the political goals pursued by the rulers at the time of its implementation (Castillo 2010).

While the constitutional frameworks of these countries have points in common, the application of access to land at the legislative and public policy level has not been the same.

3.1. Mexico

In Mexico, the ejido is the primary form of collective land ownership, with communal land mainly used for agriculture, and community members farming designated plots and maintaining communal holdings together. The Agrarian Law contained in the Constitution of 1917 established that each household should receive a plot to cultivate, as well as access to communal lands—not suitable for agriculture—for fuel collection, water conservation, or celebrations (Warman 2003). The heads of households were ejidatarios, and ejidos were ruled by an assembly of them.

Nevertheless, until 1971, women were not allowed to become ejidatarios, and even today, only a small percentage of women play this role (Vázquez-García 2016). The Mexican ejidal system has an administrative structure consisting of three internal entities. First, the General Assembly, composed of all ejidatarios in each community, whose function is to

make decisions about the internal regulations of land. Second, the Ejidal Commissariat, which acts as the executive arm of the system and is responsible for keeping the registry book, including a president, a secretary, and a treasurer who are elected by the assembly for a period of three years. Finally, the Supervisory Board is composed of the president-elect and two secretaries whose main objective is to ensure that the previous bodies carry out their duties and obligations in accordance with the law (Olivera Lozano 2005).

Collective property in Mexico began to disappear in 1992 with the reform of Article 27 of the Constitution, which encouraged privatization of social and collective property through the promotion of agricultural certification programs. The change in Article 27 allowed private investment in lands owned by corporations or communities. Programs such as the Program for Certification of Rights to Ejido Lands (PROCEDE) or the Support Fund for Agrarian Nuclei without Regularization (FANAR) divide land using property titles, which are a condition for communities and ejidos to access rural government programs. In addition, the 2013 energy reform declared oil, mining, and electricity as priority sectors at the national level. Therefore, ejidatarios were encouraged to accept PROCEDE in their ejidos to grant land titles to each of them and to sell or rent their property to private corporations (Vázquez-García and Sosa-Capistrán 2021). The amended Article 27 is implemented by the 1992 Agrarian Law whose latest reforms were included in 2017. This Agrarian Law includes five key principles (Castellanos 2010): end the redistribution of land from private farms to ejidos, privatize the housing plots of ejidatarios, allow the leasing of ejidal land to parties within the ejido, allow the total privatization of ejidal lands by a two-third vote of the General Assembly and consent the sale of ejidal lands within the ejido.

Regarding the tenure types, there are four broad categories of landholding (Lombard 2016):

- Private property: a property owned by a natural or legal person.
- Federal property: land owned by the national government, including areas of public interest such as forests, and public benefit areas (e.g., airports).
- Ejidal lands: ejidos and comunidades are managed communally by their residents. Individual households often hold individual land plots.
- Colonias: an informal urban settlement developed on formerly vacant land.

These changes have had gender impacts according to the previous literature (García-Torres 2018; Ruiz Meza 2015), since the patriarchal organization system that exists in these communities favors men when it comes to land access. Moreover, ejidal authorities are generally the only ones capable of negotiating with private corporations (Gay-Antaki 2016).

The Mexican Constitution establishes broad principles of gender equality, and the Federal Civil Code of 1928 regulates most legal aspects of property distribution within marriage and succession and determines that wives have equal authority to administer property. Currently, an ejidatario can designate whoever he or she desires to inherit the land. Normally, inheritance is the method that women have to acquire titles and access to ejidal land. Nevertheless, sons generally receive the land as an inheritance, while daughters inherit only when they do not receive a dowry upon marriage (Barnes 2014).

However, in practice, women's access to agricultural and forest lands still remains a challenge for public policies (Vázquez-García and Ortega-Ortega 2017), since by 2011, only 14.3% of titled lands were in the hands of women, compared to 85.7% in the hands of men (Costa and Velasco 2012). In addition, traditional practices discriminate women, since there is a preference for males in the inheritance of land. During the early years of legal reforms, women were only eligible to become members of ejidos if they were widows or single women supporting a family. Although this rule has been revoked, many women do not have user rights and are not voting members of the ejidos (Hamilton 2002).

