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Esther Roquas

# Stacked Law

Land, Property and Conflict in Honduras

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# Stellingen

Het concept gestapeld recht (stacked law) weerspiegelt de historie en dynamiek van landrechten in Honduras beter dan het begrip rechtspluralisme.

Land is niet alleen om te bewerken maar vervult vele andere functies, met name voor vrouwen.

Met het strikt volgen van de rechtsdoctrine lijken technische juristen soms het uiteindelijke doel van het rechtssysteem -recht spreken en rechtvaardigheid bewerkstelligen- uit het oog te verliezen.

Corruptie in het juridisch systeem in Honduras is noch een individuele moraliteitskwestie (waarbij de oplossing is de 'slechte' door 'goede' personen te vervangen) noch een kwestie van het technisch trainen van rechters (betaald door ontwikkelingsorganisaties). Beide oplossingen kunnen niet de politieke wil afdwingen om het rechtssysteem te depolitiseren en de invloed van economische belangen uit te schakelen.

Het opnieuw uitvinden van een 'indigena' traditie door druk van buitenlandse donoren leidt tot vernieuwing en versterking van racisme en ongelijkheid tussen burgers in Honduras.

De bestuursmatige, van bovenaf opgelegde  $\gamma$ - $\beta$  integratie leidt veelal tot opportunistische, oppervlakkige samenwerking en negeert het belang van de ontwikkeling van onderzoeksvragen en nieuwe concepten die pas ontstaan door noeste wetenschappelijke arbeid 'van onderaf'.

De huidige discussie over 'interdisciplinariteit' drukt het belang van pluriformiteit van wetenschapsvisies (zoals dat 20 jaar geleden werd benadrukt) ten onrechte naar de achtergrond.

Om voetbal leuk te maken en Nederland te kwalificeren voor het WK 2006, is het allereerst nodig de leus 'we are the champions' te vervangen door 'hand in hand kameraden'.

*Stellingen behorende bij het proefschrift 'Stacked Law: Land, Property and Conflict in Honduras'*

Esther Roquas, 12 februari 2002



STACKED LAW





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# Contents

*Acknowledgements* i

## **Introduction** 1

- Insecurity and conflict 5
- Laws, norms and property 6
- Questioning the 'labour is land rights' ideology 7
- Structure of the book 7
- Notes 10

## Chapter one

### **Stacked laws and norms in property** 11

- Property: Relations, gender and inheritance 12
- The contradictions of a weak state 16
- Stacked laws and norms 18
- Research questions 22
- Campesino life, conflicts and field research 23
- Notes 29

## Chapter two

### **Rights in the land of El Zapote** 31

- Manifestations of conflict 31
- Civil code and agrarian notions of property 34
- History and status of village lands 45
- State intervention: two cases 56
- Stacking and the notion of customary regulation 65
- Notes 68

## Chapter three

### **Property and labour in farm households** 71

- Internal dynamics of farm households 72
- Control and decision-making in the production of tule and potatoes 79
- Farm households and machismo 88
- Kinship and friendship 95
- Campesino images and daily life in farm households 98
- Notes 100

## Chapter four

### **Laws and norms in inheritance practices** 103

Inheritance practices and strategies: Anastacio and his siblings 104

Inheritance and the legal framework 108

Stacking norms in inheritance practices 111

Inheritance and violence 124

Parents and inheritance 135

Inheritance strategies of children 141

Inheritance, norms and adaptation 145

Notes 148

## Chapter five

### **Women and land rights** 149

Instrumentalism and the law 149

Women, labour and land rights 152

Widows and inheritance 153

Control and land use 165

Beyond instrumentalism: women, land and the law 175

Notes 182

## Chapter six

### **Land conflicts and the judicial system** 185

The judicial system: perceptions and experiences 186

Land disputes: three cases 200

The judicial system and legal insecurity 215

Changing the judicial system 221

Notes 226

## Chapter seven

### **Beyond disorder: land, justice and stacked law** 229

Understanding conflict and transfer of land rights in Honduras 230

Stacked laws and norms 233

Lessons for the land question 238

The failure of the judicial system 240

Some consequences for development issues 242

Notes 244

*Glossary* 245

*Bibliography* 247

*Summary in Dutch / Samenvatting* 259

*About the author* 263

# Lists of Tables and Figures

## Tables

- 2.1 Distribution of land in El Zapote in 1974 32
- 2.2 Distribution of land in the Santa Bárbara district in 1993 32
- 2.3 Property rights and control over distribution with regard to ejidos in different agrarian laws 39
- 2.4 Different village lands, perceptions of property rights of landholders and involvement in state interventions 52
- 2.5 Cadastral registration of property rights and juridical instruments in the municipality of El Zapote, 1979 61
- 3.1 Composition of farm households in the main village of El Zapote in 1993 73
- 3.2 Constructions of the ideal partner in life by men and women in El Zapote 91
- 5.1 The production activities of three (adult) daughters and their mother 169

## Figures

- 2.1 Manifestations of, and events generating conflict in El Zapote 33
- 3.1 Exchange of labour, material, and earnings in the production of petates 82
- 4.1 Actors in the conflict over the land of doña Mina 104
- 4.2 Actors in Delgado family conflict about inheritance 124
- 4.3 Actors in father-son conflict in Menendez family 136
- 6.1 Santa Bárbara court and related institutions 186
- 6.2 Actors in the dispute over the inheritance of Chepe Aguilar 207
- 6.3 Schematic view of the situation regarding the conflict in the Aguilar family 211
- 7.1 Stacked norms and laws with regard to rights in the land of El Zapote 235



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# Introduction

In the mid-1980s, the land of Ana Salgado developed into a can of worms for a whole group of villagers. She had not known at first that she had sold something that was no longer hers. Her late husband had given her the land when he fell ill. After he died she allowed Antonio, their son, to use it for growing maize. In the meantime, she thought about what she wanted to do with it. She had considered selling it because she needed the money; her husband had left several outstanding debts and she also had to meet the cost of the funeral arrangements. When a rich merchant offered her a reasonable price for the land, she agreed to the sale. It was all settled in a deed of purchase and Ana received her money. She could never have dreamed that the sale was only the beginning of a chain of very problematic events.

Ana had always thought of the land as her property, including the rights to control it and transfer it to others at all times. Yet according to the cadastral register (which she had no knowledge of), the land was illegally occupied national land. At the end of the 1970s the national government registered the agricultural land in the village within the scope of the start-up phase of a land titling programme. This programme intended to give legal titles of ownership to those landholders who occupied or possessed national land. Ana's land also became subject to titling by the national government. The government considered her *not* as a private owner but as an illegal occupier of land belonging to the state.

Just like many other plot holders in the village, Ana did not know about or understand these government activities. When functionaries of the INA (National Agrarian Institute) visited plot holders to discuss the matter, they did not meet with Ana but with her son Antonio instead. Antonio was working in his maize field on that particular day. Looking back, nobody knows whether Antonio lied to the functionaries, or if they simply assumed that he was the plot holder because he happened to be working on it. The INA recorded Antonio as the plot holder, and many months later, the land title arrived bearing Antonio's name. With the title in his hand, and completely ignoring the rights of his mother, Antonio claimed that the land was his. Naturally the merchant who bought the land became enraged when he heard about it. He had been convinced that the sale had given him exclusive private property

rights to the land. Yet with Antonio's claim in mind he knew that his rights to the land were not secure at all. He started to demand his money back from Ana. She felt miserable about Antonio's behaviour and she acknowledged that the claim of the merchant was justified. As she already spent part of the money, she had to borrow money from friends to pay the merchant back. Eventually she ended up in financial difficulties.

Being a notorious alcoholic, Antonio was always in need of money and, as soon as he felt recognised as the owner of the land, he began to sell parts of it. His son, who had cleared a part for sowing maize, woke up one day to find that his efforts had been in vain because his father sold this section to another producer. In the end Antonio completely sold it and left the village. The buyers of the respective plots received private deeds of purchase. Not one of the buyers thought of the INA title at that time, which remained in Antonio's hands. They considered it as a useless document that would not influence the security of their private deeds of purchase. Yet they changed their minds in 1994, when the INA started a campaign to collect outstanding debts on unpaid land titles. INA brigades entered villages with the catch-phrase that only the person holding an INA title 'owned' the land, and that all other papers or claims were invalid. After hearing this the group of buyers decided that they had to arrange the official division of Antonio's title. But Antonio, who also heard about the INA campaign, refused to hand over the title.

Desperately, the group of buyers went to consult INA functionaries in the district capital. They received the message that the INA was not able to interfere in conflicts and that the buyers had to settle the issue with Antonio first. Antonio assured the buyers that he would not reclaim the land. However, the buyers did not trust him because he was a drunkard and he would be able to sell anything if he needed money. The buyers also considered the possibility that Antonio's offspring would be able to claim the land after he died. One of the buyers finally decided to summon Antonio before the judge of the district court. It was the last option available to solve the problem. The regional court still had not reached a verdict in 2000 but the buyer did not lose hope, and he became only gradually worried about the thousands of lempiras he expended on lawyer fees over the course of years.<sup>1</sup>

Ana Salgado inherited land as a widow but was not able to effectively control it. Moreover, she lost it because of the actions of her own son and a state agency that had not recognised her rights to the land. How and why did a situation emerge in which Ana thought she was the owner, whereas the state claimed that she was an illegal occupier of the land? Why did Ana resign herself to the loss of her rights and why wasn't she able to protect her land against the plans of her son Antonio? What role do state institutions play, now and in the past, in the generation and the solution of conflicts?

This book intends to grasp the causes of property rights insecurity in a mountainous area of Honduras. Land is one of the most important assets of small agricultural producers who work and live in this area. The book starts from two premises. The first is that serious problems surrounding land rights occur daily between individual agricultural producers, but that attention to these problems and their consequences is completely absent in the Honduran discussion about agricultural reform. The second premise is that the participants in the international discussion about land rights security tend to be interested in solving the problem rather than investigating its roots and causes. According to a recent World Bank policy paper, the ideal environment in which property rights automatically individualise and transform into private ownership, has become distorted. Only through the correction of these distortions can property rights insecurity be remedied (Deininger and Feder 1998).

The discrepancy that exists between large landowners and the landless rural poor (the *latifundio-minifundio* model) has been a central agrarian question in Latin America for decades (Kay 1998). Unequal land distribution and the need for re-distributive agrarian reform has also dominated the discussion about agrarian development in Honduras. According to national census data, 82 percent of the farms hold only 19 percent of the agricultural area (calculated on the basis of SECPLAN, 1994). This suggests that the majority of producers intensively use small plots while a very small minority holds the largest part of the land. The Honduran agrarian reform of the 1960s and 1970s showed a typical mixture of more general aims described by Kay (1998:16) as designed to increase agricultural production, to enhance social and economical equality, and to diminish rural protest and win the political support of peasants. Yet the agrarian reforms did not produce results anywhere near these goals. The group of beneficiaries was relatively small and there were no significant changes in the division of land between smallholders and large landowners (Noé Pino and Thorpe 1992). Furthermore, rural poverty did not diminish as a consequence of the reform period (Sieder 1995). A result of the reform period was the emergence of new institutions and peasant organisations in the countryside (Posas 1987), although many peasant organisations changed their radical points of view in their negotiations with the government. These new organisations and institutions quickly dominated the content of the debate about the agrarian question, and their intense engagement narrowed the discussion down to the subject of the reformed sector. The situation of the majority of agricultural producers who live and work independently and who are not organised or reached by outside institutional support is, therefore, hardly known. The focus on the large landowner/ landless dichotomy overlooks, for example, the violent and complicated conflicts about property rights in land between smallholders living and working in the same community. The question about the origins of these conflicts and how people cope with them remains unanswered in the literature focussing on the problems of the reformed sector (Kückelhaus 1986, Ruben 1997). Therefore, this book wants to make a

contribution to the Honduran agrarian debate by bringing land conflicts between individual smallholders into the limelight. Such conflicts profoundly disturb daily relationships between family members or villagers, and they easily generate unrest and violence. In fact, it is difficult to find a landholder in Honduras who has not been involved in some kind of property conflict at some time.

The second premise of this book is that multilateral development organisations involved in land rights policy-making are interested in the consequences and solutions to insecure land rights but tend to take the *causes* of this insecurity for granted.<sup>2</sup> The FAO (1999) only addresses the consequences of land rights insecurity, which it considers to be an obstruction to production increases and investments and which leads to environmental deterioration and rural-urban migration. In their policy paper for the World Bank, Deininger and Feder (1998) state that in an ideal and undistorted environment, an evolutionary process of successively increasing precision in the definition of property rights to land takes place. Private property rights are the endpoint of a one-way process of technical change, population pressure, market integration and risk reduction. The authors describe the causes of insecurity as distortions of this automatic and inescapable linear development towards 'full and secure property arrangements'. Yet they do not deal with the questions of what these distortions are and how they come about.

Distortions of the ideal evolutionary process should be corrected to allow a directional progress to safeguard private property, although the World Bank and FAO have recently started to think more flexibly about property rights security and admit that communal tenure might entail the same advantages as private property in certain circumstances (Deininger and Binswanger 2001, de Janvry et al. 2001). Private property should enable the owner-operator to accumulate wealth and to transfer wealth to the next generation, to use land as a collateral for access to credit, to enhance social security, to have continued access to the land and open the door for long-term investments, and to take advantage of the social status and bargaining power attached to having land (de Janvry et al. 2001). Although not in all situations, official titling is considered to be the best way to enhance security as it increases investments in sustainable production, guarantees a higher degree of transfer and increases access to formal credit. Furthermore, it is expected that private landowners will not migrate and that property rights conflicts will no longer occur. These authors do admit, however, that titling is costly and that the land market does not automatically transfer land to the most efficient user.

This research departs from the idea that property rights insecurity has many causes and that insecurity may also arise in private property contexts. Private property may not bring about the expected advantages; titling programmes often do not solve insecurity and conflicts over property continue to persist. This book intends to lay bare the causes of insecurity in a situation where landholders consider themselves to be

owners of their plots. A switch from consequences and solutions to the *causes* of insecurity may be useful in understanding the effect of divergent land policies throughout Honduran history. In spite of the apparently clear property claims in the research area, landholders' land rights are profoundly insecure. A solution to their problems requires at the outset an understanding of the actual and historical constellation of property relations, of the rights people think they have, the ways in which they defend and legitimate these rights, and the ways in which they acquire, sell, or transfer these rights. Pleas for privatisation and titling of the involved multilateral development agencies generally lack such understanding.

## Insecurity and conflict

Practically all current landholders in the village of El Zapote, in the mountainous area of the Santa Bárbara district, have been involved in some kind of conflict about property rights, conflicts that are a manifestation of the felt insecurity of land rights. Conflicts, as well as the violent confrontations that often accompany them, strongly influence perceptions of property and the actions of landholders with respect to rights to land. Sometimes such conflicts immediately explode, but it also happens that the involved parties manage to by-pass conflict for a while.

This book seeks to analyse the causes and historical backgrounds of many kinds of conflict about land rights. Inheritance is a main process of land distribution that generates inequality and conflict. Inheritance practices take place in a context of tension between rules, the law of the state, and a changing world. Parents' inheritance strategies extend the period of their children's dependency vis-à-vis parents in a context of growing land scarcity. Another complication of inheritance practices generating conflicts is that inheritance and sale/purchase of land intermingle. Inheritance practices often completely neglect the rights of women, although they struggle for their rights and sometimes they succeed. Other conflicts arise about boundaries, right of way, falsified deeds, stolen papers, or land grabbing. Solving such conflicts is not easy as they often tend to escalate. Conflicts between men and women about land ownership and control frequently occur. Women have difficulties controlling land once they have rights to it. Men may enter a downward spiral of alcohol abuse and sale of their land, requiring the intervention of women to halt. State interventions which aim to enhance security eventuate in the emergence of contrasting claims between the legal owner and the real owner, and between the state and the real owner. In the eyes of landholders, the state should protect their private rights. Yet this book argues that the state through history has played a completely different role, and that property rights insecurity has intensified through its contradictory land policies. Furthermore, the state's judicial

system has never fulfilled the role as a neutral conflict settler and an institutional environment to solve conflicts is completely absent.

Conflicts about the distribution and transfer of property rights in land form the central focus of this book. They strongly influence the daily lives of agricultural producers and their families, and may persist for years and transcend generations. Processes of distribution and transfer of land are both material and ideological. They are instructive for social relations in families and in the village because they reflect and change power relations.

## Laws, norms and property

A second aim of this book is to unravel the role of state interventions and to understand the complex ways in which property holders define, defend, and transfer their rights in land. Norms play a role in all these processes. Land has been a central focus of government regulations and policies ever since colonial times (Stokes 1973). Yet land is not distributed or transferred according to legal regulations. Local property arrangements in Honduras are often labelled as 'customary' or 'informal' (Stanfield et al. 1990, Wachter 1992, Coles-Coghi 1993). The question raised in this book is whether these labels indeed cover the signification and the content of this complex of rules. Although the users of these labels do not explain the content of the label 'customary', it suggests at least three things that can be questioned. The first is that the term 'customary' suggests that the rules that can be distinguished in practices of redistribution and transfer of land, are the opposite of state law. The second presupposition is that it concerns a coherent system of rules. Thirdly, the term 'customary' suggests that it provides landholders with safe and secure rights to land.

In contrast to the notion of customary property arrangements, this book develops the concept of 'stacking' to better capture the apparent inconsistencies between state law and the complex nature of property rights and claims to land. I will argue that social practices surrounding land transfer result in the stacking of concepts stemming from the Civil Code and different agrarian laws in different historical periods; municipal provisions; local rules; 'customs'; and local gender images. This book pays attention to how and why state law becomes transformed and adapted in local practices of land rights distribution and in interaction with other rules and norms. The contradictory image of the state that both protects and threatens land rights is viewed in the light of the history of state policy towards land in the region.

## Questioning the 'labour is land rights' ideology

Honduran agrarian reform was based on the principle of 'land to the tiller'. The Agrarian Reform Law (Honduras 1975) demanded that land should be cultivated by the person who owns it. Hence, the law closely connected property rights to land with labour in the fields. The 'land to the tiller' discourse still dominates current discussions about the land question. The favourite image is that of the peasant who cultivates his crops on his own plot of land. The notion of connecting land and labour is not wholly unfamiliar to land holders because it overlaps the known arrangement that land rights can be gained through working. This book discusses the linkage between labour and property rights because it is one of the main causes of the detrimental position of rural women in property relations.

The linkage of property rights and labour in the Agrarian Reform Law generated special criteria for the participation of women. Women could only obtain land through the Agrarian Reform Law in cases where they were the solely responsible person for raising a family. In practice, one could only obtain land through membership in an agrarian reform co-operative or an associated enterprise of producers. Women were only able to access these organisations if they had a son who could perform the work (Safilios-Rothschildt 1983). The discriminating criteria for women became questioned when a demand for women's land rights was launched throughout the world promising welfare, efficiency, and empowerment if women would obtain land rights at the same rate as men (Agarwal 1994, Meinzen-Dick et al. 1997).<sup>3</sup>

The current agrarian law (Honduras 1992) does not discriminate against women, yet women suffer from the general restrictions on access just like men (Noé Pino et al. 1993; Martínez et al. 1995). This book shows that the arguments used in Honduras to demand land rights for women become entangled in the very same connection of labour and property rights. The dominant claim is that the invisibility and negation of women's agricultural work are responsible for their detrimental position regarding land rights. The question raised in this book is whether this is the right analysis and a constructive starting-point for demanding land rights for women. The use of the connection between labour and property rights obscures any insight into the relationship between women and land. To unlink property rights from labour creates space to acknowledge women's rights in property and to understand what women do with land, how they use and manage it, and what it means to them.

## Structure of the book

To address critical questions surrounding who has a say in the land at what moment, or how property concepts of the state and landholders differ, Chapter One elaborates a



relational concept of property. An understanding of property as a relationship between people about a thing is necessary to understand how conflicts regarding property rights in land emerge. Moreover, the chapter introduces the notion of 'stacked laws and norms' for explaining the different elements of normative pluralism regarding land rights. The notion is important in order to distinguish the different elements of 'pluralism', and to characterise the way in which they go together and the way in which social actors make use of them. Chapter One further presents the central research questions, some comments about methodology, and a review of methods used in field research.

Chapter Two focuses on the differences between the state and landholders in the way they perceive their rights to the land. It analyses stacking in state law and in the divergent perceptions landholders and the state have of property. The case of landholders in the rural village of 'El Zapote' tells the story of a specific history of land rights and the role of the state and of how this history has shaped local perceptions of property. Two cases of state intervention, the construction of a hydroelectric power plant and a land titling programme, illustrate the different opinions and emerging conflicts between landholders and the state about who controls and owns the land.

Next, Chapter Three outlines the internal organisation of farm households in El Zapote; the role of labour relations and perceptions of kinship in the control of property, and struggles between household members for control over income and property. The chapter argues that, in contrast to an idyllic peasant image, farm households do not have a common property regime. The romantic ideal of Honduran peasant life is not able to explain why conflicts about property among family and household members occur. Chapter Three concludes that in the context of the Honduran agrarian debate, it is important to study the relations between farm household members instead of assuming that they have a certain, kinship inspired, content.

Inheritance is an important mechanisms for transferring land in El Zapote. It is also a main source of conflict and violence between household and family members. It is furthermore an important process that enhances social differentiation among landholders. An important characteristic of inheritance conflicts is that they may aggravate and transcend generations because they are never solved. Chapter Four explains how inheritance becomes a deciding factor in the content of relations between the generations. Local inheritance practices do not follow the law, while a range of local norms exist about inheritance and how it should take place. The chapter argues that these norms influence but do not determine inheritance practices, nor are these practices static. The chapter addresses the background of local norms, the ways in which landholders use them in inheritance practices, and contemporary changes to these rules and inheritance practices.

Women are a particularly vulnerable group in inheritance processes. According to the law, women and men have equal rights to inherit land. However, the percentage of female owners is extremely low, which suggests that women do not succeed in claiming and controlling their rights. Chapter Five examines how gender plays a role in the control and use of land. Gender images are used that prevent women to effectively claim land. The chapter argues that female land owners look for land use strategies that do not contest the gender division of labour. Such strategies do not attack the male hegemony in agriculture, while women do turn their property to advantage and protect their rights in land.

When local mechanisms of conflict avoidance and settlement fail, the court of justice is left as the only alternative. The inadequate working of the district court motivates landholders to primarily turn to developing conflict avoidance strategies. Chapter Six argues that this should not be glorified as an effective local response to the failing state. Three cases of land conflicts that involved the interference of the district court make plain why the court does not contribute to diminishing conflicts. The working of the court can indeed be labelled as class justice. Nevertheless, the contemporary discussions about the changes of the justice system and human rights also affect landholders in remote villages in El Zapote. These discussions make them aware that they are subjects with legal rights and that they must demand the possibilities to claim these rights.

In Chapter Seven I take up the various issues and discussions in this book to link them to the research question. I discuss the descriptive and analytical value of the notion of stacked laws and norms for explaining the law-norms complex. Next, I look at the lessons to be learnt from the relational notion of property used in this book for the debate about the land question in Honduras. Thereafter, I discuss the effects of the justice system's failure for the persistence of land conflicts. Finally, this chapter addresses some consequences of the analysis for contemporary development issues.

## Notes

- 1 The lempira is the Honduran currency unit. One US dollar was approximately 13 lempiras in 1997.
- 2 International development organisations have been the driving force behind land policy in Central America for decades. Land titling in Honduras was financed by USAID in the 1980s. The World Bank claims to have invested 160 million dollars in Central American land titling operations during the last five years with another 110 million dollars to be invested in the future (World Bank 2001a).
- 3 These arguments for demanding land rights for women have their roots in a global development discourse (Moser 1989). The idea is that land rights for women will enhance welfare because women will be better equipped to feed their families. This will lead to more efficiency because technical assistance, knowledge and credit can be distributed more directly into the hands of women. Furthermore, land rights generate empowerment because land is a tool for women's emancipation.

## Chapter one

# Stacked laws and norms in property

From the 1960s, the land question, especially the agrarian reform, has dominated the political debate in Honduras. The debate identified the sharp disparity that exists between large landowners and the mass of poor rural landless as a major impediment to economic development and social justice. Moreover, the unrestrained population growth in the countryside made land increasingly scarce.<sup>1</sup> An agrarian reform programme, aimed at a redistribution of the land, was instituted to put an end to the increasing inequalities.

Excellent overviews and critical essays about this prominent aspect of the agrarian debate have been published, and this book does not pretend to repeat what has been said (Del-Cid 1977, Brockett 1987, Stringer 1989, Noé Pino and Thorpe 1992, Salgado et al. 1994, Sieder 1995, Baumeister et al. 1996). Instead, this chapter starts from two shortcomings in the land question debate that have not received much attention so far. First, the Honduran debate has hardly paid any attention to the issue of property. Agrarian reform or land titling programmes tamper with property without actually looking at it. Such interventions affect much more than just the simple quantifiable distribution of a commodity, such as relations between people, norms about who should or should not have land, and the distribution of rights that may be derived from these norms. It is this book's intention to overcome this shortcoming by starting from a relational concept of property to research the problems of conflict and contradictory claims to land.

Second, studies that look at property arrangements that existed before redistributive or land titling programmes were implemented, have defined the pre-existing land rights as 'customary' or 'informal'. This book will develop the notion of 'stacked laws and norms' to analyse how land rights were constituted and became established in state law and in social practices. I will show that the terms customary or informal do not adequately agree with the actual history and significance of land rights.

This chapter first discusses the relational notion of property with regard to land distribution, which raises questions other than those generated by a 'quantitative

distribution' point of departure. Furthermore, this chapter looks at gender as a constitutive element of property relations, as well as the consequences of the temporary character of property in the transfer land rights. The state plays an important role in the regulation of land rights by issuing land laws, transferring national land to holders, acting as the protector of private property and playing a role in conflict resolution. A point elaborated in this respect is the striking contrast between the weak state and the dominant legal culture, which attributes a strong regulating role to the state. This chapter also introduces the notion of stacked laws and norms, upon which this book will build both the description of empirical processes and the analytical breakdown of the complex of norms and laws playing a role in the distribution of land rights. Finally, this chapter introduces the central research questions, elaborates some methodological notions and discusses the methods used in field research.

### Property: Relations, gender and inheritance

Property refers in essence to a question of *distribution*: the distribution of a material good, rights to this good and power.<sup>2</sup> Sabea (1990:17) refers to Rousseau in his statement that property in regard to land is 'the act of one man drawing a boundary around some land and getting others foolish enough to respect it'. Property involves rights, duties and liabilities that are attached to people and that are distributed among people.

The literature on property attributes important advantages to an analytical definition of property as the relations between people with regard to things or goods (Munzer 1990, Benda-Beckmann 1995, Hann 1998). Central to a relational concept of property are the questions as to what can be an *object* of property rights, *who* may act as a holder of property rights and *what rights* to the land does the holder receive? Some authors consider that asking these questions is important to avoid a 'western' concept of property as absolute ownership, and to create room for recognising differences with regard to the objects that may be possessed, and variations on the definitions of holders and rights (Whitehead 1984, van den Bergh 1996). People exchange 'things' and, at the same time, reproduce a range of images, concepts and meanings. Transfers of land, for example, not only reallocate material goods between people, but also include perceptions and definitions of rights and relationships between people that may vary cross-culturally.

Private ownership is the ideal and the standard point of reference for Honduran landholders. In their eyes, private ownership stands for absolute freedom to control the land as they see fit. Nevertheless, a relational concept of property will show how the legal category of absolute ownership is not suitable for understanding people's

perceptions of their land rights, practices<sup>3</sup> of rights transfer, and the logic and consequences of state interventions in land rights.

The question about *what* rights to the land are transferred refers to the different 'sticks' that together shape the 'bundle of property rights' (Munzer 1990). These 'sticks' include the right to possess, to use, to transfer, and to destroy the property (Munzer 1990). By starting from a relational concept of property, we shift the land question away from it being an issue about the distribution of an economic good and toward it being a matter of rights, the divergent definitions of rights by social actors and the particular nature of these rights.

Furthermore, a relational definition of property places social relations, and thus power, at the heart of the analysis. Power is the transformative capacity of human action (Giddens 1984).<sup>4</sup> It is a capacity that is always present in social relations that can be productive or constraining (Flax 1987, Davis et al. 1991, Faith 1994). Important in this study is the notion that people do not engage in property relations as equals. 'Things' as land are a potential source of power and, in agrarian societies such as Honduras, the distribution of rights to land is also a question of wealth and power. A landholder may use the land to generate capital, to control other people and to influence power balances in his or her favour (Hirschon 1984, Metcalf 1990, Moors 1995). As a consequence, those in power are better able to gain access to and maintain control over land.

Moreover, a relational notion of property stresses that property entails the rights of people *against* other people. Property norms define how a holder is able to exclude others from the use or enjoyment of the object (Brewer and Staves 1995, Blum 1995). The capacity of property holders to exclude others is not absolute, however. It is limited by other property holders as well as by the state. On the one hand, the state is actively involved in granting property rights to land to individuals and corporations. Yet, on the other hand, state law also defines duties and limits the freedom of property holders (Munzer 1990, Singer 2000). Property rights that have a private character become continuously redefined and shifted through public (state) intervention (Geisler and Daneker 2000). Exclusion is thus an essential feature of property. An important question is how the exclusion of others is achieved, and what limits imposed on this exclusion may be. For example, this book addresses the argumentation and coercive strategies employed by the state to exclude landholders from gaining ownership.

The relational concept of property thus invites us to pose a set of questions lacking in the Honduran land debate. *Who* has *what* right to land, and *who* is entitled to hold land? How is power derived from property rights to land, and what role does power play in land transfer practices? How does public (state) intervention affect the private character of land rights? How does the transfer of material goods generate changes of meaning with regard to property objects and property holders?

The inequality that exists between men and women in Honduras with regard to land is usually attributed to discriminating articles in the agrarian law or to *machismo* culture. The question is whether these mono-causal explanations do justice to the problem of gender and property rights to land in Honduras. This research poses several questions about the interaction between property and gender. How does property influence power balances between men and women (Hirschon 1984, Wilson 1984, Moors 1995)? How do women's and men's capacity to act as independent actors with regard to property differ (Whitehead 1984)?

Gender refers to the culturally and historically variable social relations between men and women, characterised as relations of power (Grant 1993, Radtke and Stam 1994). Gender has an embedded nature; it is both a material and a social institution, as well as a set of ideologies (di Leonardo 1991). Gender ideologies are systems of meanings, values and beliefs about gender within a social group that are expressed through institutions and practices (Whatmore 1991, Comaroff and Comaroff 1992).

Materialist explanations of gender inequality view labour as the central issue of analysis and as the key to solutions (Engels 1980, Coontz and Henderson 1986, Sayers et al. 1987).<sup>5</sup> Materialist analysis has recently been criticised for presuming the existence of two essential gender categories while not giving attention to multiple identities (Flax 1987, Jackson and Pearson 1998). Two lessons which have been learned from this debate are important for the purpose of this study. Within gender categories, there is differentiation based on differences other than gender. Furthermore, attention to gender identities may be important to the understanding of how gender inequality persists (Menkel-Meadow and Seidman Diamond 1991, Halsema 1993, Radcliffe 1993). The concept of gender identity refers to how people conceptualise gender through images and discourses.

Above and beyond its rather simple understanding of gender, materialist explanations of gender inequality have a second important shortcoming. This concerns the centrality of labour for the analysis of, and the solution to, the oppression of women. In her path-breaking study about gender and property in Asia, Agarwal (1994:2) states: '...employment is taken as the principal measure of women's economic status, obscuring what has been commonplace in measuring the economic status of men or of households: property ownership and control'. Agarwal points to the vicious cycle that perpetuates the control of property by those who also control the institutions producing gender ideology, which prevents women from claiming property rights. This book coincides with Agarwal's alternative materialist approach to gender in its focus on property as a central source of gender inequality.

Besides looking at property and gender to understand gender issues in the unequal distribution of land, this book also takes the view that gender is embedded in how property is defined, and that it is necessary to study gender in order to understand

struggles for and claims to property in their all-inclusive dynamics. By demanding attention be paid to a group of property holders who are often overlooked, subtle processes of exclusion and inclusion become visible.

#### *The temporary character of property: inheritance*

Property rights attached to a person who dies have to be transferred to others. Sabean (1990:421), citing Bourdieu, stresses that 'land inherits the heir'. Land, as a material good subject to property rights, does not cease to exist when the landholder dies. Rather, interested parties will start negotiating over the transfer and redistribution of land rights through inheritance or inheritance-like transfers (Benda-Beckmann 1995), or they may follow prescribed procedures to distribute the land. The transfer of goods between generations through inheritance is part of broader processes of devolution: property transfers that contribute to the reproduction of the social system (Goody 1978). According to Goody, a main characteristic that makes inheritance distinct from other types of property transfer is that it takes place between the dead and the living. This book questions whether this is indeed a central feature of inheritance practices.

Historians have studied inheritance through papers and documents (Narrett 1992, Spring 1993), which necessarily biases their research towards urban and upper-class milieus (de Haan 1994). The question of inheritance in farm households is less frequently touched upon. Studying this aspect of inheritance means that we have to look at the social practices in which people struggle for property and negotiate over the meaning of gender and kinship (Lison-Tolosana 1976, Brettell 1991, Voyce 1994). Additionally, farm household inheritance practices are closely related to changing production systems and people's perceptions of the future of agriculture (de Janvry et al. 2001).

To study inheritance practices means that we study norms as well. A norm is an established guide that prescribes, forbids or directs certain actions. Inheritance norms prescribe who ought to be entitled to what kind of property, and how the distribution of inherited property should take place. Inheritance norms may grant rights to men while denying those of women, and they may prefer offspring instead of the surviving spouse. They may prescribe an equal distribution among heirs or establish the exact portion that each heir should receive.

State law, for example, provides norms of inheritance aimed at achieving particular goals, such as the protection of the weak parties, the establishment of institutions to settle disputes, the protection of the public interests in property and the social function of land. State law may be diametrically opposed to the norms that people refer to and consider legitimate in inheritance practices. People may not be familiar with, or may deny, state law prescriptions. Instead of following the prescribed procedures, they may be incessantly busy constituting norms that they consider to be important to



inheritance and the transfer of property rights which may have completely different goals than those of the state.

## The contradictions of a weak state

Land is an important and valuable asset in an agrarian society, and it has been a major source of political and economic power in the post-colonial state (Vallejo 1911, de Oyuela 1994). More than half of the economically active people in contemporary Honduras are involved in agriculture, with seventy percent of exports consist of agricultural products (Baumeister et al. 1996).<sup>6</sup> Through the years, the state has tried to enhance the production of such agricultural export products as sugar cane, cattle, coffee, and bananas (Argueta 1975).

Since agriculture has been of primary importance to the development of the nation, land has been essential to the national economy. Throughout history, the state has developed numerous policies, laws and legal stipulations to control the distribution of land and the establishment of rights to the land. However, the state has hardly been able to implement these land policies and uphold the law, which is a characteristic of a weak state (Migdal et al. 1994, Grindle 1997).

Cotterrell defines the state as 'the whole range of institutions, agencies and processes by means of which political power is exercised within a defined territory' (1992:128). This is a rather simple definition that is not specific enough to fully cover the ways in which the term 'state' appears in this book. The use of the term 'state' does not mean that I see the state as a coherent organisation with homogenous aims and strategies. The term primarily refers to *state agents*. In this book, those entities and actors that are engaged in policymaking and the implementation of law with regard to land play an important role: among them are both the National Agrarian Institute (INA) and the institute's officials working in the research area. Furthermore, the state judicial system and its officials play an important role in this book. A third part of the state that figures in this book is the local government in the form of the mayor and the municipal council.

The state is additionally a *concept in the minds* of rural people. As an institution, the state stands for the exercise of authority and the making and implementation of the law. The political system is a part of the state that is very vivid in the minds of people: many people actively participate in political campaigns preceding the general elections. Their active participation is related to the state's role as a hope-generating machine, as Nuijten (1998:11) called it. People have high expectations of the state and, although they become frustrated every time, they continue to believe in the promises generated by the state.

### *Weak state-strong state*

A main feature of the 'weak' performance of the Honduran state is corruption and the overwhelming influence of party politics, aspects that also frustrate efforts to modernise the state. Another feature of 'weak' state performance could also refer to the state's lack of capabilities to pursue its own agenda (Murga Frassinetti 1978, Posas and Del-Cid 1983, Barahona 1991, d'Ans 1998). The state's fragility has left room for continuous interference by foreign entities, such as multinational banana companies, the government of the USA and more recently, the IMF (Molina Chocano 1985, Posas 1992, Barahona 1994, Norsworthy and Barry 1994). A third general feature of the Honduran state, as mentioned above, is that it has difficulties upholding the law. State agencies, including the police, lack the means and knowledge to enforce the law and the judicial system works poorly, both of which contribute to the weak state performance. A defining characteristic of the weak state is thus the 'gap' between the intentions of the law and actual social practices (Feeley 1976, Comaroff and Roberts 1981). This book researches how the intentions of the law converge with social practices, and how laws and norms from different sources become connected, changed, set aside or re-interpreted through these practices.

Behind these features of the weak state, however, stands another story about the state. This is the story of oppression. The state dominated the daily lives of citizens under military rule. In those days, rural inhabitants experienced strong state repression exercised by their own village authorities in the name of the military ruler. Many villagers vividly remember the detentions, the persecution of political adversaries, the murders, the imposed curfew. Decades of intermittent direct rule by the armed forces ended in 1981 when state power was turned over to elected civil governments (Norsworthy and Barry 1994). However, it took nearly two subsequent decades to finally weaken the power of the military. This book shows that daily experiences and confrontations with a strong state presence have directly affected people's perceptions about the role of the state. Legal culture is strongly attached to the state.<sup>7</sup> Rural people deeply respect 'the authorities' and expect them to maintain law and order. In their opinions, the state should protect the individual rights of all citizens. The state is thus the only recognised and legitimate authority with respect to law, order and justice.

### *The role of law in the paradoxes of the weak state*

Legal culture focuses on the state and the law of the state is the only legal system in Honduras.<sup>8</sup> People in Honduras express two views on what law is and how it affects behaviour, both of which ultimately attach law to the state. In the first notion, law stands for 'natural law': the state does not invent the law, but the law is an expression of fundamental values about human life, justice and equality, written down by the state (Stokes 1973). A second notion sees law as a technical instrument, as the rules that are laid down in the codes and statute books of the state; a 'legal positivist' perspective

(Galanter 1981, Snyder 1992, Hunt 1993).<sup>9</sup> In the legal positivist view, law has no relation to ethical or political considerations and people's experiences, and the state, as the highest political authority, guarantees its objectivity. Legal positivist adherents consider these characteristics of the law as contrasting with other existing forms of social control, which are seen as partial and subjective.

Natural law stands for the utopia, how it should be. Landholders often talk about law in these terms. In their eyes, the law itself is morally justified; problems lie with the people who do not respect the law and the authorities who do not uphold it. But landholders combine their view about the content of the law with a legal positive perspective, just like state officials and legal experts: something is law when it has been written down in the law books. This book shows that landholders do not consider it to be important whether a presumed law is indeed written down in law books, but they assume that morally justified actions or concepts appear in the law books.

People in Honduras complain about their government; complaints that directly refer to the weak image of the state. Corruption and lack of law and order are common issues in their daily conversations. But, on the other hand, there is a general feeling that law will solve all problems, and proposed solutions to the huge problems of poverty and development always concern new or adapted legislation. The common natural law or legal positivist standpoints need a concept of a strong state. To think that law is the instrument for maintaining law and order and achieving social change means that there must be a strong state that has the power to change practices by laying down, imposing and implementing the law (Nader and Todd 1978).

There is a striking contrast between a weak state grip on land rights and the protection of property, and a legal culture that intensely believes in the working of a strong state. This book discusses the effects of this contradiction on people's perception of the state and on the state's abilities and legitimacy in governing land related issues.

## Stacked laws and norms

Land rights evolve in a pluralist constellation of norms. There are norms that impinge on who may work the land or who may own the land; norms that prescribe how one should transfer land to other people and that assess how one should make a claim to land; and norms that drive people to use the land in particular ways. This section discusses the different elements of normative pluralism regarding land rights and the ways in which these elements relate, mingle or merge.

Property rights are central to the organisation of society and are important subjects of state regulation. The law of the state defines what objects can be property, who is entitled to what right, and how these rights can be transferred to another person. However, the state is not able to completely control the establishment of land rights

and determine practices of transfer between property holders. The norms that play a role in these daily practices may not be directly derived from law and may encompass norms stemming from other sources.

#### *Distinguishing between elements in the law-norms complex*

Concepts such as living law (Ehrlich 1962), semi-autonomous field (Moore 1973, 1978), legal pluralism (Griffiths 1986, Harris 1996, Benda-Beckmann 2001), or plurality of law (Sack and Aleck 1992) intend to show that social order is not established through the law of the state or through state law alone. The core of these concepts is that, in society, different normative orders co-exist in a pluralist situation. To presuppose that there is normative pluralism means that we have to ask ourselves what it consists of. The mentioned concepts, however, are not unanimous about how we should see the different elements in the pluralist constellation of norms.

For the purpose of this study, I consider it important to discern the different norms that play a role in land claims, and to analyse their respective contribution to the outcomes and effects of the 'pluralist' law-norms complex. Therefore, I make a first distinction between state law and other norms. I presume that state law differs from other norms in terms of legitimacy and effect on behaviour (Tamanaha 1993, Woodman 1998).<sup>10</sup> State law is directly related to the specific constellation of state power, which is based on claims of sovereignty and coherence (Merry 1988). Thus, state law has a particular meaning and internal dynamic. State law - the written codified norms - is a powerful instrument not only for state officials and the judicial power, but also for landholders.

The distinction between state law and other norms fits in with the general Honduran perception of 'law' as the law of the state, and 'non-law' as disordered and old-fashioned customs. This book does not start from the view that law is what is written down by state agencies in acts, decrees, statutes or codes, but instead, it aims to *research* what state law is and what it does. State law encompasses those norms that are created, established or imposed by the state or state officials, not all of which are written down, but may also be generated through the implementation and enforcement of law. Thus, state law itself has a pluralist character, it does not consist of one coherent body of norms, and state law prescriptions differ with regard to prescriptive capabilities and ideological effect.

As with state law, other norms can be distinguished according to their source, their different ways of claiming legitimacy, and their differential effects on people's behaviour. Customs, kinship and gender all have normative dimensions, and their characteristics, flexibility, force or working differ in specific settings. Gender norms, for example, may overrule kinship norms in inheritance practices. Chapter Four demonstrates that the preference for the youngest child in inheritance is exclusively

attributed to the youngest son and not to the youngest daughter, because women are not seen as entitled to inherit land. Widows desperately try to claim part of the properties in spite of the prevailing family norms that prescribe that children should take care of their mother (Chapter Five).

Many debates have evolved around the issue of what is 'legal' and 'not legal'. Roberts (1998:97) argues that a 'lawyerly way of looking at the social world' has many limitations. In a 'lawyerly view', law is the only element that constitutes social order and, consequently, everything that contributes to the social order is called 'law' (Hunt 1993, Tamanaha 2000).<sup>11</sup> Law thus comprises state law and all other types of norms that might be constitutive to the social order. However, such a view contributes very little to my effort to discern different norms and their differential contributions to social order. If all norms are laws, then one should introduce other tools to discern them again which makes the effort to call it all 'law' a bit futile.

Thus, property relations and land rights evolve in a situation of normative pluralism, in which social actors can justify their behaviour by referring to norms stemming from different sources. This book intends to reveal the elements of this normative pluralism and discover the effects of the different elements. I am looking at a way of making discrete the elements of the pluralist situation, and for that, I intend to develop the notion of 'stacked laws and norms'.

#### *Human agency, norms and their structural properties*

This research looks at why people do what they do with respect to establishing, controlling and changing property rights arrangements in land. This is certainly a question of norms, but it is also about human agency. Human agency refers to the capacity of social actors to process social experience and to strategically generate a network of social relations (Giddens 1984, Long 1992:22-24, Booth 1994). Social actors - those who have agency -, are knowledgeable and capable of acting. However, they are not completely free. Their acting is constrained in various ways: by physical constraints or uncertainties, but also by social structures.

For the empirical researcher, it is very difficult to deal with social structures. The implication of the existence of social structures is that people's actions are not only meaningful, but they have causes and effects (Sayer 1992:114). Structures get mixed up and cannot be isolated. Social actors take part in several structures at the same time, and may therefore confuse the effects of different structures. It is not clear at first sight whether inequality in inheritance practices is based in law, kinship, local rule systems, property definitions or gender ideology. Or, one may explain corruption either by pointing at the psychological character of judges or at the working of the system of political clientele. Our own understanding of such issues depends on the accounts of social actors who themselves mix up different structures and concepts. For example,

Chapter Five explains how landholders confuse gender with skills in defining who is suitable to become a landholder.

Structures not only coexist and articulate, but they also endure: people reproduce them (Sayer 1992). They may not do this intentionally. Sayer (1992:96), quoting Bhaskar, states: 'people do not marry to reproduce the nuclear family or work to reproduce the capitalist economy. Yet it is nevertheless the unintended consequence (and inexorable result) of, as it is also a necessary condition for, their activity'. Structures are not static but they may gradually change from inside. 'Religious structures, teacher-pupil relations and the marital relation have all changed slowly but significantly, as balances of power and constitutive meanings and practices have shifted' (Sayer 1992:96).

Norms are part of the constraints on people's behaviour; norms encompass structural properties that may restrain behaviour. Norms may also be enabling: making something possible. People claim rights and thus use norms, and norms serve as conditions for claiming rights. They justify their behaviour by referring to norms, and through their actions, they reproduce or change these norms. They may not do this intentionally, but it is the mere result of what they do. Norms can also have effects without deliberate actions. It is not necessary for people to live up to the norm precisely, but the norm can still exercise a powerful ideological effect on their acting.

The structural properties of norms may generate different outcomes or effects in different settings and at different moments. Gender norms, for example, may be more effective in structuring behaviour than state law in a certain setting. Norms may be no more than loose guidelines leaving ample space for interpretation. Social actors choose between different norms as circumstances or their own goals and strategies require. But norms may also be compelling and combined with coercive enforcement.

#### *Stacked laws and norms*

This section has shown that normative pluralism is an essential feature of land rights in Honduras. Yet the notion of normative pluralism in itself does not give us a clue about how to look at the different elements of 'pluralism': what are these elements, what effect do they have, how do the elements stemming from different sources and appealing to different forms of legitimacy relate? The aim of this research is to test the notion of 'stacked laws and norms' to see whether it offers a way to answer these questions.

This book develops the notion of stacked laws and norms in two different ways. First, the term allows me to empirically describe and analyse what norms are stacked in the course of time and what results from the stacking of different norms for concrete practices evolving around the organisation of property. For example: Chapter Two shows that historically, on top of Civil Code notions of property, property notions

stemming from agrarian laws have been 'stacked', and on top of that are stacked people's perceptions of Civil Code and agrarian law notions, which they derived from law but that are no longer legally valid. This has led to the divergent interpretations of land rights among landholders and state officials today, and to conflict and confusion about the meaning of particular property concepts and their corresponding rights in the land.

Second, the term 'stacked' indicates more precisely how normative pluralism comes into being. There are different norms shaping property relations regarding land that do not flow together in a kind of fluid pluralism but become 'stacked' over the course of time. The first element of the complex is not replaced by another one, nor does it merge with other elements. The different elements are still identifiable, not only by the researcher but also by the involved social actors and they may still use or refer to the separate elements. The elements are thus not 'fluid' even though they influence each other. The notion of stacking thus specifies a process that is not leading to a disordered heap or pile of norms, but that gives normative pluralism a certain (stacked) structure.

## Research questions

The story of the widow Ana was told in the introduction to this book. She lost her land due to the deceitful actions of her son and a state intervention that offered her son ample space to shrewdly use to strengthen his own claim. Violence and conflict associated with land rights are daily occurrences with far reaching implications for the involved parties, generating and enhancing insecurity and injustice. These are not just the daily, trivial and unimportant problems of people of no consequence. In my view, they touch upon the crux in the analysis and elimination of rank social injustice in the rural areas of Honduras.

The main question of this research is: *What is it about laws and norms that enables them to generate violence and conflicts about property rights among landholders?* The research has dealt with three major themes that come to the fore in the course of this book: practices of rights transfer, norms and laws and conflict resolution.

### *Practices of land transfer*

- What are the major mechanisms of transfer of property rights to land; what rights become transferred and why; how do conflicts come about in these transfers?
- Who is entitled to have and hold property rights, and who isn't?
- How is property connected with land use strategies? What role does land use play in maintaining control over land?
- What is the role of gender and kinship in the emergence and persistence of conflicts over property?

### *Stacked norms and laws*

- How does state law define property and which notions of property have become stacked through history?
- What is the perception of landholders about property rights to land and why and how do their perceptions differ from the state's definition of their rights? What are the sources of their claims to the land?
- What are the individual norms within a context of normative pluralism, and which role do these separate norms play in justifying claims?
- How does the complex of stacked norms and laws affect transfer practices from state to landholder and between landholders as a result of inheritance?
- How do social actors make use of particular elements of the complex of stacked laws and norms?

### *Conflict resolution*

- What role does conflict avoidance play in property relations?
- How are conflicts resolved if they emerge, and what role do the national state, the municipal authorities and the judicial system play in the resolution of conflict?
- What characterises the working of the judicial system and what is the background of class justice as it is perceived by landholders and people in Honduras in general?
- What role do the actors involved in the judicial system play in the persistence of injustice and legal insecurity?

## Campesino life, conflicts and field research

*Campesino* life is not as romantic as I thought it was, or as it is viewed by Hondurans in the city. Any sense of peasant romanticism, of the autonomous hero with straw hat who resists modern life styles in order to protect traditional values, was gone after I had lived a few months in El Zapote.<sup>12</sup> I was not only confronted with the not-so-romantic consequences of poverty, hunger and misery, but I also came across violence and injustice so often and of a kind that it was impossible to maintain that peasants live poorly but nevertheless joyfully and peacefully. It only begged for the question to be asked: 'What on earth is going on here?'

Living as a researcher (or as a 'writer', as villagers called it) in a remote peasant village inevitably meant that my own concepts, ideas and prejudices were turned upside down. Yet this also made me wonder how state officials, rural experts and development planners obtained the knowledge they based their discourses and images of rural life and peasants on. After a brief discussion of existing images of rural villages, this section addresses the questions of how field research can have broader general implications and



how this research deals with studying conflict. Finally, the section looks at data collection during field research.

### *Images of the rural village*

National census data is the main source of information for state officials (those involved in making land laws and in implementing these laws) and scientists at universities. Development organisations base their work on more than census data, generating their own information through their activities in rural areas among specific target groups. Yet they strongly focus on their own work and their target groups, and they do not acknowledge that ordinary village life tends to proceed untouched by their weekly hour-long meetings of women's groups or brief field visits in a polished Toyota. The images created by the state and NGOs about poverty, farm households, gender relations and development are expressed in documents, projects and activities, forming a dominant and influential information source in national discussions about agrarian policy and change.

Generally, romantic images of community and rural life dominate development discourse. The peasant image (*el campesino*) presents a family producing grains for home consumption and some additional cash crops, living in a small white house made of sun dried bricks and a roof of red tiles; pigs and chickens wandering in the home garden where the mistress of the house grows vegetables. The community image (*la comunidad*) implies togetherness of the inhabitants as a whole, as well as the different local organisations that work together to achieve collective goals. The idea behind these romantic representations is that both peasant and community are under severe stress in contemporary times due to external changes and need to be rescued.<sup>13</sup> For the purpose of this study, it was necessary to leave out the many assumptions about how rural people live, think and act. The bits and pieces of the picture that I was constructing about rural life in El Zapote defied the dominant images.

Rural women in particular are subjects of image construction. Presenting women as victims is common among development organisations in Honduras and elsewhere (an example is NEDA 1997). This is an artefact of the cry for attention to rural women as it started manifesting itself in the 1970s (Kandiyoti 1990). However, presenting women as victims is also a necessary condition for working with women in the present day. The notion of women as victims creates space for development organisations to become part of women's liberation through their own activities.<sup>14</sup> Development organisations benefit from portraying the 'target group' as victims as this simplifies target group definitions and project designs, providing the right images to generate resources in donating countries (Wood 1985). The victim image has recently been counteracted by stressing that women are knowledgeable and capable and effectively use their room to manoeuvre within their social environments and networks (Villarreal 1994). However,

translated into development discourse, the knowledgeable and capable women turn out to be fantastic organisers, community protagonists or protectors of the environment; images of women that might be just as untrue as those derived from the view of women as victims (Shiva 1988, Tábora 1993, Rowlands 1997).

#### *'Real' people and generalisations*

My main research question emerged after I had been living in El Zapote for several months. I had originally been studying the labour relations between women and between men and women in the process of *petate* (sleeping mats) weaving, which is a major source of female income in the village. But the production of petates was not only about labour relations: it was also about control over goods, decision-making and property rights. Property, the issue of the distribution of rights and claims to goods, was a dominant influence in daily life and relations between villagers. Land was one of the most valuable commodities in El Zapote, and it was essential for survival. While reading the municipal council logbooks, I discovered that a majority of the issues discussed were about land. I witnessed quarrels and violent behaviour among villagers over land rights, and I observed that women tended to lose their property and had difficulties making claims to land.

The question of land, property and conflict is as relevant and important in the lives of the El Zapote villagers as it is to the rest of the country. A detailed look into a village has the advantage that it portrays the lives of 'real' people with 'real' problems. But presenting data about one village always runs the risk of being faulted for its 'micro' perspective and its inability to serve as a basis for generalisations (Burawoy 1991). Honduran colleagues sometimes chided us, claiming we buried ourselves in a particular village where very bizarre and exceptional things happened. Apart from our conviction that El Zapote is not at all bizarre or exceptional, it is not the purpose of this study to make generalisations on the basis of empirical phenomena. The method of this book is to uncover mechanisms, structural properties and relations that have contributed to the generation of violence, conflict and struggles over rights, duties, inclusion and exclusion. Because of this, this book goes beyond describing empirical phenomena. On a more general level, the case study unravelled in this book generates insight into the process of how laws and norms are stacked, the process of law-making in a developing country and the outcomes and effects of law in social practices.

#### *Events and conflicts*

The general idea about norms is that they have emerged to evade conflict. It will become clear from this book that norms may also lead to conflict (Turk 1978). The study of conflict is central to the 'situational analysis' approach as developed by van Velsen (1967). Central to situational analysis is the view that conflicts arise as a result of

contrasting norms. Norms in society are neither consistent nor coherent, and they allow for manipulation by individuals. Conflicts are not the result of deviant behaviour, but are a normal element of social change and an endemic feature of social life (Comaroff and Roberts 1981). Land conflicts emerge in the process of articulation of norms and processes, and are embedded in relations (Nader and Todd 1978). Land conflicts are not always manifested in visible and violent confrontations, but may also become expressed through subtle mechanisms in daily practices. Conflicts may latently persist for years and then suddenly come to a head and emerge. Landholders and their families may be at odds for years, which has negative consequences for daily interactions in the village. The very subtle references to and consequences of conflict are less visible than collective land occupations, squatting, bloody murders or *machetazos*.

Conflicts are part of a range of events that reveal how property rights become defined and distributed, and also how meaning becomes attached to property. By studying conflict through the extended case method, structural characteristics of social relations come to the fore. The extended case method connects a series of events that illuminate choices and actions of people (van Velsen 1967, Burawoy 1991). In conflictive situations, people negotiate their social universe and enter into a discourse about it (Comaroff and Roberts 1981:248-249, Starr and Collier 1989). A violent land conflict may be connected to other conflicts in the past or present; it may be caused by the application of certain inheritance norms; and it may have acquired a certain direction because of gender images, alcohol abuse or differential perceptions of property or land use. Hence, conflicts about property may be seen as instructive events that also exhibit structural properties of norms, features of property relations, images of property holders, goals and strategies of social actors and perceptions about land and land use.

#### *Methods in field research*

I started researching violence and land conflicts by reading the minutes of the municipal council. The council had kept records of meetings and decisions by writing up chronicles in large black 'logbooks' (the *actas municipales*), dating back to 1917 when the municipality of El Zapote came into being. Deciphering the hand-written texts in these books was worth the effort. The logbooks of the municipal council revealed loads of information about the history of the village and the village lands; the relationship between the municipal council and national and regional state authorities; the relationships between villagers and the local government; the way in which property rights to land were distributed and land use became regulated; the management of commons; the changing authority of council members; and the changing nature of the problems that the council handled. I also read the logbooks of the assistant mayor

(*alcalde de policia*), the authority that had the task of mediating and solving small conflicts between villagers. With the gathered historical information as background, I interviewed authorities and ex-authorities, agricultural producers and landholders on the practices of land distribution and management, emerging and disappearing laws and norms, and the role of village and regional authorities in granting land rights.

The INA and the National Cadastral Directorate provided my husband Kees Jansen and me with cadastral maps of the area that held information about the landholder, size and type of land use. The INA also supplied us with information about ownership and the property rights of landholders. The municipal land titles that were guarded by one of the council members (the *síndico*) also helped in locating plots of land that played a role in the diverse histories of land holding and to unravel the background of specific land conflicts.

With a local research assistant, a survey was completed of all households in the village, including data about household composition and major sources of income and agricultural activities. We later checked this information against municipal data and kept records of changes and mistakes we discovered. This database was linked to the INA's cadastral information that contained information about plots, plot holders and the state definition of their property rights.

I interviewed men and women of all ages on questions of kinship, family, household organisation, gender relations and gender identities. Through studying the tule and petate economy in the village, I first became acquainted with local discourses on these issues. Tule (*Cyperus canus*) is a perennial crop that is cultivated on tiny plots of land near rivers and streams. The tule stalks are dried and used by the women to weave sleeping mats (petate). In conversations about this production process, closely related issues of control of property and income, household organisation and gender came to the fore (Chapter Three).

Inheritance practices, property definitions and land conflicts were subjects that people were eager to talk about because they strongly influenced their daily well-being and were essential to the organisation of farm households. Kees and I also completed a survey of eighty-three agricultural producers. The survey took place in a conversational setting, during which I was able to collect a great deal of data on inheritance practices.

Land titling was an issue of lively conversations in the village, and it was instructive for the differences between state and landholders' concepts of property rights (Jansen and Roquas 1998). Observations of interactions between INA officials and landholders demonstrated the discrepancies with regard to concepts, goals and definitions that neither officials nor landholders were able to understand. The issue of land titling raised questions about the consequences of public (state) interference in property rights that landholders saw as a private issue, and about the reconstruction of local property arrangements in contemporary scientific and policy documents.

The land conflicts in El Zapote can only be understood within the framework of the historical development of law with respect to land and property. I therefore consulted available sources and experts in this field. In order to assess the local specificity of rights transfer practices in El Zapote, I went to the General Archive of the Judicial Power in Tegucigalpa and read dozens of testaments from the twentieth century and other documents that concerned property transfers. Many aspects of transfer practices in El Zapote were comparable to what had been written down in documents from the same period. The notarial property documents also shed light on the completion of legal procedures with regard to inheritance and other practices of land rights transfer.

I collected three types of data at the regional level of Santa Bárbara. First, after reading the legal documents in the General Archive of the Judicial Power, I decided to do the same at the district level. The amount of available documents about property rights transfer was limited at the district level, but their content matched the documents of the general Archive of the Judicial Power. Second, I interviewed lawyers and court personnel on the working of the regional court of justice and allied institutions to evaluate the roles they played and to see whether they supported or refuted the extremely pessimistic view landholders in El Zapote hold about the judicial system. A third source of information that I consulted was the civil and criminal case files of land conflicts. This consultation aimed to identify how the court handled land and land-related conflicts to learn how property rights were defined and to analyse how judges evaluated different types of evidence in land rights disputes.

The Third Chamber of the Santa Bárbara Court, the court that exercises jurisdiction in El Zapote, offered the opportunity to collect these three different sets of data. The Third Chamber did not have a judge during most of the time I spent at the court. In a period of six months time, three judges in a row were suspended because of 'irregularities' they had committed. The judge who was appointed at the end of my stay spent most of her time taking courses in San Pedro de Sula. She refused to co-operate with my research project, but she was overruled by other court officials who gave me access to the archives of the court. I was only able to evaluate the work of the recent judges of the Third Chamber through case files and interviews with lawyers and other personnel of the court. I spent many hours in the archive room of the Third Chamber reading case files, talking to the personnel of the court and discussing case files and other issues with the lawyers who came to visit me to see what I was doing. I also interviewed lawyers in their offices, as well as the representative of the National Human Rights Commissioner based in Santa Bárbara. The case files concerned both land conflicts between individual landholders and the claims of campesino groups struggling for land rights with the Agrarian Reform Law in their hands.

## Notes

- 1 Population growth is stable at 3.3% at the national level (BCH 2000).
- 2 Property rights issues are also discussed with regard to non-material things, such as licenses, milk quota, fish quota, and intellectual property rights (Reich 1964, Wiber and Kearney 1996, Hann 1998).
- 3 The term 'practices' refers to the whole of thinking, speaking and acting by humans within the context of conditions for existence, relationships and ideas and principles (Ramdas 1988).
- 4 Gender studies in particular often departs from a notion of power as transformative capacity because it is suitable for analysing power relations that appear to be 'natural', such as gender (Bourdieu 1989, Risseuw 1988, Yanagisako and Delaney 1995, Kandiyoti 1998).
- 5 Engels (1980) argued that the oppression of women ensued from the emergence of private property in the process of capitalist development. Women became instruments for the production of children in the interest of the transfer of private property (Stolcke 1984). Engels reduced women's subordination to a sole effect of the working of capitalism. Furthermore he assumed that the function of women's subordination was also an explanation of its existence (Barrett 1988).
- 6 It seems that through the increasing urbanisation and industrialisation (assembly plants), the agricultural sector's significance to the national economy is rapidly diminishing.
- 7 Legal culture is 'the whole range of ideas which exists in particular societies - and varies from one society to another - about law and its place in the social order' (Cotterrell 1992:23).
- 8 A legal system consists of primary rules - that prescribe or prohibit behaviour -, and secondary rules that necessarily require the presence of legislative and adjudicative institutions (Roberts 1979, Griffiths 1986). In other parts of the world, legal systems other than the law of the state exist, such as Islamic law.
- 9 A criticism of legal positivism is that it presumes state law to be coherent and secure in its definitions and prescriptions. Another argument against legal positivism is that it incorporates the ideological project of seeking the supremacy of state law and the elimination of all other norms in society (Benda-Beckmann 1997). The legal positivist project might harm, for example, the autonomy of groups of people to use their own indigenous legal systems (Assies et al. 2000).
- 10 It has been argued that distinguishing between state law and other norms inherently creates a hierarchy between them. Moreover, such a distinction would promote an ideological project of enforcing state law at the expense of other norms and legal systems (Benda-Beckmann 1997). However, we gain in analytical power if we distinguish state law from other norms. I am looking for analytical tools to precisely differentiate norms instead of lumping them all together. State law is *distinctive* because of its specific relation with the state, while other norms may have very different driving principles and forces. This does not at all mean that I place state law at the top of a hierarchy of norms, let alone that it implies an inherent political project to promote state law at the expense of other norms.
- 11 Social order is constituted through more than just normative dimensions (Tamanaha 2000). Language contributes to social order without being normative or legal. Relations in farm households have normative dimensions - family law, gender norms, inheritance rules -, but non-normative dimensions such as greed, love, dislike and fortuities also contribute to the constitution of these relations.
- 12 Fieldwork in the framework of this book took place between September 1992 and February 1995 in El Zapote. I did fieldwork at district level in Santa Bárbara during April-June 1996 and January-July 1997, mainly on legal issues and the working of courts. In 1999 and 2000, while living in another region of Honduras, I was able to make several brief visits to the research area.
- 13 This may sound as if I am exaggerating the simplifications of aid workers and urban professionals. Nevertheless, I feel that my reworking of these images is sincere. For example, a similar view on the

peasant was aired in a conversation with a representative of a Dutch Co-Financing Agency. It was only one out of many occasions in which I heard such ideas about rural life. On other occasions, fellow researchers lamented the substitution of the romantic tiled roofs for sheets of corrugated iron, without considering the advantages of latter for the poor. The community image was strong among Peace Corps volunteers who tried in vain to implement a water and latrine project in El Zapote without understanding why 'the community' did not support their efforts.