3.2. Bolivia

The current Constitution of Bolivia came into effect in February 2009 and recognizes a mixed economy that includes state, private, and communal property. It also limits private land ownership to a maximum of 5000 hectares. Similar to Mexico, the Bolivian Consti-

tution emphasizes the decentralization of governance and acknowledges the autonomy of indigenous groups. However, land and natural resource policies remain under the exclusive control of the central government (Sanjinés 2013). Bolivia's public policies aim to transform the country's agrarian structure, which has been characterized by the legacy of latifundio (a system of large privately owned land holdings). The new structure comprises both individual and collective ownership, including indigenous communities and territories. The distinction between these types of ownership is based on the preservation of land rights and access to natural resources.

The Bolivian Constitution establishes three conditions for access, acquisition, and maintenance of land: the land must be productive, it must serve a social and economic purpose, and it cannot be exploited by means of debt bondage or slavery. The social function criterion requires sustainable productive use of the land by individual owners and for the general interests of the community. This requirement is crucial, as the Constitution grants the government the power to expropriate and redistribute private land if it fails to serve its social function. Additionally, the Constitution allows the state to confiscate large estates but requires compensation for any expropriation.

The Bolivian Civil Code governs property rights, including property leasing, transfer, possession, and administration of land. However, Bolivia also has Law No. 1715 of the National Institute of Agrarian Reform of October 18 (INRA Act), which regulates legal aspects related to the use, access, and possession of land. Although the INRA Act was designed to address chronic land tenure problems through the regularization of land rights and distribution, its implementation was ineffective (Urioste 2003). In 2006, the Bolivian state enacted the Law of Community-Based Redirection of Agrarian Reform to modify the land reform under the INRA Act. According to this law, the right to access to land, responsible and transparent administration, and land redistribution for the benefit of indigenous and peasant communities were guaranteed. Although INRA ensured equal rights of women and men to land and stated that nondiscriminatory criteria would be applied in the distribution and administration of land reforms, the vast majority of property titles were granted to men, and only 17% of titles were awarded to women (Lastarria-Cornhiel 2009).

Regarding types of tenure, the Bolivian system has clear differences with the Mexican one. First, ownership is based on formal and customary law. Second, leases in urban areas in Bolivia support an active rental market. These could be obtained in traditional terms, under which the tenant pays a nonrefundable rate for occupancy of the property, or under an "antiretico" agreement, a system that emerged in response to Bolivia's high rate of internal inflation and the weakness of the private sector. Under this kind of agreement, the tenant provides the owner a one-time payment at the beginning of the term in exchange for the right to occupy the land for the term, and at the end of the term, the tenant vacates the land, and the owner returns the total amount paid (Durand-Lasserve 2006). Third, rural land leasing implies that families and communities can rent land to grow cash crops. Finally, squatting is a common means for peasant households and rural urban migrants to occupy land in urban and rural areas (Lastarria-Cornhiel 2009).

As in the Mexican Constitution, Bolivia recognizes women's legal right to own land, either as individuals or jointly and communally in a marriage, partnership, or as a member of the community. Wives have equal rights to the undivided entirety of community property during marriage; however, wives are third in line to inherit from their partners, as their partners' children and parents come first. This is a clear difference from the Mexican inheritance system, in which wives are first in line. This situation generates a clear gender gap since the land usually belongs to the oldest male in the family, and women must assert their rights against men in their families. In addition, Bolivian customary norms go against land tenure by women, since at the time of inheritance, the land usually passes from father to sons, although widows are permitted to remain on the property, and daughters can inherit a small share of the land (Lastarria-Cornhiel 2009).