- 14 A striking feature is that there is not much continuity in development work but that new fashions in the international development discourse determine the agenda. A notable example is the shift in attention from 'women's productivity' (seventies and eighties) towards domestic violence nowadays.

## Chapter two

# Rights in the land of El Zapote

Phenomena such as a maize plot destroyed in the mountains or the Babel-like confusion in a conversation between landholders and a government official are but two of the numerous manifestations of land conflict hidden in daily village life. This chapter seeks to analyse what norms or rules people refer to in social practices for assigning and claiming property rights to land. A main focal point is the complicated assembling of different normative spheres with regard to these property rights. Contrasting interpretations about property between landholders and the state are a main source of conflict in itself, but they may also trigger conflicts between landholders.

This chapter presents a picture of how land conflict is manifested in El Zapote. I then turn to explaining the normative spheres through which social actors justify their claims and behaviour; normative spheres that are characterised by stacked Civil Code and agrarian law notions of property. Thereafter, I examine the process of stacking laws and norms for the vested property rights in different zones of El Zapote, thereby giving attention to the divergent perspectives on property of landholders and the state. On the basis of two cases of state intervention, I look at how 'stacking' of norms at the village level leads to these differential perspectives on property rights. I question whether the terms 'informal' or 'customary', as used by policymakers in Honduras, are adequate to specify the nature of landholders' perceptions of their rights to the land.

### Manifestations of conflict

Before I start to unravel the complex frame of normative spheres playing a role in the emergence of conflict surrounding land and property, this section briefly discusses manifestations of conflict in El Zapote and the type of events that generate these conflicts. My intention is to give an impression about the dimensions and nature of these conflicts.



Talking about land conflicts means that issues of distribution are involved; looking at land in terms of quantity, it is clear that land is unevenly distributed among agricultural producers. Tables 2.1 and 2.2 give an impression of the land distribution in El Zapote. The census of 1993 does not provide details exclusively for El Zapote, but the situation that year may be comparable to the data for the district of Santa Bárbara.

*Table 2.1 Distribution of land in El Zapote in 1974*

Farm size	Number of farms	Percentage	Acreage (ha)	Percentage
<1 ha.	100	26	65	2
1-5	178	46	416	16
5-20	80	21	784	30
20-500	27	7	1,369	52
Total	385	100	2,634	100

Source: Censo Nacional Agropecuario 1974 (DGECH 1978).

*Table 2.2 Distribution of land in the Santa Bárbara district in 1993*

Farm size	Number of farms	Percentage	Acreage (ha)	Percentage
<1 ha.	92,713	32	5,322	2
1-5	12,353	43	27,684	12
5-20	4,736	17	46,455	19
20-500	2,420	8	165,638	67
Total	28,782	100	245,099	100

Source: Censo Nacional Agropecuario 1993 (SECPLAN 1994).

Data about land distribution at the district level show that 8% of the farms occupy 67% of the total production area in 1993. At the other end of the spectrum, 75% of the farms are smaller than five hectares, occupying 14% of the production area. These statistics correspond to the typically uneven distribution of land between a few large landholders and a majority of small landholders. The existence of uneven land distribution, however, is not proof that conflicts are caused by it. Manifestations of conflict are, in fact, not in line with the picture of clashes between large and small landowners.

#### *Manifestations of conflicts about property*

Fighting among drunken men regularly occurs at weekends in El Zapote. Villagers sigh that the participants in these fights are irresponsible and that drinking alcohol is a bad habit. What looks like a fight between two drunkards, however, is often not caused by the alcohol itself, but it is often an existing conflict fought out under the influence of

alcohol. A fight between drunkards thus does not directly reveal the *cause* of the quarrel.

Figure 2.1 portrays the ways in which conflicts about land are manifested in El Zapote and of the events through which conflicts emerge. These manifestations and events play a major role in the course of this book.

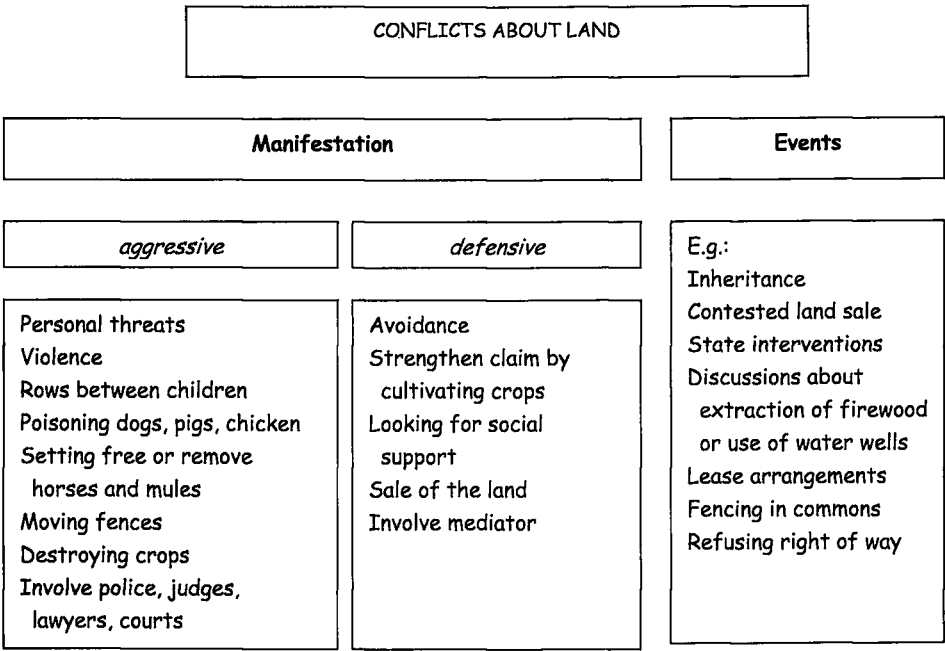


Figure 2.1 Manifestations of, and events generating conflict in El Zapote

Conflicts about land may start with a small disagreement between two parties and may gradually develop or they may silently persist for years and then suddenly boil over. At first sight it is not always clear that a conflict about property is involved when people start to openly threaten each other or get mixed up in violent confrontations. It is also not clear that quarrels between children of different families have something to do with land rights. The mysterious poisoning of domestic animals (dogs, pigs, chickens) also leaves room for guessing who did it and why. Several times I observed people complaining that someone deliberately opened the fence of their pasture field in order

to set their horses and mules free. Harassment is often an early sign of problems between two persons or two farm households about land rights.

Moved or destroyed fences, demolished plantations, or secretly harvested crops are more direct indications of conflicts about land rights. Fences are visible expressions of a claim on land: the fence excludes others from entering the field. Fencing is subject to obligatory municipal prescriptions.<sup>1</sup> If done with barbed wire, the landholder must surrender the barbed wire's deed of purchase to the municipality to prove that it has not been stolen or taken from another plot. Besides damaging and moving fences, ruining plantations or harvesting someone else's crops are also effective means to contest another person's claim.

Serious threats, bloody fights or murders make the involvement of 'authorities' inevitable: the police, the local justice of the peace, lawyers or the district court. A general opinion in El Zapote is that becoming involved in a court case is not advisable. Just the very idea of it is often enough for parties to drop claims and withdraw themselves from the conflict (Chapters Four and Six).

The receiver of threats, violence and other misery first tries an escape route to avoid the conflict. The landholder will try to strengthen the claim and hold control over the land by fencing it in or by planting crops (Chapters Four and Five). He may use all means available to influence public opinion in the village in his favour. Conflict avoidance strategies are very important in property relations. Nevertheless, when a conflict is provoked, sale of the land is a final option before it is too late. A sale may involve loss of capital and years of labour, but these disadvantages are often preferred over involvement in a conflict or a dispute in court. Occasionally the receiver of threats is able to find a 'mediator' who intercedes to try to solve the problem. The mediator may be a villager who knows the aggressive as well as the defensive party. Political leaders may also act as mediators in conflicts between party members. The involvement of these local mediators also has a 'price', not so much in terms of money, but in terms of involvement in social networks and political relations.

## Civil code and agrarian notions of property

Social actors *justify* their choices, arguments, strategies of exclusion and reinforcement of claims by making, changing and using norms. Therefore, this book focuses on understanding these norms, not only to unravel their complexity but also to understand what norms express and how people use them. State law makes a significant contribution to the complexity of normative spheres regarding rights to land. The regulation of land rights has always been a central point of attention for the Honduran state, as land is a major means of production and important to the development of the national economy. Article 3 of the Constitution explicitly protects private property

(Honduras 1994). State regulations in regard to land rights, nevertheless, have never been transparent. This section investigates whether the confusing legal concepts of land property rights have triggered the emergence of competing claims and differential property notions between the state and landholders.

This section first discusses the civil code arrangements of ownership and possession that describe the rights and obligations of property holders in general terms.<sup>2</sup> Agrarian laws, especially those dealing with land rights, have added new dynamics to the existing notions of property. The agrarian law concept of the *ejido* - land that the national state assigned to municipalities or hamlets - has played an important role in the formation of land rights in El Zapote. The legal construction of the *ejido* did not involve a radical split with Civil Code notions of property. Next, I go on to discuss agrarian law stipulations that did involve changes of the Civil Code concept of property: the social function of property, collective property, reduced ownership and the abolishment of the land-to-tiller principle. Finally, I analyse how Civil Code and agrarian law notions of property clash with each other.

#### *Civil Code notions of property*

The Civil Code (Honduras 1989) came into existence as part of a process of nation building that started several decades after independence in 1821 and in which the administration of Marco Aurelio Soto (1876-1883) played a central role (Meyer and Meyer 1994; d'Ans 1998). Around 1880, the Soto government finished modernising the constitution and proceeded thereafter to develop the 'Patriotic Codes', among which was the Civil Code.<sup>3</sup> The discrepancy between the new, more liberal constitution and the Patriotic Codes, which still strongly expressed a Spanish authoritarian view on law, led to new reformations of the codes under liberal French and United States influences. After a major revision in 1889, the four books of the Civil Code received its contemporary form in 1906 (Quesada 1967).

The Civil Code is a mixture of the Spanish Civil Code of 1889 and the Chilean Civil Code of 1855 (Stokes 1973). The Chilean Code was based on a combination of Roman, French, Spanish and German law (Cárcamo Tercero 1969). The Civil Code expresses principles of equality and freedom in, for example, liberal inheritance rules and testamentary freedom (Cárcamo Tercero 1969).

Although created in 1906, the general opinion nowadays is that the Civil Code still functions adequately. Other codes and laws launched after 1906 have replaced certain articles or entire books of the Civil Code (family code, contract law, agrarian laws). Some of these changes have also affected the legal validity of civil code concepts of property.

The Civil Code defines *propiedad* or *dominio* (ownership) as 'the right to exclusively possess a thing and enjoy and dispose of it without limitations except those established

in law or defined by the will of the owner' (art. 613). Ownership bestows the owner with full power over a thing and produces the ability to exclusively appropriate all utilities that the thing can provide for. The faculties of ownership are the rights of use, enjoyment (appropriation of products), consumption (for example, destruction), possession and disposal (for example sell or transfer it). Ownership is exclusive in the sense that only one owner can claim the rights and may exclude others. It is also enduring in that the owner cannot lose these rights as time passes. As article 613 states, the law does impose some restrictions on ownership that affect the absolute and exclusive character of property in the Civil Code in a few exceptional cases. For example, expropriation is possible for reasons of public interest. Special orders may impede the power to fell trees, or zoning schemes may forbid the construction of houses (Cruz Lopez 1993).

The Civil Code sets out in what ways one is able to acquire ownership. Several of these notions play a role in agrarian law and in people's thinking about land:

- *Accesión* (accession): Article 634 describes accession as the right to own things that become either naturally or artificially a part of something already owned (Solís and Gasteazoro 1992).
- *Ocupación* (occupation): Occupation refers to taking possession of a thing which no one owns (art. 660). A restriction is that it is not possible to occupy things which are prohibited to have by Honduran or international law (art. 660).
- *Tradición* (transfer): Article 697 defines this way of obtaining ownership as the material delivery of property in order to transfer title or ownership between living persons (Solís and Gasteazoro 1992). People must have the capability and the intention to transfer ownership. Sale is an example of a tradición. Inheritance is not a tradición as it does not only involve living persons (Cruz Lopez 1993).
- *Sucesión* (succession): Articles 930-957 and further, define the acquisition of rights in property upon the death of a person, whether or not there has been a will (Solís and Gasteazoro 1992).
- *Prescripción adquisitiva* (adverse acquisition): In article 2263, the acquisition of ownership because of possession of a thing during a certain period under legal conditions, becomes possible (Cruz Lopez 1993:74).

This section discusses two issues related to the Civil Code definitions of property that play an important role in the emergence of different normative spheres regarding land rights: first, the difference between ownership and possession and second, how the Civil Code's idea of adverse acquisition is applied to land.

The difference between ownership and possession in the Civil Code is very important for understanding the perceptions about landholder's land rights and the state. In ordinary language in Honduras, possession and ownership are used indiscriminately; in law, however, they are two different things.

The Civil Code establishes that possession is not a right but 'a fact which is protected by law' (Cruz Lopez 1993). 'Possession is the tenancy of a thing or the enjoyment of a right with the spirit of being owner, by ourselves or in our names. The possessor is known as the owner, as long as no one else is able to justify that he is (the owner)' (art. 717). The conditions for recognising possession are that possession must be based on good faith and just title (art. 719). Good faith refers to the knowledge that the thing is obtained by legitimate means (arts. 723-724). Bad faith refers to the conscious and wilful doing of a wrong for a dishonest or fraudulent purpose (Solís and Gasteazoro 1992). Thus a possessor does not own the thing, but he does own its products as long as he has good faith.

A title refers to the means whereby the holder has the just possession of a thing (Solís and Gasteazoro 1992). If a person sells something which is owned by others, the sale in itself is just title. However, it gives the buyer access to possession and doesn't transfer ownership, because the person who sold did not have ownership in the first place.

A person who does not possess the thing he owns can recover ownership through an appeal to recovery or vindication.<sup>4</sup> The owner may use vindication or 'action of ownership' when he owns a thing but does not possess it. Through the appeal to vindication, the possessor will be condemned to give it back (art. 868). Hence, the owner is able to recover his property that has been wrongfully held by a person who has no right to it (Solís and Gasteazoro 1992). A civil vindication procedure is the common way to determine who has what right in the disputed land and to claim ownership (Chapter Six).

Ownership and possession embody more or less the same advantages: they are both bestowed on a particular thing, and a thing has only one owner or possessor. In this light, it is not strange that landholders do not see a difference between ownership and possession: they perceive their rights as ownership. The state, on the other hand, recognises private ownership only when the land is registered in the Public Register of Property (arts. 2304 and further).<sup>5</sup> Without registration, a landholder has possession in the eyes of the state. The state thus seems to recognise only two types of property arrangements in land: public (state) and private property (Stanfield et al. 1986). The consequences of the different perceptions of landholders and state with regard to ownership and possession come especially to the fore when the state intervenes in existing land rights arrangements (this chapter).

### *Possession and adverse acquisition*

Possession can be converted into ownership under certain conditions. If a possessor has good faith and just title, and he possesses the thing for a period of three years for moveable property or ten years for immovable property, he is able to claim ownership (arts. 2284 and 2286). Without just title, this is six years for moveable property and twenty years for immovable property (arts. 2284 and 2287).

It has been argued that the Civil Code notion of adverse acquisition does not have a bearing on national land; a landholder cannot claim ownership on the basis of occupation or possession of national land (Cruz Lopez 1993). Occupation is only possible with regard to things that no one owns and, in the eyes of the state, land is owned by either the state or a private owner (art. 618). Furthermore, referring to article 13 of the constitution, Cruz Lopez argues that possession cannot lead to ownership of the land. Article 13 reads that 'ownership of the state is inalienable and imprescriptible'; hence, national land cannot be turned into privately owned land by adverse acquisition.

The presented legal argumentation about why the concept of adverse acquisition cannot be used for national land is overruled by agrarian laws that have instituted special arrangements for adverse acquisition regarding national land, arrangements that can be found in the legal concept of the ejido.

The state does recognise claims of occupation and possession of national land. For example, decree no. 8 of 1973 contains a radical attempt to convert national and ejido lands into productive units. Article 4 allows the occupation of these lands by landless peasants. Occupation and possession of land thus became institutionalised and recognised by the state (Stanfield et al. 1986). State agencies also accepted claims of possession and occupation of national land during the implementation of a land titling project in the 1980s (this chapter). Although the state might deny that landholders on national land are *owners* - because ownership is exclusively related to registration - state law does recognise that landholders have property rights other than ownership. According to agrarian law, these property rights can be converted into ownership through adverse acquisition such as construction.

### *The ejido and notions of property*

The Central American *pater patriae* Morazán initiated the everlasting agrarian reform politics of the Honduran government in 1830 when he started to confiscate large haciendas of the church and the national elite in order to redistribute the land among the population (Molina Chocano 1985, Bueso 1987). A main goal of agrarian legislation was to populate large areas of the country by converting public property into private holdings (Stanfield et al. 1986). The administration of Marco Aurelio Soto intended to stimulate the production of valuable export crops and considered communal land as an impediment to development. The Soto administration propagated an agrarian policy

through which communal land would gradually become replaced by individual family plots. In order to achieve different goals, the state opted for different ways to make use of the land. The state sold land to individuals, but it also assigned it as ejidos to villages and hamlets (Bueso 1987).

Ejidos have been very important in the history of land rights in the rural areas. Villages and hamlets could submit an application to the national government to obtain certain areas as ejidos. The ejido was not an invention of the Soto administration but it existed long before. The Land Regulation Law of 1835 considered the issuance of ejidos as a way for the treasury to obtain funds by selling and taxing land (Vallejo 1911:158). In 1846, land law defined the ejidos as ‘those grounds that were given for free to the villages, [in contrast to] the grounds that the villages bought, because they are the absolute owners of these grounds’ (art. 2; Vallejo 1911:183).

For the state, the ejidos provided a way to encourage agricultural (export) production. People who were too poor to buy land from the state obtained access to land through the ejidos. Access was therefore linked to prescriptions for use.

In time, the different agrarian laws changed the notion of the ejido. Major changes took place in municipality and landholder property rights and in the extent of control that a municipality could wield over the distribution of ejido land (Table 2.3).

*Table 2.3 Property rights and control over distribution with regard to ejidos in different agrarian laws*

Law	Property rights	Control over distribution
1888 Land Regulations	Holder has possession after completed land survey. Holder with certificate has usufruct (certificate is issued for free) (art. 10)	Control is in hands of the municipal council or the assistant mayor in hamlet (art. 9)
1889 Agrarian Law	Holder has the right to buy the concession (art. 10). Villages are allowed to permanently divide ejido grounds into private plots; every holder is considered dueño (owner) (art. 11)	Municipal council draws up regulations regarding the distribution of ejido lands. These regulations have to be revised by the district council (art. 8).
1924 Agrarian Law	Ejidos are assigned to the municipality and leased to private persons. State keeps direct ownership (art. 8). Concession holder has right to buy the land, but as long as it is not more than ten hectares (art. 32)	Control over distribution is nationally settled in General Reglementations of the ejidos (art. 29).
1936 Agrarian Law	Concessions may not be larger than 25 hectares (art. 23).	Control over distribution is in hands of the municipalities (art. 23)

The changes in the ejido regarding property rights and control over distribution reflect the state’s effort to deal with the concepts of ownership, possession and usufruct (arts. 745-789 of the Civil Code). It is only through the Civil Code that the concepts obtain meaning; they are not redefined or reconstructed in agrarian laws. The exact content of the notion ejido is not clear through all these changes, nor is it clear what property rights municipalities and concession holders obtained in the ejido land. What is clear, however, is that:

- The state continued to be the owner of the land; hence the state was explicit in that ownership of the ejido remained with the national government. This has also been



made explicit in more recent agrarian laws. The Agrarian Reform Law of 1975 determines in article 6 that ejido land is subjected to agrarian reform, which means that control of the land returned to the national government (Honduras 1975, INA 1978). The 1992 Law of Agricultural Modernisation (art. 50) stipulates that the INA reclaims all national and ejido land that persons may illegally possess (Honduras 1992).

- The state looked for opportunities to privatise the ejidos. It made permanent division of the ejido possible, and ejido landholders were allowed to buy the land which they held in concession. The law thereby made use of the legal construction of adverse acquisition. Article 15 of the Agrarian Reform Law established that every person who held 5 to 200 hectares of ejido land for ten years or more had the right to request that the state assign him the plot. The current Law of Modernisation (1992) specifies that if a person peacefully uses ejido land for a period of three years, then the possessor is allowed to *buy* the land from the state (art. 50).
- The state adopted changes at high speed so that it was unlikely that the changes and their implications were clearly communicated to municipalities and ejido landholders. Later I discuss the way in which ejido rights were perceived by the national state, the municipality and landholders in El Zapote.

#### *Agrarian law influences on property concepts*

We have seen that the ejido did not mean a radical split with Civil Code concepts. There were, however, other influences on property stemming from agrarian laws that did represent such a split. This section discusses the idea of the social function of property; the idea of collective property; reduced ownership; and the abolishment of the land-to-tiller principle.

The Constitution of 1957 first instituted the social function of property in article 157 (article 103 of the present constitution, Honduras 1994). The social function of property affects the absolute character of ownership. Article 1 of the first Agrarian Reform Law of 1962 (Honduras 1962) states that:

*... the object [is] the transformation of the social agrarian structure of the country, and the incorporation of the Honduran people in general, and the rural population in particular, into the economic, social and political development of the Nation, through the replacement of the systems of latifundista and minifundista by a just system of property, tenancy and exploitation of the land, based on equal distribution, the adequate organisation of credit and the integral assistance for rural producers, aiming that the land is for the man who works on it, basis of his economic stability, fundament of his progressive social wellbeing and guarantee of his liberty and dignity.<sup>6</sup>*

The social function of land that was central to the agrarian reform process was thus related to the importance of land for the development of the nation and agricultural production. The agrarian reform process promoted the equal distribution of land, and this land should be for the tiller and no one else. Article 42 of the second Agrarian Reform law (Honduras 1975) defined the land-to-the-tiller principle as 'direct exploitation': 'that the owner works on the land in person or with the help of his family. In case the owner is disabled or temporarily absent it is sufficient that he personally directs the work, and that he is responsible for the financial aspects.' The social function of land made it possible for the state to expropriate a landowner when he did not meet the requirements. Ownership, hence, did no longer entail rights but obligations as well, for example: to work on the land, to pay taxes, and to protect the environment (art. 24, Honduras 1975).

A second influence of agrarian law on the Civil Code notions of property came with the second Agrarian Reform Law of 1975. This law explicitly changed the focus towards collective property rights and away from individual private property, which had previously been central to the state's efforts to work towards economic development. Article 3 encouraged landless producers to organise into co-operatives and associations to be better able to adopt convenient technologies, to increase production and productivity and to substantially augment agricultural wages. Co-operatives were granted collective property rights and were expected to work as a group on the undivided co-operative land. The agrarian reform process continued until the beginning of the 1990s, although the main active years were from 1973 until 1977 (Kückelhaus 1986; Posas 1996). The impact of agrarian reform has not been impressive in terms of quantities of beneficiaries or distributed land. In ideological terms, however, the impact has been substantial. The idea that collective property and collective labour produces solidarity, better production rates and more equality has dominated the land question debate for a long time.

Thirdly, agrarian laws made it possible that the state transferred national land to individual holders but without transferring full ownership. Different agrarian laws have instituted the 'family agricultural unit' title, which did not transfer full ownership to the holder. The Agrarian Law of 1924 already made the issuance of family unit titles possible (arts. 14-24) and the 1975 Agrarian Reform Law also left room for individual titling in family agricultural units (arts. 97-103, Honduras 1924). Decree no. 89 of 1982 (Honduras 1982) instituted the land titling programme PTT (Proyecto Titulación de Tierras) in which plots smaller than seventeen hectares were titled as family agricultural units.<sup>7</sup> The family agricultural unit title entailed that the holder was prohibited to transfer or subdivide the land without the consent of the INA. The family unit titles were meant to prevent small property holders from being forced to sell their land, and to prevent land from becoming concentrated in the hands of a few. Moreover,

incomplete ownership titles were intended to prevent the subdivision and fragmentation of land. The title did not grant the holder freedom to divide the land between heirs.

While land had been intrinsically connected to the working tiller in previous agrarian laws, this principle was again set aside in the 1990s with the Law of Modernisation and Development of the Agricultural Sector (Decree no. 31, Honduras 1992).<sup>8</sup> The Law of Modernisation radically modified the social function of land as found in the Agrarian Reform Laws of 1962 and 1975. A major change was the abolition of the 'land to the tiller' principle: it allowed for the separation of ownership and working on the land in article 64, stipulating that land must be 'adequately exploited'. Another major change of the social function was that the Law of Modernisation became especially interested in the abolishment of the *minifundio*, defined as plots of land smaller than one hectare. Article 34 established that minifundios should be expropriated and regrouped. Ex-owners who are able to use the land in the best way and who have the best capacities to work the land should be preferred as the recipients of the regrouped land, as well as ex-owners with a major number of dependants.

The four issues discussed thus touch upon the essence of the Civil Code property notions, by introducing the social function of land, by turning to collective property rights in land instead of individual, by allowing the state to sell land without transferring full ownership, and by separating ownership and work.

*Confusion about the applicability of agrarian law: a case*

Agrarian laws are not a substitute for the Civil Code (Casad and Sotela Montagné 1975; Cruz Lopez 1992:20). Nevertheless, the judge in the following 1982 civil demand in the First Court of Santa Bárbara thought that it did. The kind of confusion that played a role in this case is seen later in this book, especially in the role the INA intends to play in determining land ownership and solving conflict (Chapters Four and Six).

Representing his two clients, a lawyer presented a demand of 'demarcation and fencing' to the Santa Bárbara court. The demand entailed the determination of boundaries between the plots of his clients and the demanded party. The judge immediately declared the demand to be invalid. He referred to article 27 of the Law of Agrarian Reform, which prohibits two or more people to commonly own land in case common ownership is caused by inheritance. Heirs are obliged to partition the land; if they refuse to do this, the land will be subject to expropriation. The judge considered that the plaintiffs commonly owned the land, which he considered to be illegal.

The lawyer appealed the sentence to the court of appeals. He argued that land can only be expropriated when it is not used for agricultural purposes (art. 28, Agrarian Reform Law). The lawyer further argued in his appeal that

*Even in [a case that fulfils the conditions for] immediate expropriation, no legal official can refuse to deal with a demand related to ownership and other rights in immovable properties, because in this case the courts and tribunals of the Republic would have nothing to do, because the great majority of the rural plots are subject to expropriation for one reason or another. If the courts and tribunals of the Republic declare inadmissible all demands concerning ownership or actions of ownership because of the fact that the owner of the immovable property does not exploit it according to the requirements of the law, then, nobody could defend what is his, and this would sow more insecurity than is already present in the rural areas. On the other hand, the Agrarian Reform Law is situated in another sphere, the administrative rather than the judicial, [and cannot be used by the judge] to refuse to investigate a case like the one we concern ourselves with, or to declare it inadmissible.*

The decision of the judge suggested that when landholders did not have legal ownership, they would no longer be allowed to put forward their claims and conflicts in the court. The lawyer asserted that if the law should be carried out to the letter, the result would be that not a single land claim is legal, because few landholders actually comply with the legal demands of ownership. The lawyer thus considered that practices differ from law, and that if judges would exclusively look at the legal regulations, nobody would be able to successfully defend a claim on land. This would only lead to more insecurity, while the court should have the aim to enhance security.

The lawyer also referred to the conflicting status of the Agrarian Reform Law and the Civil Code. In his view, the Agrarian Reform Law was merely an administrative law that was not meant to replace legal claims emanating from the Civil Code. The Agrarian Reform Law prescribed the procedures to be completed in the INA offices with respect to the land that the INA intended to give out in the framework of agrarian reform, but it should not be used to settle conflicts and determine claims on land, which was not distributed under agrarian reform conditions.

The court of appeals decided to revoke the verdict of the previous judge, using the following arguments:

- The demand of demarcation and fencing is an institution created by the state as a right inherent to property and which is made effective by the prescriptions in the Civil Procedural Code.
- The judge based his arguments on legal grounds that cannot prevail over civil norms because it refers to a judicial order of administrative character (hence, the Court of Appeals copied the argument of the lawyer).
- It appeared from a study and analysis of the file that the verdict of the judge was predetermined and that this had been to the detriment of the appealing parties.

The Court of Appeals ordered the judge to investigate the case according to legal procedures and to formulate his conclusions in a definite verdict. The judge of the First Court thereafter declared himself incompetent in the case and forwarded the file to the Third Court where it ended up in the archives.

In this case, the judge tried to apply agrarian law in a way that it was not meant to be used. The case concerned land that had nothing to do with the agrarian reform. The lawyer cited above was clearly against the view that the Agrarian Reform Law ceased all possibilities to claim rights on the basis of the Civil Code and would also affect land that had not been subjected to redistribution programs within the agrarian reform framework.

#### *Stacking agrarian and civil code notions of property*

What becomes stacked in land rights legal regulations? This section has shown that Civil Code notions of property are used within agrarian law stipulations about land and land rights: possession, usufruct and occupation. On top of that, agrarian law has started attributing a social function to land, which entails a radical infringement on ownership.

The main Civil Code notion of property is still essential to landed property rights: Registration in the Public Register of Property is the one and only proof of private ownership; the state considers all land that has not been registered as 'national' to be thus owned by the state. However, agrarian law stipulations have driven a wedge between the strict dichotomy of 'public' and 'private' property. Agrarian laws trigger the idea of a 'bundle' of property rights in which forms of incomplete ownership are possible and in which different elements are distinguishable. The elements of the bundle all obtain meaning through the Civil Code, as agrarian laws have not fundamentally altered their significance. The Civil Code notion of adverse acquisition has been copied in agrarian law by being made applicable to the possession of ejido and national land. Different agrarian laws have continuously changed the conditions for adverse acquisition. The possibility of adverse acquisition means that possession and occupation of national land generate claims; claims on the basis of which ownership can be assigned.

The Civil Code concept of ownership only knows a limited number of restrictions. It attributes exclusive faculties to owners but offers the possibility to expropriate the owner for reasons of public interest or national security. Limits to the faculties of ownership are nevertheless exceptional. Agrarian law has brought the social function of land to the fore, and herewith it has changed the notion of ownership. The social function prevails against the exclusive faculties of ownership (Menendez Hernández 1971). Land has public goals, for example, to enhance production, to sell national land

in order to fill the treasury and to create possibilities for levying taxes. These public goals necessarily lead to a restriction of the faculties of ownership. Owners of land have thus rights and obligations.

The implication of the social function attributed to land has also been that the state is able to transfer incomplete forms of land ownership to landholders. The social function entails, for example, that land should not become concentrated in the hands of few, and that it should not end up completely fragmented. Through incomplete forms of ownership such as the agricultural family unit title, the state has been able to impose conditions on sale or inheritance.

Alongside this process of stacking property notions in law, property notions have become stacked in the minds of landholders and in practices of land transfer. The full impact of stacking for landholders becomes more vivid in the next section. Important at this point is that Civil Code notions are central for landholders and that a message about a social function of land does not get across. Landholders feel themselves owners of the land because they comply with what they consider the legal requirements for ownership:

- They invest labour and make improvements. Article 602 of the Civil Code considers land and improvements to be inseparable: real property is the land and what is attached to the land (Stanfield et al. 1986: 25). The value of land in El Zapote is directly linked to improvements. The value of coffee fields, for example, is higher than the value of land suitable for maize cultivation.<sup>9</sup> Landholders are the creators of the improvements and hence, of the land as well.
- They possess the land in a quiet way without interruption. This is a legal basis for claiming ownership (art. 720).
- They have a deed of purchase, or even a bundle of papers that award legitimacy to their land claim.
- They fence in their land according to the locally enforced requirements for making a claim.

## History and status of village lands

El Zapote acquired various village lands over the course of time. This section first establishes how El Zapote acquired these different grounds and how residents applied for concessions, use or other property rights in these zones. It then discusses what property rights were transferred to landholders, which norms and legal constructions became stacked during processes of transfer, and how landholders and the state perceive their rights in the village lands. The differences in perception between landholders and the state are further analysed in two cases of state intervention.

El Zapote had been an hamlet of a nearby village but became an independent municipality in 1917. The inhabitants of this nearby village called the people in El Zapote '*chulucos*', to refer to the type of trousers that were worn by the indigenous people. Nowadays, the outside world perceives El Zapote as a poor and backward village removed from modern comforts and far from modern agriculture or development. The village lands are merely rocky and hilly and are not suitable for large scale and mechanised production methods.

Land scarcity plays an important role in the emergence of conflict. Scarcity is not a measurable quantity but is merely a perception. In the first half of the twentieth century, the municipal council motivated ejido applications to the national state by referring to the scarcity of land for agricultural producers. Considering that the municipality had much fewer inhabitants in those days than now, scarcity must have had another meaning in that period of time than it currently has. Elderly residents still remember how they cleared the forests with an axe in the past. In the past, free land was available for every person 'who wanted to work', but the available land has nevertheless rapidly diminished.

Central to contemporary perceptions of scarcity is population growth. El Zapote had 1228 inhabitants in 1926. This grew to 5653 in 1988. Farm size was reduced in these years from 13.6 ha in 1952 to 4.0 ha in 1992 (Jansen 1998). Villagers broadly share the opinion that too many people live in the village and that it will be impossible for all youngsters to build a future in agriculture.

Changes in the production system also contribute to the perceived land scarcity. Permanent pastures were introduced to replace a combined system of maize cultivation and pasture; booming coffee production changed definitions of quality of land; and land was taken out of production for non-production goals (Jansen 1998).

The villagers of El Zapote have lived through radical changes that have taken place within a few decades. Many feel that they are not able to keep pace with the changes. In the past, people considered it advantageous to have 'public' property that everyone could use. 'My father-in-law was always against fencing of free land. He said that the land and the water wells were for all the people, that everybody needed it for the animals'. Farmers who thought in this way stood aside during the ongoing process of privatisation of land rights.

#### *Concessions in the ejidos*

Even before receiving the status of an independent municipality, the village had applied to the national state for the assignment of village land as ejidos. The village lands Teocintal and Malapón obtained ejido status at the end of the nineteenth century.<sup>10</sup>

An individual who requested to use a plot of land in the ejido had to comply with a particular procedure, which started with a request to the municipal council. The

following example shows how a concession request was performed. A man called Juan Membreño asked the newly installed municipality to grant him a concession in 1918. The following text appeared in the municipal acts on August, 1, 1918:

*Present was Juan Membreño who requested to rent a plot of land in 'Nejapa' where his deceased father Orlando Membreño had his coffee field. He argued that he has the right of preference regarding this concession because the plot has coffee trees and cocoa which were sown by his late grandparents of whom he is the only testamentary heir. The plot he wants in concession is six manzanas and adjoins the possession of Antonio Membreño in the North, in the East waste land, in the South the possession of Santos Membreño and in the West the crevice of Nejapa.<sup>11</sup> The municipality unanimously decided to grant the concession to mister Membreño to cultivate the described plot. He will pay 25 cents a year for every manzana in the appropriate office.*

First, the procedure was initiated when Juan went to the municipality in person to present his request to the meeting of the municipal council. Second, the municipality verified whether he was meeting certain requirements necessary for obtaining a concession.

- **Possession:** He proved to have possession of the land that had belonged to his deceased father, and that had also been in his family for generations. The argument that the land was in his family for generations strengthened his claim that he must be given preference above other potentially interested persons.
- **Crops:** The goal of the ejido regulations had been to stimulate the cultivation of export crops. Therefore, the important thing was to grow perennials such as coffee, cocoa or fruit trees and not just maize. The perennials furthermore symbolised a strong claim to the land: they are improvements.
- **Boundaries:** His request also clarified the boundaries of the plot he wanted in concession. Although it was not explicitly stated in this municipal act, it was normally required that the land be fenced in. In this particular case, it was probably obvious that the requested plot had been fenced in.

The concession request of Juan Membreño shows that during this period (1918), it wasn't at all self-evident that he had rights to his ancestral ejido land. He could not automatically inherit the concession but had to submit a request for it. The municipal act further stated that he had to pay a yearly fee. According to the landholders, however, nobody ever paid these fees.

Although every resident (men and women) had the right to request an ejido concession, many people never did. Nowadays villagers are somewhat puzzled about why some people did and others didn't request a concession when this was still possible. They put forward that:



- People who did not request an ejido land concession did not want to work.
- There was plenty of free land to use without the need to comply with a procedure; hence, there was no need to request a concession.
- People who did not request an ejido land concession were 'ignorant', meaning that they didn't think about a future in which there would be no free land available.

Another possible obstacle to submitting a request for a concession might have been that it was not at all easy to request one. One had to visit the municipal council meeting in person, which was difficult for women or for people from remote hamlets. One had to convince the *síndico* (a specific member of the municipal council who deals with land problems and measurements of boundaries) to come and measure the land. Such barriers could have been difficult to overcome for many villagers.

The municipality had the right to reclaim concessions which were not in use according to the requirements. On February, 15, 1926, the municipal act read:

*The mayor pleaded to declare invalid all concessions to ejido and communal land, that have been given out to the villagers more than three years ago, and which have been abandoned, fenced in or not, and which are without any crops. The municipality considered the communication of the mayor and, on the basis of Art. 11 of the current Agrarian Law, it decided to declare these concessions expired. The municipality will recuperate its rights in these concessions.*

A villager named Jacobo Villanueva in 1930 complained to the district authorities in Santa Bárbara about the fact that the municipality suspended his concession. The municipality wrote to the district council in Santa Bárbara on this occasion:

*The municipality council granted a concession to Jacobo Villanueva in the communal lands of Nejapa, consisting of nine and a half manzanas, to fence it in and cultivate it within the terms of the Agrarian Law. However the petitioner didn't comply with his duties and therefore in the same year the municipality decided to declare expired all concessions granted in earlier years to individuals who do not follow the prescriptions in Article 11 of the Agrarian Law. The declaration of mister Villanueva that he fenced in the concession with posts, ditches and trails, and that he sowed hundred and eleven coffee trees, is totally untrue. Because only this year in February he placed a few posts, which were feeble so they couldn't serve him and he cultivated a few coffee trees not more than ten. In this same month Villanueva presented a document in which he requested a prolongation for fencing in the land but it was denied because it was behind time limit and because this was a concession that was already declared expired in December last year. Thirdly, the declaration of Jacobo Villanueva that the mayor*

*allowed him to finish the clearing of a maize field in the concession, is also untrue. It is true that he was prohibited to continue clearing because the same plot was requested by don Francisco Reyes and... .. because he [refused to] ask permission as do the other villagers. Hence the municipality imposed a fine of five pesos for this abuse. ... mister Villanueva did not tell the truth in his plaint before the district council, because if it were true that he sowed coffee trees last year in the plot he tries to defend without any right, why does he try to clear the same plot for maize? This proves that he had not sown these coffee trees and that he does not speak the truth.*

In this conflict between a villager and the municipality, the municipality had apparently withdrawn Jacobo Villanueva's concession because he had not used the land. The final solution to this conflict did not appear in the logbooks of the municipal council. It is clear, however, that the municipality strictly followed the rule that land that had been granted in concession must be used, or otherwise it could be recovered and given to someone else.

In a few cases I found that a concession holder herself requested to have the concession cancelled. In 1938, for example, a widow stated before the municipal council that she was too old and too poor to pay for the barbed wire needed to fence-in the concession of her late husband. She added that her sons refused to help her. The council declared the concession expired. However, in the next meeting two of her sons showed up to request the concession again. They stated that they had loaned the barbed wire to their mother and that they didn't want to loose the concession. Possibly this widow used the municipal council to deal with a conflict between her and her sons about their dedication to the land. It was not a situation that frequently occurred, yet it does show that in those days the villagers did not consider the land they held in concession as privately owned.

Both men and women were able to apply for concessions in the ejidos. However, only 24 of the 374 requests for concessions in ejidos, as recorded in the municipal acts between 1917 and 1974, were made by women (Jansen 1998). It's possible that women did not visit the council meeting themselves but left concession requests in hands of a husband or son. On the other hand, women held the majority of houseplot concessions in urban ejidos. Hence it was more common that women owned houses than land, which may be explained by the gendered division of labour (Chapter Three).

The municipal acts also make reference to problems between villagers about the distribution of concessions. In 1931, for example, a villager presented a document to the council that read:

*I was the first to solicit the plot of land that was requested and measured in favour of the Hernández family. I am a villager as they are: they possess land to work on, I haven't got a quarter of a manzana and as a villager I have the right that I will be*

*given [land] where I will be able to work. I now ask why some are preferred and others are disregarded. If you do not solve my request I insist that you will certify the documents and resolutions so that I can appeal before the district council to improve my situation.*

This villager's statement makes clear that the distribution of ejido land had problematic aspects and that political, personal and clientist relationships possibly played a role in it. This man was distressed because the municipal council granted a concession to people who already possessed a considerable amount of land. Although the concession system was meant to provide access to land to people who did not have it, it did not provide equal opportunities. Gender, knowledge, social status and social relations with municipal authorities influenced access to the concession system. The process of unequal distribution of the ejidos did not take place in the context of harsh struggles for land but, for the residents of El Zapote, it was merely an unconscious and gradual process. For a long time the unequal distribution of concessions had not been a problem as there was plenty of other land that could be freely used.

The previous section discussed how the state changed politics with respect to the ejidos and how these changes became expressed in agrarian laws. Although there was no strict policy of enforcement of new stipulations regarding the ejidos, changes in agrarian laws did influence practices in El Zapote. For example, the suspension of the concession of Jacobo Villanueva in 1930 took place under the 1924 Agrarian Law; the national state wanted to regain more control over the ejidos through this law. It is possible that the municipal council received orders from the district council or the national government to review whether the concession holders used the land in accordance with the regulations.

In the following decades, the number of concessions that were requested and granted diminished. The municipality lost its central role in distributing ejido land and the status of the ejido concessions gradually changed. The ejidos became permanently fragmented as individual concession holders devolved it to heirs or subdivided and sold it without the municipal council's permission. In the perception of holders, the concession had made way for individual ownership: they started calling the land their property.

#### *Bought land and quasi ejidos*

The council of El Zapote held other types of titles to other village lands. A considerable part of these village lands were bought from private persons by the municipality. The municipality bought the land of Cárcamo from a man named Vicente Moreno in 1934.<sup>12</sup> In order to pay for the land, the land surveyor and administrative costs, each resident was asked to pay a certain fee. The municipal council declared on June, 15,

1934: 'It suits this village more than anybody to buy this land, because the inhabitants do not have [land] to work and maintain their agricultural tasks; because the little that the municipality has are clay soils and they are fairly exhausted, given the extreme [situation]'. After buying the land, the municipal council drew up the regulations concerning the use of Cárcamo. It was meant to be a communal zone, combining the cultivation of seasonal crops (maize) and livestock grazing. Every villager who financially contributed to the sale was allowed to use one *manzana*. It was prohibited to fence in the land.

The municipality also intended to buy the land title of Juniapal, adjacent to Cárcamo.<sup>13</sup> This land was initially owned by Vicente Moreno, who was also the former owner of Cárcamo. Moreno had become indebted to the state and therefore handed Juniapal over to the state in order to pay off his debts. This provided the municipal council with an opportunity to claim this land on behalf of the residents of El Zapote. In January 1945, the logbook of the municipal council read: 'The mayor who presides, states that considering the population increase in this village, which has 2500 inhabitants, the ejidos are not sufficient for all people to dedicate themselves to agricultural work and especially the cultivation of sugar cane, and he proposes that ...[the municipal council] will put forward a request to the National Congress in order to receive the state owned land of Juniapal'.

The request did not proceed as was expected, and the municipal council had to renew the request in 1949. However, the municipal council soon discovered that the village missed out because the ex-mayor and large landowner Alfredo Lara used his former position and connections to rent Juniapal from the state.

Lara had been mayor and *síndico* of the municipality. As a representative of the village he was able to invest time and money to travel to the capital city and negotiate with the national authorities about Juniapal. The council was ignorant of his intentions to rent Juniapal on his own behalf. However, on December 26, 1949, the municipal council had finally discovered what Lara was up to. The logbook of the municipal council reported that a council member was sent to the capital city in order to look for a lawyer. The council wanted to convince the authorities that 'justice must be done' and that Juniapal belonged to the municipality and ought not to be in hands of a third party. The effort was in vain, however, as Lara gained possession of Juniapal.

New conflicts between Alfredo Lara and the municipal council arose when Lara invited land surveyors to determine the boundaries between Cárcamo (owned by the municipality) and Juniapal (rented from the state by Lara). Council protests against the land surveys were partially successful because thereafter the council obtained the northern part of Juniapal. This land is now in use as a village commons.

In the rather chaotic period that followed, the Juniapal and Cárcamo titles of the village, kept by the municipal council, disappeared. Villagers suggest that several land

surveyors were bribed. In spite of the disappearance of the titles, the villagers continued to consider Juniapal and Cárcamo as village properties and continued to use it.

The Nejapa area was bought from the state by a group of villagers at the end of the nineteenth century.<sup>14</sup> This privately owned land was not an ejido in a legal sense, yet the municipal council and the villagers considered it as such; it was a quasi-ejido. When the original buyers of the land had passed away, the council started to grant concessions to this land in the same way as it did with in the ejidos. The municipal council has kept the title of Nejapa as well as the ejido titles.

The title to Yoro was also bought from the state by a group, in this case four brothers who founded the hamlet of Yoro.<sup>15</sup> In contrast to the Nejapa land, Yoro has never been considered to be an ejido. People now convey that Yoro is owned by the inhabitants of the hamlet of Yoro, who are all descendants of the original buyers. Rights to this land are not clearly established, and disputes and violent clashes between the different heirs of the original buyers regularly occur up to this day.

*Table 2.4 Different village lands, perceptions of property rights of landholders and involvement in state interventions*

	Former ejidos <i>Malapón &amp; Teocintal</i>	Privatised concessions in ejido Direct purchase from state ( <i>large landowner</i> )	Communal property bought from state <i>Nejapa &amp; Yoro</i>	Municipal Commons <i>Northern part of Juniapal</i>	Free national land <i>Few spots in mountains</i>
Holder	Individual or group of heirs	Individual or group of heirs	Originally group of villagers, now individuals	Municipality	Individual
Perceived rights of holder	Individual or group ownership	Individual or group ownership	Individual or group ownership	Temporary usufruct to individual	Free to take possession
Rights according to the state	Occupied or possessed national land	Ownership, registered in Public Register of Property	- Occupied or possessed national land (Nejapa). - Communal private land title (Yoro)	Unknown. Municipality does not have a title; title holder is possibly the large landowner and family	Ownership of national state
Influenced by:	PTT	Hydroelectric plant (Cárcamo)	PTT (Nejapa)	Hydroelectric plant	PTT

#### *From possession to ownership*

The notion of private ownership dominates perceptions of property in El Zapote, but this notion slightly differs with regard to the different areas in the municipality. Table 2.4 compares the differences between official rights and perceived rights of landholders in different areas. In most areas, holders perceive their rights to the land as ownership. Nevertheless, their perception may stand out against the perception of the state regarding the holders' rights to the land.

**Former ejidos:** Perceptions of landholders and the state were clearly incompatible with respect to the (former) ejidos. Landholders thought that they owned their plots, while

the state considered the land to belong to them. The contradictory perspectives of landholders and the state regarding the ejidos have emerged within the context of changing ejido politics.

When the village received the ejidos from the national government, it did not count on the possibility that the state would reclaim the land again decades later. At that moment, the municipal council regulated the use of the land, whether or not it really had 'ownership'. The council controlled whether ejido land was used according to the municipal prescriptions and it reserved the right to cancel a concession when evidence existed that a holder was not in compliance with them. The municipality's ejido rights were not made explicit in the law, which exclusively referred to the rights of the concession holder and those of the national state, but not of the local government: the municipality. Specific incidences, such as the one taking place in the 1990s, show that the municipality considered itself the 'owner' of ejido land. At that moment, the municipal council decided to take back parts of ejido land in order to construct a road to the coffee fields without compensating the landholders. The council argued that it was allowed to do this because it concerned ejido land. Thus the municipal council acted in this case as if it was able to completely control ejido land for its own purposes.

Former agrarian laws from 1888 and 1924, for example, explicitly outlined that the ejido concept did not transfer ownership to holders and that the land remained in the hands of the state as the national owner. We have seen that, in those days, holders of ejido land acknowledged that they were not the owners of the land. They recognised the power of the municipal council to distribute the land and to control land use, and they knew that they had to renew their concessions. This situation apparently changed beginning in the 1940s when concession holders started to sell and transfer their land without asking the council's permission. The result was that ejido land became withdrawn from municipal control. The land became continuously resold, re-divided and transferred to heirs and the notion that ownership of the ejidos belonged to the municipal council or to the national state disappeared.

The dominant idea today has become that every person holding a socially recognised claim on a plot of land is to be considered the 'owner'. Through complying with the local ways of claiming ownership - labour investment, possess peacefully, stock deeds of purchase and fence in the land - this notion of ownership has been reinforced and reproduced until the idea of the concession has slipped out of sight completely.

The question of why this happened has no easy answer. In the 1940s, pressure on the land increased because of the introduction of permanent pasture land in the agricultural production system, which led to significant changes. For example, the system whereby producers first cultivated maize on unfenced plots and grazed cattle on the crop remnants has gradually disappeared. These changes might have enforced the idea that land was becoming scarce. Without freely available land, it became more important for

landholders to fully dispose of their land on their own behalf or on the behalf of their heirs. The municipal council's input in the land was ruled out.

From the point of view of the national government, the granted concessions gave the petitioners possession of the land. The law of 1888 created the possibility for concession holders to apply for a usufruct title (*dominio util*). The Civil Code defines usufruct as the faculty to enjoy a thing with the obligation to conserve its form and substance and to give it back to the owner (art. 745). Limited duration (art. 746) is a characteristic of usufruct. On the basis of the usufruct title, the holder can also claim a title of ownership (*dominio pleno*) by buying the land from the state. The municipal council had to serve as intermediary between the holder and the national state for receiving a *dominio pleno*. The council had to pass the application to the national government. The state issued a presidential title, which the holder had to inscribe in the Public Register of Property.

Only a few landholders in El Zapote held a usufruct title (see Table 2.5). The majority of holders of ejido land thus had possession. The possessors of the ejido land enjoyed the same rights as owners, including the right to transfer the land, until the very moment that the state appeared claiming to be the owner of the land.

**Communally bought land:** The Nejapa area had been privately bought from the state by a group of villagers. The municipal council had nevertheless treated the area as if it was an ejido. In the 1980s, in the framework of a land titling project that I discuss later, the national government defined the Nejapa zone as national land, denying the private character of the land. The state argued that the original buyers never completed payment for the land to the state. However, the title held by the municipal council contained clear evidence that the group did pay the last quota, although in tobacco instead of money. With regard to the property rights in the Nejapa area there was thus a strong contrast between the perceptions of landholders (individual ownership), the state (state ownership), the municipality (ejido), and the 'real' rights to the land (private ownership by a group of people that had already passed away).

The national state did recognise the title of Yoro as private ownership. Ongoing struggles for control of this land, nevertheless, claims victims almost daily. Within the title of Yoro, different holders with private titles claim plots of land, but most of them lack any social recognition of their rights. Moreover, the original title is still held by an heir of one of the original buyers, who tries in vain to reclaim the whole area (Chapter Six).

**Village commons:** The village commons are the northern part of Juniapal. It is unclear whether the municipality indeed ever held a title to this land; in fact, the title no longer exists. The commons are meant to be for landless people to sow maize. The users are in fact not all landless, but they have no other land to sow their maize plots. The grounds

are overexploited steep slopes that are full of large stones. The idea of the commons is that nobody is allowed to lay a permanent claim to it; fencing is prohibited, although some have succeeded to do it without repercussions so far. The users of the commons try to gain more control over the land by using other means such as planting perennials and fruit trees.

**Private ownership:** The national state recognises those landholders who have registered their property in the Public Register of Property as the owners. There are two groups of private owners in El Zapote. The first are landholders who initially held a concession of land which they thereafter bought or acquired from the state and registered it in the Public Register of Property. The second are members of the Lara family who directly bought land from the state.

**Free land:** There are only tiny spots of unclaimed land left. Villagers consider this land 'free' to grab for anyone who wishes to use it, while the national state considers these plots to be national land.

#### *Stacking of norms about rights in village lands*

The different perceptions of the rights in the ejido land between landholders and the state have developed through a process of stacking norms. In time, people have stacked legal regulations, interpretations of these regulations and their own normative framework with regard to ownership. Seen from the perspective of a landholder, the temporary usufruct granted by the concession develops into ownership because people comply with the local standards set for ownership. They work on the land, make improvements, possess it peacefully, fence it in and keep the deeds of purchase that testify about the history of transfer of rights to the plot. These 'local standards' are merely based in legal regulations and legal notions of property and in local regulations drawn up by the local government. They have thus become the general point of reference for ownership claims. For example, making improvements and fencing are strictly forbidden in the village commons where ownership claims of individual users are not accepted.

The state holds on to the concept that ownership can only be recognised with regard to plots registered in the Public Register of Property. Although the state has been clear regarding what ownership entails and who should have it, the state has not been clear about the rest of the property rights that it assigns to the land through agrarian laws. The questions as to what a concession entails and what rights to the ejidos are bestowed upon the municipality have never been answered.

Whatever the content of concession and ejido, the state considered it legal to withdraw all regulations regarding the ejidos at a later stage, and to proclaim that the



ejido was back under the control of the national state. The next section discusses how state interventions in local perceptions of land rights have been received and what the consequences of such interventions were for the process of stacking legal regulations, interpretations of law and landholders' own norms.

## State intervention: two cases

The construction of a hydroelectric power plant on village land in the 1970s meant a radical infringement on landholder's perceptions of their property rights. It made landholders realise that there was a difference between ownership and possession and that they did not hold full ownership of the land. The implementation of the land titling program PTT in the 1980s and 1990s had far-reaching consequences for the relationship between landholders and the state. It sharply brought the differences between government and local definitions of land rights to the fore. The PTT program meant an immediate threat to the local concept of ownership as well, generating new conflicts and becoming a new source of ongoing conflicts.

### *The hydroelectric power plant*

In the mid- 1970s, the government launched a plan to construct a hydroelectric power plant close to the main village of El Zapote. The proposed sites were the river plains in the area of Cárcamo, where two rivers flow into each other. From the start it was not clear who had what legal claim to this land. The area was subdivided among landholders who fenced their plots in and considered themselves to be private owners.

Cárcamo had been used as a communal mixed zone for both annual crops and cattle for a brief period before the subdivision. After the municipality purchased the land, it drew up regulations for its use. At one point, some users started to fence in the plot of their choice. In 1936, complaints started to reach the municipal council that the regulations were not being respected by every user. The illegal actions in Cárcamo of a man called Juan Romero were brought before the municipal council:

*We, the villagers, observe that we do not respect the arrangements. We know that there is a law but we avoid obeying both the law and the authorities. We have mister Juan Romero who was owner of a plot but he took one manzana outside what was his, with or without authorisation. We request the enforcement of article two and five of the law and propose to assign responsibility to the law-breaker because we believe that the municipality will not doubt our words. It is a visible thing that we all see that mister Romero took a piece of land east of his plot and west another one and he will continue to fence in more and more until he is owner of Cárcamo. That's why we*

*request to follow the law against mister Romero... , we are the inhabitants of this village, we have all equal rights in the land and therefore we believe that the municipality must listen and provide justice because that is what we ask.*

The complete subdivision of Cárcamo into individual plots was a question of time in spite of this protest. At the time that the government launched the hydroelectric power plant plan, the individual plots were mostly small and used for maize and beans, tule, bananas and vegetables. Hardly any of the landholders remembered that the land had once belonged to the municipality.

The municipal council did not have a title or a deed of purchase for the land when the state launched the plan for the hydroelectric power plant. The state concluded that Cárcamo was national land whereas nobody was able to prove his rights by showing a title. Some villagers, including the supposed perpetrator, suggested that the document was deliberately burnt during the continuous land surveys of the boundaries between Cárcamo and Juniapal. The Public Register of Property did not hold a copy of the deed of purchase proving the purchase of the land by the municipality. The INA registers, on the other hand, contained many old documents and titles of Cárcamo. The existence of these different titles made the situation complex, yet only knowing that these different land titles existed should have been enough to conclude that it was not likely that Cárcamo was national land. It was nevertheless in the interest of the state to conclude that the land they wanted for the hydroelectric plant was national land, and the state abstained from properly investigating the existing claims to the land.<sup>16</sup>

The state straightforwardly confiscated the land and told the producers to leave.<sup>17</sup> However, the state was forced to back down after joint protests by the landholders and began to treat Cárcamo as if it were an ejido. It first proposed to compensate the landholders for the improvements, improvements being any additions made on the land that required an investment of labour or capital. Landholders had never thought of the land and the improvements as being distinct. As they believed themselves to be the owners, they regarded every transfer of land through sale or inheritance as a valid transfer of land and improvements at the same time. The holders received the compensation for the lost improvements in three quota to prevent them from using it all at once to buy alcohol.

Furthermore, the state intended to give new land to all former producers of the Cárcamo area and, to that end, it bought land in an adjacent municipality. The former owner of the new land, for whom the sale had been a lucrative deal, was acquainted with high level officials of the electricity company ENEC. The compensated landholders, however, continued to be dissatisfied. The Cárcamo area had been highly appreciated for its closeness to the village, while it took a two hours walk to arrive at the new land. The quality of the new land was variable, just like the quality of the Cárcamo land had been. During the distribution phase, land quality did not play a role

at all, and the result was that some received good land and others land which was of no use. Local politics strongly affected the distribution, the result being that many former landholders of Cárcamo did not feel compensated at all for the loss of their land. They blamed local authorities for enhancing inequality. Moreover, the promised 'development' of the village in the form of electricity and roads as a means of compensation failed to occur. It took years and many protests of the villagers for the ENEE to start the promised electricity project in the village.

The intervention of the state in the Cárcamo area through the hydroelectric power plant has been significant to the lives of landholders in many aspects. After more than twenty years, many producers who had been involved in the case were still not able to control their emotions when talking about the loss of their land in the area. The involved landholders did not understand why the state was able to claim the land and they were still convinced that they were illegally robbed of the land. The small compensation for the improvements and the new land that they received far away from the village were not sufficient. It is possible that the government officials thought that the landholders would not consider it a big deal to lose marginal and small plots of land. From the perspective of the landholders, however, the Cárcamo land had been extremely valuable.

The involved landholders said that it was through the power plant affair that they learnt about the concept of improvements. Before the arrival of the power plant project, landholders did not make a distinction between ownership, possession and improvements: they considered the land transfers as a sale of the land, including the improvements. The state introduced a different idea of property rights through the power plant project, one distinguishing between possessing, working and improving the land, and the ownership of the land. The separation of ownership and improvements was unintelligible to the involved landholders and the state in fact recognised this problem because it not only paid for improvements, but it also substituted the land that it took from the landholders.

The experiences with the hydroelectric power plant project and the introduction of the concept of improvements has not produced consequences for property rights in other parts of the village. Landholders continue to divide and sell their land without distinguishing ownership, possession and improvements.

The village commons form the only exception. Here, landholders distinguish between the ownership of the land, generally thought to be in the hands of the municipality, and possession and use of the same land. There are important differences between this area and other areas of the municipality. The village commons are meant to be for public use by the landless. The recognised owner, the municipality, strictly upholds the rules drawn up for its use or, at least, attempts to do so. Although a few producers have tried to permanently claim land in the village commons, it is generally acknowledged that the purpose of the village commons should be respected.

### *The land titling programme PTT*

The infringement on property rights of the land titling program PTT (decree no. 89, Honduras 1982), a few years after the construction of the hydroelectric power plant, was far-reaching; the program completely changed the relationship between landholders and the state. The power plant affair involved dozens of producers; the PTT affected practically all landholders in the village in one way or another.

The objective of the PTT was to sell national and (former) ejido land to the landholders. In El Zapote, the PTT affected the ejidos and the quasi-ejido Nejapa, the private character of which the state refused to recognise. The PTT was an international agreement between the governments of Honduras and the United States of America that was ratified by the National Congress.<sup>18</sup> The three main goals of the PTT were (INA 1990:2):

- To benefit small- and medium-size producers by granting them definitive property titles which will convert them into legitimate owners of the land.
- To provide rural people with security and peace so that they can invest in their parcels and participate more fully in the development of the production process.
- To ensure that coffee farmers and small- and medium-size producers can obtain technical assistance and credit to increase the production of food, work and family income.

The intention of the PTT was to give landholders ownership (*dominio pleno*). The general idea behind titling programmes is that ownership enhances security and facilitates credit and technical assistance aimed at increasing agricultural production (Deininger and Binswanger 2001).<sup>19</sup> The PTT did not entail a completely new concept of transferring ownership of national land. On the contrary, the program aimed to make the existing procedures, adapted versions of the concept of adverse acquisition in national and ejido lands, less costly, less formal and quicker (Stanfield et al. 1986:19-20). The PTT followed a strategy of massive titling and surveying an entire area at once. Instead of waiting for landholders to start the procedures in the INA -which was one of the existing ways to obtain an ownership document- the INA invited the landholders to title their plots. The landholders in El Zapote had not been waiting for such land titles, but they weren't necessarily opposed to receiving them. The very fact that the PTT entailed a *sale*, however, made the PTT problematic. Stanfield et al. (1986:25) comment on this problem in their evaluation of the PTT:

*If the holder has, through the appropriate possession already met the Code requirements of ownership, what is the basis of INA's title and the underlying notion of the sale of the land? Not only is the Civil Code provision apparently violated, but*

*the common beliefs of the peasants as to their existing ownership rights seem to be contradicted.*

The PTT basically entailed a sale: the state sold land which landholders already considered to be their property. Landholders had completed the requirements for ownership in the every way known to them. The concept of the PTT radically overturned their perception of their rights. I shall explain below how landholders in El Zapote experienced the arrival of the PTT.

In contrast to the Agrarian Reform Law, women were not discriminated against by the PTT as they were allowed to hold land titles just like men (Chapter Five). The procedure was free of charges as all costs of administration, land survey and cadastral mapping, and registration in the Public Register of Property were to be covered by the project.<sup>20</sup> The ascribed advantage for landholders was that they did not need to hire a lawyer: the INA completed the procedure after an initial agreement of the land holder. Furthermore, landholders received a definite title that they were immediately able to use, for example, to obtain credit. The contract of sale integrated a promissory note (*pagaré*) signed by the landholders; their signatures guaranteed payment for the land.<sup>21</sup>

As our own observations have shown us, the PTT was technically very weakly organised. The technical deficiencies of the land surveys and mapping were a 'future source of difficulties that could produce a questioning of the validity of individual titles and of the entire property system' (Stanfield et al. 1986:15). Problems were, for example, the lack of consistency between INA data and the Public Register of Property, and the many mistakes that officials made in this highly complex process.

#### *Buying my own land: landholders and PTT*

The first phase of the PTT in El Zapote started in 1983. At the end of the 1970s, the National Cadastral Directorate finished the land survey and the registration of the plot holders of ejido land and land that the state considered to be owned by the national government. The 'engineers', as people called them, told landholders that there was no need to worry about the registration. They assured the anxious landholders that their ownership would be respected. They did not tell them that the survey was done in the framework of a titling program. The registration included a combination of several features: names of producers, size of parcels, definition of property status and available documents to sustain claims. This provided a wealth of information to the national state that it had never had before and that could also be used for levying taxes.

Table 2.5 recapitulates the property status of the involved parcels based on a combination of cadastral register data and the PTT registration.

Table 2.5 Cadastral registration of property rights and juridical instruments in the municipality of El Zapote, 1979

Property right	Number of parcels	Type			Document			Type of public document	
		Comunero	Individual	Community	Private	Public	None	Public Register of Property	Municipal concession
Possession	577	8	568	1	570	7	0	3	4
Occupation	317	30	287	0	1		316		
Usufruct (dominio útil)	22				0	20	2	16	4
Free area (unclaimed national land)	27								
Unknown	39								
Total	982	38	855	1	571	27	318	19	8

Source: based on a comparison of cadastral mapping and PTT data.

The unclear category definitions in Table 2.5 are probably due to all kinds of errors during the registration process. Possession means that a plot holder has at least one private or public document for the land.<sup>22</sup> Private documents are deeds of purchase (*papel de venta*) which are issued between buyer and seller and which are drawn up in the presence of witnesses. It contains date and place, the names of buyer and seller, the boundaries of the plot, the size of the plot, the plot history (how the seller got hold of it originally), the price settled for the plot, and the names of the witnesses. Important for landholders is not only their own deed that testifies about their own purchase, but to keep all former deeds of the plot as well. Together the papers form a bundle that tells the history of transfer of the particular plot.

Table 2.5 shows seven landholders with public documents who were also assigned possession. Four of these documents were original municipal concessions. The remaining three were Public Property Register deeds (*escritura pública*). In other cases, municipal concessions were categorised as 'usufruct' (see below). Public Register deeds eventually remained outside the titling program because the holders already owned the land.

Property rights were classified as occupation, the second category of Table 2.5, when the landholder was not able to show any kind of document. Given the large number of parcels that received the label 'occupation', the state had no choice but to recognise the claim of these landholders. The state thus abstained from freely selling plots and instead titled the land in the names of the landholders who possessed or occupied the land, following the idea of adverse acquisition.

The table furthermore reveals that twenty-two parcels were categorised as *dominio útil*, usufruct. The major part of these parcels had a usufruct title registered in the Public Register of Property. Four parcels were categorised as usufruct because the holders had a municipal concession.

Most landholders in El Zapote have some notion of the possibility of applying for a public deed. Nevertheless, only a few landholders had actually done so before the PTT

arrived. One reason to abstain from registration is that it is expensive; one needs money to pay for the land, the journeys to Santa Bárbara, lawyers, official paper and stamps. Another reason is that the bundle of private documents sufficiently protects against claims of other people. A deed of purchase entails proof that the holder had paid for the land, which is a convincing confirmation of ownership more important than public registration. The proof of payment reduces the possibility that someone else will make a claim on the land.

The deed of purchase has other advantages as well. For example, it is generally accepted by local moneylenders as a collateral. The deed of purchase is also used as a way to divide up the inheritance. In the past it was more common that landholders drew up a will, but the will was not a very reliable instrument. It often happened that the heirs quarrelled over the distribution of properties as if the will did not exist at all. A way to keep away from this dilemma is to transfer the land to the chosen heirs in separate deeds of purchase. The deed testifies that the heir has bought the land for a certain price. In reality the heir does not really pay for it (Chapter Four).

The sale and purchase of land by way of the deed of purchase also gives landholders confidence because of the included standardised procedure. Drawing up a private deed of purchase is a solemn procedure. The idiom of the document is 'official': the jargon of lawyers and bureaucrats that differs so much from daily language of rural people. Only a handful of people in the village are able to produce such a document. The boundaries are surveyed and settled by the municipal *síndico*, an authorised member of the municipal council. Witnesses are present when the deed of purchase is signed and the fixed sum is paid. The private documents are presented to the government authorities or to the judge in case of a conflict. Neither private nor public deeds offer complete protection against the claims of other people, but many landholders nevertheless think that transfers of land by way of private deeds of purchase are the safest.

While interviewed, landholders remembered that, during their first visits in 1983, the INA officials strongly suggested that participation in the PTT was obligatory. INA personnel abstained from telling landholders that they had to pay for the title and what this payment exactly meant. The involved landholders discovered this only after they had signed the promissory note. They were not aware of the implications of the promissory note and most of them never grasped what the exact meaning of the payments were that they were supposed to make.

The cadastral mapping and the legal and administrative services provided by the INA were all free of charges to the land holder. However, the title did involve a payment for the land; the price requested for the land in El Zapote by the INA was half of the local value of land. Titled as 'family agricultural units', it was fixed at 60L (30 US\$) per hectare. The expectation was that even poor producers could pay these fees (Stanfield et al. 1986, Wachter 1992, Melmed-Sanjak 1993, Khan 1996). The INA never imagined that 30 US\$ would be an insurmountable obstacle for resource-poor producers.

The difficulties concerning the price of land was only one of many differences of perception between INA and the landholders. The following story told by one of the landholders of El Zapote expresses these differential perceptions:

When José Bueso was a young boy his father, who had a fairly large amount of land, gave him a small plot of land. He handed him a deed of purchase in which the transfer between father and son was settled. When José became an adult his father also assigned him a much larger plot of land in the quasi-ejido of Nejapa. José rented part of it out and gave the rent to his mother. After years of administering this land on behalf of his father, his father said that the land was José's. Father, however, didn't give him a deed of purchase this time. José didn't know why he hadn't, but he had to accept it because there was nothing he could do about it.

José needed land for production and, although he knew that his rights in the Nejapa land were not secure because of the failing deed, he started to fence it in and to use it. All went well for years as nobody contested his rights to the land. Then, his father suddenly fell ill and needed money to pay for medical expenses. Several of his children insisted that their father should sell the Nejapa land; the same plot that he had handed over to his son José years ago. However, father decided to sell his cattle instead. Yet he did not recover and just before he died, he called upon two younger sons and bequeathed the Nejapa land to them. Again, he did not give them a deed of purchase. After father had passed away, José's two brothers of claimed that they had inherited the Nejapa land. José succeeded in buying them out, paying one brother 500 Lempiras and the other 300. Thereafter, the brothers dropped their claim.

José's laconic expression that he 'had to buy my inheritance twice' refers to a second time he had to buy the land which he originally inherited. The land in the Nejapa area was national land according to the categories of the INA. The INA issued a title for the land and José was obliged to again buy his land from the state.

Thus, José originally inherited the land from his father. Thereafter, he had to buy out his two younger brothers who made a claim in the land as well. At last, the INA insisted that he had to buy the land from the state. The fact that José had not received a private deed from his father made it possible for the other brothers to contest his rights. He knew and understood this perfectly. In contrast, the intervention of the INA was a complete surprise to him. After he had bought out his brothers he considered the land to be his. He never imagined that the state would come and claim that the land was owned by the state.

The story of José, which other landholders might tell using different details but with the very same tenor, shows the differences in the perceived land rights in the ejidos between landholders and the state. It is not difficult to follow José's reasoning about



why he considered himself the owner of the land. He inherited the land and bought his brothers out. Viewed from his perspective, the payment for the state issued title could not be considered to be a payment for the land since he already owned it. Landholders therefore perceived the payment as a tax. Titling entailed, in their view, that the government surveyed the land and registered the names of plot holders in order to be able to collect taxes.

The result of the confusion about the nature of the land title and the required payments was that there was a hold-up in the payments of the quota for the title. At the start of the second operation of the PTT in 1994, more than ten years after the start of the program, only 21 percent of the issued titles in El Zapote had been fully paid (PTT data, Listado de Saldos por Municipio; Khan 1996). The second operation of the PTT was therefore fully dominated by the idea of collecting these outstanding debts. The government had been pressed to demand payment for the titles by USAID (Jansen and Roquas 1998). The INA attributed the complete lack of eagerness to pay the title to the ill will of landholders. To collect the outstanding debts, the INA didn't shun straightforward threats to expropriate holders who refused to pay their quota at once. The INA threatened that the landholders would lose their land and that INA would sell it to another applicant.

The 1994 campaign was only about payments. There was hardly any reference to the goals of the PTT and the advantages of titling. The INA's attitude was also different: instead of assuring the landholders that their rights would become better rights through the PTT, the only slogan was 'pay or be expropriated'. The INA had no interest whatsoever in the problems that the titling programme had caused:

- The starting-point of the PTT had been that land rights were insecure and that ownership, issued through titling, would make these rights more secure. The result was, however, that existing conflicts had intensified, with the INA title as a new instrument in the hands of one of the parties (Chapter Four).
- New conflicts emerged, for example, between men and women, due to specific regulations during the implementation of the PTT (Chapter Five).
- Resource poor producers were not able to pay the quota. The INA however, refused to see that people might own a plot of land but that this did not mean they also had capital to invest.
- The second INA operation refused to deal with the soaring problems caused by the titling operation itself. For example, mistakes made by the first INA brigade caused conflicts between landholders concerning the registration of the wrong owner or the subdivision of a plot after the land survey.
- The common ways of transferring land through deeds of purchase continued. After ten years the title deed had become not more than one element in the bundle of 'papers'. Hence the registration data of the INA were no longer correct after ten

years. The INA, however, only recognised the person who was title holder ten years before as the legitimate owner.

The INA did recognise the claims of possession and occupation in national land during the PTT. The ejido plots were titled in the names of the actual holders and not freely sold to interested persons. Viewed from the perspective of the landholders, the state as a whole has been ambiguous with respect to the question of ownership-possession. Different state sectors used different perceptions. The National Cadastral Directorate assured the landholders of their ownership rights in order to secure their co-operation during the land survey. Politicians regularly supported the point of view of the landholders during political campaigns by confirming that the land belonged to the people who worked it. Although the INA recognised possession of landholders during the first phase of the project, the second INA brigade emphasised that landholders had no rights whatsoever without a land title. This slogan precluded the recognition of claims of possession or occupation.

### Stacking and the notion of customary regulation

Evaluators of the impact and working of the PTT have characterised the pre-PTT situation regarding land rights regulation and definition as 'customary' or 'informal'. Stanfield et al. (1990:3) allege that, with the tacit approval of the state, a 'customary' system of defining and transferring land rights to possessed national land emerged. Wachter (1992:176) observes that 'private possession in the informal way actually existed in the open areas, which was also allowed by the state'. Coles-Coghi (1993:56) argues that 'the customary recognition and enforcement of property rights in land stem from socially supported practices established through continuous use over time'. Carter and Salgado (2001:264) convey that in land transactions before PTT, 'informal means are predominant because they are based more on the usage and local custom than on legal rules'. Following the mentioned studies, the informal pre-PTT situation is caused by a lack of interest and an inactive attitude of the national state towards the landholders on national and ejido land. Customary rights provide security and work well among local community members. The basis for claiming customary rights is working the land and creating improvements.

The process of stacking laws and norms with regard to land rights, as I have described it, sheds another light on the pre-PTT situation, when landholders did not have secure property rights to the land. Conflicts about who had rights in the land have always existed. Thus, whatever the character of the pre-PTT rights might have been, they did not form a secure customary legal system. Furthermore, I have shown that the pre-PTT situation did not emerge because the state lacked interest in the rural

areas. In contrast, the state has been preoccupied with the distribution of land rights since independence and the state has tried to come to grips with the distribution and the definition of land rights through a whole range of agrarian laws. The landholders' notions of rights today have emerged within a historical context of continuously changing state policy and they are for a large part the result of the dynamic working, application and reinterpretation of law.

Analysis of the stacked elements in the perceptions of landowners has shown us that they use concepts and notions about property that are clearly based in Civil Code concepts of property. They have ownership because they possess, work, improve and fence in their land; an adapted concept of adverse acquisition. The pre-PTT situation was thus not diametrically opposed to state law. We have seen that, at certain moments, the state acknowledged the legal basis of their claim that they do have property rights although they do not have registered ownership. Terms as customary or informal, hence, do not do justice to the nature of the pre-PTT situation.

What the state considered to be possession or occupation of national land was ownership in the eyes of the landholders in El Zapote. They fulfilled all requirements to claim ownership both in civil legal terms and in terms of social recognition. This chapter has argued that the perception of landholders regarding their rights to ejido land has changed over time. Over the course of time, the municipal council was no longer recognised as the institute to assign temporary usufruct rights. This was possibly related to the general loss of authority of the council, but probably also with perceptions of growing land scarcity. The council was something completely different from the national state: people would have acknowledged that the municipal council had a say in the land but they did not recognise the claim of ownership of the national state.

Why did the PTT end as a *threat* instead of achieving its goal to enhance security of property rights? Central to the misunderstandings between the INA and the landholders was the required payment for receiving the title, which made the transaction a sale. The state thus acted as a landholder and it did not fulfil the role that landholders expected from the state: its role as protector of their property rights. The precise meaning of the payment was totally unclear to the landholders, who perceived it as a tax. They did not understand the difference between possession and ownership and considered registration in the Public Register of Property as merely producing a redundant document.

The legality of the threat of the INA to expropriate landholders who would not pay for their titles is debatable. Landholders who worked and held the land in a peaceful way at least had possession of the land, a fact that the INA also recognised during the first phase of the PTT. Whether or not the state had a legitimate claim as the owner of the land in El Zapote is also debatable. It depends on how one tells the story of the

ejidos, and the appropriation of municipal and communal resources by the national state.

The judicial practice does take land claims other than registered ownership seriously. A large part of the case files in the Santa Bárbara district court of justice concern civil procedures of vindication or other civil property claims on unregistered and privately transferred land (Chapter Six). Hence, the INA's assertion that only the PTT title had 'legal value' is certainly not sustained in the practices of the court.

The landholders of El Zapote may pay their land titles in the end, but they will continue their old practices of transferring and subdividing land through deeds of purchase without registration in the Public Register of Property. A return to the old situation means that, through the PTT, the state did not create a dynamic well functioning Property Register and correct cadastral maps. The PTT title is worthless to landholders in a region like El Zapote because of the low value of the land. However, coffee producers in other regions of Honduras are keen on receiving a registered title because they have land of a higher value and are also able to register improvements. Thus the complete redundancy of the PTT in marginal areas like El Zapote seems to be less dramatic in other regions with land of higher value and other production systems. It remains to be seen what the results will be regarding the enhancement of rights security and settlement of conflict.

The influence of state interventions as the hydroelectric power plant project and the titling project on local understandings of property are twofold. First, state intervention in local property concepts has strengthened existing conflicts between landholders and has also created new types of conflict. Landholders do not have equal access to the substituting means offered by the state, which contributes to an aggravation of existing conflicting situations. Secondly, the experiences of landholders with the hydroelectric power plant and the PTT have reduced the credibility of the state as protector of property rights, and it has nourished their general distrust of state institutions.

## Notes

- 1 The origins of the strong local prescriptions concerning fences are not completely clear. The logbooks of the municipal council referred to fencing as obligatory for claiming a concession in ejido land. This was probably part of the local regulation with regard to the assignment of concessions in ejido land. The Police Law (AMHON 1961) states in art. 361: 'The fences of land and pastures must be seven *cuartas* [distance between tips of little finger and thumb of an outstretched hand] high, with sufficient girth and consistency to impede the entrance of cattle'. Without following this prescription, the landholder was not able to demand compensation in case cattle of another producer destroys crops.
- 2 I do not pretend to present a complete juridical outline of all aspects of the Civil Code concept of ownership. The section only discusses those elements that I consider useful for understanding the divergent perceptions of property of landholders and the state.
- 3 The five 'Patriotic Codes' were the Civil Code, the Penal Code, the Code of Civil and Criminal Procedures, the Mining Code and the Commerce Code.
- 4 Just like ownership, possession can be recovered through 'actions of possession' (arts. 895-908). In time, the actions of possession improve titles. Bad faith, for example, cannot be transferred to another possessor. The new possessor will have good faith.
- 5 The Public Register of Property is the central institution for the registration of property rights.
- 6 The main intention of the agrarian reform process can also be explained in a way other than the formulation in article 1. The state needed to calm down the discordant atmosphere in the rural areas. Moreover, agricultural production stagnated and the government needed new instruments for modernising the existing production systems and putting land that hadn't been used before into use.
- 7 The maximum limit of seventeen hectares was in line with the Agrarian Reform Law, only that under the PTT it was extended from ten to seventeen hectares. The argument was that ejido and national lands were of lower quality than the irrigated land that formed the basis for the establishment of the ten hectares maximum for family agricultural unit titles in the Agrarian Reform law.
- 8 The main objectives of the Law of Modernisation were to promote a formal land market in order to enhance efficiency and to increase productivity, and to reduce the role of the state in the process of agricultural modernisation (art. 4). The idea was that the distribution of land as a process should not be guided by government interference but it should be left to operating market forces (art. 69, Thorpe 2000, Carter and Salgado 2001). An important aim of the Law of Modernisation was to improve land market facilities. The Agrarian Reform Law intended to avoid the renting-out and the sale of land. In contrast, the Law of Agricultural Modernisation increased the possibilities to sell land obtained through the Agrarian Reform process, and it allowed renting-out and joint ventures (arts. 54 and 55).
- 9 In the land titling program PTT, land and improvements were separated, which significantly contributed to the lack of understanding landholders had regarding the issued title. The PTT valued the land without the improvements, resulting in low values of the land.
- 10 Teocintal was 9 *caballerías* and 176 *cuerdas cuadradas*. One *caballería* was 45 hectares. The area of Malapón was 726 hectares.
- 11 A manzana is an area measure, officially 0.697 hectare; in El Zapote the manzana measures 0.8361 hectare (Jansen 1998).
- 12 The sale concerned 90 hectares that were part of a larger title called Cárcamo-Maitún. Vicente Moreno was not a villager. He was a state official who inherited Cárcamo and Juniapal from his father.
- 13 Juniapal was 433.65 hectares but the village only managed to control the northern part of it. An extended version of the story about the fight for Juniapal is told in Jansen (1998:32-36).
- 14 The land of Nejapa is 810 hectares.
- 15 Yoro is 315 hectares.

- 16 The land surveys performed on behalf of Alfredo Lara regarding the boundaries between Cárcamo (belonging to the village) and Juniapal (private property of Alfredo Lara) led to an unclear situation. Villagers protested that the land surveyors moved the stones which served as boundary markers. The enlarged area fell within the title of Alfredo Lara. Years later, in the 1990s, Alfredo's son claimed that his title of Juniapal included the land taken up by the hydroelectric power plant. He for his part demanded compensation from the state for the loss of the land.
- 17 Personnel of the electricity company ENEC acted on behalf of the national government in this case.
- 18 Fervent adherents to land redistribution politics inside and outside the INA strongly opposed the PTT. They considered the issuing of titles to individual landholders as an act of frustrating the collective project of the agrarian reform.
- 19 For a critical discussion about the relation between private titles and access to credit and technical assistance, and investments in sustainable production methods, see Jansen and Roquas (1998).
- 20 Stanfield et al. (1986) confirm that in PTT the administrative costs for titling national land exceeded the value of the land (de Janvry et al. 2001).
- 21 The Agrarian Reform Law issued provisional titles that mortgaged the land until it had been paid. The PTT, on the other hand, issued definite titles that holders could immediately use, for example, to obtain credit.
- 22 Stanfield et al. (1986:24) convey that possession is proven only through witness declarations and technical studies. However, this would prove 'occupation' according to the registration data of El Zapote.



## Chapter three

# Property and labour in farm households

Typical naïve-style paintings of Honduran artists present an idea about a countryside filled with white houses with roofs of red tile surrounded by flowers, chickens, horses, pigs and children, where campesinos work their maize plots wearing straw hats and the women wash clothes in the river or fetch water carrying water carafes on their heads.<sup>1</sup> A painting of Roque Zelaya shows a beautiful village of white houses surrounding a white church, of which the inhabitants are portrayed catching fish that fall from the sky (the common narrative of the *lluvia de peces*) (Ramos and Valenzuela 1996). Food, self-determination and traditionalism are chief elements in these paintings of rural life, promoting the family ideal of the man working in the fields and his wife in her home garden filled with flowers. The paintings reflect on peaceful existence in a traditional society that does not suffer from the burdens of modern life. The question raised in this chapter is whether such images of the countryside are in agreement with the realities and what seems to be forgotten in them. One of the most important things not reflected in these pictures is the internal dynamic of a farm household: the way in which labour, property and income become organised, arranged and divided.

This chapter looks at farm households as arenas of struggle about property, income and labour. To understand property relations with respect to land means that we have to gain insight into these households. How are property relations organised in farm households and how do household members struggle for and negotiate control over property? How do property relations in farm households relate to the division of labour? Honduran studies and debates about agrarian policy often search for explanations of property relations in farm households in the role of machismo or in the role of kinship. This chapter discusses the notions of machismo and kinship and their limits, to explain the emergence of conflicts about property between members of a farm households.

The subsequent section deals with the internal organisation of farm households in El Zapote with respect to labour, property and income. Thereafter I look at processes of



control and decision-making about labour, property, and income, in the combined production of tulle and potatoes. The chapter then discusses two factors as possible explanations of the internal dynamics: machismo and kinship.

## Internal dynamics of farm households

Debates about the consequences of capitalist development and the commoditisation of the relations of production have dealt with the question of differentiation in peasant societies (Friedmann 1981, Goodman and Redclift 1985, Friedmann 1986, Bryceson et al. 2000). Some scholars argue that the peasantry will eventually disappear, but others suggest that differential development patterns emerge among peasants. The shifting balance between production for the market and for household consumption has been a central point of attention (Binford and Cook 1991). This section especially focuses on the internal dynamics of farm households as a first step to understand how production and household domains are connected and how labour and property relations are organised.

The internal dynamics of households have become an issue under the influence of feminist critics arguing that, thus far, rural research has treated the household as a 'black box' (Redclift and Whatmore 1990, O'Laughlin 1999). The black box household encompasses a western notion of 'family-household': a combination of kinship and co-residence, which is considered to be the natural way of living (Bender 1967, Barrett 1988, Bourdieu 1996).<sup>2</sup> The black box notion portrays the family-household as the opposite of the harsh capitalist economy 'outside', as a site of solidarity and altruism. The social task attributed to the black box household is the reproduction of human beings and labour power.

Feminist critics of the black box concept of family-household contend that household structures differ world-wide. They have questioned the natural character of the combination of kinship and co-residence and have insisted that the moral family economy of pooling and sharing does not exist. Through the way in which the black box model of family-household is used, it conceals the exploitative economic relationship that exists between men and women because it legitimises labour relations and social hierarchy (Bennholdt-Thomsen 1981, Lem 1991, Whatmore 1991, Maynes et al. 1996). The black box model does not pay attention to the role played by kinship ideology and love in obscuring inequalities and injustice in the household. To open the black box model means that the internal organisation of farm households should be seen as an active social process in which ideology plays a decisive role (Whatmore 1991).

The opening of the black box of the rural family-household is important for understanding the internal dynamics of farm households. Thus far, few studies have

done so for Honduras. This section therefore first explores how labour is deployed both within the household and in agricultural production, and how property and income are distributed.

*Farm households and production*

I use the term ‘farm household’ for all households in which one or more members are involved in agricultural production. The farm household is a central arena of struggles for control over labour and property, struggles that transcend the boundaries between the household-domestic domain and the agricultural production domain. There is no fixed division of labour, and household members may lose or gain property in the course of time.

The family ideal of people in El Zapote is the nuclear family: father, mother and children. Nevertheless, Table 3.1 reflects that only half of the farm households do indeed consist of a nuclear family. Moreover, the composition of a farm household in El Zapote changes in time: a nuclear family household this year may be an extended household next year, and vice versa.

*Table 3.1 Composition of farm households in the main village of El Zapote in 1993*

	Number of households	Percentage
Nuclear family	227	46
Other composition	218	45
Unknown (only main couple known)	44	9
Total	489	100

The group of households in the category ‘other composition’ in Table 3.1 consists of households with a wide variety of combinations of members:

- married and unmarried couples without offspring
- single mothers with children
- widows and widowers
- extended households: grandparents, parents, children, grandchildren, great-grandchildren, adopted children, other family members.

Farm households may accommodate several agricultural producers with different relationships to other household members who are involved in different arrangements regarding the use and distribution of labour, property and income. Some household members have only their meals in the farm household but work or sleep elsewhere.

The amount and type of labour that household members are expected to perform, is primarily related to what is produced and the availability and quality of land. Maize and beans are the staple foods in El Zapote; the majority of agricultural producers in El

Zapote cultivate maize and a minority cultivate beans for home consumption. Even when circumstances permit them to buy maize at the market, and when it would be economically reasonable to do so, they continue to produce it. Most maize producers do not produce enough maize to sustain their households, which obliges them to purchase maize at the local market as well. Some maize producers are able to sell or lend out a small surplus of these grains.

The important cash crops in El Zapote are coffee and tule, a perennial, the stalks of which are used to weave petates, or sleeping mats. In 1992, 46% of the agricultural producers cultivated coffee (Jansen 1998). According to our household survey data, this group of producers matches with 35% of the farm households, as more than one coffee producer may be present in one household. With respect to the households in the survey, 23% cultivated tule and 12% cultivated both coffee and tule. The survey data also demonstrated that 54% of the households did not cultivate any cash crop (Jansen 1999).

The quantity and quality of land that agricultural producers have at their disposal differs. There are landholders who may possess more land than they are able to use, which means that they plan for a fallow period of considerable duration with positive effects on production rates. Producers who do not have enough land of their own will try to rent the land of other landholders or they may use the municipal commons for maize production. The choices producers make regarding the crops they want to produce depends on the availability and quality of the land, but they also consider, for example, the available labour power for clearing and weeding.

#### *Division of labour*

Discussions between farm household members about the deployment of unpaid family labour, the compensation for invested labour, the hiring of paid labour from outside the household, the division of labour and control over children's labour are everlasting and part of daily life. Every working day, the question as to who is available at which moment and for what kind of work needs to be answered.

With regard to certain tasks, farm households have a more or less general division of labour between men and women and between generations (Stürzinger and Bustamante 1997). As this section will show, this division of labour is nevertheless neither fixed nor clear.

Agricultural work in the fields is mainly men's work. Men clear fields, burn fields, sow, weed, distribute fertiliser, spray pesticides, watch the fields and harvest crops. Many women have never even seen the fields in which the men of their households spend their whole day, and they mentioned several reasons for not knowing, visiting or working in the fields, including:

- the work in the fields is too heavy

- the fields are too far away
- they have their own work (referring to petate weaving, among others)
- there is no one else to do the household work

Women broadly share this aversion to work in the field but, nevertheless, they occasionally do it. Some women, for example, help out during the harvest of beans or tule. To see these women working in the fields does not mean that all women harvest beans or tule regularly or that they are obliged to do, or responsible for, this work. It is merely what these women say that it is, 'helping out'.

The only task in the field that women perform on a larger scale is picking coffee, but the number of women that actually do this is not constant. Whether or not they will join the coffee harvest depends on the conclusions drawn on the basis of several considerations. Leaving the house means that women run the risk of becoming the subject of village gossip and losing their reputation. Women therefore only pick coffee in groups of friends and neighbours, which gives them the necessary protection against harassment and gossip. A second aspect that influences the number of women participating in the coffee harvest is that they only pick coffee at the beginning of the harvest season when the coffee is ripe in the lower parts of the mountains. When the harvest moves up higher in the mountains, few women continue to work in the coffee fields because they consider them to be too far away. A third consideration about whether or not women decide to join the coffee harvest is the price paid for the petate. During the first years of our stay in the village, few women went to work in the coffee fields, but this changed in the 1996/1997 harvest season when the price paid for a petate was much lower than the income that could be earned through picking coffee. The low petate price and the wages in the coffee harvest stimulate more women to choose to work in the coffee fields at that moment.

Women are responsible for housekeeping and the performance of a broad range of domestic tasks, but this does not mean that they are solely responsible for doing them all by themselves (Fordham et al. 1987; Kuhn 1990). For example, women are held responsible for washing clothes but this does not mean that they actually wash it all themselves; they may see to it that it is done by others. Daughters from six years old onwards wash their own clothes as do adult sons on occasion.<sup>3</sup>

Furthermore, women are responsible for preparing and distributing the food. They prepare fresh tortillas three or more times a day and cook beans and other foods.<sup>4</sup> Preparing tortillas is the most time-consuming activity that is exclusively done by women, but in most farm households more than one woman is available to get it done.<sup>5</sup> In the afternoon, they wait for their husbands to come back from the field to immediately serve them food and coffee. Men and boys fetch the firewood that is used to heat the stove, which they bring with them when they come back from their work in the fields. Women who live alone may fetch firewood from locations close to the village.

Women in El Zapote talk about their 'work', they do not refer to performing domestic tasks but to weaving petates when talking about their 'work'. In local discourse, weaving petates is part of the work in agriculture. Weaving is an exclusively female domain that has a great impact on women's self-esteem and image. I shall explain this later in a discussion about the production process of petates as an arena for gender struggles for property and control.

Besides housekeeping activities, there are many agricultural tasks that have to be done within the boundaries of the farm household, and for which women and men share responsibility. This may include the washing and drying of coffee; removing maize from the cobs and drying and storing it; feeding domestic animals such as chicken and pigs; butchering; and repairing all kinds of tools. Both men and women participate in community activities and visit meetings organised by the extension services of the state, non-governmental organisations, or the school, although women are outnumbered on practically every occasion.

How do we evaluate the division of labour on the basis of these observations? We have seen that a clear division of labour for working in the fields exists between women and men, the preparation of food and the weaving of petates, but the division of labour is much less clear with regard to other tasks. Labour is thus not rigidly organised and divided according to fixed patterns. Choices regarding who does what depend on many things, such as the kind and quantity of agricultural production, the number of farm household members, the season, the presence of small children, the relationship between husband and wife, or the number of girls and boys.

Day by day, farm household members discuss how things should be organised and how family labour should be used and for what. Sons ask their fathers' permission if they wish to work as a day labourer for other producers, which is generally possible when the father decides that he does not need his son on that particular day. Mothers order their daughters to light the fire in the stove, to start weaving petates, or to do other tasks. On the other hand, when children grow older, parents need to reward their offspring's contribution and provide incentives for them to work. Adult sons may demand some kind of 'payment' for their work and control their own income. Parents may therefore grant elder sons a daily wage or a part of the harvest. Another possibility to keep sons content with their situation is to allow them to cultivate a field of their own as well, or to allow them to work for others in order to earn some money. Struggles about labour not only take place between parents and children, but also between men and women, in which balancing the relative importance of the different tasks is a point of continuous struggle.

Agricultural producers have to regularly hire wage labourers to be able to cope with labour demands in production. Labour peaks characterise agricultural production, during which labour demand is higher than producers or farm households themselves are normally able to bring in. Hiring wage labour is also necessary when a person falls

ill. Female producers especially have to rely on wage labour when they are not able to expect labour from male family members.

Wage labourers and peasant producers do not form two separated social 'classes' in El Zapote. There is only a small group of permanent wage workers, all of whom work for the same patron. These people are often indebted to their patron and are obliged to respond to any demand the patron makes for their labour. Permanent wage labourers either do not have a farm of their own or they only cultivate a tiny plot of maize for home consumption. Most agricultural producers depend on non-permanent wage labourers who are found among a broad network of friends, neighbours and family, and who are peasant producers themselves. They come to 'help', in local terminology, and earn the normal daily wage rate. The maintenance of a network is of crucial importance in order to obtain labourers at crucial moments.

A producer is thus not automatically able to claim the labour power of household members on the basis of household membership or kinship. In periods of high labour demand, a farm household may not have sufficient labour available and the producer will depend on labour recruited outside the farm household. Moreover, not all household member labour in agricultural production activities is unpaid; payments made to household members may take different forms which are often not directly visible. Sons do not automatically work for their father, especially when they become older; the father has to provide something in exchange, such as a part of the harvest or the promise that he will be one of the future heirs.

#### *Children and their labour*

Children perform a substantial portion of work in farm households. From five or six years old, a son works in the field together with his father. Boys gather firewood, fetch the horses or mules in the early morning, and bring them back to their pasture at the end of the day. Both boys and girls visit the mill to grind maize for tortillas (two or three times a day); they care for small children; buy things at the shop; go to the middleman or tule owner to sell a petate; or they are sent off to other people with all kinds of questions or requests. Girls first start working by helping the other women in the household with the weaving of petates. Later on, they learn how to start weaving and how to shape a petate themselves and eventually work independently. Girls also lay the fire for cooking and make tortillas.

An important task of children is to run errands (*hacer mandados*).<sup>6</sup> Children are not only sent off to buy soap or sugar, but they also do 'painful' things such as asking for loans, requesting payment of loans, or looking for day labourers. Adults who 'feel ashamed' to ask such favours from others first send their children to check the reaction to their request.

Children 'serve' their parents by adding labour to the farm household and by running errands, but the work of children is also considered as a part of their upbringing. Parents say that by starting to work at an early age, children learn the value of working, producing food, and earning money. The elderly in the village convey that the upbringing of children has changed during the last decades. Parents say that they raise their own children less austere compared to their own youth, and that the relationship between parents and children has become less authoritarian. In their opinion, they have developed a different relationship with their children than they themselves had with their parents. 'We had to keep our mouth shut when adults spoke and if they spoke to you, you had to cast down your eyes'. Nowadays, children speak freely to their parents about all kinds of topics. The amount of physical violence that parents use to 'correct' their children's failures has diminished. The same is true for the school teachers who use less physical punishment in the classroom than in the past. Parents consider it important that children learn the common values of respecting other people, obeying orders and working hard.

The role of education instead of work has become more important in rearing children. There are more possibilities to finish primary school and at least three years of secondary school. Primary schools are found in the central village and in all hamlets of El Zapote. The central village also has a three year secondary school, which has been officially recognised by the government since 1996. The increased income of coffee producers has also expanded the opportunities for their children to leave the village to continue their studies.

#### *Property and income*

The distribution of property rights and the division of income are both subjects of conflict between household members. Conflicts over income have been a central point of attention on the feminist research agenda (Dwyer and Bruce 1988, Deere 1990). Struggles for property rights, however, have been neglected for a long time although they are of equal importance for relations between farm household members. The theoretical assumption that income and property are subjects of conflict between farm household members is not in line with the popular image of peaceful peasant life that I portrayed in the beginning of this chapter. It means that we have to forget the image of family members altruistically sharing resources and income.

Maize and beans are typically products that are brought into the farm household and consumed by all its members. However, if the producer sells a surplus of maize or beans, he or she controls this income and solely decides on its use. Analogously, it is the producer who controls the earnings of the sale of the cash crops coffee or tulle. Coffee producers who worked with their sons, however, were under pressure to share the earnings or to give them a small part of the harvest. Spouses also made claims on

the coffee harvest for coping with such expenses as school uniforms. I witnessed how a coffee producer refused to give his wife any say in how to use the earnings of the coffee harvest. She therefore secretly sold small amounts of the coffee when it was drying in the patio. Tule producers constantly found themselves in a field of tension between their own wish to sell tule (and control the earnings themselves) and the claims of the women in their farm household who demanded the tule for their weaving activities. I met one tule producer who sold tule to his own wife.<sup>7</sup> In many other cases, tule producers ignored the demands of women in their own households and sold the tule to other women in the village. Such sales often took place when a producer was on his way back home with one or more mules or horses loaded with tule. Thus, the tule never reached the physical boundaries of his own farm household. In other cases, tule producers only harvested tule if requested to do so by women outside their own farm households, a favour which was often paid in advance.

The weaver controls the earnings of petates and uses them largely for household needs like soap, oil, and salt. During hunger periods, when the harvested maize is already eaten, women use the earnings of petates to buy maize. Young women who live in their parents' farm household control the earnings of weaving petates themselves, and they often use them to pay for school fees and necessities. Likewise, sons who earn a daily wage by working for others also control this income themselves. Both daughters and sons are expected to pay for their own clothes and medicine, but they are also pressured to give their mothers a share of their earnings for general household expenses. Hence, income and earnings are individually controlled by the household member who is the producer or the labourer. Just like income and earnings, property rights are held individually. Land, means of production, cattle, houses, horses, trees, bicycles and tools are in the hands of individual owners. They are not owned, as the romantic Honduran peasant image suggests, by the farm household as such.

In spite of these general organising principles, property rights of individuals and their control and decision-making power are continuously contested by other villagers and household or family members. The question of who owns a thing does not say anything about who controls or uses it. The extent to which the owner of a thing has control and decision-making power over it is closely related to the way in which he or she acquired and accumulated the property, and also labour relations.

## Control and decision-making in the production of tule and petates

The production of tule and petates is important for the survival of the majority of farm households in El Zapote. It is characterised by struggles for control and decision-making about labour, property, product and income. Moreover, it is an important site for producing gender images that not only play a role in tule and petate production,



but also in struggles for control over other goods (land). This section first describes the production process of tule and the labour process of petate weaving. It then analyses how the harvest of tule became the starting place for a small family drama in a particular farm household.

### *The art of petate weaving*

The department of Santa Bárbara is known for the production of handicrafts made of natural fibres: Panama hats, baskets, handbags, and petates.<sup>8</sup> These handicrafts find their way to the national tourist market, while several of them are also internationally appreciated. The makers of these products are often extremely poor and earn only a fraction of the settled prices on the market from their work. The outside world knows little about the importance of handicrafts to the local economy, the production process, and the labour relations between the poor rural people who are involved in its production. In contrast to other handicrafts of Santa Bárbara, the tourist market absorbs only a fraction of the produced petates, and they are merely a utensil for poor Hondurans who use them as sleeping mats. Hence, with respect to the market, petate production differs from the other Santa Bárbara handicrafts.

Patios in El Zapote are stuffed with drying tule; mud paths between the houses are filled with mules transporting green tule stalks and women and children carrying petates on their heads on their way to the local wholesale buyer. Women of all ages sit on the floors of their houses while weaving petates. To give an idea of the extent of production, women weave petates on a regular basis in 337 (70%) of the 489 households in the village, while 199 producers of tule live in the village (CDI 1988).<sup>9</sup> The amount of petates that are produced is difficult to estimate. A low estimation based on data from the main village is that 6,000 petates are exported out of the village each month. Other sources estimate that some 20,000 petates are produced in the municipality (Baide Velásquez 1991).

The combined production system of tule and petates completely differs from coffee, which is the other major commodity in El Zapote. The production process of tule-petate is not based on modern technologies, it is not incorporated into the international market and there is no network of institutions created around its production and market.

Several development projects of both the government and NGOs have tried to develop the tule-petate economy. An important shortcoming of these projects has been that they have only focused on the women who weave petates. These projects did not understand how the production of tule and petate relate, and how the production process constructs labour and property relations within farm households and between women.

### *Cultivation of tule and weaving petates*

Tule can be found from Mexico to Colombia (Williams 1981). In Mexico and Central America, indigenous populations use the dry stems of tule for weaving petates (Castro et al. 1991, Castro Ramírez 1994). The village of El Zapote is by far the largest producer of petates in Honduras. While petates are made with wild tule that grows along rivers and in other watery places in other places in Mexico and Central America, tule in El Zapote is cultivated in tiny plots called *tular*. A tule field normally measures one or two *tareas*.<sup>10</sup> Land that is suitable for tule cultivation is scarce and relatively expensive.

Tule is a permanent crop that takes two years after planting to produce the first usable stalks.<sup>11</sup> Producers do not fertilise tule. Plagues and diseases do not attack tule on a large scale and pesticides are not used. The producer weeds the field now and then, although weeds do not grow rapidly because of the dense foliage. The phase of the moon is essential for planting and harvesting tule, as tule harvest is only suitable during several days in a month. Harvesting means that ripe stalks are cut and stripped of their leaves at the spot. The stalks are bundled in *cargas*, which is the amount of tule that can be loaded on a mule or a horse, and which should contain the quantity of tule sufficient to weave twelve petates (Jansen 1999).

Women dry the tule stalks in the sun on their patios or alongside the road. After drying, the triangular stalk is divided into three fibres and the 'heart' (*corazón*). They separately bundle the heart and sell these bundles to outside buyers. The heart is used to make chairs and other pieces of furniture, while it has multiple local uses for binding things together, including bundles of tule, and for saddles. After taking the heart out, the remaining fibres of tule are sorted by length and bundled. One to four bundles are needed to weave a petate, depending on the length of the fibres. If more than one bundle is needed, then, the petate will have a joint made with a bamboo needle.<sup>12</sup> The weaving of a petate may take a woman one to three days while sitting on the floor inside their houses without much day light. The poorest women are also the fastest, but it is said that the work of these women is of less quality as well.

### *Struggle for material and income: labour arrangements in petate weaving*

Women are continuously busy to guarantee their supply of tule in order to be able to 'work'. Yet they do not have equal opportunities to obtain tule. Access to tule depends on:

- whether or not tule is produced within the farm household
- whether or not women are able to come to grips with decisions about the time of harvest
- whether or not women are able to prevent the sale of tule to other weavers outside the household
- whether or not women are able to save the money to buy tule

- whether or not women succeed to maintain the right network contacts in order to have access to tule provided by others

Several women in El Zapote own and manage a tule field themselves and thus have easy access to the material. Most of these women do not weave themselves but allow other women to do the weaving. There are also women who obtain their tule through a husband, son or brother who has a tular. Some women have control over all tule that they bring into the farm household. However, many tule producers sell tule to other weavers outside the farm household. This means that the women in the farm households of these producers have to negotiate and struggle for gaining control over the amount of tule they receive.

Women who do not have direct access to tule have different options. If a woman has some money, she is able to invest it in buying tule from other producers. She has to find a producer who is willing to sell his tule and reach an agreement about the price, and she has to make sure that the purchased *carga* contains the amount of tule sufficient to make twelve petates, and not less. Women who are not able to make such an investment work at piece rate for women who have tule. Weavers at piece rates earned 2 lempiras at the time when the petate was sold for 5.20 lempiras. Hence, weavers earned 39% of the value of the petate. Furthermore, the system of '*real por real*' is common among friends.<sup>13</sup> Women who have tule give the material for two petates to a woman who weaves them. The weaver then returns one petate to the owner of the tule while keeping the other one to herself.

The main actors in the double production process of tule and petates are the tule producer, the weaver who also controls her own tule, and the weaver who depends on other women for her access to tule (Figure 3.1).

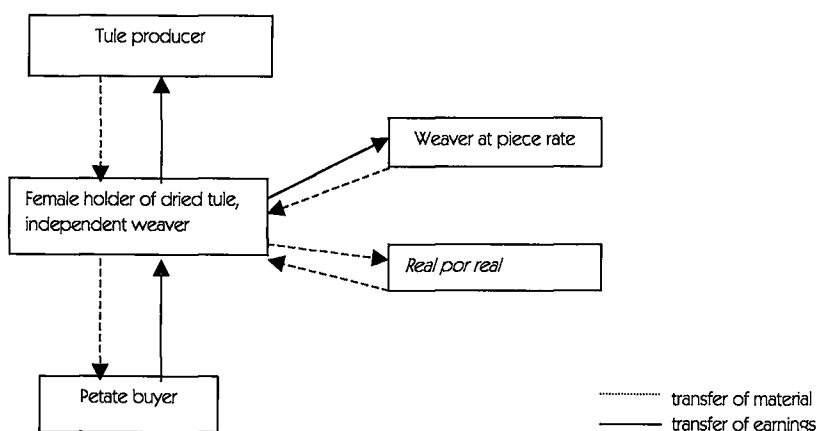


Figure 3.1 Exchange of labour, material, and earnings in the production of petates

The producer of tule has to decide when and for how long he will harvest his tule field. The moment and duration of a harvest period depends on the moon. Tule does not immediately decay in the field, and it is possible to skip one or more harvest periods if the producer prefers to finish other more urgent tasks. In his decision on when to go and harvest tule, the producer will anticipate the labour which he has at his disposal. The tule producer will plan a tule harvest when women outside his own farm household offer an advance payment for tule that they want to buy. The planning of the tule producer further depends on how he negotiates with the women in his own household.

A woman who has access to tule - the tule holder -, prepares the tule for weaving. This includes the laborious process of drying the tule stems, which may take seven days or more, depending on the weather. Every morning, the tule holder has to bring the tule outside and spread it out in the sun. When it starts to rain, she has collect it quickly because rain ruins the drying tule. When the stems are dry, the tule holder sorts them by length and bundles them, and they are then ready to be handed over to a weaver. The tule holder has to decide how many petates she and other women in her farm household will be able to weave, and how much tule is left over for women outside the household. Within the farm household, this is a question of negotiation. Grown-up daughters, for example, may be willing to weave petates but may insist on keeping control of their earnings. If the tule holder thinks that there is not enough labour in her own farm household, she will look for women in her social network who want to weave petates at piece rate or in a '*real por real*' arrangement. Tule holders who regularly control large amounts of tule have their own circles of weavers. These weavers are often continuously indebted to the tule holder by borrowing money from the tule holder and weaving petates in return.<sup>14</sup>

A weaver who does not control her own tule first considers whether she has enough to buy tule from another producer. If this is not possible, she starts visiting women who are able to give her work at a piece rate or she asks a friend for a '*real por real*' arrangement. If she is indebted to a tule holder she has no choice but to work to settle the debt. Weavers who do have direct access to tule try to establish a small network of tule holders that guarantee them access to tule. However, many weavers who work for piece rates are not able to create or maintain such a network.

Relations between tule holders and piece rate weavers are often tense. The tule holder offers advance payments to commit weavers to work for her and she deliberately creates debts. Through the debt mechanism, the tule holder ensures herself of having labour available whenever she wishes. The debts reinforce the unequal position of weavers who are not able to negotiate about the reward that they receive for their work. Tule holders complain that weavers are foolish to run up debts and do not work properly. Piece rate weavers, and especially those who work to pay off debts,

try to weave one petate a day, with less attention paid to the quality of their work. The problem for tule holders is that petate buyers may decline carelessly made petates.

Ten people, more or less, buy petates on a regular basis. Several other people buy petates only at times when they need money. In addition to the local buyers, buyers from outside the village make daily visits. These people visit houses and try to persuade women to sell them petates. These outside buyers offer women more space to negotiate prices than local buyers; local buyers tend to offer one and the same price and only change it when all other buyers change it as well. Women receive a better price for their petates when they sell them in *docena* (twelve petates). The buyers make rolls of twenty-four petates, which is the necessary format for selling on the national market. Most buyers sell the rolls to wholesalers in the city of San Pedro de Sula.

Although the price of the different buyers and the best possibilities of negotiation are the subjects of daily conversations between women in the village, the choice for a particular local buyer does not depend on the price he or she offers. Debts and other mechanisms play a role in committing women to sell petates to a specific buyer. Buyers pay for petates in advance and commit women to selling petates for a previously settled price. Social networks and local politics also play an important role in the choice of a buyer.

#### *Gender and weaving petates*

Petate weaving is a critical source of income for poor farm households. In El Zapote, it means the difference between dead-end poverty and having something, both in terms of income and as a source of self-esteem. Weaving petates means to have and to independently control an income, no matter how small. The very fact of having and controlling this income has a positive effect on women's position. Their contribution to the survival of the farm household is crucial, buying things like maize, salt and soap with their income. When such basic needs are ensured in some other way, petate weavers have more room for manoeuvring to decide whether they will buy tule, send a letter to their family, set out on a trip, or save money to buy clothes for the children. Weaving petates thus offers women of all ages the possibility to make autonomous decisions on all kinds of issues.

Gender relations are renegotiated and gender images become reconstructed through the negotiations about the moment of harvest; the different ways of controlling tule; the process of weaving and the generation of income; and the various arrangements regarding the exchange of labour and material. Observing all these negotiations and networking, it occurred to me that women in El Zapote do not see themselves as housewives. I frequently heard women assert that they 'do not work', which is not a sign that they have a false consciousness about their loads of domestic tasks (Valestrand 1991). Household tasks are not referred to in terms of *work*: they are considered to be

'duties'. The expression 'not working' has two different meanings. Firstly, it refers to the fact that women do not work in the fields and secondly, 'not working' may also mean that they are not weaving a petate *at this very moment*, for example, because they do not have dry tule available.

Women describe themselves, and are described by others, as *petateras*, petate weavers. The petatera image has a strong positive connotation. Being a petatera means that one performs productive work, generating an income that contributes to the persistence of the farm household and that is considered to be more essential than domestic tasks. There is also a less common counter-image that considers petate weaving an activity that threatens the natural complementary relationship between men and women. In this image, it is the man's job to come home with the food for the whole family: 'Petate weavers make their men lazy inhabitants of the hammock'. The positive petatera image is dominant. It is this image that is important to women in struggles for resources. Women use this positive image when they become involved in struggles for land. The positive petatera image is then set against the image that women 'do not work' (Chapter Five).

*'No tamales for Christmas': labour and control over tule*

Tamales are cooked rolls of maize dough stuffed with meat and vegetables and wrapped in banana leaves. They are a favourite dish in Honduras, and not dishing them out on Christmas evening means a severe social loss of face. The Christmas evening tamales played a role in a controversy between Rosa and Excequiel about control over tule, labour and property.

In October 1994, Excequiel and his two adult sons went to harvest tule for five successive days, harvesting four *cargas* of tule. Rosa went with them to the field to cut off the leaves of the stalks on the first and the fifth day. On Monday, Rosa worked hard but on Friday, she went to the field, taking along Dalila, her youngest daughter of five years old. She stayed for three hours, one hour of which she dedicated to bathing with Dalila in the river. When she left that day, she told me that she would help cut the leaves off so that one of the boys would be able to walk up and down with the horses loaded with tule twice. The family returned early at lunch time, and they were all in a dreadfully bad mood. A few hours later, Excequiel revealed that they did not harvest all the ripe tule. He had planned to harvest it all and to allow his two sons to sell one *carga* each in order to show them what it means to sell your own harvest. Rosa, however, had strongly opposed his plan. Now Excequiel said that he did not know what to do. He would spend Sunday to thinking and replanning his work schedule.

The month of October was a very busy one for Excequiel. He had to prepare the second maize field (*postrera*) and he also wanted to weed his coffee field. Yet Rosa said that he should continue harvesting tule as long as the position of the moon was

favourable. Excequiel thought it over. A man had approached him to buy two cargas of tule on behalf of his wife. Furthermore, Excequiel planned to harvest *a medio* with a labourer. The *a medio* principle assigns half of the harvest to the labourer and the other half to the owner. After my cautious suggestion that Rosa might want to obstruct any sale of tule, he laughed: 'How can she stop me? If I want to sell it, I will sell'.

A few hours later Rosa entered my patio to share her concerns about the tule. As with every problem, she talked about it as if it was all a joke:

*You know, Excequiel told me that he wants to sell a few cargas. There was a man from Naranjal... he just wanted to carry them off. I told him [Excequiel]: Do as you like, sell it. But when you come home there will not be salt, soap and no meat in your soup. Forget it. If you do not bring me tule, there will be no money. You will not eat tamales for Christmas.*

I put forward that she already had four cargas of tule in the house and that I did not understand why she should want even more. She then said:

*I will store it. It will soon be November, December... There will be no time to harvest tule. I dry the tule now, and I will have a supply for the months to come. I paid Josue [a neighbour] in advance to harvest me a carga, but he returned the money to me. On his way home, another woman offered him fifty-five lempiras, while I gave him forty... You see it is not easy to buy tule...*

Excequiel and his sons would start the coffee harvest in November and December, which would completely absorb their time and energy. Rosa knew that it would be impossible to convince Excequiel during that period that he should harvest tule. It would also be impossible to buy tule from other producers who also worked in the coffee harvest.

Rosa wanted her husband to continue harvesting tule and she had to think how the problem of his needing labour for other tasks at the same time could be solved. She therefore suggested he invest less family labour in preparing the maize field, and instead that she invest some of her own capital:

*I told him about the maize field: Here you have Gramaxone, the horses and the money to pay for day labourers. In this way you can do it in one day. I will pay... with Gramaxone... I recently bought it when I went to San Pedro. It is not much work. You first harvest the maize that is still there and then you apply Gramaxone. Or you apply Gramaxone first... it's a small job...*

Gramaxone is the brand name of the herbicide paraquat to make weeding easier and faster. Herbicides are increasingly used to offset labour shortages in weeding.

Excequiél thought the situation over for a few days to come up with a possible solution. On the next Monday, he took along his friend Florencio to harvest tule. Florencio recently sold his own tular because he ran into problems with the owners of adjacent plots. He bought a new tular, but he had to sow it again so he was not yet able to harvest from it. Florencio's household included several petateras who were complaining about not having tule day after day. To Florencio, it was a blessing when Excequiél offered for him to harvest tule in his tular. Being a close friend of Excequiél, Florencio did not pay for the tule he harvested in Excequiél's field.

The October events in the farm household of Rosa and Excequiél show how tule became a vehicle for struggles about control over labour and earnings. It was a busy month for Excequiél and there was not much time to harvest tule. He also knew, however, that the tule field needed to be harvested or the ripe tule would dry out and be lost. His initial idea was that his sons would do the work, and that they would be rewarded: he would allow them to sell the harvest. The boys would be able to buy new clothes for Christmas and Excequiél would have satisfied his duty as a good father.

Rosa, on the other hand, wanted to maintain control over as much tule as possible, so that she could have a supply for the months to come. She also opposed her husband's plan because she did not want to establish a precedent with regard to the sale of tule. She was afraid that by allowing her sons to sell, they would continue to claim a share of any product they worked for. Rosa demanded that all the ripe tule would be harvested and brought to the house. In order to substantiate this claim, she went to the tule field herself. Her labour was not strictly necessary and Excequiél never asked her to help out in the field. Yet by working with her husbands and sons in the tule field, she too was able to lay a claim to the harvested product.

Rosa used financial household arguments to support her claim that she needed the tule. More than any financial argument, however, Rosa's main preoccupation was to preserve control over the tule. Her husband had always given her the tule he harvested, and she had no intention of sharing her control of the tule with other household members. If she would allow her sons to sell tule at that time, she was convinced that they would continue to demand such privileges.

Another striking aspect of Rosa's actions was her growing interference with decision-making in the agricultural production system, which was normally Excequiél's domain. The situation was that Rosa controlled money that was necessary for making investments (labour power, herbicide), while Excequiél was broke. Excequiél tried to re-establish himself as the head of the household. He conveyed in really *macho* terms that he was the one to decide and that he would sell tule whenever he wanted. In reality, however, he did not act as he said. He was not able to tell his wife to mind her own business and force his own plan through. Therefore he came up with the 'solution' of



offering a role in the harvest to his friend Florencio. He did not like the idea of leaving the ripe tule to be lost to spoilage. By allowing Florencio to harvest he did not *sell* the tule but instead 'helped out' a friend. Florencio's payment would be indirect. He and Excequiél worked together on the basis of reciprocity. They were used to helping each other, and they trusted that each action of one would be paid back by the other in time. The 'Florencio solution' kept Excequiél from losing face while it prevented any complaints from Rosa.

## Farm households and machismo

Property relations in farm households are also gender relations. When the subject of gender is brought up in Honduran studies, either the concepts of machismo (Kuhn 1990, Martínez et al, 1995, Mendoza 1996) or patriarchy (de Oyuela 1993) are cited as explaining factors. Central to this section is the question of what machismo entails both in the literature and in El Zapote. Is machismo a useful concept that might contribute to our understanding of property relations between men and women in El Zapote? After a brief review of the concept of machismo, this section analyses images of the 'ideal partner' in expressions of men and women in El Zapote; images that embody concepts of gender. Thereafter, this section discusses what characterises property relations between husbands and wives.

### *Machismo and family structures*

The fact that the term 'machismo' pops up regularly to explain gender relations does not mean that there is consensus about what it means (Melhuus and Stølen 1996). It is not clear, for example, whether everyone using the term is denoting the same phenomena or relations. For some authors, machismo does not refer to male-female relations but to relations between men. Lancaster (1992) connects machismo to masculinity and male behaviour towards other males, of which the central features are drinking, fighting and sexual conquest. Machismo is thus about men, although it captures aspects of men's behaviour that are related to women. Stevens (1973:90) describes male behaviour in the context of machismo as characterised by exaggerated aggressiveness and intransigence in male-to-male relations, and arrogance and sexual aggression in male-to-female relationships. To counteract this male behaviour, women can fulfil two roles: first, as the inferior and weak woman who must be protected by men<sup>15</sup> and second, as the spiritual and morally superior woman (de Oyuela 1993, Brusco 1995).<sup>16</sup> Motherhood is the basis of moral superiority and of women's capacity for sacrifice and humility (Stevens 1973).

The house/street (*casa/calle*) dichotomy plays an important role in machismo (Radcliffe and Westwood 1996). The public role of the man - *calle* - alienates him from the private sphere of household and family - *casa* - that is dominated by women.<sup>17</sup> Machismo leads to the ideological contradiction that men are dominant and important, but also absent in daily family life where the women keep the household going and make the main decisions (Brusco 1995).

Gender relations, and especially marital relations, play an important role in two virtually contradictory images of the Latin American family (Dore 1997). The first image refers to a family structure in which a man leaves his wife and children behind in order to build a new family with a new (younger) wife, who he again abandons to start a new family with another wife, and so on. The woman and her children form the nucleus in this image while men are only temporarily present in the household. The second image portrays the patriarchal family, in which a strong male head totally controls all other family members, including his wife (Brusco 1995).<sup>18</sup> The first image in particular refers to machismo, while the latter refers to another form of male dominance, which Brusco calls patriarchy.

Family structures in El Zapote embody elements of both images. Many men have had several families - the first image - while at the same time, the man is the recognised household 'head', the second image. The pictures cannot be generalised, as there are, for instance, many women as well who abandon their husbands and children. The important conclusion for El Zapote is, in my view, that the central relation in farm households continues to be the husband-wife and not the mother-child relationship of the first image. The goal of an abandoned woman will be to find a new partner; she will not persevere in staying behind with her children.

#### *The ideal partner*

This section looks at images of the ideal partner to develop more concrete idea about what gender means to people in El Zapote and to what extent they incorporate machismo or patriarchy as elements in their concept of gender. The word 'machismo' is not known in El Zapote but people use deviant forms of the term as *macho* and *machista*. Macho is a merely positive term meaning 'strong'. Either a man or a woman may be called macho, but also 'nature', the weather, or any other phenomenon. 'Machista', on the other hand, is a negative term for men who treat women as slaves, who command, dominate and limit their personal freedom.

In conversations with young women about their future, they were very clear about the undesirability of marrying a *machista* man. In the words of one of these women:

*I do not want to marry a Honduran man. They are all machistas. They do not allow you to go out and they demand food all the time. They treat you as if you were a slave.*

*I think that it is good for a couple to share, but not as a slave. I am not going to marry a machista that treats you like that... who demands "fry me an egg... immediately!"*

The comments of another young woman were also revealing about the negative image of the Honduran man:

*I will go to San Pedro to work and to study. I will certainly not get married. A married woman cannot study anymore. That's the way Honduran men are, they are machistas. They prohibit their wives to study. They say you want to go to college only to fall in love with other men. Men can't stand it if a woman has finished her studies and knows more than they do.*

What these women call machista may be patriarchal in the terms of Brusco (1995) and Dore (1997): it is the picture of the dominant man controlling his wife's behaviour.

Elements of *machista* come back in concepts of and criteria for the ideal partner. I researched images of the ideal partner of men and women because I assumed that it would give me an idea about gender images in the husband-wife relationship. Women and men use norms, principles, criteria and considerations when they talk about their ideal partner. Table 3.2 gives an overview of what women and men brought forward in discussions about the characteristics of a (future) partner in life.

The ideal wife is portrayed as fulfilling her duties vis-à-vis men and her family. Being a wife means that a woman is obliged to carry out the main domestic tasks (cooking, cleaning, washing clothes), child raising, and the performance of such agricultural tasks as petate weaving and drying coffee. It is also the wife's duty to have sex with her husband if he wants to. Case files in the judicial archive of registered divorces in Santa Bárbara show that a valid reason for getting a divorce is that the woman has not 'performed her duties'.

A man, on the other hand, does not have duties but has *responsibilities* in local discourse. The main responsibility of a man is to bring in food, the maize for household consumption. 'The man has to bring in what the household needs. I have to bring in the food, I have to care for my wife. If I do not give her food, she will walk out on me'. This man, and many others, liked the idea of having his own harvest of maize in the house instead of depending on buying it from other producers. 'I don't like to see my wife and kids walking through the village with a bag to look for maize (to buy from another producer)'. If maize production is not enough to feed the farm household, women might assume part of the responsibility of providing the household with maize. Women play a central role as maize providers in the lean months from June to August, buying grain with the money they earn from petate weaving.

The qualification *trabajador*, someone who works hard, is one of the most positive compliments to receive. The qualification is classless; everyone, whether man or

woman, poor or not, is able to gain it. Women who are considered to be hard workers, for example, combine their domestic tasks and mothering with weaving petates to earn an income. Men who are said to be *trabajador* work hard in their fields, produce their own maize for household consumption or, more generally, try to advance in life by working hard.

Another positive qualification for the ideal female partner is that she is economical and knows how to manage her budget. The ideal woman does not spend money on ‘useless’ things like cassettes, candies or soft drinks. Furthermore, the ideal woman is well-bred. This means that she is not allowed to quarrel with other women or to hang out in the streets. The ideal wife is able to develop a good relationship with her in-laws. Another qualification used for men but merely for women, is to be unassuming (*humilde*). This notion refers to an absence of snobbery and the pretension to be more than one really is.

Table 3.2 Constructions of the ideal partner in life by men and women in El Zapote

The ideal wife	The ideal husband
She should not be a relative. <sup>19</sup>	He should not be a relative
She knows and performs her duties	He is responsible: he takes care of the family, he brings in food and money for household expenses
She works hard ( <i>trabajadora</i> )	He works hard ( <i>trabajador</i> )
She is economical	He is not an alcoholic
She is well-bred and unassuming	
She is a mother to his children	He is not <i>machista</i>
	He is monogamous
	He must have prospects, think about the future, and allow her to use birth control
She lets him freely visit friends or gatherings	He lets her freely visit friends or gatherings
She is not jealous	He is not jealous

For women, it is important that their ideal partner is not an alcoholic spending time and money in the pub, because a drinking husband stands for deep trouble. Men who are alcoholics have health problems, they are not able work hard, they squander their income, and sometimes they become violent towards their wives, children, or other persons. The following quote is from a woman who held on to promises that her husband would stop drinking, although this never happened afterwards:

*I went to live with him although I knew he was a big drunk. He promised me to stop drinking and I believed him. But he didn't. In the beginning he only drank on Saturdays, but later also during the week. Sometimes he was drunk for a whole week or month. He gave me money to buy food and then used the remaining part in the cantina. Later he did not have enough money, and he plunged into debt.*

Both men and women consider drinking as a despicable habit, but for men who do drink it is part of being male and therefore very difficult to abstain from. Evangelical churches are helpful in providing a space in which men are able to stop drinking without losing their male identity. A man who is an alcohol addict is not necessarily called *machista*, because being *machista* is not related to drinking.

Both men and women, however, detest jealousy in a relationship, although jealousy may have very different implications for them. A wife might only complain about her husband if she thinks he is too intimate with another woman. On the other hand, the consequences of a jealous partner are much more drastic to women. There are women who spend their days locked up in their houses because of their jealous husbands.

In the view of women, the ideal man 'has perspective'. The man with perspective is certainly not a permanent day labourer. The man with perspective has at least completed primary school. He might have a fair chance of inheriting part of his parents' estate one day. The man with perspective thinks about the future, how to invest money, what to study, and how many children would be desirable.

An important requirement for the ideal male partner is that he is faithful to his wife. This is not only a sentimental concern, but also a material concern for the consequences of when a woman and her children are left behind.

Furthermore, women mentioned the use of birth control as requirement for the ideal partner. Birth control is a subject that women freely discuss among themselves but which is taboo in conversations with men. Birth control is a difficult subject for men because, on the one hand, men acknowledge that it makes sense not having too many children while, on the other hand, they consider that birth control makes them lose control over their wives' fertility. Nevertheless, women use birth control with or without the permission of their husbands. The evangelical churches play an important role in the propagation of family planning and in increasing the acceptance of birth control by men.<sup>20</sup>

Comparing gender constructions on the basis of the 'ideal partner' and machismo images, we see that the gender constructions of the ideal partner embody many more elements than the machismo or patriarchy elements alone. The ideal partner constructions show that men and women to a large extent mention the same criteria, which are thus the same for the ideal wife and husband, such as working hard and not being jealous.

A vision of the marital relationship as a natural alliance in which there is a common though divergent responsibility for work, household, production and procreating and rearing children, colours the considerations regarding the ideal partner. He or she is not only a partner to love and to hold, but also in making life possible: in agricultural production, in earning an income, in buying or constructing a house, in buying land, and in decently raising offspring. In fact, we see that machismo describes phenomena that are part of the ideal partner constructions. Machismo alone offers a very restricted

view of gender: it mainly describes male behaviour and it victimises women. The ideal partner constructions express a gender relation in which the behaviour of both husband and wife is valued and evaluated on almost equal terms.