3.3. Guatemala

Land tenure in Guatemala has long been marked by imbalances and inequalities. The country's land tenure policies, especially those enshrined in the Agrarian Policy, are based on two pivotal documents from the recent past: the 1985 constitution and the 1996 Peace Accords. Both were drafted at a time when neoliberal globalization was becoming the prevailing economic order. Article 39 of the 1985 Guatemalan constitution (revised in November 1993) recognizes private property as an inherent "citizen right" and makes it the state's responsibility to ensure access to it, with the supposed dual benefit of individual progress and national development (Government of Guatemala 1993). Despite some improvements, a policy that explicitly addresses the extreme concentration of property while recognizing the social function of land has yet to be defined (Castillo Huertas 2015). Alongside the private property tenure mechanism, the constitution also acknowledges communal and collective tenure in Article 67, which refers to the protection of Indigenous land and agricultural cooperatives.

The Political Constitution recognizes the right to private property and stipulates that the right to property takes precedence over the inalienable rights of the person, such as food and housing (Velásquez 2011).

This can generate contradictions with international treaties signed as the International Covenant on Economic, Social, and Cultural Rights. In accordance with this situation, the Office of the United Nations High Commissioner for Human Rights clarified that international treaties and conventions (e.g., Convention on the Elimination of all Forms of Discrimination Against Women or International Covenant on Economic, Social, and Cultural Rights) have priority over ordinary domestic law, but not over the Constitution, except for contradictory elements (Lalander 2014).

Although Guatemala has a constitutional basis for land tenure, weak public policies have resulted in the absence of legislation and agrarian courts. Therefore, the country lacks a clear and integrated agrarian policy or land law and uses the Civil Code and Penal Code to resolve critical situations. These codes guarantee the absolute nature of property and its defense, allowing owners to have full use and enjoyment of the property with no limitations other than the use of the subsoil where the state is sovereign (Articles 465 and 468 of the Civil Code). However, civil legislation alone is insufficient to resolve agrarian conflicts since it consists only of formal rules and general principles of possession, use, transfer, and ownership of real estate (Velásquez 2011).

The National Land Fund (FONTIERRAS), established after the formal signing of the Peace Accords, prioritizes addressing "Socioeconomic Issues and the Agricultural Condition." This autonomous entity aims to promote the transfer of lands to landless peasants. Specifically, the organization seeks to "drive the land market" using two policy platforms: "regularization" and "access." FONTIERRAS operates with financing from the World Bank and the Guatemalan government and has been a main driver of market-led agrarian reform under a neoliberal development strategy. According to Article 46 of the FONTIERRAS code of conduct, regularization involves analyzing, revising, and updating records that document land sales and tenure submitted on behalf of the state. In addition, the Expropriation Law of 1948 governs matters related to the state power of compulsory acquisition of land and other properties, while the 1998 Foreign Investment Law addresses expropriation (Clark 2000). In short, there is no uniform customary law that regulates land, unlike in Mexico and Bolivia.

The Guatemalan Constitution recognizes the right to private property and states that everyone can dispose of their property freely in accordance with the law. However, Guatemala lacks a basic land law that identifies specific tenure types and, in practice, there are several tenure types, including private property and communal lands, among others. Communal lands include those in property, possession, or tenancy by indigenous or peasant communities as collective entities with or without legal title (Macours 2009). Unlike in Mexico and Bolivia, Guatemala lacks a clear land tenure system.

Despite the agreements and programs for access to land at the end of the 1980s, the institution known as Fondo de Tierras (FONTIERRAS), was necessary to define and implement public policy related to access to land, in coordination with state policy (Gauster et al. 2006).

However, Guatemala has made significant progress in establishing gender equity within its legal framework governing women's access and rights to land. The Constitution recognizes the equality of all human beings, and the Civil Code provides for marriage settlements and distribution of marital property under several regimes, including separation of property and community of property. Additionally, FONTIERRAS establishes co-property of the land for married couples or in de facto unions and individual ownership for single women. However, the prevailing patriarchal culture influences customs and attitudes towards women. Most women are excluded from inheriting land and, in most families, the male head of household makes all major decisions regarding land use (Higgins et al. 2018).