*Husbands, wives and property*

Any form of marriage implicates arrangements with respect to property. It is characteristic in the rural areas of Honduras that people do not marry officially and that property relations between husbands and wives are not influenced by whether or not a couple is married.

Central to the legal construction of marriage is procreation. Marriage is a natural union in which the natural characteristics of men and women complement each other with the aim to procreate (art. 28 Family Code, Honduras 1991). The Constitution (art. 111) also records the moral importance of family and maternity. The duties that family law assigns to the spouses reflect the naturalness and complementary character of the husband-wife relation: to live together, to be faithful, to respect the other, to support each other, to share responsibilities and the education of the family, to take part in the household and to practise a profession (arts. 41-44 Family Code). Living together also includes the obligation to share the nuptial bed in order to satisfy the 'sexual instinct' and to procreate (Cruz Lopez 1994:44). There thus seems to exist ideological consonance between the law and the way women and men in El Zapote think about family relationships. The discussion of the images of ideal partners has shown that the relationship between husband and wife is considered to be a natural way of living with naturally defined roles, tasks and responsibilities.

There is no consonance between law and perceptions of the conjugal relation when it comes to the 'economic regimes' in marriage. The law establishes different forms of economic regimes such as community of property or the complete separation of property (arts. 64-81 Family Code). Article 72 of the Family Code furthermore establishes that all household goods are the property of the wife.

Yet the legal economic regimes of marriage are completely unknown to people in El Zapote, for whom marriage does not significantly establish or alter how property is divided between husband and wife. The local meaning of 'marriage' is to start a family, to settle, to have babies, to work on your own. Marriage and other forms of cohabitation imply arrangements with regard to food provision, care in case of illness, the provision of shelter and clothes to wear. A decision whether to officially get married or not depends on access to capital, pressure of parents or the advice received from the church. Both marriage or cohabitation, however, entail one and the same economic regime: men and women have their own properties and each partner keeps what he or she brings to the arrangement.<sup>21</sup>

It thus appears as though property relations are clear: one person is the owner of such things as land, the house, tools or the animals. Yet property relations show themselves to be more complicated when the spouses end up in trouble and might want a separation or divorce. Confronted with abuses of their property rights or left in the street after a separation, women discover that they have a disadvantaged position in the property relations with their husbands. Men own almost everything and women's voices are only more significant with regard to houses, at least when the concession or ownership of the house plot is in her name. In Chapter Five I shall elaborate in detail how women cope with their own disadvantaged positions in property relations relative to their husbands. Women say, for example, that running away from home makes them run the risk of losing all material claims, the custody of their children, their own properties and their social status and position in the community. This is knowledge that they have acquired through experience and from observing the lives of other women. 'Being a woman, you should never leave the house. You lose all your rights. For example, you will not be able to claim the house. If you leave you are guilty, you are the one who broke up. That is not what a woman should do'. It is common that a husband manages and disposes of his wife's properties, and he may even sell his wife's land without her consent and without informing her.

#### *The economic regime and machismo*

We have seen that a definition of tasks, rights and duties between husband and wife cannot be described in terms of machismo alone. The ideal partner constructions do not entail images of the dominant and aggressive man and the inferior woman. The term *machista* is used as a negative reference point to indicate the undesirability of certain characteristics and habits of a partner. The ideal husband-wife relationship fits in a legal concept of marriage that puts forward the natural and complementary roles of men and women in their union.

People's perception of the husband-wife relationship does not entail an ideal economic regime: the economic regime is defined as it is generally defined in terms of individually held property rights. Nevertheless, this does not mean that property relations between husband and wife are thus clearly defined, as becomes evident when there is a separation or when one of the spouses dies. Moreover, the case of Rosa and Excequiel has shown us that it is not so simple in daily life. Excequiel is the household head, the producer and the owner of the land. Yet he cannot absolutely resist the claims and strategies of his wife Rosa and his adult sons. The significance of the husband-wife relationship with respect to property, the power generated by wives versus husbands or vice versa are all subject of daily struggles in a complex household arena of members involved in developing strategies, counteracting reactions and generating discussions.

## Kinship and friendship

A term that often pops up in relation to the internal dynamics of farm households is kinship. Kinship plays a role in legitimising and organising relations of production, power and authority structures, and the division of labour, income and property (Bouquet and de Haan 1987, Kendall 1983, Whatmore 1991, de Haan 1994, Maynes et al. 1996). This section discusses whether Bourdieu's thesis (1996:22) that kinship belongs to the forces of 'fusion' that counteract forces of 'fission' in families is correct. Does kinship play a role in conserving the power constellation of farm households? If it does, then how does it work? What role does kinship play in property relations?

Without making the slightest pretension of giving a general account of discussions about kinship, I will very briefly look at some aspects of how kinship is perceived in the literature. Some authors have described kinship in terms of blood ties with a predetermined and essential meaning: kinship relations are characterised by altruism, generosity and amity, for example (Fortes 1970). As they are blood ties, they are enduring and generate collective identities and feelings of belonging.<sup>22</sup> A discussion has emerged within this perspective of kinship, examining the degree to which the social or the natural sphere predominates in the content of a kin relationship (Gellner 1987, Harris 1990). A different view on kinship considers kinship as an idiom for underlying realities which define, inform and suffuse kinship relations with meaning (Gudeman 1976:13-14). The meaning of kinship is thus not predetermined, but Gudeman considers it to be response to ecological and economic conditions.<sup>23</sup>

The organisation of property relations as I found it to be in farm households in El Zapote cannot be attributed to a predetermined and blood-related meaning of kinship. The agricultural producer cannot automatically rely on labour freely provided by other household members on the basis of their mutual kinship bond. Property and income are not automatically shared by all household members because of their kin relatedness; parental authority does not have a fixed meaning. Extended farm household members may not be related at all through kinship as adoption of children who do not have parents to take care of them is very common. Furthermore, outside the farm household, kinship does not seem to play any significant role at all. Hence kinship does not predetermine the meaning of a relationship; it is merely an idiom that is used in certain circumstances for certain reasons. Two aspects related to the use of kinship as an idiom are important: first, Gudeman's idea of the optative nature of kinship and, second, reinforcement of kin relations by something else in order to become meaningful.



### *The role of friendship*

Understanding the role of kinship within farm households is easier said than done, but it is clear that kinship plays a minor role *outside* households. In his study of a rural Panamanian village, Gudeman (1976:175) calls the role of kinship 'ascribed optation'. Kin networks and relations may be used and activated at certain moments while remaining dormant at other times. It is possible that a person in El Zapote presents his first cousin to a stranger as 'my cousin', a relative, while the next cousin is completely ignored without even saying good-bye. The optative nature of kinship is typically used and operated strategically by social actors. Farm household members may use kinship sentiments and arguments to achieve their goals in struggles and negotiations about control of labour, income and property. For example, the discussion between Rosa and Excequiel (husband and wife) about the tule harvest that I described in a previous section was ended when a quasi-kinship relation (Excequiel and his friend Florencio) changed the conditions for the discussion.

The optative character of kinship points to a second characteristic: kinship needs reinforcement in order to become effective. Biological kin, a blood relation, is not equal to recognised kin, but the question is then raised about what the conditions are under which kinship becomes recognised. In his study, Gudeman (1976) considers that residence is important in the recognition of kinship. Biological kinship needs reinforcement through residence in the household group in order to give meaning to relationships between its members. In Gudeman's view, this would explain why kinship plays a role within the farm household but not outside. The El Zapote case, however, directed my attention to another phenomenon that influences the working of kinship: the role of friendship. Relatives mutually exchange labour, rent land, or borrow each other's pack animals only when they are also friends but, without friendship, the kin relation is denied or has no meaning.

Friendship is extremely important for social cohesion and the building of networks. Friendship also exists outside kin networks and exceeds the boundaries of the household, the village, the district and even the country. It surpasses religious, political, social and gender differences. The son of the rich landowner and the son of the day labourer who grew up together may maintain this friendship in spite of their class differences. They may activate it whenever they want or need it. Friendship also emerges between classmates and between men who worked together as day labourers when they were young. The church also generates friendships. Visiting the same religious community means regular gatherings with the same group and the churches themselves enforce mutual support and material help.<sup>24</sup>

An essential value of friendship is 'respect'. Furthermore, friends visit each other at home where they sit down and talk and laugh. Friends help out when someone is in trouble, such as in cases of illness or emergencies. The mutual help of friends is important in agricultural practices; one resolves problems with the help of friends, such

as a lack of wage labourers during the coffee harvest, or, for day labourers, a paid job or contract. Friends rent land or pack animals to each other, or they borrow each other's concrete drying floor to dry coffee, tulle or other products on. In the lean season, when maize is not always available, friends help each other by lending maize on credit. They also exchange knowledge about new seeds or pesticides or new production methods. Friends may also serve as mediators in conflicts and act as witnesses in court cases.

The role of friendship is also notable in women's groups organised by development agencies. These groups mainly consist of friends, sometimes overlapping with relatives. The women in the groups said that they would refuse to enter a group of 'strangers' (although they may have known these 'strangers' their whole life). Such a group would not work, they said, because they would distrust each other's intentions. Particularly for women, space is important in making friends because they are often tied to the house and seek friendships among their neighbours.

Hence, kinship is recognised when it is combined with friendship, and friendship and kinship often overlap. A person can be close friends with relatives, and friends who aren't relatives use a kin idiom for expressing their bond. As Florencio, one of the actors in the tulle case that I described in a previous section, told me: 'I have no relationship with my own brothers. But with Excequiel, we are like brothers...you're better off having a brother like Excequiel who isn't a relative that just wants to quarrel.'

Property and labour relations are thus not organised through kinship alone. Inside and outside farm households, kinship does not entail intrinsic values but is used strategically at certain times to achieve certain goals. The meaning of kin relations inside and outside farm households is thus the subject of negotiation and struggle. Although farm households consist mainly of husband-wife and parents-offspring relations, other factors determine if relationships are continued within and outside farm households. Friendship is important in the continuation of meaningful relationships between parents and offspring and between siblings.

The role of friendship is also notable in inheritance practices and the process of the transfer of property among family and farm household members (Chapter Four). Kinship idiom is very important in inheritance. Inheritance *norms* seem to be based on kinship in the sense of blood ties, without any need for endorsement through something else. These rules prescribe that inheritance rights are independent of the concrete meaning of the relationship between the testator and heirs, or between the heirs. These rules are constantly renegotiated in practices of inheritance, however, via negotiations in which friendship does play an important role.

## Campesino images and daily life in farm households

The peaceful peasant who resists modernisation and preaches self-determination; the natural relationship between husband and wife who complement each other in character and talent; joint family production based on altruism between relatives who work together for the common goal of producing food and culture: these are all parts of the romantic image that nourishes the views and plans of organisations, intellectuals and state policymakers in Honduras. The typical campesino cannot be identified in the rural life of El Zapote. Farm households are not built upon joint properties and collectively decided investments. They are not made up of conjugal models and kin relations with a naturally given meaning and they do not have a fixed and 'natural' division of labour. Agricultural producers cannot unconditionally claim unpaid family labour. The organisation of work in the household and in agricultural production and the transfer of property rights are sources of unremitting tension between farm household members.

For people in El Zapote, farming means the economic aim to produce food and income. This does not mean that processes of struggle for labour and property are determined by economic calculations of the *homo economicus*. This chapter has explained that notions of gender and kinship play an important role in the actions, decisions, and considerations of farm household members. They also inform norms, principles, and practices of property transfer, deployment of labour and the distribution of income.

The most important feature of property relations in a farm household is that property is held individually, hence, there are no collective properties belonging to the household as such. Whether it concerns the house, the house plot, land, tools or animals, the rights in these assets are in the hands of individual household members. The same is true of earned income: the person who earned it decides on its use. Feminist writers have long attacked the viewpoint that income is automatically pooled to the benefit of the farm household (Safilios-Rothschildt 1988), but the idea that the pooling of resources and income takes place in an unproblematic and power-free way based on kinship-driven altruism is vividly influencing agrarian policies in Honduras today.

Property rights held by individual household members are also redistributed between individuals, and struggles and negotiations between farm household members about the distribution of labour power, control over property and income form part of the daily setting of farm households.

This chapter has investigated whether machismo or kinship are useful notions to look at the internal dynamics of farm households. The notion of machismo is far too simple to explain how husbands and wives perceive gender and how they negotiate control over property and income. The course of this book will take this argument

further by looking specifically at processes of inheritance and the role played by gender notions. This chapter has further concluded that kinship should not be presented as the force of fusion in farm households. Kinship does not have a predetermined meaning; it is merely an idiom that social actors strategically use and that needs to be reinforced by other means. If a kin relation is meaningful, then the relation is given meaning through friendship.

## Notes

- 1 The term *campesino* has political connotations in Honduran history, and agricultural producers in El Zapote generally do not use the word to identify themselves. They associate the term with the *campesino* organisations that played an important role in the period of agrarian reform. The association with the violent land occupations in that period makes them hesitant to use the word *campesino*. They prefer to call themselves producer (*productor*).
- 2 Bourdieu (1996) argues that the state plays a key role in the dissemination of the natural image of the family. In this way, the state tries to hide its own interference in the private sphere of the family (Comaroff 1987).
- 3 Young men have become more interested in learning aspects of housekeeping these days. They anticipate a situation in which no woman - unless well paid - is available to arrange their domestic affairs, such as after they migrate to town.
- 4 Tortillas, small pancakes made of maize dough, form the heart of the gastronomic culture of several Central American countries and Mexico. The complete process of preparation of the dough, forming the tortillas and cooking, is very laborious and may take more than eight hours a day. Women cook dried maize together with some lime for a long time. It is then ground. In the past, this was done by hand using a grindstone (*piedra de moler*) but nowadays there are several electric maize grinders in the village. Children are sent to the grinder twice a day, or women might go themselves if they feel like having a chat or a small walk. During the grinding process, water is added to the maize. Back home, women form small pancakes from the dough with a typical movement of the hands and immediately cook them on the hotplate of the stove.
- 5 In El Zapote, women's responsibility for housekeeping is not an inherent barrier for doing productive work (Howard-Borjas 1989). Extended farm households tend to accommodate so many women that there is not enough to do for all of them. Many girls and young women are allowed to spend their time weaving petates, a task that allows them to pay for their own education.
- 6 The term 'hacer un mandado' is frequently used for all kinds of things and tasks. The standard street conversation begins as follows. Question: 'Where are you going?' (*¿A dónde va?*). Answer: 'to do an errand' (hacer un mandado), together with a head movement in the right direction. The answer has all sorts of meaning, which does not need further explanation. It varies from 'walking with no aim in particular', to 'going to the shop to buy a pound of sugar', or 'visiting the patron to ask for a loan'.
- 7 This was an exceptional case which other villagers talked about disapprovingly.
- 8 The word 'petate' stems from the nahuatl word '*petlatl*' (Simeón 1977).
- 9 The CDI data are based on a survey of the municipality of El Zapote, hence this survey includes the main village and all hamlets. In our own survey, which only concerns the households in the main village, we found that tule is produced by one or more producers in 106 of 489 households.
- 10 A *tarea* is 523 m<sup>2</sup> (1/16 manzana).
- 11 Producers do not agree on whether there are several classes of tule. Some attribute the difference between yellow and green tule to difference of class, and others to different soils or the quantity of rain.
- 12 Making a joint is special to the way of working in El Zapote. In other villages and countries the tule is not sorted by length and when a fibre ends, another one is joint to the weave. This results in a petate which is less solid.
- 13 A *real* is a bundle of dried tule.
- 14 Poor women run up debts not only because they need to buy food; gambling is another cause of poor women ending up in a dead-end downward spiral of debts.
- 15 Spanish colonial law considered women as inferior and in need of protection by men (Dore 1997).

- 16 The term *marianismo* refers to the cult of feminine spiritual superiority (Stevens 1973). It attributes semi-divinity, moral superiority and spiritual strength to women. The question whether *marianismo* should be placed as opposite to machismo or seen as part of machismo has been discussed extensively (Abrahams 1989, Vellinga 1985, Steenbeek 1995).
- 17 It has been argued that the term 'machismo' is not suitable to analyse the internal dynamics of farm households because there is no strict separation between male and female spheres (Brusco 1995, Radcliffe and Westwood 1996).
- 18 The two images of family relationships reduce the role of women to either mourning the male absence or suffering the male presence (Brusco 1995).
- 19 Relatedness in terms of kinship has a specific local interpretation. For example: almost fifty percent of the villagers bear the surname Cruz but not all of them share the same ancestors. A child receives two surnames, one of the father and one of the mother. The first surname of father and the first of the mother are passed on to their offspring. The local norm is that two persons cannot get married if they share one of their surnames, yet so many people are called 'Cruz' that there are spouses who both have this family name.
- 20 This is in line with the observation that both the Catholic and the evangelical churches contest machista elements. At first glance, the Catholic ideal of the family fits in with machismo. The Catholic Church promotes the idea that the woman is the core figure of the family-household while the man is the one who works 'outside' and provides for the family (Radcliffe 1993, Melhuus and Stølen 1996). Yet the Catholic ideal does not promote a public role of men in terms of aggressive masculine behaviour but instead refers to the husband's responsibilities. The evangelical churches, on the other hand, contest machismo by advocating the necessity of the return of men into the private family sphere (Brusco 1995).
- 21 Galan (1998) argues that the Civil Code provisions do not enforce equality between husband and wife but that they offer the space for couples to arrange property relations and economic regimes among themselves, resulting in women being in a disadvantageous position.
- 22 A point of discussion is whether the intrinsic values attributed to kinship are a typical 'Western' cultural interpretation. Such a view of kinship incorporates numerous assumptions about gender, such as the centrality and intrinsic value of the biological ties between mother and child in social life and social reproduction (Junko and Fishburne Collier 1987).
- 23 Similar to the famous question as to why women - and not men - are the oppressed gender, de Haan (1994) criticises such an approach because of its inability to explain why, of all things, kinship is used to organise certain activities. I agree with his critique, yet I do not think it is necessary to have an answer to this 'why' question to be able to study *how* kinship is used.
- 24 It is notable that members of several evangelical churches call each other brother or sister. The bond and the friendship they share from going to the same church is expressed in kinship terms.



## Chapter four

# Laws and norms in inheritance practices

Inheritance is a prolonged process that sets family members at odds with each other. For many people, it is synonymous with deep trouble, producing disturbed relationships, involvement in court cases, material losses, and violence. Problems related to inheritance occur at all social levels, are difficult to solve and sometimes survive several generations. Inheritance affects more than just the relationships in the family circle; timing of property transfers and the exclusion or inclusion of different heirs embody choices that directly influence agricultural production patterns and social differentiation (Goody 1978).

To understand how and why inheritances frequently result in trouble, we first have to study the nature and specificity of this process. What makes inheritance so special compared to other processes of property transfer? Through which laws or norms do people justify their claims and decisions regarding inheritance? How do norms and laws affect the emergence and the solving of conflicts related to inheritance? What kinds of strategies do parents and offspring pursue to achieve particular aims within the scope of inheritance?

This chapter starts with the case of how don Anastacio cheated his fellow siblings. Experienced as a land grabber and invader of other people's property, he had learnt how to claim his sister's inheritance after her death. The section thereafter discusses the contrasting differences between the law and local norms of inheritance. Central to the Civil Code arrangements of inheritance is the protection of siblings as the principal heirs. Inheritance practices, however, deal with many divergent objectives property holders and heirs. The subsequent section analyses a civil court case between two brothers that, in the course of time, turned into a criminal case between a group of cousins. The chapter then discusses inheritance strategies as seen from the point of view of parents and then looks at the way offspring deal with inheritance. The chapter intends to find out the role laws and norms play in the emergence of violence, how



stacking of laws and norms takes place, and how this produces changes in inheritance practices.

### Inheritance practices and strategies: Anastacio and his siblings

Don Anastacio Garcia is 76 years old. He and his wife Flor have eleven children, several of whom still live in the village, while others have migrated to the city of San Pedro de Sula. Anastacio is a known personality in the village. He was a school teacher, a job which he fulfilled for years to everyone’s satisfaction. In spite of lacking the official title as a real *‘profesor’*, he is said to be a much better teacher than those who teach nowadays. He was also the municipal secretary for years. He still draws up letters, documents or official papers for illiterate villagers. After his retirement, he started to invest his small pension in his coffee fields and other agricultural activities. The villagers’ image of Anastacio is not wholly positive, however. His extramarital affairs are a source of village gossip and people disapprovingly talk about his habit of taking pleasure in invading other people’s property.

In the 1970s, he was a member of a peasant group allied to one of the national peasant organisations, which tried to occupy the land of the Lara family (Chapter Two) within the framework of the agrarian reform. In the fights with the Lara family, he nearly lost his life as well as spending several days in prison. Thereafter, he individually invaded land belonging to other holders on several occasions. Anastacio's eyes twinkled when he talked about these events and he became very enthusiastic. Villagers commented: ‘Don’t think that Anastacio is a nice man. Look at what he did to his own brothers!’.

Doña Mina and husband						
<i>Children</i>	Anastacio (married to Flor)	Jesus	Ricardo (mentally disturbed)	Clara	daughter (name unknown)	Eduardo, the <i>lazuro</i> (youngest son)
<i>Grandchildren</i>	Eleven children	Oswaldo			Tomás	

Figure 4.1 Actors in the conflict over the land of doña Mina

#### The land of doña Mina

Anastacio’s mother, doña Mina, had four sons: Eduardo, Anastacio, Jesus and Ricardo. She also had two daughters, of whom only Clara remained in the village. Mina owned two large plots of land. Her grandson Tomás still retained good memories of his grandmother. He recalled that she controlled land in a place called Crossroads and also

had a considerable amount of mountain land. According to the logbooks of the municipal council, Mina was granted a concession to the mountain land in 1953. Tomás claimed she basically used it by renting it out to other agricultural producers. Producers were particularly interested in leasing the land in Crossroads that was suitable for the cultivation of beans. Mina wanted her sons to have the land but none of them showed any interest in using it at that time. When she decided to sell the mountain land, Tomás bought twelve manzanas which he still owned. Anastacio also bought part of this land but he sold it afterwards.

After Mina died, her land in Crossroads came into the hands of her husband. He spent the last years of his life ill and infirm, taken care of by his daughter Clara. As he was very grateful to Clara, he wanted her to inherit his belongings but he also felt that he should comply with the general custom to bequeath everything to the youngest son, Eduardo. Hence, he told his children that in case Clara would die, Eduardo would become the heir. Clara received a public deed to her father's land in her name. Clara, Eduardo and Ricardo lived together in the parental house after their father's death. Ricardo, who was mentally disturbed, was not able to live independently and he needed the daily care of his sister and brother.

One day, Eduardo ended up in deep trouble. He killed another man whom he suspected of having a relationship with the woman he was in love with. He was sent to the local prison pending the district court's decision.<sup>1</sup> Clara sold part of the land in Crossroads and finally succeeded in purchasing her brother's freedom.

Clara's death marked the beginning of a new range of events. Since she never married and had no children, Anastacio and Jesus considered themselves as the heirs. They did not respect their father's wish to consider Eduardo as the heir after Clara's death. Now, as it is, Anastacio made matters worse by arguing that they had to act because Eduardo wanted to sell the land.

Anastacio discovered the land title among Clara's possessions that had been issued to her under the PTT titling program (see Chapter Two). She had never made the effort to pay for the title, thinking it was a document of no importance chiefly because her father had already given her a public deed of the land. Anastacio, however, saw that the title was an official document with stamps and the signature of a lawyer: 'I thought this must have some value', he said.

The INA urged the family to pay for the land title, or else the land would revert to the state. Thus Anastacio signed the promissory note; he and his brother Jesus went to the INA office in San Pedro de Sula to transfer the title to their names and they each paid 190 Lempiras. The INA official asked them whether Clara had other heirs. When he heard that the other brothers Eduardo and Ricardo were poor, he said that these heirs 'would not be a problem'. He considered that the other heirs had no chance to be declared the legitimate heirs of Clara because they would never be able to afford a lawyer.

Eduardo became enraged when he heard that his brothers succeeded to title Clara's land in their names. Anastacio recalled: 'My brother is so naive, he let others incite him to complain to the authorities that I threatened him with death. I was locked up in prison here in the village, but Flor went to my lawyer in Santa Bárbara.<sup>2</sup> My lawyer came with the title document and I was immediately released'.<sup>3</sup>

Eduardo sued Anastacio and Jesus in the court of Santa Bárbara. He presented Clara's public deed of the land to the court and he told the judge that his father wanted him to become the heir after Clara's death. Anastacio, on the other hand, presented Clara's paid land title to the judge. The judge was thus left with two claims of ownership, one of which had to be nullified. At first, the judge pronounced that he intended to assign the land to Eduardo. He argued that Anastacio and Jesus had nothing because they had presented the title that bore Clara's name: their own title had not yet been issued. But Anastacio told the judge that in that case he would go to the local Santa Bárbara radio station 'Hondas de Ulua' to declare that the PTT land titles had no value in the court of justice. An INA official who was present in the court quickly approached the judge for a discrete consultation. It was in the interests of the INA that the PTT land title should be preferred rather than the public deed. After this tête-à-tête, the judge changed his mind. He assigned the land to Anastacio and Jesus, and Eduardo lost the case.

Anastacio happily concluded his version of the story: 'It took a lot of time and money and I had to make many rounds through Santa Bárbara. All those papers... I always wanted one of my sons to become a lawyer, it's a great thing'. Although Jesus also benefited from what happened, in the eyes of other villagers don Anastacio was the one who was blamed. Jesus was dead at the time of these interviews. Moreover, villagers considered Anastacio as the brains behind the operation using resources that were not open to other people.

Jesus and Anastacio divided the land into two plots. After the death of Jesus, his son Oswaldo decided to sell his portion of the land to his uncle Anastacio. Oswaldo needed money to pay the services of a lawyer whom he had hired to get back the land which had been sold by his aunt Clara when Eduardo was in jail. Oswaldo argued that this land never belonged to his aunt Clara because it had been his father's legitimate portion. In his eyes, his aunt had no right to sell the land. Oswaldo never saw this claim rewarded. Then one day he returned from San Pedro de Sula where he lived. Without consulting anyone, he again invaded the land he inherited from his father, but which he himself had sold to his uncle, and started sowing beans. Bystanders were luckily able to prevent a bloody *machetazo* between Oswaldo and one of Anastacio's sons at the last moment.

### *Causes of conflicts*

Anastacio was certainly an exceptional man with a particular set of resources and knowledge. Yet the particular history of Mina's land in Crossroads was only partly shaped by the personal characters of the people involved. Over the course of time, the land was partly sold to purchase freedom for a murderer; it was subject of conflicting claims of three brothers in court; it was divided between two brothers; it was partly sold and thereafter invaded. Anastacio again subdivided his part between his own eleven children. Several of them sold their share to others after they received it. The sum total of these events was a history of competing claims, shifting boundaries and latent and active conflicts, the general history of which is shared by other families and other plot histories. In the case of the Mina's land, the following elements played a decisive role:

- heir preference
- competing claims between deed and PTT title
- judges who were not led by justice but by interests
- lack of possibilities to claim rights
- mingling of inheritance and sale in property transfer
- reinforcement of kinship.

The way that Anastacio's father dealt with the inheritance is common. First, his point of departure was that he wanted one of his children, and not all of them, to be the heir. He preferred his daughter who took the responsibility of caring for him in his old age. Nevertheless, he also tried to comply with the custom of preference for the youngest son. I explain the particularities of this custom later in this chapter. The consequence of inheritance preference is that other interested persons are left completely empty-handed. Whether inheritance preference leads to conflicts or not depends on the claims of the excluded parties and their ability to put these claims forward.

It is also common that the sale and inheritance of the land get mixed up in the process of inheritance. Clara sold part of the land in order to set her brother free, but the sale of the land was not considered legitimate by other heirs because they did not recognise her exclusive rights to the land in the first place. Grandson Oswaldo had sold his land rights to his uncle, but he later again tried to make a claim with the argument that he had inherited the land.

Another common issue that arises during the inheritance process is that not all parties have equal access to resources in their struggle for obtaining a share of the inheritance. Anastacio had two important resources at his disposal that other people lacked: money and his knowledge of procedures, papers and bureaucrats. He was familiar with practices of trickery with official documents and he received full co-operation of the INA administration for this purpose. He knew what to say and how to act to make them co-operate.

The arbitrary working of kinship is also a common characteristic of inheritance practices. Blood relationships are the one and only basis for claiming inheritance rights: without blood relation, it is difficult to put oneself forward as heir. However, the assignment of rights do not automatically follow logically from one's position in blood relationships. Whether or not one is able to make a claim depends on many other aspects of the relationship. Kinship thus needs reinforcement of other relational features.

## Inheritance and the legal framework

A general phenomenon in the world is that inheritance rules exist to be broken (Gregory and Altman 1989). An explanation of this phenomenon might be that this is a way to adapt inheritance to local circumstances and features (Netting 1993). This chapter asks whether indeed a smooth adaptation of inheritance rules to changed circumstances takes place. Moreover, it discusses whether the central goal of such adaptations of inheritance rules is to preserve the unity of the farm (Netting 1993). This section compares the different norms regarding inheritance in state law. The subsequent section then turns to the norms that play a role in inheritance practices.

### *Inheritance norms in civil and agrarian law*

The third book of the 1906 Civil Code is about inheritance (Honduras 1989). This book prescribes two procedures for inheritance, the first of which is applicable when there is no testament (art. 958). In this case the law ascribes rights of inheritance to heirs in the following order: children, parents, brothers and sisters, the surviving spouse, the municipalities (art. 960). In case the deceased has children (including adopted children), all inherit equal parts of the estate (art. 965). Although the Civil Code distinguishes between the inheritance rights of legitimate and illegitimate children, this difference was abolished by the Constitution of 1957 (art. 102). The Family Code of 1984 (Honduras 1991) also grants equal inheritance rights to legitimate, illegitimate and adoptive children (art. 155). Without children, parents and the surviving spouse inherit at a ratio of one to one. Without children or parents, brothers and sisters, and the surviving spouse inherit at a ratio of one to one. Without brothers or sisters, only the surviving spouse inherits, although there are certain conditions regarding this (art. 971).<sup>4</sup> In case there is no surviving spouse, other family members to the sixth degree are entitled to the inheritance. If other family members do not exist, then, the inheritance is bestowed upon the municipality where the deceased lived (art. 974).

Article 979 stipulates the principal of testamentary freedom but adds a few restrictions. The first restriction concerns the livelihood (*alimentos*) of minor children and invalids (arts. 206-226, Family Code). Minor children cannot be completely disinherited in a testament because they are entitled to a livelihood until they are adults. In case a testament omits this facility, the judge must enforce it (art. 1148). A second restriction on testamentary freedom is the conjugal portion of the surviving spouse (art. 1150). The spouse, however, cannot automatically claim the conjugal portion. The economic regime in the former marriage primarily determines which properties belonged to the remaining spouse and which belonged to the deceased spouse. The surviving spouse is entitled to one fourth of the properties of the deceased spouse at the most. It depends on the personal wealth of the surviving spouse how much the conjugal portion will be. For example, if the surviving spouse owns 40.000 lempiras and the conjugal portion should be 70.000, then the surviving spouse is only entitled to 30.000 lempiras as an addition to his or her own fortune (Cruz Lopez 1995). The surviving spouse can thus only claim a conjugal portion in addition to his or her own fortune.

Every adult is entitled to draw up a testament (art. 986). The solemn form is written (art. 990) in the presence of a notary. For an 'open' (read aloud) testament, three witnesses are needed (art. 994); the closed form requires five witnesses (art. 1003). In villages where a notary isn't available, the justice of the peace (JP) may fulfil this role (see Chapter Six for an explanation of the institution of the JP). Less solemn forms of drawing up testaments also exist. This may be done verbally in the presence of five witnesses in specific circumstances, for example epidemics. The judge needs to confirm the testament and it has to be publicly registered (arts. 1014-1026)

Except for the two restrictions of livelihood and the conjugal portion, both mentioned above, a testator can freely distribute his or her properties. It is possible to name someone as the universal heir, or to assign specific properties to specific persons. The law perfectly allows for the disinheritance of descendants. It is sufficient to avoid naming the child that one wishes to disinherit in the testament.

Agrarian laws also contain stipulations about inheritance rights. According to Menendez Hernández (1971), agrarian laws have been in conflict with the Civil Code in this respect. The Agrarian Reform Law of 1975 prescribes that the surviving spouse or a child who complies with the requirements for beneficiaries may inherit the land, yet it strictly prohibits the division of the land between various heirs (art. 84). This makes it opposed to the Civil Code that allows testamentary freedom with only a few restrictions. The Law of Modernisation of 1992 reformulated the same article to give preference to the surviving spouse. Hence agrarian law, in contrast to Civil Code stipulations, is inclined toward the preservation of the farm instead of achieving equality between heirs.

The procedure of inheritance is a way to acquire ownership of the properties of a deceased person (see Chapter Two). In order to legally claim an inheritance, the heirs start a civil procedure in court and an administrative procedure in the Finance Department (which collects taxes and assesses the value of the deceased's properties), to take possession of the inheritance. The court procedure is called a 'declaration of inheritance'. The obliging character of the procedure aims to protect minors who are not able to protect their own rights. The procedure precludes the possibility that certain family members divide the inheritance among themselves in common agreement without interference from the judicial court.

The procedure starts with a request to the civil court to name a person as the heir and to grant him or her the 'effective possession' of the inheritance. The judge 'investigates' whether the applicant is a legitimate heir of the deceased and designates effective possession of the inheritance with the addition that the verdict does not affect the rights of other heirs. Other heirs can also complete the procedure and can be granted effective possession.

I studied dozens of court files from these procedures in the General Archive of the Judicial Power in Tegucigalpa. I found sentences of the court in cases of people who died several decades before the heir submitted the application to the court. In these case files, the heir did not start such a procedure immediately after the death of a person.

Inheritance procedures are characterised by delays and untimely endings because of problems in the presented personal documents. The applicant has to present several documents: birth-certificates of the applicant and the deceased, a marriage certificate and a certificate of death of the testator.<sup>5</sup> Another document that the procedure requires is a statement from the Finance Department about the total value of the inheritance which was left by the deceased. These documents are major obstacles to starting and successfully ending the procedure.

Many people do not have a birth-certificate. When someone desperately needs such a document, long journeys are often required to acquire it. Money for travelling is not the only obstacle to acquiring birth-certificates. Birth-certificates frequently contain spelling errors. Moreover, a person may use another surname than the one mentioned in his birth-certificate. He may use, for example, the surname of the uncle with whom he grew up instead of the name of the mother. Judges in the studied case files frequently postponed or nullified cases because of the unclear identity of the applicant or the deceased person. Failures in personal documents easily occur because books of local civil registers may easily be burnt, lost or inefficiently managed, making it more difficult to obtain certificates of birth or death.

Furthermore, a lack of knowledge or capital may present obstacles for starting and completing the procedure. Lack of knowledge and ignorance about the existence of legal inheritance procedures are common in rural areas. Additionally, a lack of capital

makes it difficult to obtain the necessary documents. Ideological obstacles such as those regarding the rights of women may also play a role. I came across cases of women who requested to be named as heir. However, women often started a procedure to request possession of the inheritance for their children without claiming the conjugal portion which they were possibly entitled to.

Although complying with legal inheritance procedures is obligatory for obtaining ownership of inherited goods, these procedures are rarely used in El Zapote. Two lawyers whom I asked about this contradiction gave divergent answers. The first lawyer was a famous and expensive lawyer in the capital city who worked for well-paying clients. The second lawyer mainly served relatively poor rural clients in the Santa Bárbara district. The first lawyer had no idea about the world of the client group of the other lawyer. His ideas were based on a concept of the educated client with resources. He expressed the view that it was an obligatory procedure and that every heir was obliged to follow the legal prescriptions. In his eyes, there would be no other way for heirs to claim the properties of a deceased person. He ignored the fact that the procedures were rarely used, or only by people in town who had the means to complete them. The second lawyer referred to the complexity of the procedure and his clients' lack of money to complete it. He stated that many people do not know about the existence of legal prescriptions concerning the acceptance of inheritance. They do not feel the necessity of the procedure because they do not legally claim ownership. A declaration of inheritance is needed when the heir intends to inscribe the property in the Public Register of Property. In other cases, heirs take possession without the intervention of a judge.

The perceptions of these lawyers were strikingly different. A strict adherence to the legal procedures was no longer possible for the second lawyer, who was constantly confronted with the inaccessibility of such legal procedures and their non-conformity with people's perceptions of property. What people do - not complying with procedures of inheritance - was ignored by one lawyer but considered legitimate by the other.

## Stacking norms in inheritance practices

This section will look more closely at practices of inheritance and how norms become stacked over time through these practices and again shape inheritance practices. This section primarily analyses the content of testaments. The result of testamentary freedom is that the content of testaments tells us much about the norms and practices of inheritance. This section also asks the question of whether and to what extent the image of inheritance constructed through reading the testaments differs from



inheritance practices in El Zapote. Furthermore, how the practices of inheritance in El Zapote change under the influence of a process of stacking norms is examined

### *Writing testaments*

'People do not write testaments, you know, because they are afraid of thinking about death. They prefer to leave it up to the heirs to divide after death'. This lawyer correctly assumed that the majority of people do not make use of the possibility to make a will. As this chapter will show, however, the cited lawyer erroneously alleged that making wills is set aside in favour of letting the process of distribution of property among heirs take its course. Wills demonstrate different aims of the persons who make them. This section argues that these aims are also central to inheritance strategies without a will.

I read fifty testaments from the period 1900-1990 in the General Archive of the Judicial Power in Tegucigalpa. I inferred from these documents the main aspirations for making a will:

- to enforce a particular division of properties among different interested persons
- to attach conditions to the inheritance
- to disinherit
- to anticipate and prevent problems between heirs

Divisions, conditions and stipulations in different manifestations came to the fore in the last will of Jorge Alvarado. Jorge's grandson Roberto presented a request in court in 1957 to be declared his grandfather's heir. The court file contained the last will and testament of Jorge, in which he declared that he was the father of six legitimate children (four of them deceased, the other two Nila and Feliciano lived), three illegitimate children (José, Victor and Anita), and one unofficially adopted daughter (*hija de crianza*) called Antonia. Jorge declared his grandson Roberto to be his only and universal heir. Furthermore, he assigned legacies to the following people:

- To grandson Roberto: the house, but with the condition that Jorge's wife Maria had the right to live in it as long as she was alive. The condition attached to this legacy was that Roberto had to take care of Maria. Roberto also received land and a house in the mountains.
- To daughter Nila: two *manzanas* of land, not further specified.<sup>6</sup>
- To daughter Anita: a pasture field, not further specified.
- To son José: three *manzanas* of the land where José also built his house. Furthermore, a plot of pasture land and several other specifically indicated small plots.
- To the adopted daughter Antonia: four *manzanas* of land, on the condition that 'if she wishes to sell the land, then, she should preferably sell to grandson Roberto'.
- To son Feliciano: several specific plots of land.

- To son Victor: land and a house his mother had the use rights to as long as she remained alive.<sup>7</sup>

There were several remarkable aspects in this will. Jorge named his grandson as his only universal heir, which meant that he should organize the funeral, the distribution of properties and the payment of debts. To name one person as the universal heir was generally a strategy to prevent problems and to assure the proper execution of the testament. The testator apparently considered his grandson as the relative whom he particularly trusted.

A second characteristic of Jorge's will that I also noticed in the wills of other people was that properties were assigned without being very specific or precise. To assign Nila 'two manzanas of land' and Anita 'a pasture field', does not guarantee that these women will receive something according to the intention of the testator. Jorge apparently trusted that the interested people knew exactly which properties or parts of properties he was referring to. One can imagine that this would easily become a source of conflict after reading the will.

A third point is that Jorge did not leave the women out, but there were some striking features in the provisions he made for them. In the legacy to his adopted daughter Antonia, he anticipated her wish to sell the land. He built in the condition that if she considered selling, she would sell to Roberto. Jorge also thought about his wife and about the mother of his illegitimate children. Neither woman received a legacy, but instead were appointed use rights to the houses in which they lived. Moreover, he imposed the condition on Roberto that he had to take care of Maria, and on Victor that he had to respect his mother's use rights to the land and the house for as long as she lived. These women did not receive strong property rights to their houses, as Jorge transferred ownership of these properties to others. Both women were dependent on the goodwill of their sons, and it was not very likely that they would be able to defend their rights if their sons were to throw them off the property.

In contrast to many other testaments, Jorge did not aim to disinherit one or more heirs. He seemed to have legated properties to all of his offspring and he made provisions for the two women he felt responsible for. In many other testaments, the main aim was to disinherit. Some testaments mentioned reasons for it, for example, 'scandalous behaviour towards the testator'. In other wills, the testator did not mention the 'why' of this action. For example, an eighty year-old widow had two daughters, Marcela and Paula. The testament stated that her deceased husband did not contribute to the marriage capital, but that she inherited twenty-five pesos from her own father. At the time she made the testament, she owned a house, a 'possession' (unclear what kind of possession) and a plot of land of three manzanas with sugarcane and bananas. The testament declared that: 'She [the widow] gave her deceased daughter Lidia a small terrain to cultivate, but since she disappeared... she transferred her house and possessions to her youngest daughter Paula, and she will be the only and universal

heir'. The document then continued: 'She denies the rights of her daughter Lidia so that her children... cannot claim property rights to the land she refers to because of their bad behaviour against the testator who didn't want to specify the reasons for her irritation'. This widow thus made the testament to disinherit her grandchildren who legally had inheritance rights in representation of their mother Lidia. She named Paula as the only heiress and therefore disinherited her daughter Marcela as well. Marcela wasn't mentioned at all in the testament, which was enough to have her disinherited.

I came across testators who assigned properties to the surviving spouse in only a few cases. Several testaments stated that the spouse did not 'contribute' to the marriage capital and that for this reason, she or he was not entitled to any property.

It is common that testators intend to anticipate problems between heirs. In several testaments, testators divided their assets between their offspring but added the condition that they would be entitled to receiving these properties only if they accepted the will as it was. For example, a testator in San Francisco in 1970 included the condition that goods had to be equally divided between the children '...in good harmony, without the need to occupy the courts because he [the testator] states that it is my will that he who wants to go to court, angry about this distribution of my properties, will lose his rights...'. Such comments and conditions in testaments seemed to anticipate the situation where, in spite of drawing up a last will and testament, the testator needed other instruments to accomplish the will. The statement, the document itself, was not enough to guarantee this.

The conditions that testators imposed upon the receipt of inheritance rights were very detailed in some cases. In a testament of 1901, a widow expressed her concerns about the behaviour of her offspring after her death. She therefore posed conditions on the heirs regarding her own funeral arrangements. This widow declared in her testament that she was sixty years old and had been married twice; both husbands had died. She had one child with the first and eight with the other. She owned a stallion, two horses, four cows, two bullocks, a young bull, a house, a sewing machine and a plot of land with bananas. The testament stated that '... her daughter Rosa owes her thirty pesos because she sold a bullock without her permission. And twenty-two *reales* [old type of coin] because she slaughtered a pig'. The document continued: 'when she dies her body will be buried in a coffin, and she orders that Mass be celebrated and after that a '*novenario de misas resadas*' in one of their houses for the sake of her soul.'<sup>8</sup> After the novena they will celebrate two Masses: one after a year and another on her birthday'. She further stipulated that 'after deducting the costs of the burial and sickbed, what is left over shall be divided between her children in equal portions. Her son Abraham will preferably inherit the possession 'Las Mesas', where he already cultivates a sugarcane field. Her daughter Rosa only gets what is left after deducting her debts'. The document explicitly disinherited several grandchildren: '...that to her grandchildren...she doesn't assign the inheritance to which they were entitled in

representation of her deceased daughters Julia and Emilia, and the reason why she chooses to disinherit these grandchildren is because it is her will without mentioning any motives’.

Hence, heirs do not consent to the division and to their share; the property holder wants to disinherit certain heirs; and the testator fears that his or her last wishes will not be obeyed. The question is whether the goals of people who make a testament actually stand a chance of being realised. The testaments have shown that testators want to actively decide who will inherit and who will not. Central to the stipulations that they laid down in their testaments were the rights of offspring; the testator assigned his properties to the surviving spouse in only a few testaments. The testators intend to anticipate problems relating to the fact that heirs do not always comply with the last will, but start their own struggles after the death of the testator. The aim of the testator is to reduce the space for these struggles as much as possible. The subsequent sections will compare the goals of testators and the norms built into their testaments in the practices of inheritance in El Zapote.

#### *The lazuro rule*

The main feature of inheritance in El Zapote is that it concerns an unequal division of property in which a system of preference for the youngest son, called the *lazuro*, is dominant.<sup>9</sup> When the youngest child is a girl, some people will call her *lazura*. This does not mean that she will be appointed as the only heiress as the right to inherit land is strongly attached to male offspring. When they were asked about the history and reason why the *lazuro* rule existed, villagers shrugged their shoulders and only said that it was a custom. They were not able to think of a reason *why* it had always existed:

*It's the custom here, the parents only give to one child, the lazuro. He can be surrounded by other brothers but they do not receive anything. I don't know why because they are all children... it should be a little to all. Here it isn't like this, various people, almost the majority, are like this. They do not give to everybody, only to one who is called the lazuro. The lazuro is the one who exerts himself less, he is the last one and his elder brothers, maybe they have worked but they do not achieve anything...*

I heard numerous stories about the consequences of the rigorous application of the *lazuro* rule:

*My father left all his belongings to my brother Ariel who was the lazuro. Ariel left the village and went to San Pedro where he finished primary school. My father made a document just before the death of my elder brother. He called a few witnesses, the mayor and the municipal secretary, and stated that he wanted his youngest son to have*

*all he owned after his death. He wanted them to draw up a deed of purchase, through which he sold to Ariel all that he had, for 1900 Lempiras. Everything, even the furniture in the house. The witnesses insisted that he had other children as well, and that he shouldn't do this. My father answered that his eldest son would die anyway [he was an alcoholic]. The witnesses said that nobody knew how long he would live. But in the end, they drew up the document. Ariel found out [that the document existed] when he came to bury our elder brother. He took the document with him to San Pedro and went to see a lawyer as soon as possible. That's why it is all his, now.*

The man whose story I quote here, Excequiel, was enraged about his father's behaviour. He was the son who took care of his old and sick parents, while Ariel, the lazuro, left the village and lived in the town of San Pedro. Even after Excequiel began his own farm household, he made sure that his parents had enough food and firewood. Excequiel built his first house on a plot of land which was his father's. However, he decided to move when the land came into the hands of Ariel. He frequently rented part of the land from Ariel to cultivate beans and he tried several times to convince Ariel to sell him the land, but Ariel refused. 'He doesn't want to sell to a relative. He waits until my mother dies too, and then he expects to sell the house, the land and everything, in one go'.

Excequiel had no explanation for his father's behaviour: 'He was a brute, only interested in drinking. He didn't want to please his children. He expected everything but gave nothing'.

Primogeniture (oldest son) or ultimogeniture (youngest son), are common systems of preference in inheritance in many countries (Lison-Tolosana 1976, Goody et al. 1978). According to Foster (1960:153), inheritance practices in Spain differ according to geographical region. In one area, Foster came across a system that preferred the youngest son: the father gave dowries and additional property to the eldest children as they married and moved away, while the youngest son stayed at home to care for the older people and received the inheritance as a reward.

The lazuro rule in El Zapote, however, does not seem to have such a logic, or at least not anymore. It may have had it in earlier times when migration was difficult and land less scarce. Nowadays, the preference system does not entail conditions and obligations for the lazuro. Ariel left the village without the intention of ever coming back and he never sent money to his parents. It was his brother, Excequiel, who worked with and for his parents. Using the rule of preference for the lazuro, the father knew that his action would not lead to guaranteed old age care but this was obviously not his motive. A second feature of the lazuro preference is that it does not necessarily entail any compensation for other heirs: Ariel received everything and his fellow siblings nothing. Excequiel built a house on the land of his father, but he had no rights to this land and he felt obliged to leave the spot when Ariel was named as the only heir.

The general image of the lazuro is the spoiled youngest child of the family who does not have to work as the other children do. The fact that the youngest son 'doesn't work' is a main cause of irritation and frustration among the other siblings. They feel that their own work and efforts are not rewarded by the parents. The rule of the lazuro does not agree with the philosophy of 'one good turn deserves another', or in other words, the expected *reciprocity* of work for a share in the inheritance. This is especially true for women. It is harder for women to make their efforts apparent to their parents than it is for their male siblings. Moreso than with men, they are automatically expected to do all kinds of work for parents without receiving any reward. I will return to this theme in Chapter Five.

Not all parents stick to the rule of lazuro as strictly as the father of Excequiel and Ariel did. In the following case, a landowner decided *not* to apply the rule. Problems emerged thereafter because the youngest son himself started to claim rights:

*My grandfather owned a lot of land. He died unexpectedly, nobody had foreseen it. When he died he said to my father [Obdulio] that he charged him with the task to divide his properties between all children. There were three brothers and two sisters. My father was the eldest and had always worked with my grandfather. Problems arose when my grandfather was dead and buried. The lazuro of the family, who was called Carlos, refused to let my father divide the land, saying that he should have everything. It went out of hand and the mayor became involved to solve the conflict. Carlos proposed, then, that he and Obdulio could share the properties. My father refused. He wanted to divide the properties between all brothers and sisters, which was my grandfather's last will. He said that there was plenty of land, and that everybody could have land, a cow and a calf. They could sell the remaining cattle and divide the money. But Carlos insisted he have it all himself and in the end, my father gave in. He refused a share for himself and said that it was better that all would be lost. My father was a man but then he cried. I remember that day very well. Carlos sold everything, except for a small plot which is now worked by his children.*

Villagers' stories about the lazuro rule all express that nobody can imagine why one would give all their properties to the youngest son. Although the lazuro rule is still in practice, its purpose and usefulness are now collectively rejected. Some informants have suggested that the emergence of the custom of the lazuro preference is related to the free availability of land in the past. In those days, it was easy for young people to start their own farm household because they could just grab some free land to work. They did not depend on receiving land as inheritance to obtain access to land. It was likely that the last child living with his parents - the youngest son - would inherit all the properties and that the other heirs had no need to claim rights as well. When land

became scarce and the possibilities to start to work independently diminished, the lazuro's claim on all properties became contested by other heirs.

Another possible explanation of the lazuro rule is that it allows parents to continue exercising control over their youngest child. The youngest child still lives in the house while other children have already departed and started their own farm households. By naming the youngest child as the only heir, parents eliminate the possibility of loosening control over their land and house in too early of a stage. This may be linked to a third explanation, that the lazuro rule had indeed been related to old age care provisions in the past. However, the rule was also implemented in situations in which it was clear that the lazuro would not guarantee old age care, and in which other children provided for their ageing parents.

The literature about inheritance preference in rural areas refers to the undesirability of fragmentation of agricultural estates as part of rural culture (Netting 1993, de Haan 1994). However, I consider this to be an unsatisfactory explanation of the lazuro rule. Although the lazuro rule has existed as long as the people in the village could remember, the same was true for practices that totally opposed the rule. Landholders who worked with their fathers but never received anything and who considered themselves to be 'victims' of the lazuro rule insisted on an equal division of their own properties between their heirs. I also hesitate to accept the theory that accounts for inheritance preference as a way to avoid fragmentation: people do not express fundamental objections to a *division* of the land. The strategies of landholders with regard to inheritance are inspired by all kinds of reflections and aims. They try, for example, to prevent their children from obtaining part of the land to only sell it soon afterwards.

The lazuro rule persists while there is apparently no logic or reason behind it. Local conditions and perceptions of inheritance among the people involved have changed but the rules have not changed correspondingly. This suggests that the slowness of adapting a social institution to changed circumstances is at stake here. Nobody supports the application of the lazuro rule; people try to bypass it but it continues to affect practices and people's perception of inheritance.

#### *Local inheritance rules: relocation in new contexts*

Villagers of all ages and both genders regularly discuss the issue of inheritance and through these discussions, new rules of inheritance emerge. The growing scarcity of land creates more tension about inheritance and people start to look more intensively for alternatives. The main norm that is set against the lazuro rule is the norm of equality between siblings. Equality between siblings is pursued as the new norm to refute the lazuro preference. The norm of equality is rarely rigorously applied in practice as the notion of equality leaves much room for discussion and manipulation.

What does 'equality' mean? Which siblings are allowed to share in the inheritance? The equality norm is thus subjected to a variety of compromises. Basically, these compromises are of two kinds: accidental compromises and adaptations of the norm.

The following cases tell the story about how accidental compromises to the norm of equality emerge. I call them 'accidental' because they 'just happened' without a deliberate intention to actually change norms. In the Gómez family, father Emilio died and left a plot of land of fourteen manzanas to his offspring, consisting of nine sons and two daughters. Their father never divided the land between them; he thought that they should use it collectively. This was done so initially, but problems arose between the siblings when their children (Emilio's grandchildren) also started to make claims on the land. The siblings decided to divide the land among the children so that they all would have their own share to bequeath to their own heirs. The division, however, became contested because it had not been made equally. Sergio, for example, lived in the paternal house on the land. Yet the plot of land on which this house was built was assigned to another brother, Angel. Angel wanted Sergio to leave the land and to relocate his house on the land that Sergio himself obtained. Sergio refused to leave because it was a good house surrounded by valuable fruit trees and tule.

When the INA came to title the land, new problems emerged. The INA titled the entire lot of land in the name of the late Emilio and insisted that the heirs would collectively pay and thereafter subdivide the title because otherwise they would lose it. Several siblings were too poor to pay their share or they simply refused to take up this responsibility. A group of siblings paid the title and then demanded that those who did not contribute to the payment should give up their rights to the land. Hence, internal differences of opinion about equality, as well as the INA intervention, caused the late Emilio's wish that his children would equally and collectively use the land to become contested.

If a landholder decides to distribute his properties among all his children it does not mean that all heirs receive equal shares. In one family, the father died at a young age and left a widow, four sons, four girls, and sixteen manzanas of land. The widow took possession and three years before her own death, she divided the land between her children. She bequeathed them all, but she made a difference between the sons and the daughters. Her 12 manzanas of land in Nejapa was divided between all the children: the sons received two manzanas each and the daughters one manzana each. The coffee field of four manzanas which she owned in the mountains was divided only between the sons, each receiving one manzana. One of her daughters explained: 'I think that my mother thought what they used to say here: it is the duty of the husband to help his wife, so women do not need to inherit land as much as men'.

The land of Obdulio, who himself had been a victim of the lazuro (previous section), was also divided between all siblings. The eldest daughter received a plot of land of more than seven manzanas. Her three sisters all received smaller plots of less than three



manzanas. A son received more than eight manzanas of high quality land, while the lazaro of the family received four manzanas and the parental house. Another brother only received a plot of land of only one manzana.

In these cases of accidental compromises on the norm of equality, the desired norm was to achieve equality but the result was an unequal division of property. The unequal result, however, was not a sign of changing norms but it was merely the outcome of personal preferences, coincidences and family histories.

Actual *adaptations* of the norm of equality also take place, with adaptations taking the form of new norms. First, *education* as a means to escape poverty has become more important in the village. The private evening college was turned into a public daytime college, which was much less expensive. Moreover, the intensification of coffee production and a related increase of income enlarged the possibilities for the offspring of coffee producers to continue their studies. Parents raised the question as to what extent the education of these children should be considered as their share of the inheritance. I recorded phrases such as 'you are the one to decide about who receives (inheritance) rights. If a father has paid for the education of the child, then that is his inheritance. You don't have to give him land too'. Inheritance was seen as a means to support the future of a child. If this is completed, one way or another, the right to inheritance of this child expires.

The rule that education should also be seen as part of inheritance was clearly expressed in the following event in the Hernández family. Domingo Hernández, coffee producer, started to drink during the coffee harvest in 1994. He drank all through December and January. Fortunately, his wife was assisted by their eldest son Daniel to deal with the coffee harvest. Daniel arranged the day labourers, went to the field every day and returned with the mule and the bags of coffee. He helped his mother to clean and dry the coffee. One day, Domingo started yelling at his son so that every passer-by enjoyed the family quarrel too. Domingo asked what Daniel was doing and whether he thought he would be able to claim the coffee field by working. He blamed Daniel for being a profiteer. He further shouted that he had paid for Daniel's education (who was a jobless school teacher) and he was expected to live on his own now. Then he threw his son out of the house. Domingo obviously wanted to ventilate his frustrations while he was drunk. However, his actions also expressed his fear that, apart from his education, Daniel wanted to claim the coffee field as his inheritance. Domingo made it clear that, in his eyes, Daniel had already received his share and that the other siblings who didn't study were entitled to the coffee field.

A second new rule concerns the rights of *migrated offspring*. Migration has recently become more important as an option for young people. Both pull and push factors are causing the apparent increase in (often temporary) out-migration. In San Pedro Sula and surroundings, large assembly plants (*maquilas*) have emerged, offering salaried jobs that many youngsters had never dreamed of in their home villages. On the other hand,

young people in El Zapote are extremely aware that it is impossible for all to make a living in agriculture. Migration is a solution to the shortage of land.

I witnessed a conversation between Excequiél and Rosa about the controversial issue of the inheritance rights of migrated offspring. They have two sons who migrated while two sons and two daughters still lived in their household. Rosa had just come back from San Pedro where she visited her eldest son Mario. She was telling about Mario, who said that he had no intentions of coming back to the village. He thought life in the village was harder than in the city. He urged his mother to tell his brothers that they should stay and help their father and that he would not claim his inheritance in case his father died. This was a difficult issue for the father, Excequiél. His own father had followed the lazuro rule and assigned all he had to the youngest son (previous section). Excequiél was therefore determined to act differently regarding his own inheritance. He listened to Rosa and then said that 'they are all my children and they have the same rights'. He wanted to include a son who grew up in another household and who he doesn't officially recognise as his own. Rosa reacted by telling an adapted version of a bible story:

*While living, a man bequeathed all his properties to the lazuro. Now, this lazuro sold everything and left the village. There he consumed the money. When he had nothing left he found work as a labourer in a pig farm. He had nothing to eat and had to eat the same as he gave to the pigs. One day he thought about his miserable life. He remembered that he still had a father and a mother. He decided to return to the village and asked his parents for forgiveness. His parents forgave him and admitted him into their household as the lost son.*

After telling the story, both Excequiél and Rosa started to interpret it in order to explain their arguments. Rosa said that the story made it clear that you should never transfer properties to children who do not live in the village. 'If you give land to Mario, he will sell it. What can he do with it? All children receive a small plot that is not big enough to live on. I am not an advocate of transferring all to the lazuro. I think that you must give it to the children who help you. I said to the boys: work hard in the coffee field because it will be yours in the future. It is for yourself that you should work hard'. Excequiél interpreted the story to mean that whatever the son had done with the inheritance, he was still a son. 'You have to give to him because he is your son'. Excequiél wanted to hold on to his principle of equality but, at the same time, he considered the logic of his wife's arguments. In general, children who definitively migrate lose their rights, but this is different when these migrated children also help their parents by regularly sending them money (Papma 1992). At the time of this conversation, the sons of Rosa and Excequiél who had migrated were not sending money to help their parents. A few years later, one of them started to send money on a

regular basis, which immediately changed his position. His parents thought of giving him a part of their home garden to build a house.

A third rule of inheritance is about the difference between *legitimate and illegitimate children*. Although the law prohibits distinguishing between legitimate and illegitimate offspring in inheritance, people in practice do make a difference and they may use the difference as an occasional argument in their struggles for inheritance. However, the local rule does not give more rights to legitimate over illegitimate children. In fact, this can be either way. In some cases, illegitimate children were successful in claiming a larger share of their father's inheritance because they belonged to the last family with which their father had resided. In other cases, though, illegitimate children were not able to claim their rights vis-à-vis the legitimate offspring who used the legitimate-illegitimate distinction as an argument to set aside their half-brothers or half-sisters. The rule does not define exactly who has what rights, but it is only used to confirm a certain difference between legitimate and illegitimate children, whatever the content of this difference is. Men who have several wives and families during their lives are often confronted with the problem of legitimate and illegitimate children. For example, a friend of Pablo commented:

*You know how many times I told Pablo that he has to go to a lawyer? If he dies, there will be problems. I heard that now all children have equal rights according to the law. But do you know who receives the inheritance if Pablo dies? His brother. His family has no rights because his wife isn't married to him. His sons are illegitimate. The woman he is married to has no rights because she lives with another man. If she would not have that man, she would have had the rights but now she doesn't. His legitimate children could claim rights but all three are girls.*

In the eyes of this friend, Pablo's three illegitimate sons should have the rights to inherit. Yet he thought that it would be difficult to claim these rights because of their status as illegitimate children. The illegitimate sons were owed their rights, according to another local rule, because they worked with their father in the fields. In contrast, the commentator thought that the legitimate children should not claim rights because they were girls. The difference between legitimate and illegitimate children was used as an occasional argument with an unpredictable content. I call it a 'rule', however, because it is referred to in order to guide and justify behaviour concerning inheritance.

Pablo's friend used arguments about legitimate and illegitimate children that mixed with ideas about gender and about the rights of women in marriage. He constructed other rules in his comment that expressed his idea about gender differences in inheritance. In the eyes of the commentator, the official wife lost her rights because she lived with another man. The legitimate daughters should not claim the inheritance

because they were girls. Pablo's current wife did not seem to have any rights at all in the eyes of the commentator.

In general, the rule expressed by both men and women is that both genders should be treated equally in inheritance. Hence, there is no general rule that women should be completely excluded. When specific inheritance questions and practices are concerned, equality of men and women is overruled by arguments that redefine this equality between the genders and, more specifically, establish who has access to what right. The short comment of Pablo's friend included a range of ideas and perceptions about the inheritance rights of women and daughters which amend the rule of gender equality and limit access to inheritance for women. Chapter Five will enter at length into the way in which women use the norm of equality in struggles for inheritance.

#### *Stacking of inheritance rules*

What happens in inheritance practices in El Zapote does not differ substantially from the image created by the testaments I read in the General Archive of the Judicial Power. Yet most people in El Zapote do not make testaments themselves. There are some indications that this was done in the past more than today. A man who was frequently involved in drawing up such documents in the past said:

*The old people in the past, they drew up a testament with the municipal secretary and the JP. In the testament they declared who would receive what after he died. But the problem was, such a testament did not make any difference. Because after his death, children started to fight anyway. A testament doesn't secure that all will be divided accordingly.*

Testaments do not form part of contemporary inheritance strategies because there are no instruments to enforce their execution. The testament does not ensure the testator that the heirs will respect his last will. Hence he needs to deploy additional strategies anyway. The necessity to write a testament is therefore reduced.

Landholders in El Zapote share the same anxieties expressed by testators in their testaments. They also want to enforce a particular division of their properties, attach conditions to receiving properties, disinherit certain people and anticipate and prevent problems. They also want to actively decide who gets what without blindly following the local norms of inheritance. I explained that these local norms are under constant pressure to change. The lazuro rule is put under pressure to change because circumstances and the ideas about what is important to people have changed as well. Youngest son preference causes more inequality today than it did in the past. Inheritance has become more vital as a mechanism for accessing land because land is no longer freely available.

Equality between siblings has become a main rule of inheritance. This is possibly part of a more general tendency to consider equality between people as important. The struggle has now become how to define equality in practise and many amendments are being made that exclude or limit the rights of particular interested people. Inheritance no longer stands for receiving land or other valuable assets from one's parents, but it may also take the shape of financial support in order to receive education. Inheritance has become more strongly connected to helping or working for one's parents and migrated offspring who do not take part in this may lose their rights. A further point of discussion between villagers is how to interpret the equal rights of women: equality is redefined in the light of existing gender norms regarding land ownership.

A continuous process thus takes place in inheritance practices, through which norms are stacked on other norms. Preference of one heir as the general norm is about to be replaced by equality between siblings, but using this rule in practice means that new norms of preference are emerging as well as new meanings of 'equality'. It is clear that local rules of inheritance do not emerge as a reaction to a law that doesn't suit the local circumstances. They have developed, and still develop, in a relatively autonomous way in relation to law.

## Inheritance and violence

On a hot day in February, 1993, my husband Kees returned from a trip to the mountains pale and shocked. On his way back to the village he attended a crying man to the health care centre who was losing a lot of blood due to machetazos (wounds made with a machete) in different parts of his body and had almost fainted. Upon arriving at the village, the JP seemed extremely reluctant to act. Only months later did we began to understand who the victim had been and why the judge didn't want to attend to the conflict. The incident had concerned an inheritance conflict between different generations of one family. The case is extreme and ordinary at the same time. It is extreme in its long duration, violent character and consecutive court cases. It is ordinary because it represents the main mechanisms that play a role in the emergence of inheritance conflicts.

Victoriano Delgado			
<i>Children</i>	Leoncio	Marcelo	Marino (deceased)
<i>Grandchildren</i>	Manuel Nestor (also known as Lidio)	Marcelito Felipe	

Figure 4.2 Actors in Delgado family conflict about inheritance

The farmer, Victoriano Delgado, had three sons: Marcelo, Leoncio and Marino. Marino was mentally retarded and didn't play an active role in the conflict. By the time this story begins, when the *machetazo* took place, Marino had already died. After Victoriano's death in 1975, his sons Marcelo and Leoncio jointly filed an application for the concession of Victoriano's land in a place called La Pita. According to the book of acts of the Municipal Council, they stated before the council meeting that they jointly and peacefully possessed this land for thirty years. Although the brothers were able to peacefully divide the land in La Pita, this did not happen with the second property of Victoriano. This was a plot of seven hectares in an area of the mountains called La Laguna. The main actors involved, and other villagers, related different versions of the story of Victoriano's inheritance.

The first version ran that Victoriano transferred his properties to his son Marcelo in his dying hour. Leoncio had migrated to the north coast and wasn't expected to return to the village. After several years, however, Leoncio showed up and demanded his portion of his father's inheritance. At that moment, Marino lived in the parental house and Marcelo in another house on the same house plot. Leoncio threw Marino out of the parental house and went to live in it. Marino thereafter moved in with Marcelo. The brothers Leoncio and Marcel then started to wrangle over their rights to the land in La Laguna and the parental house. Other villagers told another version of the story. In this version, the 'engineers' of the National Cadastral Directorate came to measure the villagers' plots of land under as part of the PTT. Victoriano ordered Leoncio to accompany the engineers to his plots, but Leoncio refused to obey his father and said that he didn't feel like it. Thereafter it was Marcelo who went with the engineers to the land in La Laguna. This resulted in the land being titled in Marcelo's name. A third version of the story gave credit to Leoncio, who was seen as having acted wholly in good faith. He and Marcelo had visited the INA brigade together and the INA official told them that the title of the land would be in their names. However, Marcelo cheated his own brother and paid the INA official so that the land was titled only in his name.

*The first court case: a civil procedure to demand property*

The slumbering conflict between Marcelo and Leoncio about the land grew worse when Marcelo decided to sue his brother in the Third Court in Santa Bárbara in 1991. He hired a lawyer and started a civil vindication procedure to demand the return of the land that he considered to be his property (Chapter Two). The vindication procedure can be used by property holders to regain ownership at the expense of a possessor. At the time of this court case, Marcelo was 78 years old and Leoncio 71.

The case file started with Marcelo's demand. It read:

*For some time now, the accused has occupied more or less three manzanas of which he cultivated more or less one manzana with coffee trees, in the south of my property. He refuses to leave the terrain in spite of the fact that I showed my title to different authorities to whom we turned to, and that the accused has no document to prove that he is owner of the land in question or which supports the claim he pretends to make. I appear in front of this court in the hope that I will be given back my land which was illegally occupied and I therefore submit this demand.*

Marcelo thus argued that Leoncio occupied part of the land he possessed legal title to and which Leoncio had no documents for. The court called upon Leoncio to react to the demand. He related that:

*I have to say, mister judge, that only two weeks before the presentation of this demand I found out that my brother possesses a title to the land of which the whole village, all inhabitants and neighbours, know that it was our father Victoriano Delgado who left us two plots of land: one is the plot which Marcelo Delgado demands and the other which we call La Pita. We have been possessing both plots and we have been using them one half each according to the agreement we made after the death of our father. We made a division with a straight line of penquillo.<sup>10</sup> Afterwards, the plaintiff changed the direction of the line and included a plot of land which was mine, and since that moment problems have started. At this moment that I see the demand I know that my brother malignantly and insolently and outside my knowledge, and who knows with what tricks, succeeded in exclusively titling the land, which we jointly owned and have divided, in his name. When the titling programme of the INA came, we went to the INA official together to inspect and measure the property, and he told us that the title would be in our names, and the official charged us 45 lempiras each to title the land. The result was that I was in expectation of my title and I believed that the title would bear both our names, as the INA official explained. I was still waiting when the plaintiff came and distributed a plot which belonged to me; he gave it to a son-in-law. This provoked my reaction and since that moment I saw the confidence of my brother when he disposed of my property and I began to see that something had happened and that I had become the victim of a vile deceit by both the INA official and my own brother.*

In his answer to the demand of his brother Marcelo, Leoncio also brought up the issue of the parental house, although this did not form part of Marcelo's demand.

*The house which belonged to my father was transferred to an invalid brother, after consulting him. [Marcelo] took him to his own house and, strangely enough, our*

*brother died three days after he took him with him. My brother the plaintiff took control of the house with the argument that he bought the house from our invalid brother Marino Delgado. I tell this story because mister judge knows of the rudeness of the plaintiff.*

Leoncio and his lawyer seemed already convinced that he would lose ownership of the land because his brother Marcelo had a land title in his name. He therefore tried another strategy and insisted that if Marcelo wanted to take the land he possessed he had to pay for the improvements.

*The most important thing is that while our father lived I cultivated two manzanas of coffee in this property, of which I renewed some parts because it is an old coffee field which needs to be sown again... hence, in case my brother malignantly succeeds in securing the land through a title, he has to pay me for the improvements in order to become possessor of these improvements, because all villagers know that I have always worked in this field and I will continue working it until I will be legally forced to vacate the land.*

After Leoncio's declaration, the case file continued with the collection of 'proofs' which were brought up by both parties. Leoncio requested the interrogation of four witnesses. These witnesses declared that the land of Victoriano Delgado was divided between Marcelo and Leoncio, and that Leoncio cultivated a coffee field on this plot. Three other witnesses testified that they knew that Leoncio was awaiting the PTT title that should be in his name. Furthermore, Leoncio demanded an inspection by the JP, which should clarify whether the plot was divided into two parts and what the age of the coffee field was. The court ordered the JP of the village to inspect the land and to report to the court. After describing the boundaries of the plot in question (expressed by describing the names of the adjoining owners in four directions), the JP declared that the plot consisted of a coffee field of seven manzanas and two manzanas that were not in use. He found the borderline of *penquillo* to be approximately fifteen years old. Furthermore, the JP declared that he saw a cross made to define the division. He considered the coffee field to be twenty years old, and there was also a part with new plants. The JP also observed that a part of the coffee field had been fenced separately.

Marcelo's first evidence he submitted was his PTT title of the land. Furthermore, he came out with three witnesses who declared that Leoncio occupied the land which belonged to Marcelo for years. According to the witnesses, Marcelo had the PTT title because he was the owner of the land.

After presenting the documented evidence to sustain the respective arguments, both parties added a concluding statement to the case file. The lawyer of Marcelo concluded that Leoncio tried to prove ownership of the land without presenting the necessary



public documents. He only presented declarations of witnesses which was, as the lawyer argued, not enough according to the law. Marcelo's lawyer also remarked that Leoncio said he uninterruptedly possess the land in a peaceful manner, but he did not say since when he possessed it. In this remark, the lawyer was referring in this remark to the civil law of adverse acquisition, which stipulates that ownership may be claimed after ten years of possession (see Chapter Two).

In his conclusions, Leoncio's lawyer stressed that he did acknowledge the existence of Marcelo's title. However, he insisted that Marcelo had to pay for the improvements of the coffee field that were made by Leoncio. Furthermore, Leoncio's lawyer remarked that the inspection report of the JP and Marcelo's PTT title presented different boundaries of the land in question. A third remark was that Marcelo did not prove to be the owner of the improvements as these did not appear in his PTT title.<sup>11</sup>

Leoncio's lawyer knew that the plaintiff had a strong argument with possession of a title document of the land. The only strategy he could think of was to demand payment of the improvements and to refer to failures in the procedure. The JP's declaration indeed mentioned names of the owners of the adjoining plots which were different from the names mentioned in the PTT title. The question was, however, if such differences meant that there was something wrong with the title deed. The PTT title was drawn up at some time around 1984, while the JP inspection took place in 1991. It may be possible that the adjoining owners were not the same as the earlier owners, due to sale or inheritance processes. One of the mentioned adjoining owners in the PTT title, for example, did not appear in the JP's inspection report, but his wife's name did. Hence, the fact that the names of the adjoining owners differed was not an indication in itself that the PTT title and the JP referred to a different plot. Nevertheless, Leoncio's lawyer deliberately suggested this. He used the argument as a trick to convince the judge of procedural failures.

Leoncio's lawyer's strategy paid off. The judge accepted his argument that the situation, surface area and boundaries of the occupied plot of land were not clear. He stated that clarity was essential to delivering a decision about the illegality of the occupation. The judge copied Leoncio's argument word for word, stating that the PTT title and the JP's inspection report did not mention the same adjoining owners. He concluded that it was therefore not clear which plot of land was the object of the conflict. He rejected Marcelo's demand and declared the case inadmissible (*sin lugar*). Marcelo's lawyer appealed, and the court of appeals discovered the technicality that the judge declared the case inadmissible outside the time limit. The court of appeals sent it back to the judge, but he again pronounced the case as inadmissible in January, 1992.

Leoncio's lawyer thereafter filed a request to the court 'to execute the sentence'. Leoncio apparently thought that he had won the case because Marcelo had lost it. The judge, however, stated that neither of them had heard a sentence in either one's favour

and that there was nothing to be done unless a new demand was submitted. With this declaration, the case file was finished and sent to the court's archives.

*The second court case: criminal accusation of damages and wounds*

The second procedure started in February, 1993. This case file opened with a declaration of the JP in El Zapote in which Leoncio Delgado accused his nephews Marcelito and Felipe Delgado, sons of Marcelo Delgado, of 'damages'. Leoncio stressed that Marcelito and Felipe destroyed the fence of his property in 'La Laguna'. In his inspection report, the JP concluded that Leoncio's fence was totally destroyed, and that part of the posts were pulled out of the ground and others were slashed to pieces. Leoncio added that his son Manuel saw the accused men on the property and then, one day later, the fence was destroyed. The court asked Manuel to make a statement. Manuel declared that: 'The day that they wounded my brother Lidio [officially called Nestor Perdomo], Felipe and Marcelo Delgado stayed in the coffee field and returned to the village in the middle of the night. The next day, I got up early and went to the coffee field. I found the fence totally destroyed'.

The Court in Santa Bárbara decided to call upon Marcelito and Felipe Delgado. Only Marcelito appeared in front of the judge. He declared that he was 56 years old and commonly called Marcelito, 'little Marcelo'. He added that he knew nothing about Nestor's wounds, but that he did pull the fence out by order of his father, Marcelo Delgado. Marcelito was charged with 'damages' and he was sent to the Santa Bárbara prison. He hired a lawyer and managed to become provisionally released on a bail of 810 lempiras. The court then called the father, Marcelo, to testify. Marcelo confirmed that he sent his son Marcelito to pull out the posts because they stood on the part of the land which he had given to Marcelito as his inheritance. After the father Marcelo, two of Marcelito's friends testified that Marcelito had behaved blamelessly.

The case then altered in content because Nestor (Lidio) appeared in court to make his declaration. He apparently came to testify about the destroyed posts.

*This particular day I met them [his cousins Felipe and Marcelito] at half a kilometre more or less from my father's coffee field. It was about two o'clock in the afternoon... that Marcelito Delgado had an axe and Felipe a colima [type of machete] and a bag, because I could see the bad intentions they had I returned [to the village] and I kept my eyes on them, and when I reached them, Felipe asked why I returned and I said I forgot something but I said that to deceive him because what I really wanted was to warn Manuel that they went with bad intentions and that he should take care of himself but I never managed to reach him to tell him anything because Felipe wounded me and I returned as fast as I could but the next day my brother returned to the coffee field and saw that the posts were destroyed and pulled out.*

The court apparently was confused by this statement because the fact of a destroyed fence now became mixed up with a case of wounding a person. The court asked the JP whether one of the parties was able to present documents to prove ownership of the land. Furthermore, the court wanted to verify whether the intention of Nestor's statement was to charge Felipe with wounding him with a machete. If he did want to press charges against Felipe, then the wounds of Nestor needed the evaluation of a forensic doctor. The court further ordered the JP to check the antecedents of the accused persons and their involvement in other criminal charges. Thereafter, the case file continued with the accusation of the destroyed posts as well as the charges of Nestor against Felipe Delgado.

In June, Felipe Delgado voluntarily presented himself in court because of the charges against him with respect to the attack on his cousin. Felipe declared that he was working as a day labourer in the coffee fields of Salvador Lopez on the day of the incident. He was accompanied by four other day labourers. He denied wounding Felipe and stressed that he did not commit any offence. He further claimed to know nothing about the destroyed fence. After this declaration, he was sent to the Santa Bárbara prison. The day labourers and the owner of the coffee field in which they worked that day appeared to testify. Their statements expressed that Felipe was a good worker who was unpretentious and honest and who didn't have problems with anyone. He was a Christian and showed good behaviour, and he was poor and struggling.

The case file then contained several hand-written sheets of paper. One of these documents was a letter to the mayor of El Zapote from December, 1990.

*Through this letter I would like to inform you that on this date Marcelo and Leoncio Delgado, with as witnesses their respective sons Felipe Delgado and Manuel Delgado, have reached the following agreement:*

*That the terrain in Teocintal will be remeasured and divided in two equal parts, without including the parts which are in hands of Candido Perdomo and the part which don Marcelo bought from Juan Sarmiento.*

*That the terrain in Robledal will be remeasured and divided into three equal parts, one for each brother Marcelo, Leoncio and Marino.*

*Regarding the houseplot of Marcelo and Leoncio which is also an object of conflict, we have agreed to involve the municipal síndico, who will evaluate the situation and determine the possibilities.*

*That a deed of purchase will be made at the moment that Leoncio Delgado will pay the agreed sum concerning the payment of the title and some travel expenses, which will be 440,99 lempiras.*

*It will be in your power to draw up the document and the solution of the conflict, taking into consideration the agreement between the parties.*

The document was signed by an official of the INA titling division. This document showed that the INA had indeed made efforts to end the conflict between the brothers before the start of Marcelo and Leoncio's first (civil) procedure against each other.<sup>12</sup> Several villagers remembered that the INA had reached a compromise between the two brothers. They said that the compromise failed because Leoncio was not prepared to pay his share of the costs of the land title.

The court again called upon Nestor and he made a second declaration:

*On February 18 of this year at two thirty in the afternoon I returned from work on the property of my father Leoncio Delgado when suddenly Felipe Delgado appeared and without saying a word or discussing anything, he hit me with a colima he brought with him and when I saw this, the only thing that I could do was to hold him off with my left hand and he cut my forearm, I wanted to pick up my machete because it fell during the first machetazo and when he saw that I wanted to lean forwards he hit me again in my right hand and when I saw that he would kill me I turned and ran but he reached me and hit me again with the machete in my back. I kept running to the village and from there they transported me to the hospital of Santa Bárbara and afterwards to San Pedro... I want to declare that I have never been an enemy of this man because we always talked, and that this problem happened because of the dispute about some plots of land with his father.*

This declaration was followed by a medical report which confirmed the existence of the wounds described by Nestor. The court then decided to charge Felipe and set a bail of 2000 lempiras. Marcelo, Felipe's father, used the PTT land title as collateral in order to pay the bail, after which Felipe was released from prison.

The question of the destroyed posts then continued. Marcelito's lawyer argued that Marcelito did not cause the damages because whatever he did, it took place in the property of his father, who himself had ordered him to remove the fence. The lawyer also argued that Leoncio Delgado, who charged Marcelito with damages, was not able to prove his property rights according to the law. The lawyer thus concluded that the supposed offence, in fact, did not exist. The judge accepted this argumentation and released Marcelito of all charges against him.

The court of appeals in Santa Bárbara reviewed the case file and detected several technicalities. It declared that Felipe's case needed to be treated in a separate case file. Furthermore, the sentence concerning Marcelito's case, that he was freed from the charge about the destroyed posts, was nullified. The case file ended with this decision of the court of appeals.

*Outside the court: 'solution' of conflict*

Many villagers knew about the court cases with regard to the Delgado family, although they didn't understand the particulars. For example: several villagers were called to testify on behalf of one of the parties. Their perception about the story of the conflict depended upon whether they considered themselves to be in the 'Leoncio' or the 'Marcelo' camp.

Both camps shared the opinion that some kind of escalation of the conflict had become inevitable. The problem had existed since the death of Victoriano in the 1970s, but the escalation came in the 1990s, when both brothers grew very old and wanted to divide the land in a dispute between their own children. At this point, the two old men as well as their children became involved.

Nobody had thought that Felipe Delgado, son of Marcelo, would become an aggressor in the conflict. The same evening of the machetazos in La Laguna, when it was still unclear who did what to whom, a man (Marcelo camp) pondered about what happened: 'It can't be Felipe, he is a believer (in God) and he stood very aloof from the conflict. But you never know, the devil can be present everywhere'. This man passed by later that evening to tell us that it had indeed been Felipe who had used his machete. While he had stated before that the aggressor would be locked up in jail for several years, he now thought that Felipe would only have to pay a fine and the medical costs of his cousin, as 'it was only a few wounds'. He adjusted his judgement of the case knowing that it was his friend Felipe who had offended the other man.

When we interviewed Felipe, he had just been provisionally released after a stay of a month in the Santa Bárbara prison. He said during this interview that he was guilty and had made a mistake. However, several conversations and years later he maintained that his cousin had attacked him and that he had done nothing but defend himself. His provisional release was made possible by paying the bail (2,000 lempiras), and he also had to pay the lawyer, who asked 1,500 lempiras. To pay the bail, his father used the PTT title of the La Laguna land as collateral to obtain a bank loan. Felipe himself sold a coffee field he owned in the mountains to pay the lawyer. In order to obtain his definitive liberty, the lawyer again asked for 2,055 lempiras. Felipe started to work for a stone quarry close to the village, harsh work that paid well. Without continuance of the court case against Felipe, the lawyer had no trouble providing the necessary document of definitive release, as long as Felipe paid him.

After the conflict escalated, Marcelo, who held the INA land title, divided the land in La Laguna between his five sons. Leoncio did not succeed in making his claim on the part he had been using, hence he lost it. He and his children left the village and went to live in the north coast area. Marcelo didn't transfer the land as an inheritance, but he sold it to his sons for a cheap price. Felipe bought 1½ manzanas, for which he paid his

father only 300 lempiras. He and his brothers separately received deeds of purchase. Marcelo's sons were now the recognised owners of the land. They were not the 'heirs', a position which could still be attacked by their uncle and cousins. They bought the land. The sale of the land with a deed of purchase gave them more security than just being the heirs.

The working of the judicial system in this conflict shows several peculiarities. First, there was the role played by the JP. It's possible that Leoncio's lawyer's strategy was to deliberately cause confusion about the boundaries in order to avoid a definitive sentence. The inspection report of the JP made the judge decide to declare the case inadmissible. The inspection report and the PTT title differed with regard to the mentioned adjoining owners. They did not necessarily concern different plots, but the judge considered the differences in the lists of the adjoining owners to be an indication that the two documents were indeed about different plots. The limits of the study of this case file are clear in this respect: I was not able to determine whether the JP deliberately made up an inspection report with divergent adjoining owners. Leoncio's lawyer was the one who requested the inspection report, and possibly the JP therefore conformed to the vision and strategy of this lawyer.

A second issue with respect to the performance of the JP was his aversion to show up when Nestor had been badly wounded. 'The judge is not able to stand blood' was a village comment. However, it was also possible that the JP was reluctant to become involved in the conflict between Marcelo and Leoncio. The case file of the second court case showed that the JP initially accepted the complaints of Leoncio about his destroyed fence, but he kept silent about the violent confrontation that took place. This issue came only came up coincidentally in the testimony of one of the witnesses. It is unclear why none of the parties initially mentioned the bloody incident. One reason could be that the destruction of the fence was in itself considered to be the important and threatening act, of which wounding Nestor was only a part; to wound and to become injured were nothing but instrumental in the acquisition of land rights.

A second judicial actor playing an important role in this family conflict was the court in Santa Bárbara. The question is whether this court played the role that was expected, as the neutral conflict solver and speaker of justice. The judge in the first court procedure did not pay attention to the roots of the conflict; this was the way in which the inheritance of Victoriano was divided. The question that the judge dealt with was not *if* and *how* Victoriano's inheritance had been divided. His central concern was who was able to prove ownership of the land. The exclusive focus on this question produced a rather limited perspective on the overall problem. The judge was not able to deal with the complicated background of the case, nor was he able to assess the problem of the boundaries, the dubiousness of the witness declarations, the JP's inspection report or the plain way in which Leoncio's lawyer presented the desired compromise/payment by Marcelo for the improvements.

The judge decided that no judgement was possible because it was not clear whether both parties were talking about the same plot of land as the boundaries in different documents were incongruent. The instituted type of civil procedure, vindication, did not leave room for other questions than those related to who had a legal claim of ownership. Had this been different, if there had been more room to understand what was going on in this family and if the division of the inheritance had been properly understood, it's possible the conflict would have ended without a violent finale.

The criminal accusation that followed consisted of two parts: one against Marcelito and one against Felipe. Marcelito was definitively released of all charges because he had acted under the authority of his father, Marcelo, who was said to be the owner of the land. Marcelo gave his son the particular part of the land which Leoncio claimed to be his. The judge decided that Leoncio could not prove to have the same or better rights to the property. Moreover, with his decision concerning Marcelito, the judge indirectly assigned ownership to Marcelo: he justified Marcelito's actions by arguing that Marcelito acted under the authority of his father, who was the owner of the land.

Felipe endured a short stay in prison. He was poor and did not have capital immediately available, but he was able to pay bail and was provisionally released. He was working hard to save enough money to obtain a document of definitive release for all charges.

The judicial system thus did not contribute to the resolution of the conflict and, in fact, the Santa Bárbara court's involvement probably worsened the situation. The litigants could not do anything but seize at the local solutions to conflicts of this kind: to sell the land in conflict through private documents (Marcelo to his sons) and to leave the village (Leoncio and his sons). The sale of the land made the object of the conflict between Marcelo and Leoncio disappear and granted new property rights to Marcelo's sons. Leoncio left the village to avoid more violence. He did not have other means for demanding justice.

The conflict over land in this family reflects several mechanisms characterising local inheritance practices. Although the lazuro rule is not literally applied at all times, inheritance practically always means the unequal distribution of properties. A second feature of this family drama was the slumbering character of the dispute. The source of the problem was the distribution of rights in Victoriano's land in the 1970s, but it ended up in a violent confrontation between his grandsons in the 1990s. The conflict persisted for years, but it exploded when Marcelo and Leoncio grew old and wanted to transfer their land to their own heirs. In general, one sees that conflicts over property rights that are not well resolved continue to silently persist until the moment that the actors in that conflict intend to transfer their properties to their own heirs. Here another feature of inheritance practices plays a role as well. The involved grandsons from both sides were strongly under the influence of their very old and patriarchal

fathers. These fathers held the keys to the inheritance firmly in their hands, and therefore were able to control the behaviour of their adult but still dependent sons.

The role played by INA officials and the titling programme was also noteworthy. It was an exceptional case, because the INA indeed tried to mediate between the parties by making an agreement that nevertheless had no chance of succeeding. Furthermore, the INA played a strange role in promising Marcelo and Leoncio that the land should be titled in both their names, which was, in fact, impossible. The title in Marcelo's hands became the key in the escalation of the conflict. As in many other cases, the title became a new instrument for actors involved in conflicts and a way to make an extra claim.

Local comments also considered the conflict in the Delgado family to be exemplary of the working of the judicial system. The JP confirmed his local reputation of 'too weak to be able to stand blood'. He was not able to handle the conflict and the pressure applied to him by the two parties and their respective local supporters. Furthermore, the case confirmed the general conviction that involvement in courts means 'you lose more [money] than you gain' (Chapter Six). Indeed, both the civil and criminal procedures did not lead to any outcome or solution. Both parties spent (borrowed) money on paying lawyers; Felipe bought himself free by selling land, but needed to work harshly to pay for his freedom and his land became mortgaged. The actors in the conflict spent money and effort but without receiving the desired result in the end. The local solution, sale of the land, meant that Marcelo's sons eventually came out ahead.

## Parents and inheritance

Parents work for the benefit of their children.<sup>13</sup> This assertion played a central role in the motivating parents' actions in inheritance practices. This section explains the complex strategies of parents and the way in which they cope with new circumstances, new claims and changing meanings of inheritance. Central to these strategies, from the point of view of the parents, is the creation of dependence and to maintain control over properties for as long as possible. The complicated processes that take place in the framework of the transfer of rights to the next generation often take years. They find a beginning at the moment that parents are still in their most productive years. At that moment, adult offspring start to exert pressure on their parents to help them advance in life.

Using the term 'strategy' might suggest that all parents deliberately plan the things they do with regard to inheritance, in line with the goals they want to achieve but this is not the case. Parents have to balance different goals, to weigh the pros and cons of a certain action, and to counteract the pressure of potential heirs in a process that may easily take years.



*'Chronicle of a death foretold': the case of Ciro Menendez*

Ciro Menendez's case teaches us important things about how inheritance is used to maintain a relation of dependence and continue exercising control over property. He was a well-off coffee farmer with six sons and two daughters, a gentle person to the visitor to whom he proudly showed his fat pigs, his house and his technologically advanced coffee fields. Yet he became extremely aggressive when he was drunk. People in the village used to tell how he beat his own sons in front of the day labourers, a completely abusive thing to do. His wife was a shy and quiet woman who was not tempted to say a word when he was around.

Ciro Menendez						
<i>Children</i>	Máximo (school teacher)	Cristino	Cirito	Filadelfo	Two minor sons (lived in parental household)	Two daughters (lived independently, received nothing)

*Figure 4.3 Actors in father-son conflict in Menendez family*

Ciro's six sons had all worked with him in the fields and he allowed one of them, Máximo, to study. Máximo became a schoolteacher. His sons Cristino, Filadelfo and Cirito started their own farm households but they still worked with their father in his fields. Ciro's two youngest sons still lived in the parental household. Ciro considered himself to be a good father since he helped his grown-up sons build houses on his own house plot. An explanation for his following peculiar behaviour might be, however, that he didn't want to stop dominating them and he did not intend to give up control over his properties.

The INA titling programme forced Ciro to title various plots of land in the names of his sons. During the implementation of the PTT, the INA office applied the rule that every landholder should only receive one title containing four plots at the most, and that all additional plots had to be titled in the names of other people (Chapter Five). Just like all the other land holders in the village, Ciro considered that the land titles would not affect his power and control over his own land. He judged that he would still control his properties as long as he held all the titles in his own hands, thus not handing them over to the title holders. When Ciro discovered that he had to pay the INA for the land titles, he decided that his sons should pay for the titles themselves. He still kept the documents and he did not hand the plots over to them.

Máximo did not immediately find a job as a schoolteacher after he graduated. Therefore, Ciro said that he should start working on the plot of land that was titled in his name. Máximo started to grow coffee in his field. It takes three or four years and a lot of hard work for a coffee field to start to produce. However, when the field was

about to give its first real harvest, his father reclaimed the plot of land and said that it was his. According to Máximo, his father said: 'The land is not yours. You have had your education as your inheritance. You cannot make a claim on my land as well'. Máximo did not want to quarrel with his father so he left the land and lost his investments.

Ciro had also assigned two adjoining plots to his sons, Cristino and Cirito, and he allowed them to work the plots themselves. After a while, Cristino and Cirito started to argue about the boundaries, fights that provoked the anger of their father. Cirito went to the fields of his sons and rigorously cut down all coffee trees so that both had to start all over again. Thereafter, Cristino decided not to use the land for coffee production. He argued that as long as he didn't have the papers, his father could easily take the land and all his efforts would be in vain. In case his father should die, his brothers would be able to claim it as well. Instead of producing coffee, he occasionally used the field for sowing beans. His father did not leave him in peace, however. His father appeared during the bean harvest period and demanded a share. Cristino reported: 'I told my dad that I was poor. I do not have enough to eat. Why should I give a share to a father who has already too much to eat? Why should I feed such a father?' In the end, Cristino grew tired of the whole situation and he decided to completely abandon the land.

Ciro also allowed his son Filadelfo to work in the field that was titled in Filadelfo's name. This was a field adjacent to a plot that Cirito used for himself. Filadelfo had been using this plot for ten years when one day, Cirito decided that the fence between them was not in the right place. He then moved the fence in such a way that he incorporated at least half a manzana of his son's land. He also cut down two rows of Filadelfo's coffee trees.

Filadelfo was obviously enraged and very worried about the situation. He had paid the PTT title of his land, but the title document was still in hands of his father. When he complained to his father about the moved fence, Cirito threatened that he would burn the title document and that he would throw Filadelfo in jail. Cirito's threat and Filadelfo's despair over this made it clear that both father and son did not understand the character of the land title. Cirito thought that there was only one copy of the title - the one that he had in his possession. He thought that because he possessed the title document that he was able to claim the land. Filadelfo, on the other hand, did not know at first that the Public Register of Property held a copy of the title. He, too, thought that Cirito was able to make a claim because Cirito held the document, in spite of the fact that Filadelfo paid for the title and that the title deed bore his name and not his father's. Their lack of understanding about the meaning and legal impact of the land titles was related to the redundancy and non-conformity regarding local perceptions of these land titles.

Cirito and Filadelfo pressed criminal usurpation charges against each other in 2000. They both spent time in prison and had to sell other properties to pay for bail and a

lawyer. Filadelfo placed his father's coffee field under embargo, arguing that he owned the field. Family members and friends were extremely worried that the conflict between father and son would get out of hand. A friend said: 'It is not a question whether one of them will die. The question is only who shall it be'.

One may wonder what inspired Ciro to behave in such a way. He deliberately manipulated his sons and he wanted to continue to use their free labour, which is difficult to enforce if a son lives on his own. In order to keep them in his power, he assigned land to his sons to use, but without transferring them other rights such as control or ownership. He was therefore able to deprive them of the land at any moment. By doing this, he benefited from his sons' hard work in the fields. He was able to demand either the land back or a share of his sons' harvests. On the other hand, the sons had to keep up with their father's behaviour. They judged that it was their only way to ensure themselves of becoming owners of the land one day.

It was only between Ciro and his son Filadelfo that the situation went out of hand. Ciro wanted to have power over his sons, but instead of obeying his wishes, Filadelfo turned against him. Ciro's behaviour reflected the typical dilemmas of propertied parents. He did not want to die and leave it up to the potential heirs to divide the property, nor did he write a last will and testament since he could never be sure that his last will would be respected after his death. A second dilemma was that he did not want to transfer land to his offspring; he needed the land to be able to continue claiming his children's free labour and services, and to maintain their dependence in case he would need help or care in his old age. The PTT title deed played a significant role in the emergence of the conflict. At first, Ciro thought that the PTT title deed had no value, and that ownership of the land titled in the name of Filadelfo would remain with Ciro. Filadelfo, however, claimed his rights to the land because he paid for the title. This payment, and not so much the fact that Ciro had assigned the land to Filadelfo, was central to Filadelfo's perception of his rights to the land. Ciro, on the other hand, thought that he could contest Filadelfo's claim by burning the title deed.

*Choices in transferring property: who, when, and how secure?*

The central questions for land-owning parents are to whom they would want to transfer the land; when they would want to do this; and in what way so that their own conditions and goals would be fulfilled. The answers to these questions lie in three major fields of making choices:

- exclusion and reduction of heirs
- postponement of definitive transfer of ownership
- development of strategies that aim to increase security of both parent and child

Although parents claim to pursue equal rights between all heirs, this is difficult to sustain in practice. A system that prefers one or more heirs is still common. Parents try to reduce the number of heirs, claiming they have to reduce the number of heirs because they do not have not enough land for them all. Children who have migrated are the first to be excluded from the inheritance in favour of their siblings who live in the village and depend on agriculture to make a living. Education and professional training may also reduce the group of potential heirs, although educational opportunities are not explicitly offered as an alternative inheritance. Parents rely on a silent agreement that paying for education means exclusion from the inheritance of land, but they are never completely sure that the child will indeed abstain from claiming land. Women form a third group that is very often excluded from inheritance (Chapter Five).

I found that landholders in several families choose and exclude heirs without citing many reasons or previous discussion. The excluded siblings simply know when they are excluded and that they have no chance of receiving anything. A frequently heard statement is that inheritance has to be earned, and that only children who care for their parents are entitled to an inheritance. Yet it is obvious that opinions differ between the parties about the meaning of 'care'.

The troubles and discussions about the division of land among heirs sometimes inspire landholders to entirely refrain from dividing the land. Instead, they control it themselves until their death, or they sell it to a third person outside the family circle. Parents may attempt to maintain control over their land and avoid conflicts between heirs by refraining from transferring the land to their offspring. On the other hand, parents who do not transfer property rights run the risk of losing control over the labour and care that should be provided by their offspring. More often, parents develop strategies in which they try to balance the different interests through a specific way of transferring property rights. In these strategies, the transfer of 'papers' plays a main role.

The main area of tension between parents and children is not only the *moment* of the transfer of property rights (during the life of a landholding parent or after death), but also the *security* of such a transfer. In order to provide security, the transfer of property rights has to be set down on 'papers': private deeds of purchase drawn up between the landholder and his or her child. Landholders may transfer property to a heir through a quasi deed of purchase that testifies about a sale that is not a sale in reality because the heir does not really pay the price stated in the deed. Such a quasi deed looks like a normal deed, stipulating the price that is paid and signed by the parties and by witnesses.

A transfer of property rights through a deed of purchase provides more security than a transfer between a parent and a child within the scope of inheritance. The document testifies that a payment has been made, although the child has not actually paid the

sum. The quasi payment is central to security: one owns a thing that one has paid for. Third parties are hardly able to contest property rights to the land of a person who is able to show a deed of purchase. When land is transferred between a landholder and an heir without a deed, other persons might contest the transfer because there is no proof. Both parents and children agree on the importance of the deeds. 'If you don't give them papers they will quarrel if you die. That is not what a parent should do.'

A related dilemma for parents in this scope is to determine the moment of the transfer of papers. The determination of this moment has the character of a silently played game. Landholding parents want to hold on to the child as long as possible. They please their child by assigning him or her a plot of land to work, or a part of their own house plot to build a house. However, they refuse to hand over a quasi deed of purchase of the assigned land. Some parents explicitly state that they do not trust the child; they are afraid that the child will sell the land if he has complete control over the property.<sup>14</sup> Once they have given the papers to one child, the others will start to make claims on the property as well.

Without papers, many children decide not to use the assigned land or only use it for growing maize and beans (annual crops). In order to gain security of property rights to the assigned land, children are forced to wait and continue to be dependent on their parents until they receive the papers.

Landholding parents create the impression that are uncertain about their contradictory wishes with respect to the best way of transferring properties, avoiding conflicts, controlling their children's labour power, and assuring themselves of old age care. Only a few landholders were able to come up with elegant ways to settle these matters. A woman told me:

*You know my padrino... he has many children but he has arranged it all perfectly. He drew up a paper for every child he has, in which they can read to what they are entitled. He keeps all these papers in a locked cupboard of which he has the only key. He wears it on a string around his neck. If he dies the key will pass on to his wife. And when she dies too, the children are allowed to open the cupboard and take whatever is theirs.*

More often, the end result of the 'paper game' is a compromise between parents and child. Landholding parents transfer land to children by actually selling it to them for a cheap price. In this case, the child thus actually pays a settled price. This way of transfer has advantages for both parent and child. Parents receive money in return for their land and children receive secure property rights. It is a compromise between an inheritance transfer and the sale of the land by partly giving and partly selling it to children.

In practices of inheritance, parents try to balance different interests: to keep control over their properties for as long as they wish, to receive old age care when needed, to

avoid quarrels between the heirs, and to have money available when they would need it. Landholding parents try to enlarge their children's dependence in order to secure access to their labour power and increase their chances for old age care. However, most of them are not able to completely refrain from transferring some of their property rights to their children while alive.

Furthermore, parents reduce the amount of potential heirs and try to keep control over their properties as long as possible. Some aged landholders sell their land in order to be able to completely dispose of it. Others transfer their land to heirs but try to choose the right moment. They have to counteract the pressure of heirs who demand deeds of purchase in order to have secure rights to the land.

### Inheritance strategies of children

Inheritance is important to children; it is perhaps a basis to build on in life, but it is often not enough to enable them to lean back and enjoy life afterwards. 'There isn't enough [land] for all of us' is a common opinion. Work, and not inheritance in itself, makes people go beyond poverty and misery. Inheritance is thus important but not essential. Yet in spite of its relative importance, practices of inheritance are characterised by life-and-death struggles between siblings. The overall importance of inheritance as one of the mechanisms of access to land has increased in the face of increasing land scarcity. It plays an important role in causing and increasing inequality. From the children's point of view, there are several possible ways to deal with inheritance: to withdraw and refrain from claiming an inheritance; to resign to one's fate; or to develop strategies to anticipate struggles for property in order to obtain one's share.

Women especially tend to easily drop out of inheritance, not only because their rights are denied by others because of the fact that they are women, but also because they themselves decide to refrain from claiming inheritance rights. Women have little faith in their own abilities to defend their rights against others, and they are often afraid to confront their siblings and deal with judicial authorities or violent behaviour.

To resign to one's fate means that a child awaits the decisions of parents and tries to see the positive sides of his prolonged dependency:

*If it wasn't for my dad, I was a poor mozo. I use my father's land, his house plot, to build my house and to dry my coffee, I use his mules to fetch firewood and the product from the fields.*

By working for his parents and doing as they wish, this young man hoped and prayed that his father would transfer his properties to him. He reckoned he would increase his

chances by staying 'close to the fire' instead of living his own independent life. The strategy of this young man was most common among possible heirs. In fact, house plots in the main village of El Zapote became smaller and smaller as they were subdivided to build houses for the offspring.

Children try to influence their parents' decisions about the transfer of rights to land. A son might refuse to work on the assigned inherited land when he does not receive a deed to prove his ownership. Instead, he might look around for other land to buy for himself. He uses such actions to emphasise his independence vis-à-vis his parents. Another strategy for sons to influence and speed up their parents' decisions is to start talking about the possibility of migrating. Migration means that parents may lose their son's labour power and support during hard times and old age.

The main causes of problems between siblings are the preference of parents for certain heirs and the consequential denial of the rights of others, and inequality in what had been distributed. It is not easy to challenge decisions made by parents; children cannot involve judicial authorities because they lack time and money. However, the very idea that siblings will indeed go to court is sometimes enough for the preferred heir to look for a solution. A preferred heir may give his siblings use rights to the land while he or she remains the owner of the land. Or a preferred heir may buy his brothers and sisters out, which is common, such as when the preferred heir does not live in the village but has a job in town. Having a job in town means that he has the means to indeed buy his siblings out. Buying out is also a solution when the land has become equally divided among the heirs but the divided plots are too small to work.

The INA titling programme complicated existing inheritance problems in many ways. One of the problems was that siblings, who were assigned plots of land by their parents - with or without deeds of purchase - ended up sharing a land title which was in the name of only one of them. The INA said that joint ownership was not to be recognised, and the INA brigades that were sent into the field did not pay attention to the problem of the division of plots after inheritance transfers and thus assigned the title to only one of the heirs. They then advised the heirs to first pay for the title, then a division could be made with the help of a lawyer. It was impossible for many people to complete this last step. The title owner could easily take advantage of the situation in which he was officially the owner of the plot of land as a whole.

#### *Force and violence among the López family siblings*

The story of the López family siblings demonstrates the extreme mechanisms that people were able to use to obtain a share of the parental inheritance. Sale of land to a third person was a common mechanism in the village to avert a crisis about land and it was also a common occurrence in struggles over land related to inheritance. The case

about the López family shows what might happen when a land-owning parent is not absolutely clear about the division of the inheritance.

Father López had planned to transfer his properties to his youngest son, but the behaviour of this son made that impossible. His hesitations led to room for all the children to work their strategies. As a result, the youngest son tried to gain complete control over his father's properties to the detriment of other children by using extreme force and violence.

Demetrio López, the youngest son, was a feared man in the village because of his aggressive behaviour when he was drunk. One day, he killed another man in a local bar and was locked up in the Santa Bárbara prison. His father did everything he could to get him released; he hired a lawyer and sacrificed the small store he owned to pay the expenses and made sure that Demetrio received good food while he was in jail. Demetrio was released within a few months. When he came back in the village, father López wanted to help him to get on with his life and he gave Demetrio a house and a bar he owned so that his son would be able to make a living.

Demetrio, however, sold both the house and bar without asking his father's consent. He did not have any deeds but he forged his father's signature for the sale. After discovering Demetrio's deceit, father López was extremely disappointed. According to his other son Darío, their father said that Demetrio had consumed his inheritance and that he would not receive anything more.

Things changed, however, when father López became ill. Without his consent, Demetrio assigned himself a part of his father's coffee field. It was the part that his father had already promised to his daughter Elisa. The family discovered that he had grabbed the land when they tried to sell the coffee field in order to pay the expenses of the father's illness. Demetrio fenced in part of the coffee field and demanded his family pay 500 lempiras for the improvements which he said he made.

After the death of his father, Demetrio tried to grab the properties which his father had given to the other heirs. Elisa, for example, received a house from her father. Demetrio tried to grab her house and drive Elisa and her family away. Fortunately, Elisa had a deed of purchase, so he stopped trying after a while. He did grab a tule field belonging to his brother Darío, which Darío did not have a deed of purchase to. Demetrio showed up with a deed of purchase for the tule field, but it was a falsified deed on which a forged signature of their father figured. When I asked Darío what he would do to get this land back, he said: 'I do nothing. You better do not quarrel with your family... he acts with force, and remember that he already killed a man.' According to Darío, Demetrio insolently grabbed the tule field (*a puro buevos*); he did not want to use it, but proceeded to sell it immediately.<sup>15</sup>

Darío also held another plot of land of one manzana that had belonged to his deceased mother. When he saw that Demetrio was getting ready to grab this land as well, Darío decided to sell the manzana to another person. He needed to visit two



lawyers to complete the sale because again, his brother showed up with a falsified deed of purchase. Through this action, Darío avoided the emerging conflict with Demetrio and was able to buy new land. He said: 'It is better this way. He [Demetrio] has to fight with someone else now. The new owner has a document [hence he has more secure rights than Darío]'. Elisa also obtained half a manzana of her mother's land which Demetrio also grabbed. Elisa considered the plot too small to pay a lawyer and fight over so she decided to resign to the fact that Demetrio had grabbed it. Only the brothers and sisters who received deeds of purchase to the inherited properties felt secure. Both Darío and Elisa expressed that they were very afraid of their brother. He knew of their fear and easily used it against them.

A few years after he grabbed his siblings' land, Demetrio again landed in prison. He was sued by a man to whom he sold the tule field that once belonged to Darío. Demetrio sold the land but then tried to grab it back by starting to work on it. The new owner did not resign himself to the loss of the land, but immediately pressed criminal charges of usurpation against him.

#### *Lingering on the doorstep*

From the children's point of view, receiving inheritance is important, although whatever they receive is rarely sufficient for making a living. Children have to do more to build their lives up than just wait for their inheritance. To make the best claim on the inheritance of land-owning parents, it is important to live on the parents' doorstep and to work for them. If the available space allows to do so, children ask permission to build their own houses on the parental house plot. In this situation, sons who already live in their own farm household continue to work for their father. They receive payments in money or harvest shares. These sons also work for themselves at times that their father does not need them. For example, they sow their own maize for their own households and they might start a coffee field of their own on land that is still owned by the father. They are allowed to use their father's horses and mules to bring home the harvest. These sons silently await the decisions of their father regarding the division of his properties.

Children may press their parents to come up with a solution to the division of the land. They threaten to migrate if they might not receive land, or they buy other land and start to live independently. Demetrio used a third strategy to get what he wanted: he deceived his father and used force and violence to contest the rights of other siblings. Strategies such as those used by Demetrio are less common but, nevertheless, prevail in the construction of images and perceptions about inheritance.

## Inheritance, norms and adaptation

Inheritance practices are closely connected with important aspects of agrarian change. The value of land and definitions of quality and scarcity have changed over the past decades. Land has continuously been divided, sold, transferred or joined together. Practices of inheritance are part of, and react to, such changes.

This section first takes up the character of inheritance practices in El Zapote. Inheritance practices are not transfers of land between 'the dead and the living', but between *living* people. The transfer is explicitly reciprocal: it is considered to be a reward for care or labour. Next, I elaborate the argument that, in order to understand inheritance, it is important to shed light on the stacked character of the norms that shape these practices.

Inheritance is considered to be a special way of transferring property because it takes place between the dead and the living (Goody 1978). This chapter has shown that the idea of inheritance as a transfer between the dead and the living actually sketches an inaccurate picture. The main features of inheritance originate from the fact that the transfer does take place between *living* people: between land-holding parents and their offspring, and between siblings when the land-holding parent is deceased. Inheritance only rarely starts at the moment of a property holder's death. Before the time of death, years of anticipation, development and adaptation of strategies by property holders and potential heirs, discussions and appeals to different norms and ideologies, have already passed. Inheritance frequently mingles with sale or quasi-sale, in which prices of the land are settled and (sometimes) paid. In this way, inheritance is not a way of transferring property rights to the living. In contrast, it is part of daily strategies and struggles between living people, about the bare essentials of life.

Inheritance is explicitly reciprocal: it is considered as a payment for work, care and efforts for the benefit of the property holder. Although parents say that they work for their children's future, they do not treat them all equally and prefer certain children while excluding others. Inheritance is thus not a process of property transfer that automatically distributes rights to these properties according to one's social position in kinship terms. A division of inheritance is not fixed beforehand: it is a question of struggles and negotiations in which both parents and children consider the promotion and development of strategies to be legitimate tactics to achieve their own aims.

Inheritance practices in El Zapote entail images of the future. Parents claim they work for their children's future and that children work with them for their own future. Parents do not strive to preserve the unity of their farm, nor do they convey a strong cultural attachment to the land in their decisions and strategies. Parents think of their own future by wanting to maintain control over their property and the labour power of their children and securing an irrefutable position for obtaining old age care. From the children's point of view, the future entails an extended dependence on their

parents in order to obtain access to their parents' land. The different images of the future that are embodied in inheritance practices put pressure on these practices (for example: the idea that land is becoming increasingly scarce) and lead in the end to changes of norms (the lazuro rule is about to be replaced by equality as the central norm).

Through practices of inheritance, a continuous process of stacking of norms takes place. I consider this process of stacking as the result of the lopsided and delayed adaptation of norms to changing circumstances and changing perceptions on inheritance. A central feature of the process of stacking norms through practices of inheritance is that it is relatively autonomous from the law. The law of inheritance has practically remained unchanged ever since 1906. Family law abolished the difference between illegitimate and legitimate offspring in 1984 and different agrarian laws settled special provisions for the inheritance of land that was assigned to individuals through agrarian reform or land titling programmes. Central to legal prescriptions about inheritance are equality between heirs on the one hand, and testamentary freedom on the other. Very few people in El Zapote know that legal prescriptions regarding inheritance actually exist and that being married or not, for example, influences the legal rights to inheritance of particular persons. Neither the parties involved in inheritance practices, nor judicial or other authorities that intervene in conflict situations, refer to or comply with legal stipulations of inheritance.

On the other hand, inheritance practices are changing in a direction quite similar to the legal prescriptions. Equality between heirs has slowly become the norm since the lazuro rule has been set aside because it no longer responds to people's expectations and perceptions about land and their own future. The norm of equal rights has affected former differences between illegitimate and legitimate offspring, and between women and men. Equality as a norm, however, has not undermined practices of preference for certain heirs. Writers of testaments, for example, use legal testamentary freedom to give preference to a certain heir and to disinherit others. The content of testaments clearly attempts to anticipate conflicts between offspring and attaches conditions to the receipt of property rights. In local inheritance practices, people strive for similar goals. The norm of equality generates new inequalities and feelings of injustice, a process that again produces new norms about how equality should be interpreted and perceived. This leads to norms about alternatives to inheritance, the rights of migrated children, the rights of illegitimate children and the divergent rights of women and men.

Practices of inheritance only slowly react to changed circumstances, and changing practices fall out of step with changing norms. The adaptation of norms takes place, either coincidentally and in a single instance or as newly emerging 'rules'. This process is not smoothly evolving from changed practices but it is essentially a result of struggle: the complicated process of (silent) negotiations between parents and offspring, as well as between siblings, about the *what, how and when* of property transfer rights.

The stacked character of inheritance norms makes it so that every actor in the inheritance process is able to develop a strategy and draw on a whole repertory of old, adapted, and new norms. People have a strong sense that change is central to inheritance practices: in their view, inheritance practices themselves should change and are themselves responsible for generating change. Characteristic of the process of changing inheritance norms is that the participants are actively involve in, and are able to consciously interpret, the changes. This stands in sharp contrast to the stacking of land rights as I explained in Chapter Two, which is *not* a conscious process to every land holder who is affected by it.

## Notes

- 1 Several villagers conveyed that they realised at that moment that Eduardo was a '*brujo*', a wizard. They stated that Eduardo was locked up in the prison of El Zapote, but at night, he left the cell and was seen sitting before the entrance of the prison. Some people said that they saw him strolling through the village while he should have been in jail.
- 2 At this point in his story, two of Anastacio's daughters, who were present during this interview, said to each other: 'That's what women are for' (*Para eso son las mujeres*).
- 3 Anastacio knew his lawyer through his activities for the political party PDCH, of which this lawyer was also an active member.
- 4 These conditions stipulate that the surviving spouse must not be guilty of a separation. Moreover, he must not have left the deceased for more than six months preceding death.
- 5 In the past, a death certificate included information about the existence of a testament, and whether the deceased person left any goods. In the 1980s, the written declarations of the local civil register was replaced by a standard form which lacks this information.
- 6 A manzana is officially 0.697 hectare.
- 7 Jorge had enough property to divide between his heirs. In other testaments, the properties themselves had to be split up. For example, I read a testament of a man who divided the rooms of his house between his heirs.
- 8 Foster (1960:144) has described this custom in his book about America's Spanish heritage: 'During each of the nine following nights [following the burial] friends and relatives drop by to pray for the soul of the departed, and on the ninth the novena, or final period of prayer, is held'.
- 9 The word lazuro possibly stems from the Indian idiom *nahuatl*. The people of El Zapote pronounce it as 'el azuro'. Preference of the youngest son in inheritance is common in the departments of Santa Bárbara, Lempira, and Copán, although in the latter department people used the term *cumel* instead of *lazuro*. Testaments, judicial court cases and interviews with lawyers in Santa Bárbara, confirm that the system of preference in inheritance is not at all specific to El Zapote.
- 10 A common name for *penquillo* (*Yucca elephantipes*) is also *izote*, which is used for making fences. The flowers are generally considered a delicacy by the villagers.
- 11 PTT only titled the land and not the improvements (Chapter Two).
- 12 The civil procedure case file of the first court case did not contain a copy of this agreement.
- 13 The often heard statement in conversations about inheritance was '*los padres trabajan para que tengan los hijos*'.
- 14 Parents' fear that a child will sell the inherited land is not inspired by the desire that the farm will remain intact and be continued. Parents rather regret the choice of the heir or their own diminished chance to receive old age care from this child. Another reason to fear the sale of the transferred land is that another owner will start to play a role. An inherited plot of land is often part of a larger parcel that is still owned by the parents, or that is transferred to other heirs. Parents have no control over who the new owner will be and they are not able to prevent problems with the new owner.
- 15 Darío and Elisa also used the expressions 'with force' [*a la fuerza*] and 'like a macho' [*a lo macho*], to tell about the behaviour of their brother Demetrio.

## Chapter five

# Women and land rights

Only 205 plots out of 982 (21%) are in the hands of women in El Zapote (calculated on the basis of combined data of PTT and National Cadastral Directorate). The unequal distribution of land between men and women is, for different reasons, a source of concern to the Honduran state and to national and international development organisations. This chapter addresses two shortcomings of the Honduran discussion about the unequal distribution of land rights between men and women. A first shortcoming is that the discussion suffers from instrumentalism regarding the relationship between women and development. A second shortcoming is that the solution to gender inequality in relation to land is exclusively sought by changing the law.

After discussing these two shortcomings and their consequences, this chapter addresses strategies of widows and future widows regarding the inheritance of land. Furthermore, I will discuss the gender dynamics of the PTT land titling programme, through which some women lost and other women gained access to land. This chapter not only looks at gender differences in mechanisms of accessing land, but also at the gender-divergent ways of enforcing control over property, in which land use strategies play an important role.

### Instrumentalism and the law

The theme of the law is dominant in discussions about the gender inequalities in the distribution of land in Honduras. This is understandable considering the fact that laws have discriminated against women for decades. Spanish law that continued to rule for a long time after independence did not allow women to hold, to buy, or to sell property (de Oyuela 1989).<sup>1</sup> The Civil Code that was introduced at the end of the nineteenth

century allowed women to inherit and to hold property, but it was not until 1957 that women obtained full civil rights (CDM 1997:67).

The main subject of recent discussions about women's land rights has been article 79 of the Agrarian Reform Law (Safilios-Rothschild 1983, León et al. 1987, Kuhn 1990, Martínez et al. 1995). This article stipulated that a beneficiary of the Agrarian Reform should be 'a Honduran by birth; a man (who should be) more than sixteen years old in case he is single, or whatever age when he is married; or a woman (who should be) single or widowed with responsibility for a family'. Feminist organisations considered this article to be discriminatory against women and that it was cause of the fact that, among the beneficiaries of the Agrarian Reform, there were only few women.<sup>2</sup>

In the fanatic discussion that emerged about changing the challenged article, two shortcomings came to the fore. First and most notably, the state expressed an instrumentalist view on the relationship between women and development: that women should have access to land to become incorporated into productive activities that are indispensable to achieve development, prosperity and economic efficiency. For example, Martinez et al. (1995:79) cite Azcona Hoya when he assumed the presidency of the Republic in 1986:

*In their condition as mothers and wives, women constitute the largest reserve of our society. Through history, they have been the central characters of a human drama, bastions of their families, the personifications of the most noble values. Therefore, without causing detriment to the primary functions that only women are able to perform, we have to incorporate them into the sphere of social work. We have to culturally elevate and train them in order to entrust them with important productive functions that preserve their dignity. With the collaboration of women's organisations, and taking into account the programmes of international organisms that already exist, we take the responsibility to support the Honduran women as indispensable factors for the solution of social problems by increasing national production rates.*

Feminists and women's organisations have challenged the state point of view on the role of women in development in a particular way. They have argued that women are not only mothers and wives, but that they also contribute significantly to the national economy. Their contribution, however, is 'invisible' (León et al. 1987, Noé Pino et al. 1993, Martínez et al. 1995). Rural women have double workloads, performing both domestic and agricultural labour. Their production activities are less eye-catching than those of men because they focus on subsistence instead of commercial crops. Moreover, women's incomes seem to end up absorbed by the daily needs of their households without the possibility of being used for productive investments. As a peasant woman said in a workshop about women and access to land (Noé Pino et al. 1993:5):

*The woman works and is more sensible, and the man works, puts the money in his pocket and does not think about whether there is soap and the woman, although she earns the same as the man, it is the woman who buys the soap, an aspirin, the medicine for the child and many things, hence the result of her work vanishes and it is not possible to see where it has gone.*

In their criticism of the state view of women as 'mothers and wives', however, the women's organisations fail to challenge its instrumental character. The criticism itself expresses a different but still instrumental standpoint about women as mothers and wives (Zúniga 1989). The main objection to the state view is that it denies women's contributions to the economy and does not consider women as heads of household or as producers. The women's organisations assert that, in contrast to the state's viewpoint, women are already contributing to development because they are the only people responsible for feeding and sustaining their families. In fact, their view reproduces a peasant image of rural women: women work on the land and put food on the table of their families. Women are thus mothers at the service of their families, and by taking care of these families, they provide an important economic input in the national economy and, therefore, they should have rights to the land. This chapter will show why, in my view, it is necessary to abandon an instrumentalist view on women and development, instead of replacing the state instrumental view by another equally instrumental view as the women's organisations tend to do.

A second shortcoming of the Honduran discussion about women and land rights is that both the analysis of what goes wrong, and the possible solutions, are to be found in the law. Looking at the content of law on the one hand, there are few legal restrictions on women's rights. Women have equal rights to inherit and, according to the law, spouses are equal with regard to the administration of marital property (León et al. 1987, Galan 1998). On the other hand, agrarian law does impose restrictions on women's rights, most notable in the Agricultural Reform Law. Furthermore, family law restricts the legal recognition of cohabiting couples, a restriction which most likely limits cohabiting women's opportunities to claim rights to their husbands' land (Galan 1998).

The focus on law when *explaining* gender inequality and land rights involves the assumption that law indeed directly determines social practices of land distribution. In practice, nevertheless, gender inequality may be caused by the interplay of all kinds of mechanisms. This book takes the view that we should not assume the existence and working of these mechanisms, but instead, we have to research them. Regarding the centrality of the law as *solution*, this chapter will argue that equal rights for men and women in the law are a necessary condition for achieving equality, but it is not the guarantee that equality will become reality. Moreover, it is a question whether changing law should be the one and only strategy to solve the problem.



## Women, labour and land rights

'Access to property' refers to the various ways in which women gain control over one or more elements of the bundle of property rights. How women in Honduras use which mechanisms of access, and how they lose or gain property, are processes that are not easily observable. First, there is little data on land rights or land transfers available, and the available data is not gender specific. Thus, there are no national statistics on property and women (León et al. 1987). Data on women's land ownership, as deduced from the PTT registration, do not give insight into transfers of property that are more important to women than state-landholder transfers of land, as for example, inheritance and sale/purchase. These processes play an important role in the daily lives of women of all social classes, regardless of whether they struggle for a hacienda complete with dozens of cattle, or for a tiny plot of tule. Hence, women inherit, buy, sell, rent, lease out and occupy land. They are involved in transfers and endeavours to gain land that take place outside official land markets and are completely invisible to national statistics.

Secondly, the land-to-the-tiller concept that dominates the Honduran discussions about the land question does not help us gain insight into women's relationship to land. Women are not 'tillers', but they do struggle for and own land.<sup>3</sup> I explained in Chapter Three that El Zapote women do not do daily or regular work in the fields. The only source of statistics related to women's role in agricultural labour is the national agrarian census that compiles gender data about the amount of independent agricultural producers. According to the agrarian census of 1994, only 9.7% of the independent agricultural producers in El Zapote are women. The percentage of female producers in the entire Santa Bárbara district is even less, at 7.5% (SECPLAN 1994:14).<sup>4</sup>

However, the census data refers exclusively to the percentage of independent female producers but no more. Thus, this data does not inform us about all agricultural labour performed by women. The data disregard women's seasonal labour, such as work performed during the coffee harvest, and they also ignore unpaid 'help' in times of labour shortage. The role of women in decision making, post-harvest activities, the sale and manufacturing of products and keeping domestic animals is therefore often underestimated (Buvinic 1982, Fordham et al. 1987).

The land-to-the-tiller concept would incorrectly lead us to believe that women do not work in the fields and thus, they do not own the land. However, women themselves generally de-link work in the fields and rights to the land. They feel that although they do not work in the fields, they do have the right to claim land, a right that they derive from their own perception about their tasks and responsibilities. In a seminar about the Law of Agricultural Modernisation, a member of FEHMUC, an organisation of rural women, explained why she thought that women should have land rights:

*Because, although we do not work on the land directly, but our sons with our husbands, that's the way we live, because they are the ones who work, and we use to say that women do not work, but we are the first to get up to prepare food and we stay to prepare clothes and we are the first to work in our households... that is why I say that maybe the beneficiary of the land is the one who cannot use it and we see that the one who needs it doesn't have it..* (Noé Pino et al. 1993:24).<sup>5</sup>

Women may own land even though they are not the user, so in order to understand the relationship between women and land, it is important to unleash the often unconsciously made, land-to-the-tiller-like association between labour and land rights.

A third problem which has received little attention so far in Honduras is that women's struggles do not end once they have obtained land rights because, for several reasons, they may easily loose control over it thereafter. This chapter will show that women try to establish control over their rights to the land by deploying different land use strategies.

## Widows and inheritance

Inheritance is important to women because it is one of the main mechanisms through which they are able to gain access to land. Chapter Four explained that inheritance practices are characterised by a preference for the youngest son, and that new norms have emerged as part of, and as reaction to, the need to adapt the system of preference to changing circumstances and changing perceptions of the people involved. Women play a vital role in the ongoing discussions about how inheritance should be changed. In this section, I explain more specifically how women face inheritance processes which they become involved in and the specific gender constraints they cope with. The section looks particularly at widows and women who are anticipating their lives as widows. As daughters, women do not have many possibilities to claim rights vis-à-vis their parents or brothers. As potential widows, they do not await the death of their husbands but instead start to plan their old age security at an early stage.

Ermelina Ponce was the oldest woman when we came to live in El Zapote; she died during our fieldwork period. Her case serves in several ways as an object lesson to other women, not in a positive way but merely as a representation of the extreme situation that women seek to avoid.

Ermelina Ponce was the mother of four living sons (one of them was Excequiél, Chapter Four) and one daughter. Born in 1901, Ermelina lived through a whole century of profound changes. By the time of her death in 1996, her life had become the illustration in the conviction of other women in the village that they wanted to change their destiny.

Ermelina's husband entirely transferred his house and all his land to his youngest son Ariel. After the death of his father, Ariel allowed his mother Ermelina to live in the house which he then owned. He decided to rent out the land he inherited to his brothers and went back to the city where he lived.

The first years as a widow, Ermelina earned a living by weaving petates. When she grew older, however, she nearly lost her vision and she was not able to take care of herself any longer. The house partly collapsed and she had no kitchen and no running water because she could not afford to pay the subscription. Ariel never visited her and he had no intention to repair the house. Her sons who lived in the village were not very willing to give her food or to help her out in the household. They blamed their mother for not trying to change their father's mind about the division of the inheritance. In public, however, they said that they were not able to care for Ermelina because they were poor themselves. In their opinion, Ariel should take care of her because it was his duty as the heir.

In spite of his resentment about not obtaining a share of his father's inheritance, one of the sons, Excequiél, felt obliged to give his mother food. Excequiél was poor compared to his brothers and he did not produce sufficient maize and beans to feed his own family. His wife Rosa obeyed his wish to give food to Ermelina, but she was also angry: Excequiél's brothers had more to give but they refused to feed their mother. Rosa told me:

*I told Tulio: Look, you, Ariel, and Chema, you do not lift a finger for your mother. We give her food, but Excequiél does not have an idea about how I struggle for her food. You do not give me half a bottle of milk from your cow and say, 'Take it and boil it for my mother'. I can give her tortillas and beans without any problem but apart from that... If I buy milk she receives her part but when I can't buy it she gets nothing. I do not give her food to have a say in the division of the inheritance because this old woman does not have anything to divide. I give her food because I pity her. I am not after her inheritance, nothing she has is mine. The only thing that is mine is what my old man has in the mountains...*

Ermelina had to walk to Excequiél's house when she wanted to eat. Her walks, three times a day, formed part of the village picture: a tiny, very old, blind woman with a walking stick walking in the middle of the main road, not noticing horses, cars or other

dangers. Ermelina's situation was a shock to other aged people who commented: 'It is terrible when you have to tail along after your children to receive food'.