4. The Impact of Land Tenure Policies on Women in Mexico, Bolivia, and Guatemala

The examination of the three countries provides an overview of how gender relations operate in communities with communal tenure and women's rights to land. Since the 1980s, most Latin American countries have reformed their civil codes and adopted legislative instruments that recognize equal rights between men and women. However, agrarian laws have been less responsive to these demands for gender equality, although some general articles of these laws mention equality (von Bennewitz 2017). There are limited data disaggregated by gender on the distribution of communal land and who controls the land (Ravnborg et al. 2016). Nonetheless, in the case of communal land, women often do not participate in community meetings despite the fact that decisions about land use and distribution are made at these meetings. Furthermore, inheritance systems in the three countries seldom transfer land to daughters. In the case of Mexico and ejido lands, women were granted the same territorial rights as men in 1971, and, as a result, they were granted the right to speak and vote in meetings.

According to estimates from the FAO (FAO 2011), women constitute just over one-fifth of the agricultural labor force in Latin America, yet they represent only around 18% of landowners in the region, with significant differences between and within countries (Doss 2011; Ravnborg et al. 2013).

In 2000, women controlled almost 18% of ejido parcels and represented 27% of people with agrarian rights, although they only held 5% of the main positions and deputies in the assemblies (UN-HABITAT 2005). However, the previous literature suggests that the 1992 reforms have eroded women's rights in ejidos, since most women were not official members of these meetings (Vázquez-García and Ortega-Ortega 2017). Additionally, the privatization of ejidal plots has allowed the head of household to sell these lands, which generates insecurity in women's land tenure. Although wives have the first right to refusal, they may not have the financial resources to purchase the land (Barnes 2014).

More recent data from the FAO indicator of the distribution of agricultural holders by sex (published on its website) shows that in Mexico, there were 640,265 women (15.7%) of the total population of 4,067,618 in 2007. Women have improved their access to land, but they have little presence in decision-making related to the ejido, the activities, and the welfare of its members, including decisions about land. However, gender inequalities in land tenure are lower in Mexico. According to the Ninth Ejidal Census of 2007, women represented only 20% of ejidatarios and 23% of holders. This implies that land tenure for women is much broader in the non-ejidatario sector, which is governed by the rules of property and the Civil Code and not by agrarian law (Almeida 2012).

In recent years, Mexico has developed several programs to support productive projects in agrarian centers and empower women in the agrarian sector, such as the Social Economy: Territory and Inclusion Project and Rural Productive Inclusion Project. These programs help eliminate poverty by supporting groups that have suffered discrimination, such as

indigenous communities or women. Employment opportunities are offered to the inhabitants of agrarian centers, allowing them to join regional development. These programs have also contributed to the gender perspective in promoting equality between women and men in the economic, social, and cultural fields. Through these projects, rural women who live in the country's agrarian areas have been provided access to work in productive processes. These programs follow the recommendations made by the FAO in 2012 and the Center for Research and Higher Studies in Social Anthropology ([Secretaria de Desarrollo agrario territorial y urbano 2013](#)).

Guatemala and Bolivia differ significantly in terms of land tenure structure, organization, social movements, and women's land rights. Bolivia, like Mexico, has several legally recognized tenure systems based on private and communal property. However, in Guatemala, the lack of agricultural regulation prevents clear types of tenure. According to World Bank statistics, only 10% of women are employed in agriculture in Guatemala ([The World Bank 2019](#)).

In Guatemala, the poor utilization of land combined with highly unequal distribution means that most of the rural population lacks access to land for subsistence or wage labor opportunities on large farms. Both factors, along with export-oriented agrarian policies, contribute to extreme poverty among the rural population. In practice, the state has not recognized women's land rights since land titling programs issue titles to a single person, usually the male head of the family ([Deere et al. 2010](#)). Women in Guatemala face many obstacles to asserting legal rights, such as cultural and social values that do not recognize them as equal, low levels of education, limited resources, and lack of awareness among state officials of women's legal rights ([Lastarria-Cornhiel 2003](#)).

In the absence of specific agrarian laws, the Civil Code in Guatemala establishes matrimonial agreements and property distribution under various regimes, and this code mandates equal division of property passed in intestacy among relevant heirs, without gender preference. Nevertheless, in practice, only 6.5% of agricultural land in Guatemala is administered by women, as patriarchal culture influences customs and communities ([Mejía López 2006](#)).

Mexico appears to be the country where women have more equitable statutory land rights, as the Mexican Constitution establishes broad principles of gender equality. Moreover, the regulation of property and land provides wives with the same authority as men to manage property, and an ejidatario can designate anyone to inherit the land. Nevertheless, as with the other two countries, land use and customs show a clear preference for men. Only 16–20% of ejido members in Mexico are women, and in 2007, only 2% presided over the ejido council ([Vázquez-García 2016](#)).

Despite the progress made, women recognize that the struggle for empowerment also occurs within homes, where they face greater resistance. While many men support women's participation in governance and commercial production, these new responsibilities do not reduce their workload at home. Thus, women must work double shifts by including domestic tasks ([Bórquez and Ardito 2009](#)). Although access to and control of land is a right of rural women, obstacles to its realization go beyond the provisions of the norms to guarantee it. Mechanisms of exclusion of the right to land, although based on certain legal limitations, are intertwined with social, economic, cultural, and institutional factors. In Mexico, Guatemala, and Bolivia, the patriarchal system's maintenance and influence obstruct women's participation and contribution to family support, impeding recognition of rural women as independent citizens with equal rights ([Diez 2010](#)).

Although the legislation of these three countries provides advantages in land tenure rights for both women and men, doubts arise about their implementation and whether women can benefit from these rights in practice. In practice, patriarchal customs hinder women's access to land. In addition, unequal land distribution obstructs the exercise of territorial rights, as occurred after privatization in Mexico. When few people or companies own most of the productive land, peasant families are displaced to large cities or confined to working on foreign land ([Cantor 2014](#)).

5. FAO Voluntary Guidelines in the Legislative Field of Mexico, Guatemala, and Bolivia: How They Can Improve Women's Access to Agricultural Land?

After providing an overview of the land tenure legislation in Latin American countries and the situation of women in this context, this study examines whether the Voluntary Guidelines (VGs) are being followed and how such compliance can improve public policy and women's access to agricultural land in Mexico, Bolivia, and Guatemala. The VGs were created to encourage responsible tenure governance across all tenure types and promote national food security, sustainable livelihoods, social stability, housing security, rural development, environmental protection, and long-term social and economic growth. They aim to benefit all people in all countries, with focus on the most disadvantaged and excluded. Since the VGs' approval, the need to introduce effective monitoring for their implementation has been widely acknowledged. Good advancement in this area is critical to their long-term acceptance. It is important to focus not only on the participatory nature of the VGs but also to ensure that they have an impact on public and private strategies at different scales (Brun et al. 2014). However, here is a recognized lack of supporting evidence on the driving factors, contextual factors, and timeline of how and when tenure governance interventions lead to the desired outcomes among beneficiaries, the distribution of such outcomes among beneficiaries (e.g., women and men, etc.), and any interconnections between the contributing factors (Andriamihaja et al. 2021). As a result, this study proposes to take an initial approach towards such implementation.