Ermelina became a collective village problem when she started to get up at nights and walk around in the village. She scared people by wandering around the cemetery (which was close to her house) in the middle of the night. Excequiél's sons were sent to sleep with their grandmother. However, they refused to go after a few days because they were sure that their grandmother received visits from her late husband at nights, and they were very scared: 'I am sure I saw my grandfather; he was sitting at her bedside and they were talking. I am not going to stay another night in that house'. Thereafter, Excequiél locked Ermelina's door from the outside and unlocked it again in the early morning.

In 1996, Ermelina fell and was not able to walk again. She spent day and night in a dirty bed in the dark and collapsed house. Her daughter Maria lived in a neighbour village and she tried to visit her mother once a week. She then prepared food and washed her mother. Rosa and other women in the village also came with food regularly. After a while, Ermelina had the company of her granddaughter Martha and her third husband, who had been looking for a place to live. Martha cooked food but she did not set aside any food for her grandmother, and when other people sent food for Ermelina, Martha's family ate it. Martha was irritated when visitors passed by to offer their help; she sent them away, conveying that she gave her grandmother food already. Rosa and Maria were worried because Martha's behaviour made other people stop sending food to Ermelina. It was clear that Martha was trying to starve her grandmother out, and Ermelina actually died a few months after Martha moved in.

When women in El Zapote talked about Ermelina's fate, they automatically related this to their own situation and future. They believed, on the one hand, that Ermelina only had herself to blame for her situation because she had not been a loving and caring mother and she did not speak up against her husband to protect her children's inheritance rights. On the other hand, the village women considered that Ermelina never stood up for herself and that she had counted on her children for her old age care.<sup>6</sup> The story of Ermelina was a lesson to the village women that they had to develop a strategy that would enable them to take care of themselves, a strategy that very often focused on acquiring property rights to land.

#### *Widows and future widows*

In general, women convey that they have more rights to their husbands' properties than in their parents' land. Their brothers gain rights to the land by working in the fields of their parents. As daughters, women work for their parents but their work is not in the fields and, therefore, it does not substantiate a claim to land. As wives, women feel that they contribute to the building up of their husbands' properties through working in the farm household, investing money in agricultural production and taking care of their

children. Wives generally contemplate that they therefore have rights to their husbands' properties too.

The literature sometimes portrays widows as transitional figures between two generations of male property holders (Metcalf 1990, Voyce 1994). Metcalf, for example, studied Brazilian widows in colonial times, who controlled their deceased husband's property but were not in his position of power. They only had control over the property while their sons grew up.

The women in El Zapote's strategies to take control of their husbands' inheritances, however, do not express the idea of being transitional figures. Women try to get hold of land in order to prevent a life of poverty, misery and dependency, without the notion that they should be intermediaries. Examples such as Ermelina, who was eventually abandoned without the possibility of controlling her own life, motivated other women to take action on behalf of their own fate. Women prepare to contest their children's efforts to use a family discourse to leave their mother out, such as: "Mother does not need land because we, her children, will take care of her".

#### *Separating ownership and use*

The lazuro played an important role in Doris Ponce's struggle to keep control over her late husband's land. Doris named her youngest son as the heir while he still lived under her authority. She was in her seventies and had eighteen children, eleven of whom survived. Her husband died unexpectedly in 1983, leaving a coffee field, a piece of pasture land and cattle. He had always been in good shape and able to work and he never thought of dividing his properties among his heirs.

The children expected Doris to distribute the land and cattle among them. However, Doris immediately proceeded to sell the majority of the cows. When I asked her why she sold them, she said that she needed money to pay the funeral expenses and to survive the first months. She kept the remaining cattle. When the INA came to title the land, they registered Doris as the holder of the 5 hectare pasture and, in accordance with local regulation, they told her that the other plot should be titled in the name of a relative. Doris decided to title the mountain land (10 hectares) in the name of the family's lazuro, Ricardo. He was only fifteen years old at that time and he still lived in her household. She decided that she wanted to keep control over her husband's properties and that Ricardo would be the most suitable person to assist her because he still lived under her control. In Doris' eyes, she had made decisions according to her best interests.

Doris knew that she would lose the land if she were to leave it up to her adult sons to decide about the land and the cattle. Regarding this story, one of her adult sons said:

*When my father died, all his belongings stayed behind in the hands of my mother. We, her children, expected her to divide it between us. Yet it was not possible to talk to my mother about the subject. She kept on crying when we tried. We were all angry in the end... I think she did it on purpose, she wanted to keep control.*

This son was certain that his mother developed a conscious strategy and that she intended to avoid problems with her children by crying and refusing to talk about the subject of the property. His comments revealed that the sons would not have thought about their mother's rights to the land. Only Doris' own manoeuvres protected her land rights and made it so she was able to live independently and control her own income. Her situation would have been totally different if she had divided the land among her sons and was dependent upon them for her care.

Doris did not tell her sons about the land title that the INA had issued in Ricardo's name; they found out about it only years later. At that time, Doris tried to change the situation by giving parts of the mountain land to her other sons. Several of them did not live in the village anymore, and they immediately proceeded to sell it. This generated new problems because then there were several owners of the mountain land, while Ricardo remained the holder of the undivided land title.

Doris used the lazuro rule of inheritance to keep control over the land and to protect her own rights vis-à-vis her adult sons. Her strategy clearly focused on maintaining control regarding ownership and income while she left the use of the land to her youngest son Ricardo. Although Ricardo managed the cattle and worked in the fields, she was still recognised by other villagers as the owner of her properties.

#### *Owner and producer*

In contrast to Doris, Belinda Matute not only succeeded in claiming ownership to her husband's properties, but she was also able to convert herself into an independent producer and manager of her land. The contrast with Doris was considerable: Doris was old and, despite being the recognised owner, she was heavily dependent on her youngest son. She was always worrying about how Ricardo ran the farm, but she had little say in the decisions he took with regard to the production process. Belinda, on the other hand, was a young, rich and innovative entrepreneur and she created the impression she had everything under control.

Belinda was one of the largest landowners in the village with 63 manzanas of land suitable for food crops, coffee and pasture. She was an important member of AHPROCAFE, the national organisation of coffee producers, and was also deeply involved in local and regional politics on behalf of the Liberal Party.<sup>7</sup> She drove her own car, and several of her children were in college in San Pedro.

She inherited her land from her late husband when she became a widow at the age of thirty-two. She had six young children. When he fell ill, her husband, a rich farmer, followed the advice of friends and officially married Belinda. He thought that this would be sufficient to secure her rights of inheritance as his legal spouse. Her husband was not yet buried when her in-laws advised her to leave the village to find a job elsewhere. She told me about this period in her life:

*They [her in-laws] said that it was not the same without the principal head<sup>8</sup>.. that it was better to go [to the city] and leave the kids with their grandmother. Between them they said that I was young and that I would have a boyfriend soon who would make a run for my late husband's properties.<sup>9</sup> They only thought of the properties and they did not feel the grief and the pain I felt, I who missed him in the house... No way I would give my children to my mother-in-law. My children will live with me until the day I die.*

She suspected that her in-laws were playing games with her, but she did not yet understand what they wanted. She felt that she did not have a person she could trust, as she had no parents herself and only two younger brothers. One day, her sister-in-law Julia came and took her to the district capital of Santa Bárbara. They went to visit a lawyer. When they approached the lawyer's office, they happened to run into Marcos and Myrsa, a couple that had previously also meddled in the discussion between Belinda and her in-laws about her leaving the children.

*When we entered the office, the lawyer said to Julia: "Marcos and Myrsa have already explained everything to me. You want to get hold of your brother's properties and take it away from his wife". He already had a document on his desk which I was supposed to sign. Julia's face grew red. The lawyer had not known that I was his wife. I went to the door and said that I was his widow and that I now understood what they wanted from me. I left the office. The next day I went to another lawyer. Within ten days I had arranged all the papers. I had everything registered in the Public Register of Property. For the future, for my kids. Nobody can take it away from them, I explained it all to them [her children].*

Through her experience with her in-laws, Belinda learned about the value of her properties and her rights as a widow with six little children. She claimed the properties for herself and for the future of her children; not as transitional figure in the service of her offspring, but as the owner.

*I was totally ignorant in the past, but after my husband's death I began to understand things about land and papers. I think that ignorance is the cause of so many women*

*losing their rights of inheritance. I had always been busy in the house, with my shop and my kids, and I had hardly ever left El Zapote. They [her in-laws] thought I was stupid. In those days my heart was still soft. Now I am a hard-hearted woman'.*

Belinda was an exceptional woman whose position in the village was unique. The way in which she nearly lost her rights to her late husband's properties was, nevertheless, not at all exceptional, but comparable to what many other women with much less land went through. Just like many other women, Belinda had never been involved in decisions about agricultural production before her husband's death. She did not know how much land he had or the number of cattle, and she had no knowledge of property rights and documents. This seriously affected the way in which she was able to confront her aggressive in-laws after her husband's death.

Secondly, just like other women, she had no idea of the law or her rights of inheritance. Her husband had sensed beforehand that his family would try to get hold of his properties after his death. He therefore married Belinda in an attempt to protect her. However, he failed to inform her about the rights that she could derive from the marriage. The marriage made it more difficult for Belinda's in-laws to grab the land just like that. They had to bring in the knowledge and skills of a lawyer who was able to use the law as a resource. The lawyer drew up a document that he wanted Belinda to sign which would cause her to give up all her rights to the land. He considered that Belinda was so ignorant that she would not understand the content of the document, and that it would not be difficult to convince her to sign it. Yet the lawyer and the in-laws made a stupid mistake that alarmed Belinda and made her aware of their intentions.

Thirdly, the in-laws used notions about gender which Belinda found difficult to ward off. Belinda's in-laws considered her to be stupid because she had been a 'housewife', only engaged in household work and child care (although she also ran a shop but even Belinda did not consider this as an activity of importance). They said that she would not be able to provide for her children all by herself and that life without a 'principle head' would be impossible. They did not consider her to be capable of managing the farm.

Just like other women in El Zapote, Belinda had to struggle for her land rights while she had no knowledge about land, papers and property rights. She did not know that she had legal rights to her late husband's property. She had to struggle against local gender notions that defined her as not being able to hold land.

Doris and Belinda were both confronted with the consequences of the sudden death of a husband. Doris had to protect her rights against her own children, Belinda against her in-laws. The 'success stories' of Doris and Belinda both concerned farms with considerable amounts of land that were already producing, which enhanced their chances to successfully continue running the farms of their deceased husbands.



### *Anticipating widowhood*

The best protection for women against becoming a new 'Ermelina' is to anticipate the possibility of widowhood. Women do not await the decisions of husbands or sons, but they actively claim their own property rights. A first possible strategy is to immediately react to any emerging reorganisation of property rights. A second possible strategy is to start discussing norms of inheritance and their practical consequences in the abstract.

Patricia Garcia was a woman who expected to become widowed because her husband was ill. She died a few years before we came to live in the village, but many villagers were able to tell the story of her actions concerning the inheritance of her late husband. The story goes that, one day, don Sebastian, the husband of Patricia, fell ill and became concerned about how to divide his properties. He decided to call upon his youngest son Francisco to talk about it. Francisco advised his father to draw up a last will. In his last will, don Sebastian declared that Francisco should be entitled to his properties after his death. After drawing up and signing the document, Francisco took it with him.

A few days later, however, don Sebastian deeply regretted his decision and he told his wife Patricia about it. When she heard what the last will entailed, Patricia became afraid that Francisco would expel her from the house after the death of Sebastian. She thought seriously about the situation. Then, she waited until Francisco came home drunk, which was virtually his daily habit. She stole the document out of her son's pocket and went to don Mario, an important *patron*. She asked him if there was something she could do about it. Mario said that there was no problem, and he changed the document so that Patricia got the house until her death, and two manzanas of the land. After her death, the house and her share of the land would pass on to her daughter. Patricia went home and put the changed document back in her son's pocket. Francisco discovered the change only after his father's death. He went with the document to don Mario as well, asking the same question of whether it could be changed. Naturally, he did not know that don Mario had been involved in making the changes. Don Mario told him that he was sorry but that it was not possible to change the last will of a deceased person.

Patricia did not trust her son Francisco and did not expect him to care for her until her death. She therefore had to act and she did so perfectly by making use of her youngest son's weakness: his drinking behaviour. She cheated her son and forged the document with the help of don Mario.

A second strategy of women that I frequently came across was to start discussions about the subject of inheritance in plain terms, even before the property holder was thinking about his own death. As I said before, women are very active participants in the discussions about the necessity of changes with regard to inheritance, and the rights of the surviving spouse are an important issue. I observed the use of discussion as a deliberate strategy by Rosa. Motivated by the illness of her husband Excequiel, I

witnessed how Rosa started to carefully think about her position. She told me that she did not have any property, and that she was with a husband who could die any moment while leaving four adult sons. Excequiél was set on conferring rights of inheritance to all his children as a matter of principle, but Rosa did not agree with him in this respect (Chapter Four). Rosa was not only worried about her children's rights, however, but also about her own prospects. Excequiél never showed any interest in protecting her position. One day, he bought a new plot of land. Rosa asked him to buy it in her name, yet he refused. After that, she tried to persuade her husband to register a newly bought mule in her name, but again she did not succeed.

At dinner, or when they all worked together to thresh maize, she initiated conversations about the subject of inheritance. She talked about everybody's rights, and she took inventory of her children's views on the subject. She made suggestions on possible property divisions and revealed her own wishes.

*The coffee estate is far away in the mountains and I would not be able to manage it myself. So it will be in better hands with the boys. If I would have the tule field, I could take care of myself.*

Although many tule fields were not close to the village (it took a two hours walk to reach them), they were relatively accessible compared to the fields in the mountains. Therefore, they were attractive to women. Several women in the village managed a tule field on their own and earned a good income. These women set the example for Rosa, that a woman should be able to manage a tule field and that it would offer an opportunity to live independently.

Apart from talking about the inheritance, Rosa started to meddle in agricultural decisions and to help out in the tule field at harvest time (see Chapter Three). In the past, she never really participated in decision-making about agricultural production and working in the fields. As part of her strategy to anticipate widowhood, she forced herself to become involved and to gain more control and say in the agricultural production process. In spite of all her efforts, Rosa was still not sure whether Excequiél would give his tule field to her before his death. However, the result of her talks and monologues about inheritance was that the whole family became well aware of the fact that she wanted this field for herself and that she would be prepared to fight for it.

#### *The hidden gender facets of land titling*

Chapter Two explained the importance of the PTT land titling project in the emergence of differential notions of property regarding land. The main aim of this programme was to sell national land to individual landholders and to grant the holders registered ownership titles. As I stated in the introduction of this chapter, 21% of the issued titles

in El Zapote bore the names of women.<sup>10</sup> León et al. (1987) found that 17.8% of a total of 16000 land titles in the Santa Bárbara district were in female hands. Who were these 21% of female owners in El Zapote? Were they indeed female landowners who ended up with a title?

During the titling activities in the framework of PTT, INA officials used specific implementation rules in El Zapote.<sup>11</sup> The official INA policy was that a landholder could receive as many land titles as he wished as long as the total amount of land did not exceeded the maximum of 200 hectares. One title could contain up to ten parcels. However, during the implementation of the project, the rule was that a title could only contain four parcels and that one person received one title only.<sup>12</sup>

The fragmented land in El Zapote obliged landholders to title large plots of their land in the names of wives, sons, daughters or other trusted persons. The INA functionaries themselves advised landholders to title any other plots that they might have in the names of other people. Landholders thought that this was a purely bureaucratic move. They did not imagine that it would really affect their status as property holders.

The specific rule that encouraged the titling of plots in the names of people who were not the holders affected the gender division of land. Some female owners lost their land because it was titled in the name of a husband or son who happened to be working on it the day that the PTT brigade passed by. The introduction of this book told the story of Ana who lost her land because it was titled in the name of her son Antonio. I also met women whose land was titled in the names of their husbands. They were often not sure about the actual implications of such mistakes, especially when the land was used primarily by their husbands and they had never used it themselves. When a female landholder in her thirties was telling me about their farm, I got the impression that that her husband owned the land. Only after I explicitly asked about it she said:

*That is.. this land is mine, it was I who bought it but they made a mistake so now the document is in my husband's name. People told me that I should change it and that I should take care to register it in my own name again. Supposing me and my husband should end up in troubles... It was my own mistake that I did not do it so far. But we never had any problems. And when we will have problems.. well, then the land will be his eternally [laughing].*

The implementation rules of the PTT also resulted in women receiving the titles to land that they neither owned nor controlled, but which was the property of their husbands or sons. For attentive women, this meant that they obtained a *potential* source of power to use for securing a future life as a widow. The two gender effects of PTT only partly counterbalance each other in the statistics; the average of female title holders at the district level, as calculated by León et al. (1987), was slightly lower. This possibly indicates that there were more women who received land through PTT than lost it.

The following conversations between Anastacio Garcia and his wife Flor (see Chapter Four) addressed how the PTT rule of titling in other people's names worked out in daily life. Anastacio and Flor seemed to be continuously arguing about land. Anastacio was a healthy man but he was twenty years older than his wife so it was likely that he would be dead first. He had already divided thirteen manzanas of mountain land among his eleven children. He was also aware of his wife's interest to have a say in the land. The INA allowed Anastacio to title only one plot in his name, which was the land in the mountains. He therefore decided to title another plot of land of 1½manzanas in the name of Flor. When I was visiting them one day, we talked about the land that Anastacio owned, and we also came to talk about the plot that was titled in Flor's name. Anastacio said: 'That plot of land is mine, I bought it. But when INA came, they told me that I could only title one of my plots. So I put Flor's name instead'. Flor was listening carefully and intervened: 'The land is mine, and if I want to, I can sell it. But why should I do that... nowadays money is not worth anything. I still have to pay for the title, of course. Maybe I will do that with money from Anastacio's pocket'. Anastacio looked very displeased and quickly changed the subject. He knew that she was able to claim this land because she had a land title in her name. Her claim made it impossible for him to transfer the land to one of his children. Flor was obviously joking during this conversation. At the same time, however, she used the opportunity to re-enforce her claim.

Several months after this conversation, I noticed how Flor had shifted her attention to another plot of land that she also wished to have. This was a coffee field of one manzana, situated in the lowlands and not so far from the village. Don Anastacio and Flor invited me to visit the coffee field. It was the harvest season and several day labourers (an old woman, a son-in-law and several young boys) went with us in the early morning. I was surprised that Flor was really going with us. She ran a big household with several young children and grandchildren. I guessed that she was not used to walking to the fields often and that she would leave it to don Anastacio to show me around. Before we left, their eldest daughter Norma (who lived in a house next to her parents) said that she would love to accompany me but her husband forbade her to leave the house. When we arrived at the field, Flor emphasised that everything I was seeing was the result of her work and not Anastacio's. It was actually Flor, and not Anastacio, who managed this coffee field. She supervised the day labourers, watching them pick the coffee and giving orders on how to do it.<sup>13</sup> She regularly called the young boys to order when they started to play instead of working. She weighed the coffee at the end of the day and helped her youngest son load the bags of coffee on the donkey. When we returned home, Flor said that she would take care of the sale of this coffee herself. She said:

*Women know more about the facts of life. Look at Anastacio. There are things that I cannot leave up to him, like hiring day labourers or selling the coffee. If a man comes*

*and says "I will buy this coffee for this price", then Anastacio gives it to him. He has no idea that you have to negotiate and that you must investigate which of the buyers pays the best price. He says "what this man offers must be the right price". If I do not take care, he will give the coffee away for free.*

A discussion arose in the coffee field about the use of chemicals on the young plantings, a subject which obviously had her interest and about which she had a clear opinion. The issue was whether it would be worthwhile to use chemicals on young plants, considering the risks. Anastacio did not want to use it while Flor was in favour of using chemicals. Anastacio argued that chemicals were too expensive and he didn't consider it a proper investment. Flor had the opposite opinion. She had an interest in long-term investments because she wanted the coffee field as her share of Anastacio's inheritance. On the other hand, Anastacio had lost interest in the field and did not want to invest any more money into it.

Flor took advantage of the fact that Anastacio was getting older. He was no longer able to do all the work by himself. Her claim was successful because she convinced Anastacio that she was able to manage the field. Hence, Flor successfully expanded her successful claim on the land that was titled in her name and to the coffee field that she also wished to have.

#### *Widows and land use*

The widows whose stories I presented in this section do not struggle for an intermediate role in agricultural production, waiting for a son to take over. They do not expect their children to care for their widowed mother. Women actually develop strategies as a way of preparing themselves to defend against the claims of offspring. Women's strategies involve making their own wishes explicit and becoming active participants in inheritance processes. They think about the land they want to have and how they will make it productive.

I also noticed another feature of their strategies. Rosa (anticipating widowhood) wanted a tule field and Flor (taking advantage of the land title she obtained) wanted a coffee field. Belinda and Doris - widows who inherited large amounts of land from their late husbands - were involved in coffee and cattle production. These women's interests and intentions were not directed at working in the fields to produce food for feeding their families. Rather, they opted for producing cash crops or cattle to earn money.

Belinda and Doris were relatively well-to-do producers. Belinda had enough capital to pay an overseer and day labourers to do the work. She was able to invest in and technologically modernise the coffee production. Doris had her youngest son Ricardo to do all the work and who occasionally hired day labourers. Ricardo lived with his own family in her house and took responsibility for her well-being. Rosa and Flor, on the

other hand, did not have the same options as those of Doris and Belinda. Rosa and Flor were interested in having fields suitable for cash crops that were close to the village. Such fields would give them the opportunity to supervise the work in the fields themselves. They would not think, however, of doing the work in the fields all by themselves. They figured out how to earn money so they in turn would be able to pay for day labourers. The following section discusses women's ideas and intentions with regard to land use in greater detail.

## Control and land use

What do women do when they have made a successful claim to property and what are reasons behind their land use strategies? Male and female landholders are constantly busy keeping their land under control to validate their claim and exclude others, but they differ in the means they have at their disposal to these ends. Land use strategies are central to the reinforcement of claims to ownership. Here, land use strategies include all kinds of 'using' land by women. First, this section addresses the reasons behind why some women decide to give their land to a trusted male member of their family or farm household. It then portrays women who keep control of the land in their own hands by selling or renting out their land or by making it productive themselves.

### *Women own, men use*

A common way that female landowners use land is by allowing male farm household members (husbands, sons) to work their land while they maintain ownership of it. Several female owners stated that they had never visited their own property because they considered it to be too far away. Yet, despite their lack of familiarity of it, these women remained owners of their land and reserved the option of making decisions about its use, sale or transfer.

The arrangements between Marcia Garcia and her son Marvin were exemplary for the tensions that the separation of ownership and use might create. Marcia told the story of her life as a series of misfortunes and troubles: she married the wrong man, was bewitched by him and became blind. He left her pregnant with a third child when another child got polio and died. Only one child survived: her son Marvin who was mute. Marvin married a woman with normal sight and hearing who served as an intermediary in communications between mother and son. They lived in a house of mud and branches which was divided in two: one part for Marcia, who had her own kitchen, and one part for Marvin and his family.

Marcia inherited eight manzanas of land from her own father. She cared for him until he died so she considered the inheritance as a payment for her efforts. She no longer had

the full eight manzanas because she sold three manzanas when she needed money. She nearly lost her land on two occasions. She held a tule field in the construction area of the hydroelectric power plant. (Chapter Two) She lost the land and was compensated with 160 lempiras and a new plot in a neighbouring municipality. However, the new plot wasn't suitable for tule cultivation. Her neighbour, who was an employee of the electricity company, wrote a letter to the company stating that they deceived a poor blind woman and her mute son. Thereafter, she received 1000 lempiras from the ENEE. She gave half of the money to her neighbour and used the other half to buy herself a small coffee field. The second time she thought she was going to lose her land was when the INA issued land titles. She wasn't able to pay the title since she had land but no capital. She was afraid that the INA would take over the land.

Marcia allowed her son Marvin to use the land. He sowed maize and beans and cared for the coffee field. The products were used by Marcia and Marvin's own family. Although Marvin worked on the land, Marcia had no intention of transferring ownership to him. However, she grew older and decided to transfer part of the land to Marvin in 1997 as his inheritance. He received the coffee field that was already titled in his name and two manzanas in another location. Marcia continued to control three manzanas of her deceased father's land. Marvin continued to use this land as well. A few years later, however, she decided to sell the rest of her land. She first offered it for sale to Marvin but he refused to buy it and said that he did not have the money. She then sold two manzanas to her brother Pablo and one manzana to a friend. Marvin was forced to stop using the land.

There was tension in the relation between the mother (owner of the land) and son (user of the land). The son hoped to become the owner one day; this was the reason why he worked on the land and took care of his mother. His work should have enforced his claim. However, the mother chose to sell part of the land to others, generating enough capital for her to live independently for the rest of her life.

In this case, Marcia completely entrusted her son with the use of the land and did not expect him to contest her property rights. This, however, was often a major problem for the female owners that chose a similar option for using their land. Catarina López was not so sure whether her rights would be respected by her family. Catarina inherited two manzanas of land from her father when his properties were divided after his death. After she received the land, her nephew Elmer invaded it. Catarina's land was not fenced in and was not in use. This made it relatively easy for Elmer to invade since he owned the adjacent plot. Catarina's husband and sons started to plant *penco* as a fence and some coffee seedlings. They were too late to avoid a conflict, however. Elmer proposed that Catarina should buy him out and, in order to avoid problems, Catarina's son Pedro paid him. Afterwards, Pedro and his father quickly finished the fence and planted more coffee trees.

When the INA titling brigade came, Catarina wondered of what she should do with her land. She decided to transfer ownership to her son Pedro as she trusted him more than her husband. Her husband was famous in the village for his drinking habits and for the fact that he had sold everything he once owned in order to be able to buy alcohol<sup>14</sup>. Pedro was a member of one of the Christian communities and he did not drink. She expected to have more support from Pedro than from her husband.

On the face of it, one might conclude that Catarina was not interested in having land and that she therefore decided to give it to a son. This, however, would be a wrong interpretation of her motives and intentions. Catarina's nephew Elmer did not accept the way in which the estate of his grandfather had been divided between the heirs, and he thought he had rights to more land. He thought that his aunt would be incapable of acting against him. The response of Catarina - making a fence and planting coffee - made him demand a financial compensation in exchange for giving up his claim. Thereafter, Catarina concluded that she did not have complete control over the land and that there was the possibility she would have to withstand new claims.

She did not trust her husband, whom she thought to be quite capable of selling her land without her consent. This would be even a greater danger if she permitted him to work the land, as this would allow him to reinforce any claim to it. Moreover, it would impose a socially accepted claim: he works on the land, thus it must be his. Even if people recognised her ownership of the land, her husband would be able to sell it because the buyer would think that, as a spouse, he was acting completely in his right. She expected that her son Pedro would work the land and not sell it. In fact, she exchanged ownership for the prospect of guaranteeing her son's support of her household and care in her old age. Her own insecurity with respect to her property rights made her decide to transfer it so she could at least take some advantage of it.

By allowing male household members to work on the land, female owners were not able to automatically make a claim to the products of that land. More than property rights alone, labour allowed for a strong claim to the harvest as a compensation for the invested labour. Hence, female owners kept dealing with the contested claims on the produce in the farm household, even though it originated from their own property.

#### *Sale and renting-out*

Female landowners have possibilities other than allowing male household members to use their land. Just like Marcia, women often opt for selling part of their land. I consider selling to be a land *use* strategy as well. The sale of the land means that women have cash at their disposal. However, sales also occur in emergency situations, such as when money is needed to cover medical expenses. In some cases, the land itself is not sold but is instead used as collateral for a loan.



A term that I frequently heard when talking to female landowners was 'need' (*necesidad*). According to women, land is sold out of 'need'. This can mean all kinds of things: illness, threats of violence, poverty, emergencies or a loan which has to be paid off. Need is a very vague but socially accepted motive for selling land. Illness is a very common 'need' which leads to the sale of land. As a woman who sold the land inherited from her mother told me:

*You know how this happens with poor people. I became ill, it was serious and I had to go to Santa Bárbara, to the hospital. I was brought home again but I did not recover from the illness. I needed a real doctor. I asked my mother, who was still alive at the time, what to do. She said "the land I gave you is yours, you decide whatever you would like to do with it, but... it is not wise to die because you do not have money". Now I am sorry about it [the sale of the land] because my sons do not have land to work on.*

Hence to women, land is a source of cash and a possible safety net to be activated when needed. Land thus serves as a social security provision (Agarwal 1994).

Some female owners used their land by renting it out to male producers. Renting-out has the advantage of receiving cash in a relatively easy way. There were two women in El Zapote who were known for renting their land out year after year: both were old widows for whom cash was important to survive. One of these widows kept partial control over the production process of her tenants by forbidding them to burn their fields in order to protect fruit trees and a well. She needed a trusted man, however, to actually impose and enforce sanctions on tenants who disregarded this stipulation.

#### *Female agricultural producers*

Renting-out provides a landholder with cash, but she does not produce: production is in the hands of male tenants and the landholder does not receive the harvest. Female landowners consider themselves to be 'producers' when they independently control, in one way or another, the production process on the land. Thus, women who let male household members use their land do not define themselves as producers. There are relatively few female producers, which indicates that it is not easy for women to start producing for themselves. Female producers are not always single women, but many are widows. They are generally not small landowners and may hold considerable amounts of land, often of good quality, which increases the ability to establish a viable production system.

Whether or not female landowners succeed in becoming producers themselves depends not only on the amount of land they have access to, but also their access to other resources, perceptions of their own possibilities, the choices they make, or the influences

of husbands and other male household members. The following case of three sisters and their mother shows that the same amount of land may lead to differences in production systems, productivity and income, as well as differences that women who are producers and landowners have in the control over their land. Laura, Mara, and Silvia were three sisters who, together with their mother Amalia inherited a large coffee estate from their late father and husband. The fields were quite a long distance from the village, in the mountains of the adjacent district Lempira. After her husband's death, Amalia left her house in the village and went to live in the coffee field. She thought that she would best be able to take care of the fields by doing this. Her three daughters had their own households in the village. Table 5.1 outlines the different ways in which these four women were using their coffee fields.

Silvia and Amalia made a good income from the production of coffee. Silvia had a husband who did not meddle in his wife's affairs concerning her coffee field; he completely considered it to be her property and responsibility. Unlike other men in the village, he did not object to the fact that she left the household for several weeks during harvest time. He said that he did not have to make claims on Silvia's field because he had a paid job as the municipal secretary and he managed his own coffee field.

*Table 5.1 The production activities of three (adult) daughters and their mother*

	Laura	Mara	Silvia	Amalia (mother)
<b>Obtained through:</b>	Inheritance father	Inheritance father	Inheritance father	Inheritance husband
<b>Area</b>	1.5 manzanas (coffee)	1.5 manzanas (coffee)	1.5 manzanas (coffee)	10 manzanas (several with coffee)
<b>Management and decision-making</b>	By her husband; she herself travelled during the harvest season to help pick coffee. Her husband considered the field as her property.	By her husband and two sons; she only travelled to the field in case it was absolutely necessary. She was nevertheless the recognised owner and kept partial control over the product.	By herself; her mother helped by recruiting the necessary labour power for weeding and other tasks. She stayed in the field without returning home during the harvest season. She did not pick coffee herself but brought along women from the village who were indebted to her. Husband managed his own coffee field.	By herself, with labourers from nearby villages. Her house was in the middle of her land and she was able to inspect the labourers herself.
<b>Production system</b>	Traditional way, no inputs were used  Sold coffee as wet parchment because she lacked space to dry it and the money to transport the wet coffee to the village <sup>15</sup>	Traditional way, no inputs were used  Sold coffee as wet parchment. Same reasons as Eleonore	Modernised production system with use of inputs (mainly fertiliser) Paid transport to the village and took wet parchment coffee home to dry on her own patio. Sold dry parchment.	Modernised production system, with use of all required inputs Dried coffee in patio in coffee field and sold dry parchment

Laura and Mara did not independently manage their coffee field. Laura's husband worked in the field and made decisions with regard to improving the production; in Mara's case, this was done by her husband and two sons. The women, however, continued to be the recognised owners of their fields, and to a certain extent they also were recognised as producers because they were involved in decision-making and in the work in the field. In contrast to Silvia, Laura and Mara were not able to exclusively lay claim to the product derived from their coffee fields because their husbands and children worked as well, which meant that they also had a say in the product. Laura's and Mara's field output was low but, nevertheless, it was still worth the effort.

The inheritance of the coffee fields meant a considerable progress in life for the sisters, yet there were also differences in what this meant for each of them. Silvia was a rich producer who was able to make investments. She received crucial support from her mother. For her two sisters, the coffee fields were essential to their strategies for survival. However, they did not succeed in increasing their production and earn more. They needed their husbands' knowledge and labour power and, in turn, they had to give up part of their control of the land and its product.

I observed female producers who were involved in cattle, coffee, and tule production, while very few female producers cultivated food crops such as maize and beans. Only female landowners who were able to easily mobilise reliable labourers, and who had suitable land, cultivated maize for home consumption. Maize and beans are much more difficult to cultivate because they involve more risk, more labour power and permanent vigilance.

Coffee production and cattle holding confronted female producers with considerable managerial problems as well. It was not easy for aged widows, for example, to continue their production activities. Two widowed sisters of 75 and 67 years old, respectively, inherited considerably large estates from their deceased husbands. The youngest owned 17 hectares of land divided into four plots, the most important of which a coffee field. Her deteriorating physical condition made it increasingly difficult to manage it on her own. She became totally dependent upon her son to care for the coffee field and to organise labour power, and the de-pulping, drying and sale of the coffee. However, he preferred to take care of his own coffee fields first. He was only willing to start on his mother's field after he had taken care of his own needs.

The eldest sister owned three plots of land, consisting of 1, 17, and 25 hectares each. She was mainly engaged in cattle and milk production. When I talked to her in 1994, she was thinking about selling the land. She experienced problems because the grass on her pasture lands did not grow in the way it did before and the cows therefore had less fodder and gave less milk. She had no money to repair the fences and to divide the pasture land into sections which gave the grass the opportunity to grow without being devoured immediately.

In 1995, I met her while she was talking to a friend who proposed some possible solutions. In the end, she said: 'As a single woman, how should I do that? No, it will be best to sell the cows. I am demoralised [by the situation]'. She confided to the friend that she did not know how she to monitor the work of day labourers. The labourers did not perform the tasks in the way she expected of them: 'The day labourer is not as the owner'. She said that the milk she produced provided her only with sufficient money to pay the salary of the day labourer who milked the cows, but she complained that it did not leave her with a real income. She was convinced that there were people stealing her wooden fence posts to use for firewood. 'While they should take care of a poor widow they steal from her'. She was still uncertain if selling would be the best option. She was thinking about her late husband, who had built it all up and the memory of whom made it difficult to think about selling. Her daughters who lived in the capital city were both trying to persuade her to sell the land and to come and live with them. She actually did this in 1998.

Both these old widows lived alone. The first widow had a son who lived in the village and was expected to manage his mother's field. She could not prevent him giving preference to his own fields before attending hers. The problem of the second widow was that she did not have a trusted person who could assist her in the management of her land. Her only two daughters lived in the capital city. She had a permanent day labourer to take care of the cattle and the pasture fields, but she lacked access to knowledge about keeping cattle. She never went to her fields to inspect the condition of the grass and relied only on what her day labourer and other people told her about the condition of her pasture fields and cattle, and the destruction of her fences. She did not know what to do. In spite of the support of friends with whom she discussed the problem, she had lost the spirit to tackle her problems.

The way in which these widows used their land was characteristic of female producers. They concentrated on production to generate cash; they depended on their ability to build up a trusting relationship with the people who worked for them; they used as little paid labour as possible, but did not work in the fields themselves; they had no capital to invest in better production methods; and they were focused on ensuring their own survival and not on improving their enterprise.

#### *A female manager*

One of the rare women who definitely tried to break out of the standard pattern for female producers was Belinda Matute (see previous section). She was one of the few women who actually managed well on her own. She considered herself to be different from other women because she was widow and single: 'Other women have husbands to care for them'.

After she successfully contested her in-laws' claim on the land, she never thought of selling it. 'I never thought about selling. I would have eaten it and then I would be left without anything'. She wanted to continue with her late husband's ideas concerning the six manzana coffee plantation. She therefore took courses about coffee production that were given by AHPROCAFE, the coffee farmers organisation and she hired the services of her brother, who became her permanent overseer. He organised the daily work and provided her with technical advice.

Belinda did not know much about the technical side of coffee production. She hardly had any idea about how much fertiliser she used in the coffee plantation, or the effects of certain chemicals. She was not in the habit of regularly visiting the field and she only went frequently during the harvest season<sup>16</sup>. The day labourers who worked in her coffee field during the harvest season were practically all women. According to Belinda:

*My workers come from the hamlets... It is easy for these women to reach my field because it is close to their homes [she referred to a hamlet in the mountains near the coffee fields]. They work for me because I am a woman. If women need money they come to me.<sup>17</sup> There is only confidence among women.*

The coffee plantation was her main source of income. In addition, she cultivated half a manzana of maize and half a manzana of beans for home consumption. She did this for the same reason as male producers who sowed these crops: 'I do not like to have to beg other people to sell me their maize. I like to eat what I produce myself'. The production of maize and beans was also organised and supervised by her brother. Belinda confirmed that women have more difficulties in sowing maize:

*In my position... it is more difficult to manage the labourers. It is expensive for me to sow maize. It's because I am not present [during work]. It's not the same as when the owner is around. This year I decided to pay three day labourers in advance. Sometimes I pay labourers on contract, which makes it cheaper.*

Her wish for the future was to start cattle holding. She had land which was suitable for pasture but it was still a *guamil* (secondary growth of forest).

*This year I wanted to give the guamil to the people so that they would clear it and sow maize. I didn't want them to pay [rent]. [After the clearing] I would be able to sow grass. So I told my brother to be pass on this information [to other villagers]. Only a few people, only four, came to request a plot. I do not know why they did not want [the work]... I am not in a hurry [to clear the guamil] because I do not have cattle yet. But I have hopes.*

Other villagers, however, said that Belinda did have cattle once, but that she failed to attend to the animals. They frequently escaped from the pasture field and caused damage to adjacent plots. She received so many claims for damages that she decided to sell them.

Belinda's success as a producer also became a source of criticism. If she would have left her children and the property in the hands of her family-in-law, the villagers would almost certainly have labelled her as a degenerated mother. She could have opted for selling the land, and gossip would be that she squandered her late husband's property. She decided to start producing herself, and people reacted negatively to that choice as well:

*A woman criticised me the other day. You know how people like to criticise someone else. This woman said "you are consuming your late husband's work". I told her the land was left by my husband but he did not leave his labour. I am the one who is producing. If I would have sold the land and eat it, yes.. It is true, the old coffee field was his but I am the person who makes it produce. That is how I and my children eat today.*

She was a loner in the village and, in this respect, the place she chose to sit during community meetings was revealing. She did not sit with the other women, who usually gathered at the back of the community centre, but always sat in front by herself apart from the men. She was informed by her work in AHPROCAFE, and she was the only woman who dared to speak at public gatherings. On the one hand, she was a role model to other women. She showed them that it was possible to live independently as a widow and a single mother. She enjoyed this role enormously. She told me in 1997 that she wanted to be elected the mayor of the village to work towards new income generating possibilities for poor women (she was eventually elected mayor for the Liberal Party in 1998). The other side of her story was that she was rich and influential. This isolated her from other village women and sided her with the ruling elite.

Many people rejected her aspirations to become a mayor. One of the critical persons commented:

*I will not deny that she has her merits. She always worked hard for the party. Yet her private life does not combine with being the mayor. The people will say: if she cannot lead her household in an adequate way there is no hope that she will be able to lead the municipality.<sup>18</sup> She is not social, she does not know how to deal with people. This could all be a disadvantage to the party, because in a dirty campaign this can all be used to discredit the party.*

Men and women harshly criticised her style of living. Her political affiliation with the Liberal Party was an eyesore to the members of the National Party and some of the

members of her own party. She dressed as an urban secretary with suits and high heels. She became involved in relationships with younger men, among them a young man who broke up his marriage to live with her. She drank beer in public, which was a most unusual thing for rural women to do. Some people labelled her as either as a 'prostitute' (*puta*) or as a bad producer: 'A woman alone cannot keep control - look at what happened to her cattle'. However, others admired the way she managed her coffee field, which produced very well.

#### *Land use and the gender division of labour*

The foregoing cases of land use strategies by female landowners have shown that they have several options:

- Temporarily lend it to a husband or son to work
- Transfer all their rights to a male household member
- Rent it out
- Sell it
- Use it as collateral to receive a loan
- Work on it themselves
- Try and manage it themselves.

These options stand for divergent ways to achieve, control and transfer elements of the bundle of property rights. Through the choice of particular land use options, women become differentially engaged in property relations inside and outside their farm households.

Lending land to a husband or son means that a female landholder loses control over the use of the land, but she is still owner. Furthermore, transferring ownership to a husband or a son is not some kind of irrational act, but a woman might expect that she will receive care in return. Several of women's strategies, moreover, focus on generating a cash income that they are able to control themselves.

Belinda suggested during the interviews that female landholders would only convert themselves to producers when there is no man around. She reproduced an image of women as dependent on men. In her eyes, it is not desirable for women to be independent producers, but it is an alternative for women who are left by themselves and do not, or no longer, have a man to care for them. On the other hand, Belinda would not give up producing at if she were to become engaged in a new relationship with a man.

Generally, female landholders seek land use options that do not contest the gender division of labour. They do not neglect their housekeeping duties and their responsibilities as mothers; and they do not operate in a way that requires them to frequently leave the boundaries of their farm households. They operate as distant managers of their land and do not work in the field, which at the same time restricts their possibilities.

Female producers complain that it is difficult to control the day labourers they send to do the work. Furthermore, they lack access to knowledge because they do not attend meetings or courses given by outside agencies, and they do not take part in the informal networks of knowledge exchange which exist between men. Even a rich producer like Belinda, who has been an active member of AHPROCAFE, has limited knowledge about the production process on her coffee plantation. She depends on the knowledge of her brother, who she hires as a superintendent. Female landholders are in big trouble the moment they lose such an intimate and trusted person.

It is important for female landowners to avoid openly questioning the boundaries of the gender division of labour. Typically, at the moment Belinda intended to overstep these boundaries, she was immediately criticised and had to put up with very negative labels about her life and production capabilities. She was a successful producer, she was important in village politics and she maintained her libertine life style, all of which made her a threat to most of the village men.

### Beyond instrumentalism: women, land and the law

The general points raised in Honduran discussions about land and women are that women have to become productive in order to combat poverty; that women want to produce food to feed their families; that women work on the land and thus should have rights to the land; and that improving women's access to land is a development issue that requires special policies. I previously concluded that, thus far, changes in law have been the main strategy to achieve these goals.

What do the situations and strategies of female landholders in El Zapote teach us? This chapter has demonstrated that women's struggles for land can only be understood when attention is paid to the constraints and possibilities of women to obtain land through inheritance practices. Moreover, it is important to note how women struggle to obtain land rights, but it is equally important to understand how they struggle to keep these rights once they have acquired them. Women and men experience different threats to their property rights. Male landholders anticipate other property holders or the state to make claims; female landholders have to deal with these as well as husbands or sons making claims on their land on their land.

Women struggle to own land to obtain an independent source of income with decision-making power. Having land means having the social status of a property holder. Landholders are able to participate in state programmes for agricultural producers and they have a say in community land management. Land rights may strengthen women's say in the use of labour and income in farm households; they may reinforce women's position when they are confronted with divorce or inheritance; and land may guarantee their old age care.



Pleas in favour of giving women access to land refer to the specific and unique responsibilities of women. Women are considered to be responsible for the wellbeing of their families and children; they are potentially productive and therefore a blessing to the national economy; or they are, more than men, responsive to sustainable production methods. Rather than seeing women as being entitled to land because they are ordinary citizens and equal to men, such pleas see women's entitlement as rooted in their usefulness to their families, the economy, the environment, etc.

This section will first examine the gender constraints that women experience in their efforts to obtain land rights. It then turns to the solutions that the state proposed in order to deal with the gender inequality of property rights to land: gender neutral law and joint titling. The section then discusses whether land ownership is indeed a tool for achieving women's emancipation.

#### *Gender constraints*

Women who struggle to acquire and control land are confronted with specific gender constraints. Women are primarily considered to be people who have a right to be taken care of, a very strong perception that is not easy to break through. This perception positions women exclusively in the sphere of *la casa* (the house) (Radcliffe and Westwood 1996). Women are not considered to be possible participants in property rights relationships, but as mothers and caretakers instead.

A second constraint to women is the linkage between rights to land and 'work'. Women's work and men's work are differentially valued, which makes the link between labour and land rights directly detrimental to women's opportunities to claim land. Men's work on the land, for example, reinforces their claims to inherit land. Women, on the other hand, have difficulties claiming inheritance rights because they do not work on the land and are thus not able to make a direct claim.

A third constraint is that female landholders develop all kinds of use strategies that are not considered as 'proper' use by men. What female landowners do with their land is often not identified as a land use strategy. As a result, women in general are viewed as not being capable of properly using the land and not being worthy landowners. The range of women's land use strategies includes giving land to a son or husband to cultivate, transferring it to heirs in a variety of ways, renting-out or managing it by using day labourers. Through all these different strategies, female landholders derive advantages from their land and they choose a land use strategy according to their own wishes and abilities.

Even if women sell their land, it is often a conscious decision which they speak of with pride or with regret in hindsight. Selling is thus not necessarily a sign of oppression, poverty or a lack of ability to make land productive. Nevertheless, men choose not to understand women's land use strategies and they stick to conveying that

women unjustly demand land because they do not work on it, that women only want land to sell it and that women are not able to make land productive.

Negative gender images are not the only impressions playing a role in women's struggles for land. Women engaged in petate production have a strong self-image of being producers with autonomous responsibilities. The petate means arduous labour and, in many farm households, the petate generates an income that is essential to the survival of the household. Women use the petate image to show that they are able to work hard and produce.

Gender constraints are important reasons why female landholders develop land use strategies that do not contest the gender division of labour. They continue to attend their domestic and motherly affairs and do not work in the fields themselves. When they choose to produce themselves, a male adviser helps with the organisational and technical sides of production. It is exactly through maintaining the image of housewife and not *openly* meddling in 'male' activities, which makes it easier for women to enter the public sphere of agricultural production. Keeping pace with the gender division of labour and the image of a decent wife and mother protects women against criticism and makes their activities less hostile to men's positions.

Generally, female producers do not choose to cultivate food crops, but they are interested in generating cash. Cash allows them to buy whatever they need for their farm households, to hire day labourers, to save regularly, to make investments. It reinforces their position and it fits in with their principle goal, which is to have authority and decision-making power over their land by omitting negative labels and making use of the space that they have within the gender order of their society.

#### *The consequences of gender neutral law*

I stated in the introduction to this chapter that the law has been the central subject of discussions about women's land rights in Honduras. In the Law of Modernisation of 1992, the discriminatory gender provisions of the Agrarian Reform Law were replaced by gender-neutral requirements affecting potential beneficiaries of the land distribution programme (Sandoval Corea 1992, Noé Pino et al. 1993, Hendrix 1993, Martínez et al. 1995). Directly after implementing the Law of Modernisation, however, a discussion emerged about the effects of gender-neutral law. Palacios (1994:7) argued that:

*...the normative component of this law [the Law of Modernisation] prescribes that women participate in the agrarian reform programmes in conditions equal to men's. However, while stipulating equality of conditions for women and men, this law does not establish natural equality for women... Social, cultural and emotional differences are ignored, which also affect economic and political aspects.*

Palacios furthermore added that nothing has been done to prevent gender discrimination in the sphere of the implementation of the law. León et al. (1987) made similar observations with regard to the gender-neutral PTT programme, in which they assumed that the absence of gender differences in the programme were not sufficient to achieve equal land rights for women.

Feminist organisations considered the abolition of discriminating criteria in the Law of Modernisation to be an important step because it embodied a political decision to do something for rural women. On the other hand, they argued that the state did not provide the necessary conditions to make women able to be 'competitive and efficient', as the law stipulated, such as relieving them of the burden of reproductive work or changing gender constraints. The female president of COCOCH<sup>19</sup> pointed out that women will never be able to work in agriculture on a full-time base (a legal requirement for becoming beneficiary of the law) because of their housekeeping duties. She considered that women thus do not qualify to obtain land from the state through the arrangements of the Law of Modernisation (January 30, 1995: Diario Tiempo).

A related point of discussion regarding the effects of gender neutral law is whether law really enhances women's opportunities to claim land. To what extent do changes in agrarian law really improve women's land rights? Women may use the newly created legal space to claim land from the state, yet knowledge of the law among trained female members of peasant organisations is limited, and women who are not organised or trained have even less knowledge (Noé Pino et al. 1993). Agrarian law does not immediately influence or change the gender constraints on claims to land, the same constraints that nevertheless form the major obstacles for women to claim land in daily life. The gender-neutral law may inspire the emergence of new gender notions that could gain influence in daily life at a certain time, but such changes easily take years and their outcomes are unpredictable.

The aura of the developmental discourse placed around the issue of women and land has meant that a kind of instrumental reason has to be created to plead for land rights for women. Instead of unconditionally conferring equal rights on all men and women, women are depicted in unique positions with specific responsibilities such as food providers and caretakers that have to justify their land claim.

#### *The state and joint titling*

Gender equality in land rights is an important policy goal for the state. It was an important point of discussion when the Law of Modernisation was formulated, stimulating a discussion that involved many organisations for peasants and rural women. It has also become an issue in the discussion about land titling. The following quote of the Honduran President Carlos Flores illustrated the dilemmas of the forced gender equality in state policy:

*Yesterday President Carlos Roberto Flores announced a change in the policy of land titling which means that the majority of titles will be issued in the name of women or couples. Traditionally land was legalised almost exclusively in the names of men... Flores said that in the past the titles have been fundamentally for men but "terrible things happened, for example, that women who worked together with their spouses and contributed to the patrimony... the questions of life left them in the cold afterwards. This will not happen again because we want women and couples to have rights to titles and to their patrimony and that, together with him, she is able to pass an inheritance to the children and future generations". (October 22, 1999: El Heraldó).*

The Law of Modernisation allows for the possibility that land can be titled in the names of both spouses, but only if they both agree to it and file a special request (art. 64). Joint titling is considered to be a possible solution to gender inequality in land rights (Galan 1998, Deere and León 2001, Deere 2001). This might be advantageous to women, although at the same time, the article in the Law of Modernisation stipulates that a woman cannot demand joint registration independently but she is still dependent upon her husband's consent (Hendrix 1993).

Yet on the basis of this chapter, I see other problematic aspects of the joint titling solution. The proposal of President Flores is actually only applicable to areas that are empty and without inhabitants or pre-existing property rights distributions. A new area to be colonised for migrants to live and work might offer the possibility for the state to consider how plots of agricultural land should be distributed and titled. This is not possible in all other cases where villages exist and people have been working the land for generations.

Women have received land titles ever since the start of PTT, both on property they owned and coincidentally, as in the case of El Zapote. To increase the number of women with land titles, their opportunities to acquire and control property rights in daily life first must first be increased. This is a process far more complicated than was expressed by Flores. Moreover, it should be taken into account that titles jointly held between husbands and wives can bring about problems in cases of divorce, inheritance, or sale. Moreover, the joint title does not say anything about who makes the decisions about land use or who controls the product.

Land titling as a process interacts with existing property relationships and may very well have unintended outcomes, both to the advantage and disadvantage of women. Information about the concrete daily struggles of women, their claims and arguments, their problems managing and keeping land, need to be dealt with if the objective is to propose concrete titling policies.

Can land provide welfare, efficiency and, especially, the empowerment of women? Is it the means of rural women's emancipation? This chapter has shown that property rights to land are a potential source of power, through which the position of women may be significantly altered. However, this chapter has also demonstrated that such changes do not follow a clear and singular route.

Relatively few women in El Zapote succeed in claiming land rights and when they do, what women actually do with their land makes a difference. Female landholders are generally able to improve their position in the farm household in terms of decision-making power and ability to control production and income. They have something to fall back on in case of emergencies or crisis and they are able to rent it out and they receive a regular income. Through inheritance strategies, female landholders are able to exercise power over their children. By binding the children in anticipation of the inheritance, they guarantee themselves support, free labour and care when they become old. Women who actually manage the production on their land themselves are able to provide themselves with the autonomous control of cash and product.

The outsiders interpretation of women's land use strategies very often misses crucial points. Men for different reasons use the occasional argument that women misuse land. Development organisations and the state either argue that women do not work on the land and therefore are not interested in having land; or that women are interested in land, hence, they work on it. In my view, the important step to take is to recognise that the land use strategies of women are reasonable in the light of women's circumstances; reasonable in the sense that they are consciously created to bring in products, income, proceeds, or to have a say in decision-making at certain moments.

Female landholders, however, do not automatically use their land to change their bargaining position in the household or to structurally change gender relations. A once-only sale of the land, because of illness for example, generates cash to cover the costs of travel, hospital care or medicine. Such an action in itself does not yield power or improve their bargaining position. However, land ownership does change power relations when women use their property to improve their bargaining position and decision-making power regarding the division of products and income, and fetter their husbands and offspring by cleverly bringing inheritance into play. In this sense, land is indeed a means to women's emancipation.

Honduran women's organisations, NGOs and national and international development agencies have opted to use the law as the central focus of attention in the elimination of discrimination against women and their rights to land. This chapter has shown that improving women's access to land means that many elements besides the law that cause this discrimination against women have to change, such as:

- Recognition of women's land use strategies

Female landholders in El Zapote do not live up to the peasant image: they do not work on the land themselves and do not produce food for their families, but they use land in such a way that they are able to achieve economic independence.

- Changes in gender images

Gender images play a crucial role in struggles for land rights by women. Any demand for more land rights for women should include an answer as to how ideological barriers put up against women in struggles for inheritance may be overcome without establishing new ones (as is often done, for example the peasant image).

- Equal rights claim

The claim of equal rights is already strong in local inheritance practices (Chapter Four). Equality between men and women is one of the most important aspects of the equal rights claim. It is possible that women's demand for land rights will become more successful when more women start to publicly demand their rights, and when men will continue to argue that inheritance should be divided equally between heirs.

Many voices in Honduras, as well as in the international discussion about women and development, have claimed that women's rights to land are crucial to the welfare, efficient distribution of resources and empowerment of women. By adding an instrumental perspective - women need rights to land *for achieving different objectives* - they have created, perhaps unintentionally, a difference between women's rights and men's rights.

I have often asked myself why women's demands for land rights are only justified when it serves a purpose in the light of women's servitude to the familiar and the societal welfare. Are women not normal citizens with normal rights just like men? The demand for ending discrimination and giving women the rights they are entitled to should start with a recognition that we need to stop patronising rural women. The demand should begin where these women want it to begin: by recognising their right to independently decide on the use and transfer of their land.

## Notes

- 1 In her study of pre-independence documents and case files in the General Archive of the Judicial Power, de Oyuela (1989, 1994) came across many files about women who intended to transfer property rights to another person. She observed that the court rejected the requests when the women lacked permission of their husbands.
- 2 Beneficiaries of the Agrarian Reform were expected to join a co-operative or association. Safilios-Rothschild (1983) argues that this was also an obstacle to women because the members of these organisations refused to accept women who did not have adult sons who could substitute for the women in the work required for communal purposes. The idea behind their refusal to accept female members was that they considered women to be incapable of performing these tasks on their own without male support.
- 3 Garifuna women on the northern coast, and indigenous Lenca women in the departments of La Paz and Intibucá do work in the fields on a regular base.
- 4 The percentage of female producers is higher in other departments of Honduras.
- 5 Fehmuc is the Federación Hondureña de Mujeres Campesinas.
- 6 Impoverished widows who are completely abandoned by their children are also observed in other parts of the world (Ortiz 1973, Mtengetti-Migiro 1991, Wanitzek 1994, Palriwala 1994).
- 7 AHPROCAFE is the Asociación Hondureña de Productores de Café.
- 8 The 'principle head' is a common expression for the male household head.
- 9 Other villagers informed me about a story which took place right after her husband's death. Belinda indeed met another man, but after a few months he left her while taking along the entire coffee harvest of that year.
- 10 This data is based on the number of female names on a list that combined data of the National Cadastral Directorate and PTT. León et al. (1987) found that 154 plots were owned by 131 women with a total area of 565.38 hectares in El Zapote. It is not clear how León et al. collected this data since the titling programme itself did not provide gender separated data at that time.
- 11 Possibly, this not only happened in El Zapote. An ex-member of an INA titling brigade in the department of Comayagua confirmed that the same rules were used during the pilot project in this department. The head of the PTT office of the INA, however, denied in 1995 that these rules had ever existed and had been applied.
- 12 In El Zapote, multiple plot titles incorporated one to four plots smaller than the minimum size of one hectare. By registering several small plots in one title, the land obtained the minimum size.
- 13 Just like other coffee producers, Flor was complaining that day labourers and, especially, irresponsible young boys, did not pick, but strung the berries in order to work faster. This method allowed the labourer to work quicker but it damaged the coffee trees.
- 14 Alcoholics become impoverished because they sell everything they have when they need money. This can easily be their wives' properties as well. Although a husband has no legal say at all in his wife's land, the illegal 'sale' will very often lead to the woman's loss of the land. The husband consumes the money, and the buyer of the land needs to be paid off if he does not receive the land. The excessive drinking behaviour of men and its consequences is not typical only for Honduras. Nuijten (1998) describes the importance of drinking behaviour with regard to the choice of an heir in rural Mexico.
- 15 Wet parchment means that the beans are freed of the pulp with a hand pulper and sold without drying them. Dry parchment is coffee that is dried in the sun. Dry parchment obviously has a higher value than wet parchment.
- 16 It took one and a half hours by mule to arrive at Belinda's coffee field. In 1996, the producers of that particular mountain area succeeded to receive funds to construct a road in order to be able to take the

coffee to the village by car. Belinda's property was not on the road but she was able to construct a private side-road to her own field. She was the only woman in the village driving a car, and one of the first persons in the village who owned one.

- 17 Practically all the day labourers who picked coffee in the harvest season were involved in a debt relation with Belinda. They paid this debt off by working during the coffee harvest.
- 18 A nice detail was that Belinda used the same metaphor in a conversation with me about her aspirations to become mayor, stating that the problem with male mayors was that they did not understand that it was not feasible to decorate the house when it had not yet been cleaned.
- 19 *Comité Coordinador de Organizaciones Campesinas* (COCOCH) is an umbrella organisation of several peasant organisations and organisations of rural women. COCOCH strongly opposed the Law of Modernisation.





## Chapter six

# Land conflicts and the judicial system

There are popular sayings in Honduras that express how people perceive their judicial system: 'Justice only bites the barefooted' (*La justicia solo muerde a los descalzos*), and 'fleas only bite the bony dogs' (*solo a los perros flacos pegan las pulgas*). The image created through these sayings is that the judicial system exclusively focuses on punishing the poor, and that it never catches rich people. The previous chapters have looked at the emergence of conflicts between landholders, why and how conflicts come about and how landholders deal with them. Landholders find it difficult to resolve their conflicts; there are hardly any 'informal' or alternative ways of conflict resolution and people do not have many opportunities to call upon the judicial authorities. And when a conflict ends up in the hands of the judicial authorities, their activities and decisions raise a lot of questions.

This chapter seeks to analyse how different social actors - landholders, local authorities, lawyers, court personnel - perceive the judicial system. It does so by taking land disputes as a starting-point for analysing these perceptions and experiences. What are the main problems in the working of the judicial system? How do courts deal with land disputes, and what effects do their dealings have on solving such conflicts? How do people's perceptions of the judicial system relate to legal insecurity? This chapter first discusses perceptions of, and experiences with, the judicial system, from the points of view of landholders, lawyers and court officials. Next, I look at three land dispute case files in the Third Chamber of the Santa Bárbara court to examine practices and procedures and what they tell us about evidence, the role of the judge and the involved lawyers. I then analyse how the nature of court procedures relates to the persistence of legal insecurity. Finally, I look at the possibilities for changing the system and improving legal security in Honduras.

# The judicial system: perceptions and experiences

Figure 6.1 is a simple organisational chart of the judicial system in Santa Bárbara that also shows several institutions that are directly related to it. The part of the judicial system that villagers know best is the justice of the peace, his secretary and the assistant mayors. The justice of the peace holds office in El Zapote and his competence is very limited. El Zapote falls within the jurisdiction of the Third Chamber, which consists of a judge overseeing all civil and criminal cases, a secretary and an archivist.<sup>1</sup> Santa Bárbara also has a court of appeals.

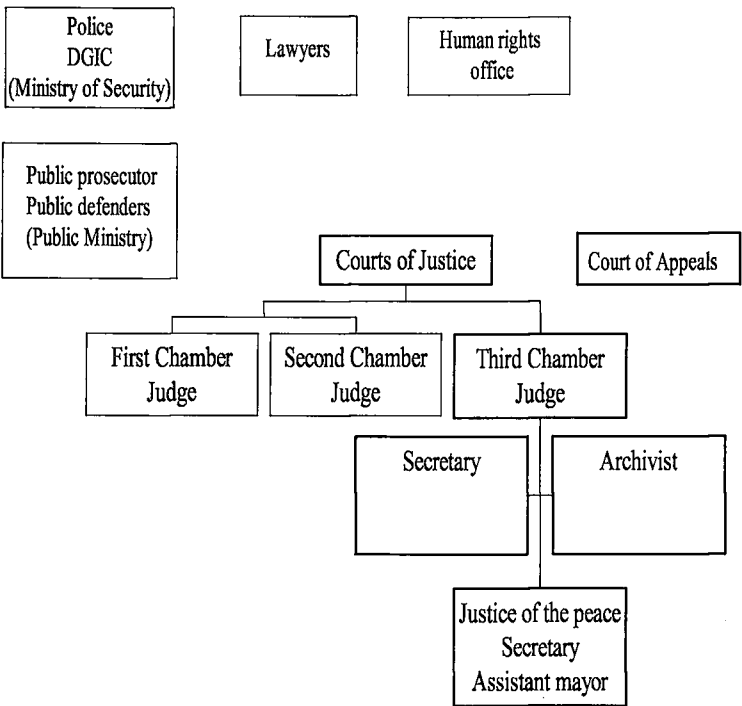


Figure 6.1 Santa Bárbara court and related institutions

The Ministry of Security is responsible for the preventive police and the DGIC, the criminal investigations directorate. The preventive police maintains law and order; the DGIC has to investigate crimes and collect evidence. As part of the Public Ministry, the public prosecutor institutes proceedings against criminals. The task of the public defenders is to guarantee legal defence for poor people. The drastic renewals of the Public Ministry in the 1990s (Honduras 1993) have made it easier for people to press criminal charges against another person, although I shall explain in this section that the

public prosecutor system in Santa Bárbara is not functioning well and is still harshly criticised for its poor operation.<sup>2</sup>

Furthermore, some twenty-six graduates in law (*licenciados en derecho*) worked in Santa Bárbara at the time of this research. Three of them were *abogados*. The *abogado* is a lawyer who has completed an examination before the Supreme Court and who may also act as a notary (Espinal Irias 1990). The common practice in Santa Bárbara is that the *licenciado* and the *abogado* do the same jobs, including the notarial acts. The *abogado* signs the documents in case the *licenciado* is not permitted to do so. People who consult a lawyer do not distinguish between the *licenciado* and the *abogado*, and in local terms they are called either *abogado* or *licenciado*.

Finally, the Human Rights Office, a regional auxiliary branch of the National Human Rights Commissioner, works on the sidelines of the court.<sup>3</sup> The Human Rights Office investigates illegal detentions of people by the police, and researches case files to detect irregularities. Furthermore, the Human Rights Office mounts campaigns about human rights and is actively involved in counselling women who are confronted with domestic violence.

#### *The justice of the peace*

The judicial functionary that is most known and visited by villagers is the local justice of the peace (JP).<sup>4</sup> He runs an office in the municipality building in the main village in which he and the secretary receive clients and draw up documents and reports for the regional judge.<sup>5</sup> The typewriter (one of two available in the village) on which the secretary of the JP types declarations, witness statements and inspection reports, is awarded a central place in the office.