The VGs are not intended to replace existing domestic or international laws, commitments, treaties, or agreements. They do not, however, weaken any legal obligations that governments may have under international law. Despite being outside the realm of international law and resulting from a different procedure than hard law, the VGs provide authoritative guidance for state and nonstate actors on a wide range of tenure governance concerns. Unlike international treaties, the VGs promote reform through multi-stakeholder debate, political consensus, and international good practice rather than binding rules (Jansen 2020). The use of VGs also allows for monitoring of the instrument's effectiveness in effecting change. However, the voluntary nature of VGs impacts monitoring, as there is no legal requirement to do so. Nevertheless, in today's interdependent world, the VGs call for international cooperation to establish harmonized, efficient systems for land and natural resource tenure control. Adoption of the VGs requires state cooperation to overcome sub-optimal or even negative consequences affecting sustainable development, particularly in the event of transboundary tenure difficulties or unfair competition. Nonetheless, national regulation is possible in both circumstances (FAO 2012).

In all three cases (Mexico, Bolivia, and Guatemala), the general principles and rights are met, as they are included in their constitutional framework. However, in the case of Guatemala, the fundamental responsibility of the state to recognize land tenure rights as absolute is not fulfilled. Additionally, Guatemala lacks a basic land law that identifies specific land tenure types, although in practice, there are several types of land tenure. The lack of legal regulation can generate insecure access to land.

Regarding the legal recognition of the land tenure rights of indigenous peoples and other communities with traditional tenure systems, the VGs require the state to pay special attention to the recognition and protection of traditional tenure rights, as well as to conduct good faith consultations with indigenous peoples. However, none of the above-mentioned countries conducts such inquiries. Although their rights have constitutional recognition, their legislation is poorly developed. In cases such as Bolivia, where significant rights are recognized, it is not enough to eliminate conflicts.

Nevertheless, since 2013, Guatemala has received assistance from the FAO in implementing an agrarian policy. This rural development policy promotes sustainable development through access to land and legal certainty and security of land tenure for women. It also recognizes and promotes women's rights to land and seeks to promote the rural economy and contribute to the competitiveness of rural areas and their full integration into the national economy (FAO 2014).

Given the current situation of women in the agrarian world, it is necessary to examine gender in land tenure in relation to the Voluntary Guidelines. These guidelines are based on human rights, gender perspective, tenure rights, and good governance. Additionally, they aim to establish a series of guidelines for governments to carry out responsible practices for governing land tenure. The consequences of weak governance, including increased vulnerability for women, a socially and economically marginalized group, have been identified. Therefore, one of the fundamental pillars of the VGs is gender equality and nondiscrimination.

One objective is to legally recognize women's traditional rights to use the land. Therefore, the guidelines integrate a gender approach into different sections, contributing to demonstrating the applicability of international human rights principles to land tenure administration. The countries under study have committed to creating structures in accordance with these guidelines, with technical assistance from the FAO, as seen in Guatemala. However, despite some progress, they still present clear deficiencies in the legal field, and gender-based land tenure distribution remains unequal. For example, in Guatemala, the Fondo de Tierras Act is the first legislation to expressly identify women as subjects to access land using loans and technical assistance ([Castillo Huertas 2015](#)).

The Voluntary Guidelines seek to support responsible governance of land and acknowledge the fact that women already suffer from social and economic marginalization. Mexico, Bolivia, and Guatemala reflect respect for the principles of nondiscrimination and gender equality at the legislative level. Still, several social and cultural obstacles make it challenging for women to have an equal relationship in land tenure.

Full implementation and monitoring of the VGs are essential in environments such as Mexico, Bolivia, and Guatemala. The VGs provide practical advice on how to comply with human rights commitments and assistance on guaranteeing enforcement. A key element of the VGs is the human rights-based approach, which goes beyond secure access to land and includes equitable access to it, ensuring equal opportunities. Women's rights to land and other productive resources are outlined in several international legal and policy instruments, including the Universal Declaration of Human Rights, which establishes the principle of nondiscrimination based on gender; recognizes the rights to property, food, and education; and guarantees women equality and nondiscrimination in land and natural resource rights. Secure land rights and natural resources are frequently necessary for rural women to realize other human rights, such as economic livelihood, appropriate quality of living, housing, food security, education, health, freedom from violence, and participation in decision-making at all levels ([Collantes et al. 2018](#)). The Committee on the Elimination of Discrimination Against Women has identified the Tenure Guidelines as a key reference point to clarify the nature of state obligations with regard to realizing rural women's right to participate in and benefit from rural development. However, another international treaty already contained explicit provisions on land rights and gender equality: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The CEDAW was adopted by the United Nations General Assembly on 18 December 1979, and among international human rights treaties, it takes an important place in bringing the female half of humanity into the focus of human rights concerns. The Convention's broadest attention is on the legal status of women, particularly the basic rights of political participation. Article 14(2) specifically instructs states to facilitate equal participation and benefit in rural development, particularly women's right to equal treatment in land and agrarian reform. Article 15(2) mandates equal rights for women to administer property, and Article 16(1)(h) extends equal rights to both spouses in respect to the ownership, acquisition, management, administration, enjoyment, and disposition of property, including land ([United Nations General Assembly 1979](#)). These instruments are key elements in improving women's access to land.

6. Conclusions

The political contexts of Latin American countries have led to the inclusion of regulations for women's access to land. Adoption of international human rights standards has enabled favorable interpretation of internal regulations for excluded social groups. This research shows that rural property concentration was present in nearly all Latin American countries at the beginning of the 20th century, which contributed to agrarian reform programs. Legal reforms implemented in recent years have marked significant progress in recognizing and protecting vulnerable groups, particularly women's rights. However, communal land ownership practices limit women's full recognition as members in some regions. Policies or regulations privatizing communal land hinder progress in these countries. For instance, Bolivia's land use process starts as a family product, but men take control over land and resources during its transformation into a product for sale. In Mexico, ejidal plots that are being privatized can be sold by the head of household, leaving women's access and land rights within the household uncertain. Though wives have the first right of refusal, they may lack financial resources to buy the plot.

Despite equal legal rights, women's access to land remains unequal in practice. Traditional customs and practices often discriminate against women in Mexico, Guatemala, and Bolivia, with a strong preference for male land inheritance. The influence of patriarchal systems on community customs and a lack of specific agrarian regulations, as seen in Guatemala, makes it difficult for women to access land. Even though laws or policies in different countries may refer to equality and nondiscrimination, the concept has not been implemented or translated locally.

The FAO Voluntary Guidelines were created to counter land grabbing and foreignization processes affecting 17 Latin American countries, including those studied. Although these guidelines advocate for nondiscrimination and gender equality in agricultural policies, their voluntary nature means they are not legally binding. However, this "soft law" instrument could help Mexico, Guatemala, and Bolivia reach an agreement more easily on the pressing issue of improving women's access to land.

Over time, countries have achieved positive results in guiding national policies using these guidelines, which tend to become binding. Therefore, the Voluntary Guidelines are useful for initiating a process that helps women secure access to land. The guidelines can be translated into operational mechanisms, including formal and legal commitments, institutional mechanisms for improving women's access to land, as well as administrative and public policies.

Peasant and women's organizations are gaining national and regional political space with the full participation of women, as seen in Bolivia, and with limited success in Guatemala, in their fight against power structures. Women's contribution to governance and representation organizations, and their reinforcement of access rights to land, will lead to strong governance and property, a positive experience for the state.

It is crucial to continue advancing knowledge of the conditions that favor women's acquisition of land, and to prepare reports and studies with quantitative and qualitative data to verify the situation. It is essential to challenge patriarchal roots that limit women's access to land. Land is a rural women's right, where they live and work, producing benefits for their families, communities, and society as a whole.

Funding: This research received no external funding.

Institutional Review Board Statement: Not applicable.

Informed Consent Statement: Not applicable.

Data Availability Statement: No new data were created or analyzed in this study. Data sharing is not applicable to this article.

Conflicts of Interest: The author declares no conflict of interest.

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