The JP is appointed by the Supreme Court and is part of the state judicial system. He has usually been a committed political activist of the political party in power. According to the official regulations concerning the appointment of judges, the JP should be a legal expert who has finished the study of the law, but this is not the case in El Zapote. The local requirements for becoming JP are that one should know how to read and write; and only when a new JP starts his job does he receive training about his tasks and obligations and the completion of legal procedures. The JP is replaced every four years after the general elections.

The JP in El Zapote may impose fines of up to 90 lempiras.<sup>6</sup> Criminal acts that require higher fines are directly sent to the regional court in Santa Bárbara. The JP's task also includes assisting with the gathering of evidence in criminal investigations (Espinal Irias 1990). The JP will inspect the location where a crime has taken place and interrogate witnesses.

Every hamlet within the municipality borders has its own assistant mayor, who assists the JP. In the main village, the assistant mayor job rotates among the members of

the municipal council. The assistant mayors handle small conflicts that do not entail violence, like small thefts and neighbours' quarrels. The JP settles conflicts that result in blood from wounds or slaps. In contrast to the JP, the assistant mayors are not allowed to send out arrest warrants.

The JP of El Zapote, Beto Rodriguez, was born in El Zapote, where he worked as an agricultural producer. Being a Liberal Party activist, he became appointed JP in 1994 after his party won the general elections. He received courses about the tasks of the JP, which he defines as 'to administer justice and to be impartial in criminal cases, public and private'. As JP, he learned to apply a limited number of laws, among which are the rural police law, the penal code, the procedural code, and the Constitution of the Republic.

Beto is not a highly educated outsider, but he is a villager equal to others. His position as JP does not automatically grant him the authority that he needs to do his job. Beto was not appointed JP because of his abilities, but because he was a liberal party activist. People are therefore suspicious about what he does. Beto recounted the following example: 'The money which I collect through imposing fines goes to the municipality. But the people think that I become rich because of the fines. I do nothing and I put the people's money in my pocket, they say'. Being a villager, it is difficult for the JP to uphold an impartial image of independent authority. One day, a group of villagers went to the Public Ministry and pressed charges against Beto. They said that Beto refused to conduct an investigation into a particular case. However, according to Beto, these people wanted him to charge a person for two crimes that were not committed at the same time, and that did not relate to each other. This was not in accordance with the law and Beto refused their request. The villagers thought that he had not been impartial and that he favoured the offending party. Beto said that he learnt to consult his superiors as often as possible to cover himself against the complaints of the villagers.

Murders were common occurrences in the village, and Beto found them extremely difficult to deal with: 'The people are angry because they say I do nothing to arrest the murderers. But that is not true. Why should I send out an arrest warrant if there are no police to arrest the person?'

The JP who had been in charge before Beto had been known as the 'judge who was afraid of blood'. During our stay in the village, this man refused to investigate at least two cases of bloody machetazos (fights with machetes). In the first case, two cousins fought over an inherited plot of land, a conflict that transcended generations (Chapter Four). In the second case, a mentally retarded man named Monchito became angry with his mistress, ran out of her house and hit the first person he saw with his machete. The father of the victim, a young boy of sixteen years old, went to the Santa Bárbara court 'to demand justice'. Not that he wanted Monchito to be punished, he said, but he wanted to file a complaint against the JP about his behaviour. Beto still dealt with the

consequences of the bad reputation of his predecessor. But he also realised that he had to act when confronted with a murder case, and that his actions would be interpreted as 'mingling in the conflict' instead of impartially rendering justice.

Being a villager means that the JP has the advantage of knowing the people and the background of conflicts. However, he is almost inevitably related to one of the parties, which makes it very hard for him to gain the necessary authority and impartiality. Moreover, people were not convinced of Beto's abilities. Beto made procedural mistakes -intentionally or not- in several cases, after which the regional court declared the cases inadmissible. The duped parties blamed Beto for being incapable to fulfil his role as the JP.

Besides being a villager like everyone else, the political character of Beto's appointment meant that nobody considered him as an independent authority whose judgement could be trusted and that his was a reliable institution to turn to. As an activist of the Liberal Party, he was not able to convince members of other parties, as well as other fractions of the Liberal Party, that he would not favour his political friends above others.

Recently, the DGIC's role in collecting evidence has been enlarged at the expense of the JP's responsibilities in this respect. Moreover, the Supreme Court has started to take seriously the requirement that the JP should be a legal scholar.

#### *Access to the judicial system*

The villagers have easy access to the JP, even though they have little confidence in his impartiality and expect little result from his rulings. As soon as a case has been passed on to the district court in Santa Bárbara, however, the easy access disappears.<sup>8</sup> Articles 82 and 83 of the Constitution (Honduras 1994) guarantee access to the court and defence for the poor, but poor people actually lack access to the judicial system because of the obligatory involvement of lawyers.

A consultation with a licenciado in Santa Bárbara cost 150 lempiras (US\$11.50) in 1997, a price that was settled on by the National Council of Lawyers. Lawyers in Santa Bárbara acknowledged that the price for a consultation restricted poor people's access to the judicial system. One of them said:

*The price is too high. We can decide to drive it up but we cannot lower it because then they will throw us out of our profession. I often have clients who are too poor and cannot afford it. They prefer to lose it [property]. So we stick to the people who can afford our services... Because of the obligation that you need a lawyer, except in cases in the labour law sphere, we had the system of the 'lawyer for the poor' in the past. And now the Supreme Court has introduced the public defence. Here in Santa Bárbara we have three [public defenders], each chamber has one. These are young people, recently*

*graduated with no experience. They are from outside, not from here... they do not earn much because they are employed by the government. But in reality... they take good care of themselves.<sup>9</sup> The only thing that is really for free is the Juridical Advice Centre (Consultoría Jurídica) in the capital, where university law students gain experience. But I would not recommend submitting complicated conflicts to them. If you want to modify the spelling of your name, okay, but one cannot leave serious business to them.*

Hiring a lawyer does not mean a once-only payment for a consultation: clients have to pay for every document drawn up by the lawyer during the course of the procedure. Landholders who had been involved in court cases conveyed that they had never understood what their lawyers were doing, and that they had to make payments for reasons they did not understand.

People facing criminal charges who are not able to pay for a lawyer themselves are now assigned a public defender. I came across indications that the introduction of public defence in court practices influences the course of criminal procedures. Although somewhat disordered, there was a relatively small pile of criminal case files in the archives of the Third Chamber labelled 'sentenced cases'. A large majority of these sentenced cases (more or less 75% of the case files from this pile) involved a public defender. The majority of the case files in the large piles of discontinued criminal procedures concerned private lawyers. A possible explanation is that, in contrast to private lawyers, public defenders seem to be keen on completing the procedure. Private lawyers often manipulate the charges so that bail can be paid and the accused is set free, after which the procedure is discontinued. To public defenders, on the other hand, it was essential that they produced completed and sentenced cases.

The lawyers referred people who were too poor to pay for the services of a lawyer to the Human Rights Office or the National Office of Women.<sup>10</sup> The head of the Human Rights Office confirmed that she received people who had been referred to her by one of the lawyers. She often advised poor people to abstain from entering a juridical procedure because:

*... it costs more than it yields. People have rights, but in order to be able to assert these rights they have to pay first. That is injustice. We [the Human Rights Office] can only go to a friend and beg him to do the case for free. You absolutely need a lawyer. Without a lawyer you end up with nothing. You need a lawyer to prevent your case from fizzling out.*

Villagers in El Zapote addressed the problem of court access with the words 'you lose more than you gain'. The 'you lose more than you gain' phrase stems from Sebastian Ayala, a man who ended up dirt poor and robbed of all his properties because he insisted on defending his rights to a plot of land in the regional court. He and his brother-in-law

Lucio Pineda disputed land in the hamlet of Yoro, which is locally famous for its violent land conflicts (Chapter Two). The Pineda father died without dividing his properties. After his death, Lucio, who was his illegitimate son, stole the papers of his father's land, including the original land title from Yoro. The land had originally been bought by a group of brothers, the descendants of whom all claimed land in the area. His father had never possessed all the Yoro land, but he happened to be the person who kept the original title. There were dozens of landholders on the original Yoro land, and Lucio was only able to gain control over a small part of it; the part that his father had held before he died. Lucio went with the papers to the Public Register of Property in Santa Bárbara and received a public deed.

Sebastian's version of the story was that Lucio refused to recognise the claim of Mirsa, who was his sister and the wife of Sebastian.<sup>11</sup> According to Sebastian, Mirsa only wanted fifty manzanas to cultivate coffee. It was not clear whether she really claimed fifty manzanas, which is a lot in terms of this village. Sebastian conveyed that Lucio refused to reward Mirsa's claim and that this was why Sebastian went to court. He started a procedure that took years, during which he sold 8 manzanas of land, three mules and five cows to pay the lawyer. Sebastian claimed he had already paid 3,500 lempiras to the lawyer but without results.

Other villagers contested Sebastian's version of the story. Their story was that the deceased father named his illegitimate son Lucio as his heir, but on the condition that he should give six manzanas of the land to Mirsa. She received the six manzanas, but a few years later Sebastian decided to sell Mirsa's land to Lucio. The sale was laid down in a private deed drawn up by the mayor. Nine years later, Sebastian decided to reclaim the land, which was a coffee field. He went to the plot with two day labourers to pick the coffee, but a son of Lucio saw them working and warned his father.

It was Lucio who sued Sebastian. Lucio went to visit the mayor who had drawn up the deed of purchase. The mayor said that he did not remember if he was the one who had made up the private deed, and Lucio became enraged. He shouted that the mayor was a 'liar without shame' and that there had also been other witnesses. The mayor became scared and said that he must have forgotten it. Lucio had the deed that was drawn up when Sebastian sold him the land, and there were also witnesses who knew that Sebastian sold him the land. He visited a lawyer in Santa Bárbara who told him that he had a winning case.

When Sebastian understood that Lucio had sued him, he went to the political leader of the Liberal Party, Mario. Mario asked him if he had a document for the land but it turned out that he had nothing. Mario said that there was nothing he could do about it. Then, Sebastian went to the mayor as well. Sebastian was a member of the Liberal Party and the mayor, a prominent member of the Nationalist Party said that his party would be willing to 'help' him because they had the best lawyers. Hence, Sebastian became a member of the Nationalist Party and the Party provided him with a lawyer.



In order to pay for this lawyer, Sebastian had to sell everything he owned. He had not been poor; he had some land and cattle, but in the end, he had nothing. The procedure developed into a lingering process that continues to this day because neither party has enough money to push the procedure ahead.

Villagers do not use this case to talk about who made true and false claims on the land. Instead, they refer to it in order to talk about the consequences of contact with lawyers or courts. The story serves them in their conviction that lawyers are expensive, that they cheat poor people and that only involvement in the right political party makes lawyers act. Hence, if a person is not able to comply with the conditions (wealthy and active in a political party), it will be very difficult to secure a lawyer.

The difficult question of court access is not only related to the prohibitive costs of lawyers. People who become involved in civil or criminal lawsuits enter a world of mysterious and unknown actors: judges, court personnel, national police officers, DGIC researchers, the regional Human Rights Commissioner, prison personnel, public defenders and lawyers. People have to travel from remote mountain villages to the district town; they have to stay the night in strange places; they have to deal with jargon, documents and ways of reasoning that they do not understand. All these aspects make involvement in court cases something that is extremely unattractive, even to people who may be able to afford to do it.

#### *Procedures and practices*

The phrase '*muertes a los jueces vendidos*' (including its spelling mistakes), means 'death to the corrupt judges'. Painted on a white wall in big blue letters, it cried out to all the passers-by at the technical school in the centre of the town of Santa Bárbara. The writing was apparently an act of frustration by someone whose sense of justice had been seriously offended. What is wrong with the role the Santa Bárbara court plays in rendering justice and how do different actors perceive the working of the court?

The problems of the judicial system in Santa Bárbara that people mentioned were:

- The problem of access to justice (previous section)
- The involvement of politics in the system
- The poor workings of the Public Ministry and the DGIC
- Problems related to the internal working of the court

Supreme Court magistrates are elected by the National Congress every four years after the general elections. The choice for Supreme Court magistrates is merely a political act. An important lawyer and influential advisor of the Public Ministry conveyed to the press:<sup>12</sup>

*Judges are not selected according to the adequate mechanisms, correct, a real selection, and through an investigation of their antecedents which prove that they are honest and reliable. [In fact] people who are mentioned by some congress members are appointed.*

Romero and Salomón (2000:69) analyse the appointment of Supreme Court Magistrates as political 'clientism':

*When they have achieved such a position, they have become involved in multiple political compromises and they owe many favours to powerful economic sectors, which they will pay through using the influence that their jobs permit, to assure favourable results in trials of their patrons, protectors or allies. The clientist spiral is extended to their task to name the magistrates of the courts of appeal, judges and other judicial officials.*

The Supreme Court names the JPs, the judges of the courts and the magistrates of the court of appeals. Given that Supreme Court magistrates are necessarily involved in politics themselves, the appointments of JPs and judges are also political. JPs and judges at the district level are appointed through political channels and not on the basis of their experience and knowledge. Consequently, already at the very beginning of their career, judges and JPs are committed to political influences those responsible for providing them with their jobs. The political character of their appointments makes many of them are only one step away from becoming politically corrupt.

Another aspect that frequently popped up in conversations about the working of the judicial system was the poor functioning of the Public Ministry and the DGIC. Both lawyers and villagers thought that the officials of these institutions were involved in corrupt practices and that they lacked interest in performing their tasks. Lawyers in Santa Bárbara harshly criticised the investigations of the DGIC. As one of them stated:

*Those boys kill time dancing and visiting parties. They do not even know how much a bullet of a .22 weighs, or of a .38. The only thing they do is to count the perforations [in the bodies of people who were shot].*

I shall later discuss how and why villagers in El Zapote openly questioned the functioning of the DGIC.

The heart of the problematic working of the judicial system are procedures and the internal functioning of the court. Lawyers indicated the working of the Santa Bárbara court using such words as 'abominable', 'rotten' and 'backward'. Civil and criminal lawsuits are essentially procedures on paper assembled in a case file (*expediente*) (Karst & Rosenn 1975, Livio Tabora 1987, Livio Tabora 1994, Padilla n.d., Zúniga n.d.). Both

parties and the judge add documents to the case file: declarations, evidence, requests to interrogate witnesses or to execute inspections; reports of inspections, public and private property documents, expert reports (such as from a forensic doctor) and testimonies. Furthermore, the case file contains the written conclusions of the respective lawyers and the sentence. The judge does not meet the involved parties as all proceedings are conducted on paper and not in person; he generally does not hear and question witnesses of the involved people, which makes it difficult for him to form his own independent view of the conflict that he is supposed to resolve.

The judge unites all required roles in himself and can judge indiscriminately. He investigates and collects proof, and only he interrogates the witnesses. The next section addresses some examples of case files of land disputes that painstakingly exhibit the weaknesses of the investigative task of the judge. In civil procedures, the judge is merely passive: he only carries out the requests of lawyers with respect to the inspection of sites and the interrogation of witnesses. Yet in most cases, he does not do this himself, but orders the JP to do it instead. The JP submits written witness statements and inspection reports; and the judge does not extensively check these reports but just takes them for granted whether or not they make sense. In criminal case files, the judge plays a more active role that may entail such actions as ordering a medical investigation of wounds or the questioning of witnesses and suspects brought in by the Public Ministry.

The argumentation of the judge in case files is often unclear and very limited, using only a small number of laws to generate and substantiate his conclusions and sentences. In Chapter Two, I explained that judges have difficulty interpreting the law with regard to land rights. I also noticed that in many case files, civil and criminal, the judge had copied the verbatim text of the conclusion drawn up by one of the lawyers.

The multiple roles of the judge as investigator and administrator of justice, as well as his solitary position with no oversight, make him vulnerable to manipulation and more inclined to favour important persons. As one of the lawyers in Santa Bárbara stated about land disputes:

*The problem is that in such cases one can easily have irregularities. Judges are easily influenced by economic or political power. If the case is a large landowner against a peasant, then he will choose for the landlord and he will order the land cleared. That is the way it works with the majority of the judges.*

The judge 'follows the doctrine', as I was often told: he sticks to trusting documentary evidence and looks for the right articles in the law. He is not interested in researching the background of the conflicts that they deal with. The quality and the content of the evidence that is brought up in court cases is often flimsy and unconvincing. Witnesses, for example, are expected to sign declarations that have been previously drawn up by one of the lawyers. In many case files, I found lawyers protesting that the witnesses

from the other party were relatives or friends of the involved person and could not be considered to be independent. JP inspection reports often only created more confusion and, moreover, the JP was not the reliable and independent party that he was supposed to be.

A civil court case never ends without lawyers continuously pushing the procedure ahead. The client has to pay the lawyer over and over again to achieve this. If the procedure is not pushed ahead by the lawyer, the file ends up in the archives without a sentence. A private lawyer might not be interested in pushing the procedure ahead because, when nobody acts, the case file is abandoned and ends up in the archives. If this is possible and in the interest of the client, the lawyer will not act until the criminal charge lapses. In contrast, the prosecutor of the Public Ministry and the public defenders are interested in pushing the procedures ahead, as they are judged by the percentage of convicts that inhabit the prisons, a percentage that has to be increased.

A criminal procedure abruptly ends when the suspected party is released on bail. Paying bail does not mean that the procedure has ended, but this is nevertheless the practice. The discontinuance of a procedure after the payment of bail is so common that people in Honduras do not seem to realise that, officially, it has to continue. Paying bail is thus practically tantamount to freedom. Corrupt state officials, for example, escape charges of fraud or abuse of authority by paying bail.

The untimely end of procedures is not a specifically Honduran feature. On the basis of a study in the US, Galanter (1981) concludes that the majority of court cases untimely end because of abandonment, withdrawal or settlement. He considers this to be positive, because courts would otherwise become overloaded. In his view 'courts are arenas in which various kinds of dispute (and non-dispute) processing takes place' (1981:3). A court provides a backdrop of norms and procedures against which negotiations and regulation in both private and governmental settings take place. 'Thus courts not only resolve disputes: they prevent them, mobilise them, displace and transform them' (1981:11).

The causes and effects of the unfinished court cases in Honduras are, however, different. The poor's lack of access to justice means that people may want a judge to issue a sentence in a dispute, but they know that it is impossible. The untimely end of court cases does not mean that this *intentionally* happens according to the wish of the involved people. A procedure may be cancelled because the people involved are no longer able to pay the lawyer. This doesn't mean the conflict has already been solved through mediation or another means. Another example is that, although this is against the law, criminal procedures often stop after paying bail, which may also be against the wishes of the victim of a criminal offence.

It is easy for the best lawyers (and the best paid lawyers) to manipulate the course of events during processes. For example, common actions for a lawyer are:

- To continuously accuse the judge or the lawyer of the opposite party of procedural failures, for example, the exceeding of terms
- To manipulate the formulation of criminal charges so that bail will become possible
- To push ahead or abstain from pushing ahead the procedure, according to the clients best interest
- To produce as many documents as possible to the disadvantage of clients, thus producing so many papers that the judge will not be tempted to read the whole case file

Hence, the nature of the procedural paperwork, the multiple role of the judge, the poor working of the Public Ministry, the inferior quality of investigations and evidence, the way in which lawyers push ahead or stop procedures depending on the interests of their clients: all are aspects of the emergence of the '*jueces vendidos*' (bought judges) referred to on the walls of the technical school.

To my surprise, the head of the human rights office in Santa Bárbara told me that she had not found irregularities in the working of the court. She had researched case files, she said, but they were all dealt with according to the procedures. A possible explanation for this is that she did not want to directly attack her confreres in the court. Being new in town, she had to fight to be taken seriously by the judges and lawyers. Another explanation, however, is that she only investigated the sentenced case files and that she did not pay attention to the unfinished case files that fill the archives.

#### *Facing corruptive practices*

Relations between villagers, the police and the judicial authorities are extremely important in the construction of local representations of justice. On the one hand, people complain that they do not have access to the judicial system because they are poor and, on the other hand, when they have access to the system, they are confronted with corrupt practices turned to their disadvantage.

A large-scale theft of coffee in 1997 involved a large number of villagers whose perceptions of justice took a definite turn toward a complete distrust of authorities. When I arrived at the house of Rosa and Excequiel in March of that year, I immediately noticed that something was wrong. This was uncommon because they usually concealed their daily 'disasters' very well until weeks or months later when they mentioned them as part of a joke. This time, Excequiel excitedly began to tell me that he had a problem, which was the reason why he did not visit us earlier in our house in Santa Bárbara. He had sold his coffee harvest to a man from Olancho.<sup>13</sup> However, he had never received his money. He was not the only victim: more or less fifty producers lost parts of or, in some cases, their entire harvest. Excequiel:

*He is called Nelson Monterossa but we now know that he uses the name of Alexis Martínez as well. He also bought coffee here last year. Ramiro Variento sold him his harvest that year. The Olanchano paid a good price. This year he came again and he was recommended by Ramiro, who said that the man was very honest. So we all sold him our coffee, even though he was a stranger. It was time to sell, and the price he offered was so attractive that other [local] buyers stopped buying. The man appeared in mid-February for the first time and he transported three trucks loaded with coffee to his warehouse.*

Another victim was Toño Pineda, who said: 'I trusted the man. I saw him pay good prices to others. So I helped him'. They received cheques for their coffee, but they found out later that he had signed them using different names. It was Toño who discovered in Santa Bárbara that the bank account to which the bank drafts belonged had been cancelled the day before. He then knew that something was wrong.

The Olanchano had not only been stealing coffee in El Zapote but also in neighbouring villages as well, and the duped sellers reckoned that the man had run off with five million lempiras worth of coffee, more or less. The victims in El Zapote lost a total of 800,000 lempiras (more than 60,000 US\$) worth of coffee. Excequiel lost seven bags of coffee, which were half of his total harvest. Toño lost his entire harvest and he also lent the Olanchano 9,000 lempiras.

The group explored several theories about what had happened. One of their theories was that the man bought coffee without having much capital. He bought the coffee from one person, which he resold to a third party, then used the money he earned to buy coffee from another person. The man started to run up debts after a while because of the fluctuations in coffee prices. Another theory of the duped coffee producers was that producers from a neighbouring village - of which the inhabitants were known as much more aggressive - threatened to kill him if he didn't pay for their coffee, after which the Olanchano had run off. Both theories explained that the man did not have the intention of running off with the coffee at first, which was important to them to justify why they had trusted the man.

The first thing the group decided to do was inform the DGIC and the national police.<sup>14</sup> Their story was that, while they were waiting to be received in the DGIC offices in Santa Bárbara, they saw the Olanchano walk out of the office. He had been arrested for another criminal offence but had just been released. The DGIC official listened to the villagers' story about what happened but he said that it would be impossible to charge the man with theft because they all voluntarily handed their coffee over to him. Hence, he didn't steal it according to the law. The charge had to be fraud. Toño went to the Third Chamber of the Court to request information. They told him that a person charged with theft could not be released on bail, while this was possible with a charge of fraud. This would mean in practice that if the DGIC were to arrest the

Olanchano, he would be released in five minutes after paying the amount of 1,200 lempiras. The functionaries of the court told Toño that this would not be the way to get his coffee back. The best way, they said, was to confiscate the Olanchano's properties.

Toño was convinced that the Olanchano had bribed the DGIC. Several persons in Santa Bárbara told him that they saw him drinking beer with the head of the DGIC. Toño's lawyer said that if the Olanchano bribed the DGIC, then there was nothing he could do. He advised the victims that they only could wait and see if the DGIC would start an investigation.

The group felt completely abandoned by the authorities. Toño said: 'If we would know that the law would punish him we would charge him. But if they arrest him he will be out in five minutes. This is also the way it works for people who steal millions from the state'. The group therefore decided to start an investigation themselves. They went to the house of the Olanchano in Santa Bárbara only to discover that, unlike a week earlier, nobody lived there anymore. Thereafter, a delegation travelled to the district of Copán to a coffee export house. The cheques which Toño and the others had received belonged to a bank account in the name of this export house. The victims had heard that there were still 5,000 bags of coffee in the warehouse which belonged to the Olanchano. The owner of the export house, however, denied this and stated that the Olanchano still owed him 600,000 lempiras. Although the delegation did not believe him, they could not do more than travel back home. The group subsequently planned to travel to the district of Yoro because they understood that the man owned two haciendas in that district. If this were the case, they would confiscate these haciendas.

At this point, however, the group dissolved. Most of the victims were desperately trying to solve their personal problems which stemmed from the loss of their harvest (no income, outstanding debts which could not be paid back, wives who became furious and blamed their husbands). Toño complained that only few producers took the time to join the self-made investigation team. Many of them were afraid that they would need to hire a lawyer and that they would lose more money. Most producers implicitly blamed Toño as the person who had convinced them to sell to the unknown buyer. They argued that it was up to Toño to try and recoup the coffee or cover their losses. Toño became desperate because even the richest producers refused to co-operate and to help him in any way. Excequiel said:

*Nobody is to blame. It isn't Toño's fault, these things happen... He only saw that the man paid good prices. You know Tomas? He knew that the man was not to be trusted, but he did not say anything.. Why didn't he tell the others? He was afraid. And he probably thought: okay when others want to lose their money, let them do it.*

A few months later, Toño decided to hire a lawyer in San Pedro. This lawyer requested 30% of the value of the missing coffee for his work. The group would have to start paying him this after the Olanchano was captured. However, nothing happened and they never succeeded in capturing the Olanchano or in getting their coffee back. The group felt deceived once again, this time by the lawyer from San Pedro.

The case of the disappeared coffee clearly demonstrates the impotence of villagers with respect to the behaviour of police, the DGIC and the judicial system. The villagers suspected that the Olanchano bribed the DGIC and, although no proof existed of this bribery, the DGIC did not visit the swindled coffee producers nor even investigate the charges. Toño's lawyer and the personnel of the Third Chamber clearly explained how the Olanchano would be able to escape the judicial system through the definition of what happened under the legal category of 'fraud', instead of what the producers felt was 'theft'. He would not even need to actually bribe someone to be set free. He would only have been obliged to pay a minor bail fee, minor compared to the value of the coffee he had stolen.

The theft of the coffee by the Olanchano was a serious offence involving a large group of victims, for whom the impact on their daily lives has been significant. Nevertheless, there was no authority to come and investigate the case and to help the victims. The involved villagers were immediately confronted with the fact that the suspect made use of protective relationships. They also had difficulties in dealing with the juridical translation of the delict into 'fraud', which in no way covered how people felt about it. The result was thus that, confronted with bribery and lack of interest in their case, the group of victims felt abandoned by the authorities and experienced the consequences of a profound lack of legal security.

#### *The paradox of class justice*

The term 'class justice' refers to the legal system's role in maintaining the class character of the state (Collins 1982, Thompson 1987, Luckham 1987). Studies may use the term to refer to different phenomena (Haaß 1990). Class justice may refer to judges who originate from one and the same class, which impedes them from acting impartially in relation to other classes: law is upheld in such a way that it favours a particular group. Another interpretation of class justice refers to the sentences of a court that favour one social group, and to the law that is configured to become an instrument for the ruling class. In this interpretation, the content of the law is manipulated so that it favours a certain group. In Honduran newspapers, I came across the term class justice regularly, meaning the same as what landholders in El Zapote called 'the judicial system favours the rich'. Class justice, in the way the term pops up in Honduras, refers to an upholding rather than a content argument. People who refer to it do not consider the *content* of the law as favouring the rich; in their opinion, it goes wrong in the process of



*upholding* the law; a task which the state fails to perform and in which the rich become favoured.

Judges are corrupt; lawyers line their own purses at the expense of the poor; sentences are delayed or do not evolve at all; jails are filled with poor people while white-collar and other well-to-do criminals leave within a day. In such perceptions of the judicial system, the content of law is above suspicion: the content is merely unknown. In the case of the disappeared coffee, for example, the duped landholders depended on legal experts in Santa Bárbara to tell them what the law entailed. People are not interested in getting to know the detail of the law until the moment they are confronted with a specific problem. Basically their idea of the law is that the law expresses the right values and norms: 'right' in the sense that they are the same as their own values and norms.

In addition, the Honduran view of class justice is about access to justice for the poor, a problem that nevertheless is not only a question of having capital. We have seen that landholders differ in their abilities to enter a lawsuit, but that this difference is not only a question of money or class. Between Sebastian and his brother-in-law Lucio, for example, there was not much of a class difference. Both men were more or less equal in terms of poverty and property. The crux of their participation in the conflict was their capacity of to participate in the political game, their abilities to read and write, and to control the work of a lawyer. These issues seemed to work to Lucio's advantage. He had access to a good lawyer. He had some knowledge about property claims, the value of title deeds, and the working of lawsuits and the court. Sebastian, on the other hand, was no longer able to pay his lawyer as he had sold everything he owned. He played a political game but it did not help him in any way.

Talking about their perception of justice with landholders, it struck me that they somehow tried to uphold a paradox: a paradox between their own cynical experiences with the judicial system, and their high expectations about the role that the judicial system should play. In spite of the failure of the judicial system to provide legal security, people stick to believing in it since there is no alternative. They want to have access to it even though they know the risks and they may sell all they have to be able to defend their contested rights in court. They do not understand the legal procedures and the expert jargon, they know that they will be cheated by lawyers and that the chance is very small that the outcome will be favourable, unless they are able to follow the same strategy as rich people do. Yet when all their conflict avoidance strategies have failed they have no choice: they have to enter the system and believe in it.

### Land disputes: three cases

This section looks at three examples of land disputes in the Third Chamber of the Santa Bárbara court. When a conflict enters the public arena of a court, it is transformed

because its history and content become translated into legal categories, but the translation takes place outside of public view (Galanter 1981). Landholders do not understand this translation. They have no idea why the judge does not simply hear their stories and arguments, but instead only grasps those aspects of the story that can become part of the legal doctrine and translated into juridical arguments.

What happens in a court case and why does it happen? How do civil procedures tackle problems of contradictory claims of ownership? How are land conflicts treated in criminal procedures? Are problems in lawsuits a simple question of bribery, or do more complex processes contribute to landholders' feelings of injustice and legal insecurity?

Before I introduce the cases I am going to present in this chapter, some general comments on the case files are necessary. The case files of the Third Chamber, all recent date (as from 1980), were in a disorderly pile in the filing room, where the court also keeps the collected material evidence, like machetes, guns, rifles, stolen bicycles and bloody clothes. Since I was looking for case files in which a conflict over land had played a visible role, I had to look through hundreds of case files. There have been attempts to order the case files. Some rubrics were still visible: civil, criminal, condemned, divorces and adoptions. Yet the system was in collapse and a clear order no longer existed.

I reconstructed thirty land disputes, which often entailed more than one case file. I searched for civil and criminal cases but, in the latter category, it was more difficult to establish if a dispute had concerned a land conflict. When the accusation was 'land occupation' or 'usurpation', this obviously had something to do with land, but I also came across land conflicts where the accusation was 'damages', 'homicide' and 'murder'. Most criminal files did not even contain a sentence.

The Court of Appeals' role was striking. With regard to civil case files, the Court of Appeals declared many procedures invalid because of elapsing time limits and other technical failures in completing procedures. It is unclear what happened after the court declared a procedure invalid. Some cases started all over again, some were transferred to another Chamber and in most cases, it remained unclear whether these procedures were done again. Furthermore, the Court of Appeals, just like the judge of the Chamber, often copied the demands and conclusions of the lawyer who appealed to the letter, which created the impression that the Court of Appeals does not rule independently. My impression of criminal case files was that the Court of Appeals tended to maximise sentences in cases in which the original judge had given a milder punishment.

Civil case files about land conflicts are mostly vindication procedures to determine who has the best claim and who is the rightful owner of the land. The documentary evidence in this case files was often the original land documents. The involved landholder had submitted the original document but it had never been returned: he or

she again needed a lawyer to file a return request. The INA played a role in several of the studied case files. As the third case shows, the INA and the court of justice wrestled with the question of the INA's jurisdiction in determining who claims what rights to the land.

The next case file that I discuss concerns a prolonged inheritance conflict, fought out in two subsequent civil procedures: a vindication procedure and a demand to measure a plot of land.<sup>15</sup> In the case after that, a land conflict resulted in a 'usurpation' criminal procedure of. This case involved people and land in El Zapote, which made it possible to relate the content of the case file to what people in El Zapote knew about it. The third conflict is about land that the INA guaranteed to a peasant group; a guarantee that was contested by the original owner of the land. The agrarian reform background of this escalating conflict makes the setting different from the other two cases.

I chose to present these particular cases because they represent general characteristics that I found in all case files, which I will later discuss as the main features of legal procedures and court practices that contribute to legal insecurity. In my reconstruction of these three cases, I intend to fill in the knowledge gap that originates from reading case files by suggesting possible explanations for each conflict. This is not just 'guessing' out of the blue, but is based on what we have learned about land disputes in the course of this book and, particularly in the second case, on villagers' knowledge about the case.

*Land dispute: a civil vindication procedure*

This case involves a vindication procedure that treated a conflict between brothers and sisters over the inheritance of their late father. It started in the First Chamber in 1983 and subsequently proceeded to the Third Chamber. Gloria, one of the sisters, asked the court to restitute a plot of land of eighteen manzanas that she considered hers, but which had been occupied by her three brothers and her sister (who were children of another mother). Gloria presented a public deed to the court that provided evidence that she bought the land from her father in 1981. She declared:

*More or less two years ago, the accused introduced themselves at my property behaving as if they were owners, although there is no a legal ground for this, and they caused severe damages because, on different occasions, they harvested a coffee field of four manzanas on my land. I summoned them to leave my property but this was to no avail because they argued that the property was exclusively theirs and that, in contrast, I have nothing.*

The defendants, three brothers and one sister, answered the demand through their lawyer: The land in dispute had been their father's, who had bought it with the

proceeds from a land sale. The father had requested and received court permission to sell their mother's properties after she died.<sup>16</sup> Their father bought thirty-seven manzanas of land with the proceeds from the sale of the mother's land.<sup>17</sup> The defendants declared that their father sold them the plots of land, on which they cultivated grains and coffee, and on which they had also built their houses ten years previously.<sup>18</sup> They held four manzanas each, and they had private documents which their father had given to them.

The brothers and sister further stated that the coffee field, which Gloria had mentioned in her accusation, did not fall within their own sixteen manzanas but within the original plot bought by their father. It had been completely abandoned, but they managed to rehabilitate it and make it productive. They admitted that their father had indeed sold land to Gloria, but in their opinion the sale did not include their own plots. Furthermore, according to the siblings, Gloria had never possessed the land.

The judge ordered the lawyers of both parties to present evidence. Gloria presented her public deed as her only evidence. The defendants asked the judge to interrogate three witnesses who declared that the brothers and sister possessed the land and worked on it, and that they held private documents. Another four witnesses outlined how the father distributed the plots among his offspring. They also declared that the father had a coffee field of five manzanas and that his idea had been to divide this field among his five children. After the presentation of this evidence, the case file provisionally ended.

Three years later, in 1986, the file was reopened when Gloria hired a new lawyer. This lawyer introduced more evidence in favour of Gloria's version of the story. Witnesses declared that the other siblings threw Gloria of her land and that the father had not sold land to the other children after the date of issue of Gloria's public deed (which was supposed to prove that they could not have the land). There was no reaction from the defendants' lawyer, but witness declaration statements supporting their side appeared in the case file. Gloria's lawyer objected to the fact that these witness declarations had been typed on normal paper instead of certified paper with the required stamps. He requested that the statements be typed on certified paper, but the defendants did not react within the prescribed twenty-four hours.

Gloria's lawyer presented his conclusions: Gloria had full ownership of the land and her accused siblings should be sentenced to pay damages, losses, and the restitution of the land. According to the lawyer, the defendants' witnesses only submitted superficial declarations and they had not been able to prove that they had possession in the land (which would generate some kind of claim).

The defendants' lawyer did not formulate his conclusions, but he requested that the judge declare the whole process invalid because of the case's large time span, taking place between 1983 and 1986. He argued that such a long time span within one procedure was only allowed in cases with circumstances beyond one's control, such as

natural disasters. Gloria's lawyer reacted by accusing his colleague of delaying tactics and lack of professional ethics.

Although the judge rejected the defendants' proposal that the procedure be declared invalid, the court of appeals did accept the argument. After reviewing the case file, the court of appeals declared the procedure invalid because of the many technical mistakes. Thereafter, the judge of the First Chamber declared himself incompetent and the case file was sent to another chamber: the procedure had to start all over again.

Gloria's lawyer immediately began the new procedure by adding the witness declarations to the new case file. These declarations, nevertheless, appeared with numerous deletions in the case file data. The defendants did not respond and, in 1988, the judge pronounced sentence. The judge argued that 'the defendants let the procedure pass by without making use of their rights, and therefore they do not negate the facts on which the demand is based'. Furthermore, he considered that Gloria was the owner of the land and she was within her rights to demand it back from anyone who may possess it.

Gloria thus won her case and she immediately demanded the sentence be executed. The accused party reappeared, however, represented by a new lawyer who again requested that the judge declare the procedure invalid. The new lawyer argued that Gloria demanded the execution of the sentence without fulfilling the legal requirement that she should have notified her brothers and sister about it. He also pointed out that the defendants' former lawyer had been appointed judge in the First Chamber during the course of the procedure and this was why Gloria's siblings had lost their lawyer. The judge of the Third Chamber who treated the case should have known this because the appointment was public and it concerned his own colleague. The defendants' lawyer further argued that no person should be convicted without his constitutional right to defense (art. 82). The judge considered the plea of the new lawyer and he decided to declare the sentence execution orders invalid on the basis of the argument that Gloria should have notified her brothers and sister. He did not, however, declare the entire procedure or the sentence invalid.

One year later, the defendants' lawyer again tried to declare the whole process invalid. He argued that one of the brothers died in 1986 and that his heirs should have been summoned in his place. Yet his request was turned down once more. The second case file ended.

The dispute continued in 1990 when a third case file was opened in which Gloria's sister, Saturnina, sought to 'determine the boundaries of a property and [be] given back what she possesses'. Her reason for presenting this demand, she stated, was that during the execution of the previous sentence:

*... they unjustly gave thirty-seven manzanas [to Gloria].. which causes us to be deprived of a coffee field of five manzanas as well as our little plots that our father*

*gave to us, and in my case a plot of one and a half manzanas. I think that I should not have become the victim of a inappropriate measurement because, if the corresponding sentence grants her eighteen manzanas, she should give back the land that does not belong to her...*

Saturnina's demand referred to the execution of the second case file sentence. Although the execution was declared invalid in that procedure, Gloria apparently proceeded to measure the plot she considered herself entitled to. Gloria answered the demand:

*She [Saturnina] wants to surprise the judge because I honestly bought eighteen manzanas, more or less, from my late father, the property boundaries of which he defined in the public deed and if, in reality, this is more than eighteen manzanas this is correct because the surface area is enclosed by the same boundaries. We understand that not one seller of land knows the exact number of manzanas he sold in the first place because it is not measured with a precise device nor with a basic measure, but he sold it more or less, but it is precise when the seller specifies the boundaries, which means that neither the seller nor the buyer will exceed this boundaries.. the accusing party pretends to revive the death because they did not argue this during the vindication procedure, presumably because they took the time to elaborate this private document [presented by Saturnina to sustain her claim], which does not have the same probative value than the public deed according to which I bought this land.. I cannot give back one inch of the terrain because I... respect the boundaries of the property, as the owners of the adjacent plots will affirm. I will agree to measure the plot in order to demonstrate to the judge that the boundaries of the plot that was sold to me are the same, which is important because I know that if the terrain is more than eighteen manzanas this does not mean anything because the seller and the buyer respect the boundaries and an estimation of the surface..*

Gloria thus argued that she possibly held more land than the eighteen manzanas she bought from her father, but the land within the boundaries was given in the public deed.

Saturnina's lawyer subsequently presented evidence, which consisted of Saturnina's private document and six witness declarations. These witnesses declared that, after the previous court procedure, Gloria claimed to be owner of all her late father's land , which included the land of Saturnina and her brothers, instead of the eighteen manzanas she was entitled to. According to the witnesses, the late father distributed his land between all his offspring, but Gloria eluded the law. The father never sold the whole plot to Gloria. Furthermore, Saturnina's lawyer requested a measurement of the

plot. The report of the measurement, however, did not arrive at court in the prescribed period and the judge did not allow an extension of the period.

The judge declared that he was not able to determine whether Gloria received more than she was supposed to, and that he did not have the special knowledge to be able to interpret the situation. He argued that Gloria did not do anything to counter the demand, but Saturnina did not present sufficient evidence to sustain her point. Additionally, he used the argument that the witness declarations were not relevant in this case because it concerned an immovable property in which the rights could only be determined by presenting documentary evidence and not through witnesses.<sup>19</sup> Saturnina lost her case. Her appeal arrived at the court of appeals too late and the third case file ended.

The case files of this inheritance conflict were stuffed with documents, requests and other papers. Through reading these case files, however, the background and causes of the conflict remained unclear. Four children received land from their father through private deeds and one child, at a later stage, through a public deed. The boundaries of Gloria's plot as specified in the public deed enclosed the complete area that was her father's property. This, however, included more manzanas than the eighteen she ought to have received, and also included her siblings' plots. She argued that the number of manzanas may be unclear, but the land she claimed fell within the boundaries as settled in her public deed.

It is possible that the father did not know the exact number of manzanas he had or how many he sold to Gloria. It is rather inconceivable, however, that he did not know whether he had thirty-seven or eighteen manzanas. For example, he would have known how much land he bought in the first place because he paid a certain price for each manzana. The boundaries as mentioned in the private deeds of Saturnina and her brothers, and the boundaries mentioned in Gloria's public deed, showed no relationship at all.

Based on my reading of the three case files, I see one possible scenario as an explanation of what occurred. This is that the father gave four manzanas each to Saturnina and her brothers, and then decided to sell the remaining land to Gloria. This would have been eighteen manzanas, more or less. In the process of issuing the public deed to Gloria, however, the boundaries of the whole property were incorporated as if they represented the boundaries of Gloria's eighteen manzanas. Gloria took advantage of this mistake to throw her sister and brothers of their land. Gloria took possession over her land only after her father's death when he was no longer able to control what she took.

What should the court do with this conflict and how should it evaluate the presented evidence? One problem that stood out was that the boundaries of the private documents and the public deed did not match at all. The judge, however, did not investigate the documents that were presented by the two parties. He confirmed that

the documents existed but he admitted that he lacked the knowledge to determine who had what rights on the basis of those documents. Furthermore, witness declarations were added to the case files but their content was merely taken for granted: whether or not they were compatible seemed not to be of interest to the judge.

In the verdict, the first judge followed the reasoning and conclusions of Gloria’s lawyer, because the other party was no longer represented at that time. He based his judgement on the principle that the ‘onus of proof rests with the accused’. In general, this would mean that those people confronting a demand but who are not able to pay for the services of a lawyer are declared guilty beforehand. Although the judge must have known that this was against the Constitution (art. 89), he nonetheless did so. Gloria’s siblings did not have a lawyer to write conclusions in their favour, and the judge seemed to have read only the lawyers’ conclusions. The lack of conclusions from the defendants’ side meant that nothing spoke in their favour, which meant a guaranteed loss of the case.

In the second process of Saturnina against Gloria, the judge declined the witness declarations in the favour of Saturnina by stating that they were irrelevant in disputing immovable properties. He considered that only documentary evidence was suitable to determine property rights. Without witness declarations and without valid measurements, Saturnina did not manage to prove her allegations against Gloria.

*Land dispute: reconstruction on the basis of criminal accusations of usurpation*

The previous case was an inheritance conflict that was dealt with in three successive civil procedures. In the following case, a land conflict accumulates into criminal accusations of usurpation and damages. The main actors in this story, Bernardo and Eduardo, were both related to a man called Chepe Aguilar. Chepe left two families behind when he died. One was his legitimate family in the village of El Zapote, the other an illegitimate family in a nearby hamlet. His grandson Bernardo was the son of Chepe’s legitimate daughter. Eduardo was one of Chepe’s two illegitimate. Eduardo and his brother Eudocio received a plot of land each as their inheritance while their father lived.

Chepe Aguilar								
Spouses	Spouse 1: Clara Castellanos (unmarried)		Spouse 2: deceased (married)					
Children	Eduardo	Eudocio	Gabriel (eldest son who claimed all land)	Son (failed to contest claim of elder brother)	Son (insane)	Daughter	Daughter	Daughter
Grandchildren						Bernardo		

*Figure 6.2 Actors in the dispute over the inheritance of Chepe Aguilar*



At the time of his death in 1987, Chepe did not have a testament nor had he divided his remaining properties. His legitimate family proceeded to divide the properties. His daughters had expected some kind of payment after several years of caring for their father day and night, and paid most of the expenses out of their own tight pockets. They were extremely disappointed to find that their father had left them nothing special. At first, their eldest brother proposed that some of the land had to be sold to pay off some of their father's remaining debts. The other heirs agreed, and a plot of Chepe's land was sold to his grandson Bernardo Ponce. Then, the eldest brother claimed that he was entitled to have the rest. His sisters, a mentally handicapped brother, and a brother who lived in the capital city, did not receive anything. When the migrant brother discovered that his eldest brother had appropriated his father's land, he tried to sue his brother in court. But for reasons that were not clear in the case file, the unfinished case file ended up in the archives of the court.

Several years after Chepe's death, grandson Bernardo entered into a conflict with Chepe's illegitimate son Eduardo: they started to accuse one another of the usurpation of their land, which is a criminal offence. First, Bernardo accused Eduardo of usurpation in front of the JP, which resulted in Eduardo being sent to the local jail. One month later, Eduardo accused Bernardo of 'usurpation and alteration of boundaries' in the Third Chamber of the Santa Bárbara court.

Eduardo declared in the Santa Bárbara court that he possessed the disputed land for the last twenty-five years. He said that Bernardo:

*...maliciously and capriciously has been busy to appropriate this property while pulling out the posts and the barbed wire which he left rolled up. He did this to be able to freely enter my small property which is the only plot I own, where the accused ordered his day labourers to sow a maize field, knowing that it [the land] is mine. On August 8, he ordered them to construct a new fence which encloses more than half of the property. An inspection, which will be realised, will prove this... In July 1993, my son and I reconstructed the fence that was pulled down by the accused. And days after they arrested me by order of the JP, and I was imprisoned for four days in spite of the fact that I presented my title deed, of which they said that it did not have any value, and thanks to the intervention of some friends who went to the superiors of this judge [the JP], I succeeded in regaining my freedom.*

The judge proceeded by ordering the JP of El Zapote to inspect the site and to estimate the damages. The judge also ordered that the INA should re-measure the plot (it is not clear whether the INA indeed became involved). The case file included a report by one of the assistant mayors of El Zapote who had inspected the disputed land. He observed six posts that were pulled out, fifty *brazos* of rolled up barbed wire, fifty-six *brazos* of barbed wire attached to four posts and six trees, five *tareas* with old coffee trees, six

tareas of maize and ¼ tarea of land prepared for sowing maize.<sup>20</sup> He estimated the damages to the posts at 690 lempiras. The assistant mayor also observed that there was a sown maize field, which belonged to Juan Alvarado. Juan declared that he rented the plot from Bernardo Ponce.

The case file further held the declarations of several witnesses. One of them declared that the disputed land was once owned by Clara Castellanos (the unmarried spouse of Chepe), who had given this land to her son Eduardo. A second witness said that he did not know anything about it; he held the adjacent plot but he did not work on it anymore. He added that he had recently visited his plot and saw that somebody had sowed maize on Eduardo's plot but he didn't know whether this was Eduardo's maize.

The judge decided to order the arrest of Bernardo, who appeared in the court two days later. He declared that he was thirty-seven years old and worked as a coffee producer. When asked what he was doing on August 8, he stated that he was probably working because 'that is what I do'. Furthermore, he said that he had accused Eduardo three months earlier of illegally placing posts in his property. He did this because 'I consider myself the owner and because I have documents that prove that I am the owner and that I have to defend what is mine'.

In addition, the case file held a declaration of the JP of El Zapote, stating that Bernardo accused Eduardo of invading his property. Eduardo and Bernardo both submitted documents to prove their rights to the land. Eduardo presented a title deed from the INA, while Bernardo presented a private deed to the land which he bought after his grandfather died.<sup>21</sup>

The same day Bernardo was arrested, the judge declared that there was not sufficient evidence to imprison him. In his view, the conflict should be solved by way of a civil vindication procedure. He emphasised in his judgement that 'both the accuser and the accused presented property documents in their favour', but that he was not able to determine who held better property rights to the land. Therefore, he decided to release Bernardo.

In its review of the court's decision, the court of appeals decided that it had acted incorrectly to liberate Bernardo because the procedure had not yet been completed. Furthermore, the court of appeals stated that the inspection of the assistant mayor had pointed out that there had been damage to the field, but that this did not prove that the accused (Bernardo) was responsible for causing this damage. The Court of Appeals noted that Bernardo thought he was the owner and that he possessed documents to prove his ownership, but that the opposite party had documents as well. The Court of Appeals therefore restated the judge's decision that it was not convenient to continue the criminal procedure and that the conflict has to be resolved through a civil procedure.

The story of the conflict between Bernardo and Eduardo was well known to other villagers, who told the story in various versions all contrasting with the case file. One

version was that Chepe transferred parts of the land to his two illegitimate sons Eduardo and Eudocio through private deeds of purchase. The legitimate children, however, considered Eduardo's land to be part of the inheritance from their father. When they sold part of the land to Bernardo, to pay off Chepe's debts, they included part of Eduardo's parcel in the sale. Eduardo became enraged, and he reclaimed his land. But he lost his own private document when he was on his way to a lawyer in Santa Bárbara; it fell out of the pocket of his shirt and he could only find bits and pieces of it. He tried to create a new private deed, but as he used new certified paper, his own lawyer quickly discovered the deceit. The loss of his private deed considerably weakened Eduardo's claim to the land.

How should we evaluate the contrasting claims of Bernardo and Eduardo? Were they both owners of the plot? What did the documents which they submitted actually claim? The judge did not succeed in unravelling the claims of Bernardo and Eduardo, possibly because he was not able to investigate the content of the documents. To the judge, it was important that both men felt themselves to be owners and that they had documents to prove ownership. Whether their claim was justified or not was a question that the judge did not consider suitable for a criminal procedure, hence he suggested that a civil procedure should verify who had what right.

I have tried to reconstruct the situation on the basis of the bits and pieces of information from villagers and the information in the case file. According to the villagers story, Eduardo no longer had his private deed. It is possible that he therefore submitted the INA title which he possessed, but which concerned a plot of land other than the one covered by the lost private deed. As one of the witnesses confirmed, Eduardo had received land from his mother Clara Castellanos and it had been this plot that was titled in his name.

The public INA title that Eduardo presented to the court concerned the plot that once belonged to his mother, Clara. It did not concern the land he inherited from his father, Chepe. The JP had insisted that Eduardo's title deed 'had no value' when he sent Eduardo to jail, possibly because he thought that the title did not concern the disputed area. Bernardo's private title concerned the land he bought from his relatives after his grandfather's death.

According to the judge, both parties presented documents and considered themselves owners.<sup>22</sup> When researching the described boundaries, however, it is clear that the documents do not concern the *same*, but (possibly) two adjacent plots. Figure 6.3 is an attempt to schematically reconstruct the situation. The area in dispute was thus on Eduardo's land and possibly overlapped both his plots. The boundaries as described in the private deed of Bernardo suggested that he had no claim in the disputed area and that he was just trying to grab a part of Eduardo's land. It appears that Bernardo had sent Juan Alvarado to sow maize in the area, through which Bernardo made a claim to the land without being directly involved. Eduardo would not attack Juan as he had

nothing to do with the conflict: Juan was only sowing the maize as a temporary tenant, and he had rented the land in good faith.

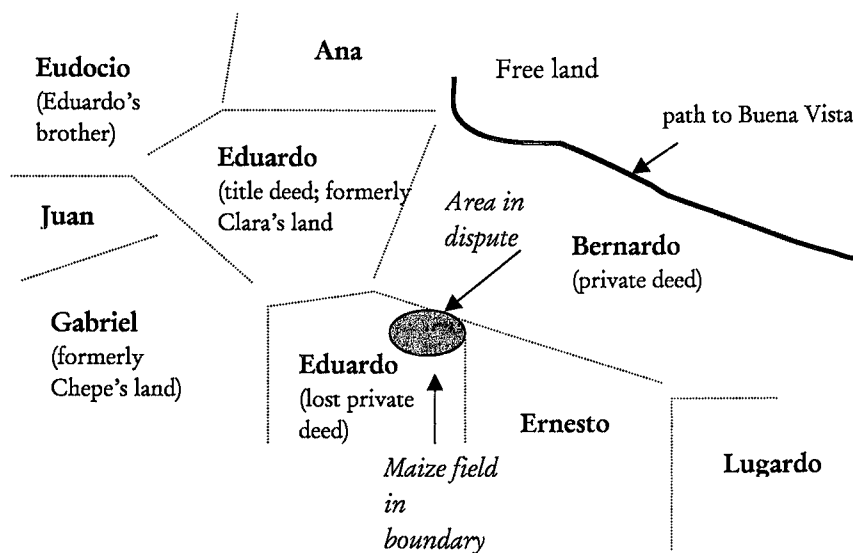


Figure 6.3 Schematic view of the situation regarding the conflict in the Aguilar family

Source: based on the documents of Eduardo and Bernardo and the cadastral map of the area.

The conflict appeared in the judicial system twice. The first time, Bernardo accused Eduardo of invading his property. The JP sent Eduardo to jail but had to release him after the intervention of some influential people. The second time, Eduardo sued Bernardo in the district court but they were again sent home with their unsolved conflict.

Neither the first nor the second intervention of the judicial authorities led to an investigation and a solution to the conflict. By referring the parties to a civil vindication procedure, the judge did not contribute to a quick solution: a vindication procedure may take years and requires the intervention of lawyers. The violent way in which Bernardo and Eduardo contested each other's claims to the land, however, required a quick and definite solution to prevent further escalation of the conflict.

The vindication procedure to determine the different claims of Eduardo and Bernardo never took place. Eduardo decided to give up his claim. He had lost his private deed and had nothing to sustain his claim in the area in front of the judicial authorities. He was poor and it was not possible for him to pay a lawyer to proceed with the vindication procedure.

Three case files, all criminal accusations, dealt with a complicated land dispute in another village in the Santa Bárbara district. The accusations concerned a peasant group whose members claimed land on the basis of the Agrarian Reform Law.

In the first case file of 1990, a woman named Antonia Cruz accused the peasant group of land occupation, robbery and damages. She declared that the group had invaded her property and that they had stolen some barbed wire, four cows and a horse 'to finance the group'. Furthermore, the group intimidated Antonia's labourers, who were sowing maize on her land with her permission, and they threatened Antonia herself with death.

By order of the court, the JP inspected the site and declared that the land in dispute included fifteen manzanas prepared to sow maize and that cows and horses were grazing there. The JP furthermore observed several posts from which the barbed wire had been recently removed, and piles of wood to build a camp. He stated that he met a group of men armed with machetes, rifles and shotguns.

The judge ordered that the men be arrested. They declared that they had not stolen cows and a horse from Antonia because there had not been any in the field. They also told the judge that they were in their right because they had a recently issued guarantee card from the INA. The INA issued these guarantee cards to peasant groups during the agrarian reform period, although such a card was not a legal property document.

Several witnesses declared that the group did steal the cattle and that they threatened the labourer who lived on the land and took care of the cattle, saying that he had to leave or they would kill him.

The case file continued with a declaration of an INA lawyer, who said that, according to the guarantee card, a plot of eighty-eight manzanas was taken away from Antonia Cruz and given to the group. The lawyer argued that the guarantee card proved that the men did not illegally occupy the land and he questioned the competence of the judge in the conflict by arguing that, not the judge, but 'the INA is the organisation to know and resolve everything that has to do with access, exploitation, alienation, recovery and distribution of land'.

The judge decided to release the men. Antonia Cruz was furious, as the telegram she sent to the judge proved:

*I beg you to summon the men who I charged with robbery of cattle and illegal occupation, given the fact that they occupied land that was in use by producers of basic [food] grains. I already informed the Supreme Court, the National Congress, the Ministry of Natural Resources and the President of the Committee Production of Basic Grains; it is justice that I want.*

Nevertheless, the judge decided that there was not sufficient evidence to charge the group with robbery of cattle or any of the other charges. The first case file ended.

Four years later, in 1994, Antonia Cruz again pressed charges against three members of the peasant group 'El Limón' because of illegal occupation and damages. Only one of the accused men was arrested. A witness declared that the group had continued to claim the land after the first court case, because 'she [Antonia] is a single woman, maybe this is the reason why these men do not want to leave'. Yet the situation had changed considerably compared to the first case file. According to documents that were attached to the second case file, Antonia Cruz had started a procedure within the INA after the first court case, lodging an objection to the INA decision to take the land away. The INA had argued that Antonia Cruz was not the owner of the land, but that she occupied national land and the peasant group could therefore claim it. Moreover, the INA stated that Antonia had not claimed her land within the prescribed period after the INA made the decision to grant it to the peasant group. According to Antonia, however, the INA officials were responsible for many administrative irregularities, and that was the reason why she had not reacted to the INA's decision in time. Antonia argued that she had the right to claim the land which had been her late husband's concession (on ejido land). The INA thereafter decided in her favour and admitted that Antonia had legal rights to claim the land. In this second procedure, Antonia submitted a public deed to the judge to prove her ownership of the land. The second case file ended when the imprisoned group member was released on a bail of 2,610 lempiras. The payment of the bail meant discontinuance of the criminal procedure and the case file ended up in the archives.

Two months later, the third case file about this same dispute was opened when a day labourer working for Antonia was brutally murdered. Eighteen members of the peasant group were charged with the murder, several of whom were relatives of the murdered labourer. The victim, accompanied by a young man and a grandchild, was on his way to leave some cattle, owned by Antonia, in a pasture field near the land that was claimed by the peasant group. The JP reported that the victim was decapitated, that his brains and chest were beaten in, and his stomach was eviscerated. The seventeen year old grandson of the victim who witnessed the murder declared: 'When they saw that my grandfather was dead, they stood on his corpse and jumped on him and they fell on his corpse and they made jokes about him even though he was dead.. '.

The declarations of people who saw what had happened unanimously confirmed the involvement of peasant group members. Many of them were arrested in the following days, but they either denied the accusations or were able to provide an alibi. Various members of the group tried to put the blame on other members. One of them declared: 'The devil has carried us off. The group will vanish because of this problem which has

happened to us'. Some imprisoned group members who hired a lawyer were immediately released. The judge issued arrest warrants against fugitives.

A young man, who was not a member of the group but who had the group's permission to sow maize on the disputed land, finally made a declaration in which he acknowledged his responsibility:

*For several days I have worked on doña Antonia's land... to sow a maize field because the peasant group... allowed me to work on this land... The motive to kill Juan was because he wanted to deposit several cows in doña Antonia's property, a property that is subject of a battle between her and Samuel Lopez and Sergio Perdomo and other members of the peasant group... When we killed Juan... Sergio Perdomo, Samuel Lopez and others... they summoned me to the house of Sergio on a certain day and they gave me the following advice: that when the police would arrest me and bring me before the judge I would say to the judge that doña Antonia paid me a certain amount of money to kill Juan in order to save the land which is the object of the struggle of this group of men who call themselves peasants. This confused me and I started to think about the advice of Sergio and the others, that it would not serve me in any respect because doña Antonia... I do not even know her and she never offered me money to commit a crime, because this was a slyness invented by these men and that we should kill Juan.. We hit him three times with a machete in his upper body, the first Osmin Romero, then Sergio Perdomo, Fernando Orellano, Nelson Cruz... Sergio gave him the deathblow because he cut off his head... We were fifteen men all armed with machetes to kill any day labourer of doña Antonia... I did not want to accompany the peasant group, and because I didn't want to I was reprimanded by Sergio, Samuel and Osmin, that if I would not go I would be a coward and a chicken and that I had to accompany them because otherwise they would end my life as well..*

In his second statement he said: 'we fled because they could get us because of the crap we made...'. At a later stage, he withdrew his declarations and said that he knew nothing.

Several men who were mentioned by witnesses and by other group members presented an alibi in the form of a written statement of the INA, which said that these men were in the INA office in San Pedro at the time of murder, 'to estimate the damages made by the cattle of doña Antonia in their maize fields'. The INA functionary who wrote the written alibi presented himself in court to declare. He explained that 'these men were handling the problem of a confrontation because someone had introduced cattle on a plot of land which the INA guaranteed them, and three days later they came again to say that there were problems and that there was someone killed'. At this point, the case file ended up in the courts' archives.

A procedure within the INA, and not a civil vindication procedure, determined the property rights of Antonia Cruz. She appealed the INA's resolution that the land she possessed should be given to the peasant group. The court dispute between Antonia and the group, then, were all criminal charges filed against the group. The INA guarantee card that the peasant group had received played an important role. The INA had issued the guarantee without effectively controlling the land that was in Antonia's possession. In the proceedings within the INA to determine Antonia's property rights, her lawyer suggested that the INA committed administrative irregularities in order to take the land away, but it remained unclear what kind of 'irregularities' the INA had committed. The INA functionary who appeared in the third case file still denied Antonia's rights, in spite of the fact that she had been assigned the land in the internal INA procedure and had a public deed to the land.

There was a tension between the INA and the judge about the competence of the court in this case. The INA argued in the first court case that the judge did not have competence in cases related to access, exploitation, alienation, recovery and distribution of land. It was not clear, however, whether the INA wanted to discuss the competence of the judge only in this case, since it was a dispute directly related to the agrarian reform process, or that the INA claimed to have jurisdiction in all disputes related to land. In the third case file about the murder, the INA again played an unclear role in influencing the course of the criminal procedure, in that it provided an alibi to members of the group who had been positively identified as being responsible for the murder by several witnesses.

## The judicial system and legal insecurity

The working of the judicial system as it is perceived by rural landholders, practices in the court, and our knowledge about how judges complete civil and criminal procedures, point out that the system does not work properly according to the law and that it does not fulfil the job that it ought to fulfil in the eyes of the people. The problematic aspects of the working of the judicial system are the procedures and the practices with respect to these procedures, the investigations, the content of the evidence, and the role of the bail system. Furthermore, the working of the judicial system has special features as a result of formalism, politics and manipulation.

### *The role of the judge*

The judge operates completely on his own. He does not confer with anyone on the case, he has hardly any technical or administrative support and is not obliged to extensively substantiate his decision. The Court of Appeals' role is restricted to



evaluating whether or not procedures are completed correctly. In the case files that I reviewed in the Third Chamber, the Court of Appeals did not really meddle in the content of a decision, but only imposed the maximum sentence when the judge had chosen to impose a lesser one. As long as the procedure is correctly completed (time limits are not exceeded; the proper order of procedural stages followed), the Court of Appeals is not able to see through the nature of judgements. Moreover, both the judge and the Court of Appeals tend to copy the conclusions or the demand of a lawyer to the letter, creating the impression that there is no impartial evaluation of evidence in a case.

Becoming judge is a first step in the career of a graduate in law, and judges do not need any special or additional training and they are not evaluated on their expert knowledge or suitability for the job. In cases of obvious failure or bribery, judges are removed from their posts without further consequences; discredited judges frequently opened their own law firm in the same town as where they had been appointed judge. Judges have thus developed little vision for their own job: they stick to the doctrine because that is a safe thing to do. District court judges in Santa Bárbara deal with all types of cases that require knowledge about a wide range of subjects such as property rights, labour rights, criminal offences and divorces. It is not unusual if they do not know everything about all these subjects and they stick to applying the few laws and articles from laws that they do know.

The judge considers following the procedures to be a major part of his investigative task, which should automatically generate the right knowledge about a case to come to a juridical and factual consideration. In reality, of course, it does not. The judge is passive in civil cases where he only evaluates the evidence trotted out by the parties. The parties' lawyers propose certain witnesses be heard and prescribe the declaration that these witnesses should sign. They also demand site inspections and prepare the questions and answers that should be produced by way of inspection. The only thing the judge does is order a JP to hear the witnesses and inspect the site and report about these activities to the court. The investigative role of the judge in criminal cases is more active, such as in giving out arrest warrants and hearing suspects.

### *Evidence*

The quality of evidence in civil and criminal procedures is meagre; it is hardly ever 'real evidence', as one of the lawyers put it. The involved parties provide evidence according to their own interest: witness declarations and inspection reports may be completely contradictory, which makes it impossible for a judge to determine what is right and what is wrong. Lawyers frequently clash about the antecedents of the witnesses that are brought in, witnesses who obviously do not have an independent position with respect to the dispute. Witnesses have been primed to provide a certain declaration. The lawyer

makes a proposition regarding the questions that a witness is supposed to answer. For example: the witness is supposed to answer the question *whether Gloria's brothers and sister received the land from their late father and whether they possessed and worked on it for more than ten years*. The JP report thereafter states that the witness has declared that *Gloria's brothers and sister received the land from their late father and that they possessed and worked on it for more than ten years*. JPs and judges never thoroughly question witnesses; they are merely supposed to say 'yes or no' (or sometimes not even that is necessary) and then sign a written statement.

Furthermore, the judge has great difficulties in understanding the content and the value of property documents. In some cases, the judge is convinced that he does not understand the legal value of property documents and completely abstains from reading them. In the second case between Eduardo and Bernardo, for example, it was enough for the judge that Bernardo presented some kind of document and that he declared that he felt himself to be the owner. The judge did not find out what kind of document Bernardo presented and what rights to which plot of land it was supposed to attest to. The judge also has no instrument to determine whether a JP's or assistant mayor's inspection report has been manipulated.

Despite the fact that the judge is confronted with evidence of a completely contradictory nature and content, he balances the information in a way that is totally unclear. The judge does not evaluate information but decides about the case using his own criteria; in most case files I studied in the Third Chamber archives, the judge chose to believe one of the lawyers and he copied the conclusions of this lawyer in his decision.

#### *Paying bail*

The role bail plays deserves special attention as it is an important mechanism of 'class justice', as the prisons of Honduras are exclusively inhabited by people who cannot afford to pay bail. Payment of bail in criminal procedures means that the procedure has ended, in spite of the fact that this is not the intention of the law. Not all criminal offences can be bailed, but contracting a good lawyer means that the lawyer will first work on having the charges defined in a way that bail becomes possible. Someone charged with murder cannot be bailed out, but someone charged with homicide can, so a good lawyer will take care that the charge will be homicide instead of murder, after which the bail can be paid and the suspect will be set free. The Olanchano stealing coffee in the poor remote mountain villages of Santa Bárbara, can only be charged with fraud, a charge which practically means that he pays a relatively small bail and is then released.

The payment of the bail makes it so that the process is not continued by the lawyer of the accused party; it is no longer in his interest and he abstains from any action until

the offence has become precluded by the lapse of time. The Public Ministry should continue to push the procedure ahead, but the practice is that this does not happen.

### *Formalism as a problem*

Legal culture in Honduras shows great respect for, and an excessive concern with, legal formalities (Karst and Rosenn 1975).<sup>23</sup> Deep respect for formalities can be found at all levels within the state and in many other forms of social organisation. For example, a newly formed women's group in El Zapote does not start with a discussion about the goals of the organisation, but with the formal election of a 'board of directors' (*la junta directiva*), and the establishment of rules and procedures that define the organisation and the responsibilities of members. The tendency to first create an 'official' organisational structure with official tasks and obligations is very strong even in such informal groups.

Formalism and the importance of procedures are strongly related to the slow and uphill battle for democratisation of Honduran society. People experience procedures like the one I described in the women's group or, as used in courts, as stepping stones towards transparency. In this sense, procedures fulfil the role of rituals to counteract feelings of distrust that there might be people in power who have the wrong intentions. Procedures form a guarantee against clientism, favouritism and corruption.

Formalism in courts leads, for example, to a tendency 'to presume that every citizen is lying unless one produces written, documentary proof that one is telling the truth' (Karst and Rosenn 1975:63). In the three cases presented, property documents were extremely important, but it was merely the *existence* of these documents and the fact that the parties involved were able to present them to the judge, as opposed to the actual content and meaning of these documents. In the three cases, the judges had difficulty reading these documents and interpreting their content, which is nevertheless important considering that the Public Register of Property is not reliable and that there is a fair chance that documents are falsified or do not represent the true situation.

Formalism provides an alibi for judges and lawyers who make use of the features of the paper procedures to achieve particular aims. They are either focused on the proper completion of procedures, or they deftly use the opportunity to abstain from completing procedures when it is in their own or their client's interest (for instance, the payment of bail, after which the procedure does not continue). They may use procedural arguments to justify all kinds of contradictory demands, protests and actions.

Procedural mistakes are a reason to extend the procedure or to declare it invalid and, herewith, lawyers and judges may deliberately or unintentionally influence the outcome of a dispute or a criminal accusation. Procedural failures are often deciding factors, as the first case about Gloria and her siblings has shown. The judge in that case decided in favour of one party, using the argument that the other party did not contest

the charges within the prescribed period. If this were a general principle, then, it would inevitably lead to the conviction of poor and illiterate people who are not represented by a lawyer, and who are not able to respond to the charges.

The Honduran press tends to blame the problematic working of courts on judges who neglect to complete procedures or that fail to do so properly. The idea is that corruption occurs because there is a lack of respect for procedures. This chapter has shown that the centrality of procedural arguments in court practices is leading to problems as well. Excessive attention to procedures, and complete lack of attention to meaning and content, mean that parties involved in a dispute are left with feelings of injustice when judges declare evidence or the entire procedure to be invalid and when lawsuits are never finished.

#### *Politics, manipulation and bribery*

There is a lot of talk in Honduras about corruption and bribery in the courts of justice, but as could be expected, this is very difficult to prove in concrete cases. What is certain, however, is that the appointment of judges at all levels in the justice system is a political affair (political in the sense of directly linked to party politics), in which their expertise and suitability for the job do not play a role. The JP of El Zapote has not completed the study of law, and he is not a law expert. However, his lack of expert knowledge is not his main problem. Rather, it is the political character of his appointment and, consequently, his lack of impartiality and credibility that prevents him from properly doing his work.<sup>24</sup> The general viewpoint is that it is impossible for a person who is deeply involved in politics to be impartial as politics involve networks of people who are related, who know each other and who owe each other.

The marked influence of politicians on well known cases of judicial bribery heavily influence the perception that the judicial system provides 'class justice'. The Supreme Court researched the activities of 500 judges in 2000 and found that, over a period of three years, 100 judges were charged with fraud, corruption or abuse of authority (US Department of State 2001). Politics also affect Santa Bárbara court practices. Many lawyers are actively involved in politics and landholders stick to lawyers who share their political preference in order to ensure that the lawyer will work for their benefit. Judges have been party activists or they have direct connections with someone who is in politics. In spite of the fact that landholders have deep respect for expert knowledge and juridical jargon, they sense the political character of the judge's actions, although this is sometimes less visible to them than the direct link between a JP and politics. This leads them to conclude that judges are *vendidos* ('bought') without realising the details of how and why.

Influencing judges is thus possible in the system and it is relatively easy because of the deficiencies of the juridical procedures themselves. Without being bribed in a literal

sense, judges might be more inclined to decide in favour of rich and influential people whilst carefully completing procedures. Juridical procedures are not transparent, nobody has visible influence on the activities of a judge, and a judge imposes sentences which he is not obliged to argue about extensively.

There is a second point related to manipulation and bribery, which is obviously true. The inhabitants of the cramped and inadequate prison in Santa Bárbara are all poor, and there must be a reason for that. Poor people do not inherently commit more crimes than rich people, and the famous white-collar criminals are everywhere but in prison. This chapter has not, of course, presented an extensive study of these problems. On the basis of this study, nevertheless, it is possible to say that poor people end up in jail because they cannot afford a lawyer and that everyone who is able to hire a lawyer will keep himself out of jail. The lawyer, by making use of legal instruments such as influencing the formulation of charges and payment of bail, and perhaps by also using such not-so-legal instruments as bribing the judge, will be able to keep his client out of prison. Every person charged with a crime who ends up in jail will stay there until a lawyer gets him out, which is the ultimate consequence of the failures and inadequacies of the entire judicial system.

#### *The role of legal insecurity in property relations*

Most landholders in El Zapote are poor people who try to stay out of conflicts and who are even less eager to enter court. This chapter has concluded that poor people do not have access to the judicial system, not only because they lack the money to pay for a lawyer, but also because they are anxious to enter an unknown world of expert knowledge, documents, signatures, stamps, registrations, prisons and long and expensive travels. Poor and illiterate landholders lack mechanisms to control the course of events as soon as they cross the threshold of this unknown world. They end up in more than one procedure for reasons that they do not understand: they have to sell land or other valuable assets to continue paying the expenses; they have to tap their social networks to gain access to loans or political power, and deal with the consequences.

Landholders in El Zapote will not feel comfortable with the consequences of looking for justice in the judicial system and, consequently, they will try to avoid a situation in which this becomes inevitable. The lack of access to the judicial system does not mean that alternative forms of dispute regulation have emerged. People either stick to the hope that the judicial system will work in their favour or they try to avoid becoming involved in the conflict by all means. A central feature of property relations regarding land is thus conflict avoidance, which influences sale and inheritance practices. For example, avoidance strategies entail the enforcement of claims by using land, efforts to

gain social recognition of a claim, and to eventually sell the land as a last attempt to evade being dragged into a conflict.

Only in rare situations did I find that local leaders (mayor, head of political party) had 'mediated' conflicts. This kind of mediation was not gratis, but it required political contacts and compromises. Not everyone had access to it, and not everyone was willing to pay the political price.

An important aspect of legal insecurity is the unclear status of landholders' property rights. Chapter Two explained that how the lack of clarity in property rights creates conflicts not only between landholders and the state, but also triggers conflicts between landholders themselves. In the first court case, the public deed of Gloria created confusion about what she should have bought from her late father. The boundaries settled in the document enclosed much more land than the number of manzanas she had bought. She was right in arguing that measurements are not precise and that there might be a difference, yet it is a not plausible explanation when the difference is 18 or 37 manzanas. Hence, her public deed did not lead to transparency about her own property rights and those of her siblings. Instead, it led to a conflict. In the second court case, two property documents, one public and one private, confused the judge because he considered that the documents proved that both parties had rights to the disputed land. The third court case was more clear about the claims of both parties, but it was not clear why the INA refused to recognise Antonia's property claim at first, and gave the peasant group a guarantee card for the land.

The state recognises the opaque and unclear property rights to land as problematic and has proposed the creation of agrarian tribunals that would especially concern themselves with land conflicts and contradictory property claims (Honduras 1996, INA 1996). The question remains, however, whether such an agrarian court would also generate a new legal culture with less formalism and more focus on understanding the background of disputes and the juridical meaning of property claims, and that landholders would be able to easily access, no matter how poor and illiterate.

## Changing the judicial system

It has become widely recognised over the last decade that the Honduran judicial system needs a thorough revision (Romero and Salomón 2000). Several developments and coinciding incidents have led to a broad acknowledgement of the problematic working of the judicial system and the lack of legal security in all sectors of society. The IMF has put Honduras through a Structural Adjustment Program beginning in 1990. For example, the poor working of the judicial system hampers adequate property rights protection, which is a major obstacle to attracting foreign investment. The IMF's intent

was to remove such obstructions, resulting in increased attention being paid to the judicial system.

Another change opening the way for changes in the judicial system has been the attempt to break the power of the military and to place it under civil control. The creation of a Human Rights Commissioner expedited the decline of the military power: one of his first reports was about the human rights abuses by the military in the 1980s (Comisionado Nacional de Protección de los Derechos Humanos 1994). The report called for the imprisonment and conviction of the involved military officials, but it also questioned the capability of the judicial system to seek justice. Furthermore, the rape and murder of the student Riccy Mabel in 1991 led to joint social protests by students and the anti-military and feminist movements (Mendoza 1996). The demonstrators, who held a group in the military responsible for her murder, demanded that the impunity of the military be brought to an end, and that severe punishments should be imposed on rape and murder.

#### *Major changes*

These events resulted in major changes to the Honduran judicial system, including the dissolution of the Investigation Directorate DNI (accused of illegal detentions and other human rights abuses in the 1980s), the creation of the criminal investigation directorate DGIC, and the reformation of the Public Ministry. The state took the national police force out from being under the control of the military and placed it under civil mandate. Furthermore, the state reformed the 1906 Penal Code; the idea was to limit the number of crimes subject to bail and to modernise the penalties for certain crimes. Rape, sexual abuse and domestic violence were high on the agenda of the interest groups that participated in discussions about the reformation of the Penal Code. Major discussions were held concerning the penalties for corrupt judges and abuses by journalists, as well as about the penalties for land occupation.

After the reformation of the Penal Code, the Criminal Procedural Code also became subject to revision. These changes took much more pain and effort due to the resistance of the 'political and economical powers' (June 15, 1998: *La Prensa*). The specific character of these powers remained slightly vague. However, accusations were made about the role politicians played (for example: August 6, 1998: *La Prensa*) in explicitly delaying the approbation of the Criminal Procedural Code. This was approved in December 1999, but without the necessary adjustments to the budget of the Judicial System in order to be able to implement the reforms.

The important reforms in the new Criminal Procedural Code include the following:

- The establishment of oral hearings:

Oral hearings will allow lawyers to hear witnesses themselves, it will change the role of the judge and will allow for more control over the court's activities. Part of the magistrates and judges have been opposing the reforms because they do not want to lose their monopolistic position with regard to the investigation, and they resist the stronger role of the Public Ministry.

- Eradication of imprisonment without a sentence:

People will no longer be sent to jail unless they are sentenced. The general expectation is that this will put an end to the overcrowded prisons and will diminish the number of unsentenced prisoners. In 1996, only 835 (9%) of a total of 9,342 prisoners at the national level were sentenced for a crime. All others were still awaiting a trial, sometimes for years and some even longer than the duration of the penalty for the crime they were charged with. Generally, these are the well known poor people 'who stole a chicken to feed their families'.

The Judicial Branch's resistance to the new Procedural Code was not the only reason why the National Congress was slow to accept the new code. The members of Congress were also responsible for the delays. Many Congress members did not want an efficiently working judicial system: they enjoy immunity (*inmunidad*), which is generally considered to be synonymous with impunity (*impunidad*). The immunity of members of Congress means that nobody is able to sue them in court for any kind of offence, whether such an offence is related to the performance of their duties or not. When a member of Congress murders another person, he cannot be charged with murder, which thus generates impunity. A judicial system that works effectively would possibly eliminate the immune status of Congress members and end impunity. Congress members were thus extremely reluctant to approve a law that would possibly begin breaking the circle of political clientism in the judicial system.

#### *Human Rights*

The writers of the Report on Human Rights Practices for 2000 (US Department of State 2001) seem to be well-informed about the judicial system. Every year, this report is extensively discussed in the Honduran news media, which generally greet its conclusions about the working of the judicial system with approval. The report for 2000 (US Department of State 2001:7) concluded that the judicial system continues to favour rich and politically influential people, thus making the problems of the judicial system a prime indicator of the 'state of the art' of Honduran human rights:



*A number of factors limit the effectiveness of the system: Both the judiciary and the Public Ministry suffer from inadequate funding; low wages and lack of internal controls make law enforcement officials susceptible to bribery; the civil law inquisitorial system is both inefficient and opaque, and powerful special interests still exercise influence and often prevail in the courts... An accused person has the right to an initial hearing by a judge, to bail, to an attorney provided by the State, if necessary, and to appeal. Although the Constitution recognises the presumption of innocence, the Criminal Code in practice often is administered by poorly trained judges operating on a presumption that the accused is guilty... Modest progress was made in using a judicial career system to enhance qualifications of sitting judges, depoliticise the appointments process, and break the subcultures of corruption, clientism, patronage, and influence-peddling within the judiciary. Nonetheless many courts remain staffed by politically selected judges and by unqualified clerks who are inefficient and subject to influence from special interests. The reforms have not been implemented fully.*

The creation of a national human rights commissioner, and the increased influence of the global debate on human rights, have certainly had a positively effect on the Honduran discussion about the lack of legal security and the inadequacies of the constitutional state. Yet the human rights debate has another important influence, which has so far not been noted in the State Department reports. It concerns changes in people's perceptions of justice. Chapter Four explained how human rights serve as a stepping-stone for reconsidering inheritance rights. Human rights introduced the notion of equality, which fundamentally differed from the rules of preference that had always ruled inheritance practices. More generally, human rights have positively influenced the rights of women, or at least the idea that women should have rights at all:

*In the past, you married a woman and you thought of her as your property. You possessed her, used her and dominated her. If she did not obey you, you were allowed to punish her and beat her black and blue. You were allowed to lock her up in the house if you wanted to. That has changed now. The woman has rights. She can leave the house if she likes and she can join organisations. And if you do not allow her to do this she can go right to the Public Ministry and press charges against you and you end up in jail... I am maturing now but I have been brutish in the past. I commanded my wife "go to the kitchen, make dinner!". I punished her if she did not obey. I now see that women and men are equal, that she freely needs to mix with others... I like to watch the young girls myself, I long for them. That doesn't mean that I really want them... I learned that this is the same for women. My wife likes to chat with everybody. There was a young man who also came when I wasn't in. He talked and flirted. People told*

*me to chase him off. Me and my wife... we talked. I said that she had to decide if he would be a better husband. I told her that I gave her everything, a house, food... But if she thought that he would be better then she had to leave. You see, in the past women had only a voice [voz], now they have a say [voto] as well.*

This man was very positive about the changes in the relations between men and women induced by the human rights discourse. However, there are also less positive interpretations of the human rights influence among villagers. Several villagers argued that human rights 'favour the criminals'. In the following quote, human rights appear as a 'law':

*I have always been in favour of human rights and the work of COFADEH and CODEH for the [people who] disappeared in the eighties.<sup>25</sup> But the law of human rights.. I don't know. The police and the army say that this is why so many criminals walk around freely and cannot be captured. This law says that nobody can be captured without an investigation by the judge, [after which] a judge can give an order to capture a person... that everyone has the right to be convicted before he is locked up. If minors have been raped, which often happens, not here but in other places, then you cannot lock up the rapist just like that. The police have to wait for an order of the judge to capture that man. The judge had to await the investigation [of the Public Ministry] and that information never appears. So the rapist can walk out and he stays away from prison. I don't know... that is what the army and the police say.*

Human rights have become an issue of great importance for people in El Zapote. Many of them are constantly confronted with injustice and they may have never before perceived themselves to be subjects with legal rights, as citizens equal to other citizens. The increasing attention being given to human rights seems to lead to a change in the perception of these rural people about themselves. People have become interested in the content of the law, the effects of rights on their own life and on the lives of other people. In this way, the human rights issue potentially changes the relation between people and it might catalyse a break with their idea of living without institutions, in the law of the jungle.

## Notes

- 1 All civil and criminal cases of a municipality are assigned to a specific Chamber. In the case of El Zapote, this is the Third Chamber.
- 2 The Public Ministry existed before 1993 as well, but it was organised in an opaque and disordered way (Espinal Irias 1990).
- 3 The Human Rights Office was active at the time of research but was disbanded later on.
- 4 Until 1997, all JPs in El Zapote happened to be men. In 1998, the state appointed a female JP, a legal expert who was born in El Zapote.
- 5 The institution of the JP has a local character, but it is not comparable to an 'indigenous' or community court (Collier, 1973, Sauveplanne 1975, Hunt and Hunt 1987). He is part of the state judicial system. Thus, the JP does not seem to be a starting point for developing alternative dispute resolution (ADR).
- 6 The JPs of the district capital were allowed to impose fines up to 1,000 lempiras in 1997.
- 7 El Zapote has never had a steady police force. The municipality built new accommodations for the police and possible detainees in 1995. However, the police post was staffed only few days a year. If the authorities need the services of the police, they had to file a request to Santa Bárbara or a neighbouring village.
- 8 In civil cases, both parties need a lawyer; in criminal cases, the accused person needs a lawyer while the person who presses the charges is represented by the public prosecutor.
- 9 Several lawyers and court officials conveyed that public defenders demanded payments from their clients.
- 10 The National Office of Women is a state organisation, which is mainly involved in the issue of domestic violence.
- 11 Sebastian emphasised that his wife Mirsa had more rights than Lucio because she had been a legitimate child, while Lucio was illegitimate.
- 12 Jesus Martínez in La Prensa, October 7, 1997.
- 13 Olancho is a district to the north-west of the capital city of Tegucigalpa. The *Olanchanos* enjoy a dubious reputation as brutes who love to fight with guns (*pistoleros*).
- 14 It was difficult for village authorities to persuade the DGIC to come and investigate a crime. According to the villagers, the DGIC officials said they had no cars, that they were short of fuel or that there was no money to pay their travel costs. In the rare cases that the DGIC did show up, villagers say that the officials arrested the wrong people and carried out investigations that were rather imprudent.
- 15 The three cases in this section were all in the Third Chamber, but in different periods. Therefore, they were all sentenced by different judges.
- 16 He had to ask the court's permission because the children, heirs of their mother, were underage at that moment.
- 17 The suggestion made in this declaration was that Gloria could not claim this land because she had another mother.
- 18 Although they used the word 'sold' in their declaration, it is possible that they did not pay for the land as it concerned their inheritance share (Chapter Four).
- 19 Witness declarations are nevertheless commonly accepted as evidence in vindication procedures.
- 20 A *brazo* (arm) is a longitude measurement. A *tarea* is 1/16 manzana, which is, according to the local standard, 523 m<sup>2</sup>.
- 21 According to the private deed of Bernardo, he bought five manzanas of land from his late grandfather for 2,000 lempiras. His grandfather had held a concession on this land since 1936.
- 22 The Santa Bárbara court does not have special judges for criminal and civil matters. It would thus be the task of the same judge to investigate the presented property documents in a vindication procedure.

- 23 According to Karst & Rosenn (1975), Latin American legal cultures feature idealism, paternalism, legalism, formalism and lack of penetration. This chapter has shown us the importance of formalism and lack of penetration with respect to Honduras, although the other characteristics may also be salient.
- 24 Laymen judges are common and perform well in customary justice systems elsewhere in Latin America (Nader and Metzger 1963, Collier 1973, Parnell 1978, Sack and Aleck 1992).
- 25 The Committee for the Families of the Detained and Disappeared (COFADEH) and the Committee for the Defense of Human Rights (CODEH) are two central human rights organisations.



## Chapter seven

# Beyond disorder: land, justice and stacked law

Property conflicts have an enormous impact on relations between the members of farm households and their families. Given the long duration, frequency and intensity of these conflicts an investigation of how they arise and how they affect the daily lives of, and relationships between, landholders is certainly warranted. Conflicts over land visibly manifest themselves in destroyed fences, stolen crops, poisoned dogs, horses that are set free, bloody machetazos, hails of stones between children and murder. But there are also less visible symptoms of potential conflicts over property. Inside the walls of the farm household, hidden from public view, people discuss the consequences of migration or education on inheritance rights; they mull over the advantages and disadvantages of a land sale; they argue about the division of labour and they silently develop strategies to control income or products. These discussions and strategies generate and express conflicting views on how property rights should be distributed and who is entitled to obtain a particular right to property.

The central research question of this book has been: What is it about law and norms that enables them to generate conflicts about property rights to land? Conflicts about property are related to the way in which social actors define and perceive rights to the land. This book has handled three research themes: practices of land transfer, stacked laws and norms and conflict resolution. A major point of departure has been that land rights do not by definition consist of legally recognised full ownership. Instead, we have researched *who* claims to have *what* right to the land (Chapter One). Therefore, I suggested that the notion of stacked laws and norms (Chapter One) could be helpful to explore the differential claims and contradictory property definitions with regard to land. This book has been an effort to test the usefulness of this notion for a better understanding of the constellation of land rights and the emergence of conflicts.

Against the background of the process of national state building after independence, land became a primary subject of state regulation in Honduras. Private ownership became a condition for the development of the nation, and the state established rules and procedures to protect ownership. Land obtained a particular status: it became subject to special agrarian laws. These laws have been major subjects of comprehensive discussions about land policy.

The introduction of the agrarian law notion of the 'social function of land' affected the absolute character of ownership. This was one of the changes that agrarian law brought about in the original Civil Code notions of property, as well as a source of confusion about the property status of land. However, and this is a major argument developed in this book, Civil Code notions of ownership, possession, usufruct and occupation have continued to be very important and should receive more attention in the land debate. Civil Code notions of property have been decisive in at least three ways: in the particular property concepts used in agrarian law; in the way in which land policies of different state agencies have applied these definitions; and in the perceptions of rural landholders about their rights.

Ample confusion exists about the preference of agrarian to civil notions of property with regard to land. The INA, juridical experts, judges and landholders have their own ideas about the applicability of the Civil Code property concepts in relation to land. While rural landholders tend to think in terms of Civil Code notions, the INA - responsible for enforcing agrarian law - accepts the applicability of Civil Code notions only to a point, but in general denies their validity. During the implementation of the PTT land titling program, the INA recognised that landholders had possession of national land, but at the same time declined the validity of any property claim other than registered ownership through a PTT title (Chapter Two).

The national state, the municipal government and landholders have developed contradictory perspectives on land rights in different regions of the municipality of El Zapote (Chapter Two). Central to these divergent perspectives is the ejido. Former agrarian laws characterised ejidos as grounds that the national state handed over to the municipality for free in order to make them accessible for use by local producers. Rural producers could apply to the municipal council for concessions on ejido lands. Concessions were officially temporary use rights that included requirements regarding the use of the land. Furthermore, these use rights could be registered and turned into a title of usufruct, while landholders were also allowed to buy their plot of ejido land and to convert it into private ownership.

An entirely different construction of what happened to the ejido can be told from the perspective of landholders. The national state continuously changed its perspective on exactly which rights had been handed over to the municipality and landholders, and

in time, the landholder perspective about the ejido drifted away from the standpoint of the state. The notion that concessions provide temporary use rights has slowly become remodelled into a concept of ownership. Landholders comply with locally accepted means of proving ownership: fencing; working; participation in communal activities as, for example, the maintenance of trails connecting the fields; and the neat conservation of the piles of private and public deeds that testify about the history of consecutive transfers. They have forgotten the precise meaning of the concession and perceive their rights as ownership and themselves as owners of the land.

The different perceptions of property by ejido landholders and the state emerge from processes which I describe as 'stacking' of laws and norms. I have distinguished two separate processes of norms stacking about land rights, in the law and in the minds of landholders. In state law, agrarian notions of land rights are stacked on former agrarian notions that are for their part stacked on Civil Code property notions. In the minds of landholders, temporary use rights have been converted into permanent use rights, which have been reconverted into a notion of ownership. At the same time, the temporary use right concept has not vanished completely and is still applied at certain times for certain parcels.

The process of stacking in state law shows that Civil Code notions of property have not become totally replaced by agrarian law concepts. Agrarian laws are full of property concepts derived from the Civil Code that have not received a new or distinct meaning in these laws. Furthermore, there is an ongoing discussion about the applicability of agrarian law stipulations to land and landholders who obtained their land through transfer practices other than the agrarian law regulations for the transfer of national land to private owners. The property concepts in the minds of landholders are largely consistent with Civil Code notions of property. The claims they make on the land are thus not derived from a 'customary' normative framework (e.g. Stanfield et al. 1990). Landholders base their claims on norms that have not developed as opposed to, and separated from, state law, but these norms can be traced back to legal notions and local reinterpretations of law.

The state-landholder clash of perspectives on property is only one side of explaining conflicts; the other side is to be found in the struggles for property that take place within farm households and between family members. To understand why family members bash each others brains out for a square meter of land means that we cannot stick to the prevailing romantic image of the campesino-with-straw-hat working in his maize field (Chapter Three). The harmonious peasant family representation with the unity of property, labour and income seems incongruent with the daily ins and outs of farm households. The descriptions of daily village life and farm households in El Zapote show that a farm household is not a collective whose organisation is determined by kinship bonds or by machismo culture. Members of farm households do not share



their labour unconditionally. Land, animals or other assets are not collective property but are held by individuals who have decision-making power over their use.

Although fights over property take place day after day, they can become very intense in specific contexts. One of these settings is inheritance. In contrast to the idea that inheritance is a transfer of property between the dead and the living, I have analysed it as a process of struggle and negotiation between living people, and part of daily strategies about daily things (Chapter Four). In practices of inheritance, local norms chiefly determine who is entitled to inherit, and these local norms are also subject to the process of 'stacking'. The traditional rule of preference for the youngest son, for example, is less appreciated nowadays, and the norm of 'equal rights for all' is gaining importance. On top of the equal rights norm, other norms are stacked that express divergent ways of interpreting 'equality': For example, women should not receive land but houses; migrant offspring who do not financially support their parents should not have rights; and nor should children whose education was financed by their parents. These new norms are new interpretations of preference and exclusion.

Changes in inheritance norms are a slow and unbalanced reaction to changed circumstances, including population growth, increased land scarcity, migration, changing perceptions of people about equality and changing expectations about the future. Actors deliberately create new norms to achieve different goals through the inheritance norms stacking process. The new stacked complex of local inheritance norms has unintentionally led to more compatibility with state law: state law departs from equal inheritance rights for all offspring, and thus is the pretension of the new equality norm in inheritance practices. Although people do not deliberately seek compatibility with state law, the fact that they see their own norms as 'legal' contributes to the legitimacy of new inheritance norms, in contrast to the earlier inheritance 'customs'.

'Equality' is a rather new issue for people and has become important to inheritance as well as on a more general level. A recent influence to put equality first has been the human rights discussion. It has had a considerable impact on gender relations in the village. Women have difficulties claiming their rights of inheritance and access to land (Chapter Five). Men work on the land, women don't. In inheritance practices, this means that women, unlike men, cannot make a claim to land by working on it. The equality norm has changed women's views of inheritance because they now have a new basis on which they can found their claims to land.

The state and international donor agencies have found that women's access to land is a major impediment to development. I have depicted their views as instrumentalist, as they define women as a potentially productive force and as major caretakers. Their knowledge of women's land use strategies is blurred by the following ideas: first, only tillers should have rights to the land and, second, women work on the land to produce food for their families, hence, they should have land rights.

The instrumentalist view creates, in fact, a distinction between women's and men's rights to the land, probably without intending to do so. Women are not given the same rights as men. They only are entitled to land *because of* their functionality as food producers and family providers. I have argued against this view by proposing that women's interest in land must be understood through an understanding of their land use strategies. Not working the land themselves, but instead renting it out, selling, mortgaging or lending it, are not ways of misusing the land but instead rational and reasonable forms of land use. An important feature of women's land use strategies is that they do not contest the gender division of labour.

Conflict avoidance characterises property relations in El Zapote. However, when a conflict does persist it may escalate and end up in the judicial system (Chapter Six). Poor people do not have free access to the judicial system because they cannot afford a lawyer. Furthermore, judges and lawyers dealing with land conflicts experience great difficulties in finding their way through a jungle of stacked legal concepts and regulations about property (Chapter Two). The poor working of the judicial system contributes to the lack of legal security as well. The correct completion of procedures receives much more attention than the improvement of the quality of the evidence. Judges are vulnerable to outside influences and downright bribery because of their solitary position that makes it difficult to control their work. People perceive the poor working of the judicial system as a type of class justice: the poor always lose against the rich and influential. It is a class justice image with a paradoxical side. On the one hand, people are convinced that judges are corrupt and that the poor will always lose. On the other hand, they continue to believe the state is the ultimate authority fulfilling the role of neutral conflict solver.

In the remainder of this chapter, I first discuss the strengths and weaknesses of the metaphor of the stacked laws and norms to explain the differential perceptions and definitions of property rights to land. Thereafter, I look at what can be learned from this analysis for the Honduran debate about the land question. I again take up the poor working of the judicial system to discuss the implications of this study for the validity of the so-called 'rotten apple theory'. Finally, I comment on some consequences of my analysis for development interventions on the basis of the argument developed in this book.

## Stacked laws and norms

Law experts and policymakers in Honduras tend to start from a 'law is reality' point of view, i.e. the goals of the law are achieved in practice by implementing the law. Starting from this perspective means that they find it difficult to deal with the unintended outcomes of the law, which they usually attribute to the law not being enforced, people

having the wrong mentality or old-fashioned, customary practices. In the eyes of law experts and policymakers, property rights to land are an apparent 'disorder', a 'disorder' that plays an important role in the emergence of conflicts that has to be solved by implementing new laws.

I started this investigation with a rather broadly defined notion of stacked laws and norms, which I used to visualise the processes that create the apparent 'disorder' of land rights. The notion of stacked laws and norms ended up being helpful in analysing the situation of land rights in El Zapote, and we are now able to refine the meaning of the term. This book has described three processes of law and norms stacking in property rights arrangements: in state law, in practices of land rights transfer from the state to landholders, and in inheritance practices.

State law stipulations regarding land rights are not consistent or coherent, and its meaning confuses landholders, but also lawyers, judges, and policymakers. Agrarian laws have continuously been changed, replaced, amended and re-amended, which creates ambiguity in their message and makes it unlikely that the meaning and practical implications of these changes have been clearly passed on to the involved people and agencies. Agrarian laws have, in time, encompassed differing views on which property rights were passed from the state to the municipalities and the holders of ejido land. The result has been lack of clarity, which has left room for the emergence of divergent views on the meaning of the concession and the property rights involved in it, and for the continuous importance of Civil Code-like definitions of property in the minds of ejido landholders.

Additionally, this book has developed the argument that the relationship between Civil Code and agrarian law notions of property is ambiguous. Agrarian law stipulations incorporate Civil Code constructions as possession, occupation or adverse acquisition. Moreover, there is no unanimous stand among law experts and policymakers about the validity of Civil Code property notions versus agrarian law stipulations.

The process of stacking in state law has become more clear by looking at practices of land rights transfer practices between the state and landholders in El Zapote. The actual laws and legal articles are only one side of state regulation; the other side is that state agencies and officials interpret the law and create implementation rules during state interventions. Hence, metaphorically speaking, on top of the stacked legal regulations, they stack their own interpretations of the rules, which are adapted to the specific situation. Landholders, on the other side of the spectrum, interpret and adapt the parts of the law that they know or come in touch with, and they add their own norms to it as well.

Stacking of property notions seen from the perspective of landholders	Stacking of property notions seen from the state's point of view
Interpretations of equality: new norms of preference and exclusion	
'Law of human rights' notion of equality	Interpretations of the rules concerning land titling by state officials
Local gender norms: women not entitled to inheritance	Agrarian law land titling procedures
Local inheritance arrangements (lazuro rule)	Agrarian law notion of the social function of land
Interpretations of landholders about ownership and their property rights to ejido land	Agrarian law notion of land to the tiller
Civil Code notion of indivisibility of ownership and improvements	Local ejido regulations
Local ejido regulations	Rural police law
Local norms about fencing and working as expression of claim to ownership	Different agrarian law regulations for ejido
Civil Code notion of adverse acquisition	
Civil Code notion of possession	Civil Code: Ownership is registered in Public Register of Property

*Figure 7.1 Stacked norms and laws with regard to rights in the land of El Zapote*

The different norms in the complex of stacked norms and laws in Figure 7.1 do not completely merge and they do not become clearly demarcated hybrids. The renewed complexes of norms consist of the different elements that have been added in time and that can be distinguished and used by the involved landholders, national state agents and the municipality, or that may also be forgotten and disappear in the end. Figure 7.1 thus does not represent a static situation; the process of stacking is continuous and will change the constellation of the complex.

With regard to inheritance, we have seen that people are actively involved in making, changing and adding new norms through their dialogues and endeavours, while striving for certain goals at certain moments. The result is a complex of stacked norms, different elements of which the actors in inheritance practices (landholding parents and their offspring) use in their strategies to obtain what they want. They are aware of the existence of different norms and they seek to legitimise the norm that best suits their own aims. The whole process of stacking inheritance norms contrasts with stacking in reference to land rights, in which people do not deliberately try to develop new norms.

The advantage of the notion of stacked laws and norms for describing norms about property and the land rights derived from it, is primarily that the concept of stacking describes the historical changes of these norms better. By deconstructing the empirical process of the stacking of norms as regard property rights to land, it has become clear that land rights arrangements are not 'customary', referring to a separate legal system that has developed in opposition to, and disconnected from, state law. It has taught us that landholders' notions of property coincide with civil code concepts of ownership and possession and that the rights that others consider as local or customary are derivatives of old Civil Code property concepts.

'Stacking' in this book is not just a notion to explore an empirical situation of disorder. Its main value as an analytical concept is that it clarifies how 'plurality' of norms come into being, as well as the structure of this plurality and the elements it consists of. In the complex of laws and norms, divergent legal concepts and interpretations and re-interpretations of these concepts are assembled and serve as a basis for rights and claims to land, whereby in time, new elements and interpretations are continuously added to the complex while other elements disappear from it. Sometimes one element is more important, and sometimes another. Furthermore, the notion of 'stacking' makes clear that the constellation of norms surrounding land rights is constantly changing; it is a never-ending process. This process does not create a disordered pluralism, an untidy and random heap of norms without any sense or logic, but it leads to a certain stacked structure in which the separate elements have not merged into a kind of fluid constellation. Its stacked character implies that social actors may be able to recognise the different elements and to use them for their own purposes. They distinguish between different elements and exchange them, reinterpret them or discard them.

By unravelling the stacked elements of the complex, the separate norms and their sources, interpreted meaning, influence and relative importance vis-à-vis the entire complex of laws and norms can be taken more seriously. State law elements differ from other norms because of the state's monopoly on authority. People consider the state as the entity to implement rules, exercise authority and administer justice and as such, a special status is attributed to state law. State law may have far-reaching effects without being adequately implemented. For example: gender equality is a main goal of recent legal changes, but despite the fact that serious enforcement of the new legal stipulations is lacking, the notion of gender equality is filtering through and profoundly influencing gender relations in El Zapote.

Norms that are not related to state law may stem from different sources and differ in their effects and how they obtain legitimacy, which refers to the basis on which people consider a norm to be justified. For example, this book has shown that the lazuro inheritance rule is not comparable to gender norms used by men to contest women's claims to land. People seek legitimacy of the lazuro rule (the youngest son preference in

inheritance) by describing it as a custom: something that has always been there. The legitimacy of particular gender norms, on the other hand, is based in the gender division of labour. Men translate women's ways of using land - mostly aimed at not contesting the gender division of labour by not working on the land themselves - into misuse in order to safeguard their own claims.

Landholders' perception of law involves them considering those norms that they themselves consider morally justified to be law; and law is what the state has laid down in codes and legal prescriptions. By attributing legality to norms, thus starting from the idea that the norm is state law, they institute and confirm the legitimacy of the norm. Deeds of purchase, for example, are important to landholders not only because they prove that a payment has been made, but also because they are supposed to be legal documents of unquestionable value in a court of justice. These private documents are drawn up using official language and are signed by the parties in the presence of witnesses.

The analysis of the norms and laws stacking process has focused our attention on shifts in the relative importance of laws, norms and new laws. Without intending to adapt inheritance practices to state law prescriptions of inheritance -which most people in El Zapote lack knowledge of -, the choice for equality as the leading norm in inheritance actually creates greater similarity between civil law and inheritance norms. Gender norms and the local rule of youngest son inheritance preference have been slowly pushed aside and new norms have gathered strength and legitimacy by referring to law, such as the 'law of human rights.' The reference to human rights has had the effect that people seek to legitimise changing inheritance practices through the state, while they found it sufficient to refer to 'custom' in the past. The reference to legality also enables people using the new inheritance rules to challenge entrenched customs such as the youngest son preference and the denial of women's inheritance rights.

State interventions in El Zapote have affected landholders' ability to maintain the idea that local property concepts are 'law'. Landholders have learnt from the clashes between their own norms and those of the state that the force of their own stacked constellation of property norms is limited. Although legitimate in their eyes, their own norms lacked validity vis-à-vis the state. The difference in how the state and landholders define property rights has distorted their relationship. The state itself, as the institution that defines and protects private property through its laws and legal system, has become an actor in land conflicts. Civil Code property notions are losing strength; the legitimacy of local property concepts has been seriously undermined and landholders have thus become even more insecure about their property rights.

Debates about the land question in Honduras have concentrated on the unequal distribution of land between large landowners and the mass of landless and the scarcity of land as a result of excessive population growth. This book's intention has been to take this debate a step forward by shifting our attention to the organisation of property to develop a better understanding of the constellation of existing property rights instead of taking quantifiable redistribution as point of departure.

The daily conflicts between landowners that appear in this book, where in some cases the subject of conflict may be as tiny as a square meter, may look like marginal problems, but landholders make decisions as a result of these and other factors that profoundly influence their production systems and daily lives. The number of people that are involved in and influenced by such land conflicts is far greater than those who have been engaged in agrarian reform. However, agrarian reform rather than the problems of this majority have received all the attention in the Honduran agrarian development debate so far. Now that the land reform heyday seems to have passed, the land debate in Honduras should focus on understanding the property conflicts that small and independent landholders deal with and provide solutions to the increasing insecurity of property rights.

The state's propagation of land ownership registration in the Public Register of Property has meant that landholders perceive state intervention in property rights as menacing and aggressive. From the state's perspective, hardly any landholder in El Zapote owns the land, a view that is in strong contrast to the way landholders perceive their rights. They have bought or inherited the land, or they have an original concession in ejido land and, as a consequence, they claim to own the land. In my view, the recognition of registered private property should not relieve the state of the obligation to deal with the question of what rights landholders have to their land. This book has studied the histories of people's claims to land and I have contended that these claims are legitimate and reasonable and that they are based in state law concepts of property. A consequence for state intervention in these property rights should be that the state should not be allowed to reclaim land by arguing that landholders do not have registered ownership. In fact, intervention practices have shown that the state's point of view of ownership is difficult to sustain. During the PTT land titling program (a state project to sell national land to resource poor producers), for example, the INA recognised that landholders had possession, and it sold the land to the holders rather than to the highest bidder.

The state, by departing from the registration system, unjustly places too much weight on the registration. The quality of the registration system is so poor that it cannot serve as starting point to determine who the owner of the land is, and isolated

efforts to improve the registration system will not make sense without tackling such related problems as, for example, the deficient judicial system.

The recognition of different property rights instead of focusing exclusively on registered ownership might provide the state with a differentiated image of the peasant-landholder as well, by asking such question to determine who the holder of the land is, who the land user is and who exerts control over the land and its products. The state, policymakers and scientists who participate in debates about the land question often have a certain presumption about the landholder that runs as follows: the landholder is the owner, the user, the decision maker and the controller of the product all at the same time. This book has presented ample evidence that it is not so easy to establish who a landholder is. The person who possesses the land may not be the one who owns the land; the person who works in the field may not be the holder of the land; the person who has 'papers' may not be the same person as the one who has a land title or a registered title deed; and the person who is the holder might not possess any deed of the land. All of these are people who all have figured in this book.

An important lesson to be drawn from this book is that the state should take into account that landed property rights interventions rarely occur in unclaimed areas where there are no vested property rights. Wherever people live, there will be divisions and divergent claims to property, and the very fact that these claims exist implies that the state will not be able to start all over again with the distribution of property rights. Newly proposed policies such as 'joint titling' to improve women's position in property relations are difficult to apply in areas where people have been living for centuries and have their rights to the land and definitions of property firmly established.

Solving property conflicts means that we have to understand local land rights transfer practices. Landholders may not transfer ownership to the land at all at once, but different 'sticks' in the bundle of property rights are transferable at different times. For example, this happens in inheritance practices where adult sons continue to work on their father's land while the father remains owner and determines what the right moment to transfer ownership to his sons will be. Inheritance is thus not just a cultural practice that can easily be changed through new laws. This book has demonstrated that the state has goals with regard to inheritance that differ remarkably from the divergent perspectives of landholders. Nobody wants to comply with the legal inheritance prescriptions, but people use inheritance in strategies to achieve their own particular aims.

Female landholders tend to deploy each element of the split bundle of property rights at different moments. They gain from the land without working on it themselves by renting it out, giving temporary use rights to husbands or sons, working it themselves and making it produce, using it as a collateral for a loan or transfer ownership through a sale. For the women in the research area, only full control over



the land through ownership allows them to effectively split the bundle of property up and make use of the their land.

A related factor that also influences landholders' dealings with their land rights is that transfer practices not only mean that rights transfer to another holder, but that they also reproduce images about the capabilities and rights of people to obtain, hold and use land. These are practices through which ideology is produced and changed. It is therefore important that they are understood whenever the objective of new policy is to improve the rights of excluded groups. The rule conferring inheritance preference on the youngest son, for instance, is disappearing in favour of the new 'equal rights' discourse based on the 'law of human rights'. In fact, new norms of preference and exclusion are coming into existence: norms that define who is right and proper to hold land. Insight into the role that images of people and property rights holders play in land rights transfer mechanisms is vital to understand inequitable distribution and conflict.

### The failure of the judicial system

Legal insecurity as experienced by poor people is a central problem that is perhaps even more consequential than the low agricultural productivity and low incomes they are subject to. Lack of legal security touches the core of their existence as members of a community they depend on for their survival.

This book has dealt with two aspects of legal insecurity: access to the judicial system and the working of the judicial system. Landholders notice that the judicial system is not for the poor but instead favours the rich. When they witness the rich cattle holder with political ties murdering a day labourer and returning from prison unhindered after a few days, they compare this with the poor old man they know who stole a chicken and is still imprisoned after five years without being sentenced. Few poor landholders can afford a lawyer to represent their affairs, and they find it difficult to pay bail when the judge has made this possible. Many of them are not able to read and write, let alone to understand and control the actions of a lawyer. Access to the judicial system is thus extremely problematic for poor landholders, and entering the system is only possible through selling other properties or lending money at social high costs for themselves and their families.

Where does the judicial system itself fall short? This book has revealed many problems related to the internal working of the courts. The autonomous role of the judge makes it difficult to control his work; the paper procedures do not allow for a thorough investigation; evidence is untrustworthy; and the legal regulations surrounding property rights are complicated. These characteristics of the courts' internal workings and judges' dealings with land disputes allow ample opportunities for

all kinds of corrupt practices. Political clientism is another characteristic of the judicial system that may contribute to the persistence of corrupt practices in the courts. Political clientism begins at the Supreme Court and filters through the entire judicial system down to the level of the local justice of the peace. Moreover, the judicial system suffers from such organisational problems as lack of experience and the low quality of training judges and court personnel receive, deficient salaries and lack of control mechanisms. Finally, an additional factor contributing to the failure of the judicial system is that not every official is trustworthy and law-abiding and able to deal with a position of power.

The effects of the judicial system's failure can be seen directly in people's daily lives. Conflicts over property have an intense effect on small rural communities where people have known each other their whole lives and feel themselves compelled to side with one of the parties. For a landholder, involvement in a conflict means that he or she can no longer walk at ease through the village because he or she runs the risk of facing all kinds of violence.

The examples presented in this book have shown that conflicts may persist for decades and may even involve succeeding generations. The lack of institutions that are able to effectively deal with conflict leads to people individually developing conflict avoidance strategies. When involved in a conflict, they are confronted with the politicised character of their own community and the dual roles of village and regional judicial authorities, who are expected to maintain law and order but who are politicised and not able to judge independently. It is at this juncture where a class justice perception develops and settles in the minds of rural people. The judicial system is accessible exclusively to the rich and the administration of justice works in such a way that it provides advantages to the rich, thus enforcing the class justice image. Paradoxically, however, the state at the same time is the people's only frame of reference as the institution that they expect to be responsible for wielding authority, issuing rules and administering justice.

Criticism of the judicial system's operation mainly refers to the 'rotten apple' theory, wherein the rotten apple among good apples bears the potential danger of infecting the others. Now and then, an official of the judicial system is suspended or faces criminal charges because of corrupt practices: he or she is the 'rotten apple' which has to be removed from the system so that the system can keep working. My analysis of the judicial system in Chapter Six shows that the problem of the judicial system is not a simple question of removing a rotten apple. An apple does not begin rotten; there are specific conditions and circumstances that *make* it rot. Class justice is more than just how people perceive the justice system to be: it is also rooted in the system itself.

A major problem with the prevailing analysis of the working of the judicial system is that a cause of failure is seen as a problem of individual morals: a judge or court official lacks the appropriate morals and therefore, the judicial system falls short. Morals, in

this view, are the driving force instead of the *consequence* of the way the system works. At the same time, personal morals are something that are among the most difficult things to change. The emphasis on morals as the heart of the problem makes it difficult for landholders to understand why the removal of one corrupt official does not change the systemic characteristics of the judicial system that are responsible for the emergence of the class justice image. They consequently think that all judges are 'rotten apples' without further questioning the deficiencies of the system.

### Some consequences for development issues

The theoretical and political consequences of my findings strongly relate to contemporary development issues. This book has discussed the many difficulties of land titling, which is still a main goal of agricultural development policies. The state expects that land titles will help create a land market through which land can be transferred into the hands of the most efficient producers. These producers would get access to productive credit, extension services and new technologies, whereby owned land could be used as collateral. They will then modernise their production systems, make long-term investments and enhance their productivity. Land titling advocates think that titling will thus put an end to poverty.

I have discussed the following problems in this book that emerged when a land titling program was implemented in El Zapote in the 1980s:

- Land titling is a state intervention in unknown vested property rights
- The state lacks insights into the dynamics of the local land market
- The state acts in a double role as owner of national land and as protector of citizen's private property rights
- The expected benefits of land titling are merely assumptions, which are not supported by the outcomes of titling programmes

The analysis presented in this book calls for a thorough revision of land titling policies. Landholders are not negative about titling in itself and they are not all completely set against registration. I have argued that a titling program that focuses on protection and security goals rather than the *sale* of state-owned national land to private owners would have more legitimacy in the eyes of landholders. Moreover, this book has emphasised the enormous consequences of the lack of legal security and access to justice, problems that every land titling project will encounter and have to deal with. Even in a case of a tiny plot with no serious economical value, a conflict about who holds and controls the rights to this plot may be utterly devastating to people's wellbeing. Access to an independent judicial system which is able to independently evaluate contradictory claims to land would be of great help in avoiding the emergence and persistence of

conflicts. It may thus be necessary to harmonise Civil Code and agrarian law notions of property, to think about the legal validity of agrarian law property concepts relating to land that has not been distributed through agrarian reform, and to evaluate and understand the vested and stacked property notions in the minds of landholders.

A second consequence of this book in the context of development relates to women's rights to land. Women's land rights is a prominent subject in development discussions that focus on abolishing gender inequality. The argument elaborated in this book is that land rights for women are unjustly seen as a specific development issue instead of an inherent part of their citizenship. Whilst men are considered to have a natural and inherent right to land as Honduran citizens, women's rights are particularly wrapped up in an instrumental development discourse. Men seem to be able to automatically claim inheritance rights, while women cannot. There is for the time being a lack of insight into why women gain or lose out with respect to land rights (Deere 2001, Deere and León 2001). Yet this is the key to understanding women's multiple strategies and interests in land, the multiple meanings they attach to the land, how they want to use land, or why and how they wish to transfer their rights.

Additionally, enhancing legal security means that it is very important to facilitate the poor's access to the judicial system, to improve the quality and independent character of the court of justice, and to change the class justice perceptions of landholders. This book has only treated a limited aspect of the consequences of the absence of legal security. Lack of legal security in Honduras not only affects rural landholders but all sectors in society. We have seen that the judicial system suffers from problems that are not solved by removing rotten apples. Legal security is high on the political and development agenda (World Bank 2001b), but projects to improve it and stimulate legal and judicial reforms feature merely technical questions of more training, computers or renewed procedures.<sup>1</sup> The outcome of this book suggests that one would be better off starting at the very heart of the problem: the politicised Supreme Court and, subsequently, all other judges and court personnel. Yet this requires a change of the political system, a solution that is still far from becoming reality and which will result in little credit for the development agencies.

The relationship between the state and its citizens is problematic and contradictory. People continuously mix cynicism over failing authorities with hope regarding the desired future role of the state with regard to land rights. Ana Salgado, the woman who appeared in the introduction of this book, lost her land to her son who received the unintended help of the state in putting forward his false claim, thereby creating a conflict situation in which many villagers became involved. A situation such as this is not easily solved by villagers themselves, and it is not unusual that they would hope and expect an independent authority to show up to help them solve it in a peaceful way, so that the almost unavoidable conclusion of crossing machetes can be avoided for once and justice might be at hand.

Any future activity of the state will certainly be confronted with scepticism. It will take enormous effort to transcend the general distrust in the working of the state, and particularly of the judicial system. It is a distrust that finds its roots in the state's own inability to change it. Meanwhile, landholders will be imprisoned in the paradox they reproduce themselves: they complain about the working of the state and expect the same state to solve their problems.

## Notes

- 1 The aim of putting legal insecurity on the development agenda is not always inspired by the desire of improving the lives of the poor. The government of the USA has been pressing to implement new property laws and improvements of the judicial system, to the benefit of the American investors in Honduras.

# Glossary

Actas municipales:	Records of the minutes of the municipal council, including official agreements and land measurements carried out by the <i>síndico</i> .
Alcalde auxiliar:	Assistant mayor, having the tasks to solve small conflicts and assist the JP in doing inspections at crime sites. Each hamlet has its own assistant mayor.
Concession:	Usufruct rights to the land given by the municipal council to producers.
Deed of purchase:	Private deed, the common way to transfer land rights.
Ejido:	National land designated to the municipality by the national state. The municipal council could grant usufruct rights in ejido lands to its inhabitants on an individual base.
Escritura pública:	Public deed, document of the Public Register of Property, legal proof of ownership.
INA:	Instituto Nacional Agrario, state institute to enforce agrarian laws.
Juez de paz:	Justice of the Peace (JP); local judge who is part of the state judicial system.
Land title:	Document of ownership, issued to landholders during the PTT titling program.
Lazuro:	Youngest son, the preferred heir according to local inheritance rules.
Lempira:	Honduran currency, 1 US\$ = 13 lempiras (1997).
Manzana:	Area measure, officially 0.697 hectare; in El Zapote the manzana measures 0.8361 hectare (Jansen 1998).
Petate:	Sleeping mat made from tule, women's most important source of income.
PTT:	Proyecto Titulación de Tierras, land titling project of the state.
Síndico:	Member of the municipal council who is responsible for land measurements, settling boundaries and solving boundary conflicts.
Tarea:	1/16 of a manzana, 523m <sup>2</sup> .
Tule:	<i>Cyperus canus</i> , perennial crop of which the stems are used for weaving petates.



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## Gestapeld recht. Land, eigendomsrechten en conflict in Honduras

Conflicten over zelfs het kleinste stukje land kunnen potentieel gewelddadig zijn en reorganiseren relaties tussen mensen en tussen burgers en de staat. In de bergen van de provincie Santa Bárbara in Honduras leven de mensen van de landbouw; land is één van hun belangrijkste en meest waardevolle bezittingen. Dit boek analyseert de oorzaak van conflicten over het eigendom van land, en kijkt daarbij met name naar de achtergrond en betekenis van normen, wetten en stukjes van wetten waarop mensen én de overheid hun claims op het land baseren. De onderzoeksopzet combineert gedetailleerde gevalstudies van landconflicten, eigendomstransfers en praktijken rondom overerving in een ruraal dorp met uitgebreide analyses van rechtbankdossiers en interviews met sociale actoren in het rechtssysteem. Ik beschrijf in dit boek uitvoerig de organisatie van eigendomsrelaties in boerenhuishoudens, de verdeling van de verschillende eigendomsrechten tussen mannen en vrouwen, sociale praktijken rondom de verdeling van landrechten zoals overerving, de verschillende betekenissen van land voor verschillende groepen mensen en de rol die het landgebruik speelt bij het kunnen volhouden van een claim. Een ander belangrijk onderwerp in dit boek is het verschil van mening tussen burgers en de overheid ten aanzien van de eigendomsrechten op het land. De vraag is of de claims van de overheid op het land in alle gevallen legitiem zijn. Ook ga ik in op de bestaande mogelijkheden van conflictbeslechting en kijk met name naar hoe de rechterlijke macht met conflicterende eigendomsclaims omgaat.

De wijze waarop mensen in Honduras hun eigendomsclaims verwoorden en de normen en regels waarop ze zich baseren wordt in de literatuur over land vaak 'informeel' of gewoonterecht genoemd. Het gewoonterecht zou bestaan uit een wirwar van regels die landrechten vastleggen en die de basis vormen voor eigendomsclaims. Deze gewoonterechtregele zouden echter losstaan van de wijze waarop landeigendom wordt gereguleerd door het statelijk recht. De gewoonterechtanalisten concluderen

daarom dat conflicten en onzekerheid over eigendom ontstaan omdat mensen geen wettelijke rechten op het land hebben. Een daaraan gekoppelde beleidsconclusie is dan ook dat de overheid nieuwe eigendomscertificaten aan eigenaren zou moeten verstrekken. De essentie van het eigendomscertificaat is dat de overheid het nationale land (eigendom van de staat) door middel van een verkoop overdraagt aan een private persoon. Een evaluatie van een project via welke de overheid eigendomscertificaten verstrekke aan boeren in Santa Bárbara laat echter zien dat de certificaten de onzekerheid met betrekking tot eigendomsrechten niet hebben bevorderd en dat conflicten eerder versterkt dan opgelost zijn.

Door middel van het concept 'gestapeld recht' ontwikkel ik in dit boek een alternatieve analyse die beter dan de term gewoonterecht in staat is om de uiteenlopende definities en de organisatie van landrechten te begrijpen. Het concept 'gestapeld recht' vraagt aandacht voor normatieve pluraliteit in de regulering van sociaal gedrag. Bovendien stelt het de dominante vooronderstelling ter discussie dat er een directe relatie zou bestaan tussen de voorschriften uit het statelijk recht en de sociale werkelijkheid.

Het concept 'gestapeld recht' gebruik ik om meer helderheid te verschaffen in de compilatie van de bestaande rechten en in het ontstaansproces van eigendomsclaims op het land. Stapeling vindt allereerst plaats in de formulering van het statelijk recht. In de loop der tijd worden nieuwe wetten en wetsartikelen geformuleerd zonder dat het precies duidelijk is hoe deze zich verhouden tot eerdere wetten. Dit boek beschrijft bijvoorbeeld de verwarring over de wettelijke bepalingen ten aanzien van eigendomsrechten op het land, waarbij claims gebaseerd op het civiele eigendomsrecht ofwel het agrarisch recht contradictoir zijn. Het proces van stapeling in het overheidsrecht is nooit 'af', het zal continue doorgaan en altijd weer leiden tot meervoudige interpretaties.

Stapeling vindt niet alleen plaats in de formulering van wetten en regels door de overheid. Er vindt opnieuw stapeling plaats als het overheidsrecht een rol gaat spelen in sociale praktijken, waarbij sociale actoren bepaalde voorschriften interpreteren en herformuleren en hun eigen normen hier weer bovenop 'stapelen'. Dit proces is goed te zien als we kijken naar de ontstaansgeschiedenis van de lokale definities van landrechten.

Landeigenaren vinden dat zij hun land in eigendom hebben. Deze definitie van hun landrechten is niet altijd dominant geweest. Oorspronkelijk had een deel van het land in de gemeente de status van een *ejido*. De *ejido* was land dat de nationale overheid had toegewezen aan de gemeente, die daarover, onder bepaalde voorwaarden, tijdelijk vruchtgebruik gaf aan agrarische producenten. Het land kon niet zomaar worden verkocht, herverdeeld of overgeërfd. In de loop der jaren verloor de gemeente haar grip op het *ejido* land. De mensen begonnen hun perceel als hun eigendom te beschouwen en zij verkochten en vererfden het land zonder inmenging van de gemeente. Zij

voegden eigenhandig steeds meer rechten toe aan het vruchtgebruik, totdat men voldeed aan de lokale standaarden voor volledig eigendom: zij omheinden hun percelen en bewerkten ze. Een eventuele verkoop werd vastgelegd in private transactiedocumenten. De regels en normen die ze ten aanzien van eigendom ontwikkelden, hadden de betrokkenen niet ter plekke zelf verzonnen. Het blijkt dat de gestapelde elementen in de gehanteerde eigendomsdefinities in feite afkomstig zijn uit het civiele recht. Op grond daarvan concludeer ik dat 'gewoonterecht' geen accurate term is omdat de lokale definities van landrechten en eigendom een duidelijk wettelijk basis hebben.

Dit boek beschrijft nog een derde proces van stapeling in het recht. Overerving is een van de belangrijkste oorzaken van conflicten. In de context van groeiende landschaarste en een groeiende bevolking vormt de erfenis een steeds belangrijker mechanisme van toegang tot land. Erfenissen worden verdeeld volgens regels die geen enkele verbintenis lijken te hebben met het officiële recht. De lokaal gebruikte regels voor overerving zijn onder invloed van de snel veranderende omstandigheden aan voortdurende bijstelling en verwerping onderhevig. Een belangrijke regel die de jongste zoon aanwijst als enige erfgenaam, lijkt achterhaald omdat de toepassing van de regel vaak leidt tot gewelddadige conflictsituaties. Nieuwe normen zijn in ontwikkeling en worden gestapeld op de oude, waardoor het arsenaal aan normen, waaraan men besluiten en gedrag ten aanzien van overerving kan toetsen, is uitgebreid. De rechten van vrouwen ten aanzien van overerving worden bijvoorbeeld steeds belangrijker. Onder invloed van de groeiende belangstelling voor mensenrechten speelt 'gelijkheid' een steeds belangrijkere rol. Dit resulteert onder andere in een veranderend genderdiscours (en daarmee ook in andere gender-normen) en in het vergroten van het zelfbewustzijn van vrouwen.

Het concept 'gestapeld recht' vervult twee functies in dit boek. Ten eerste zorgt het voor een historische kijk op de ontwikkeling van landrechten, waarbij in de loop der tijd verschillende regels over de verdeling van landrechten op elkaar worden gestapeld. Het boek beschrijft de schijnbaar chaotische constellatie van normen die bij eigendomsclaims een rol spelen als een gestapelde structuur. Oude elementen worden niet compleet vervangen door nieuwe, maar de nieuwe elementen worden bovenop de oude gestapeld waardoor de verschillende belanghebbenden zich nog steeds kunnen beroepen op de oude elementen. Een tweede functie is dat ik door middel van het concept 'gestapeld recht' de verschillende elementen waaruit de 'stapel' bestaat, apart kan belichten. We zien dan dat de verschillende elementen van elkaar verschillen wat betreft hun bronnen, betekenis, invloed en belang.

Het boek belicht verder een belangrijke paradox met betrekking tot de rol van het statelijk recht. Mensen beschouwen hun eigen normen, waarop zij hun claims baseren, als legitiem omdat zij denken dat deze normen statelijk recht zijn. Door recente staatsinterventies hebben zij echter ervaren dat de staat de legitimiteit van hun claims

niet erkent. Dezelfde staat die in de ogen van landbezitters eigendomsclaims legitimiteit zou moeten verschaffen en hun rechten zou moeten beschermen, doet in werkelijkheid het tegendeel.

Deze studie laat zien dat in het beleid rondom de toewijzing van landrechten, de staat (daarbij aangestuurd door ontwikkelingsorganisaties) zich minder zou moeten concentreren op de verkoop van het nationale land aan particulieren en aan eigendomsregistratie. In plaats daarvan zou men meer aandacht moeten besteden aan het verhelderen van het wettelijke kader dat landrechten zou moeten reguleren en aan het opheffen van de rechtsonzekerheid. Rechtsonzekerheid blijkt sterk gerelateerd aan de falende capaciteiten van de rechtbank om geschillen over eigendom te beslechten. Het boek concludeert tevens dat de rechten van vrouwen op land niet langer meer gerelateerd zouden moeten worden aan hun specifieke taken als moeders en voedselproducenten, maar dat net als bij mannen, de nadruk zou moeten liggen op hun burgerschap en de daaraan verbonden wettelijke rechten. Het benadrukken van de unieke positie van vrouwen gaat voorbij aan de werkelijke betekenis van land voor vrouwen en creëert -onbedoeld- juist ongelijkheid.

## About the author

Esther Roquas (born in Sittard, the Netherlands, in 1966) studied sociology of rural development at Wageningen University. She worked for various NGOs during her practical period in Honduras in 1989 and did her MSc field research in Honduras in 1993. Since 1995 she has been a research fellow at the Law and Governance Group at Wageningen University. She was a visiting researcher at the Postgrado en Economía y Planificación del Desarrollo (UNAH) in Tegucigalpa, Honduras.

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