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Balancing Economic Development with the Protection of Indigenous Territories in Latin America

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POLICY SUMMARY #15

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GENDER AND DIVERSITY KNOWLEDGE INITIATIVE

Balancing economic development with the protection of indigenous territories in Latin America

The legal protection of Indigenous territories in Latin America has been key to preventing their loss and safeguarding the collective rights of Indigenous Peoples. However, in many countries this protection has relied on rigid frameworks that prohibit any form of transfer, which also limits the possibilities for economic development within those territories. This design creates tension between the preservation of Indigenous property and the full exercise of their economic rights.

The case of Chile offers an intermediate experience: a legal framework that restricts the transfer of Indigenous lands to non-Indigenous persons but allows circulation within the same ethnic group. This restricted liberalization seeks to safeguard Indigenous territorial integrity without blocking economic dynamism within the communities.

A recent study funded by GDLab (Jordán, Jaimovich, and Heilmayr, 2025) finds that this model has helped reduce land loss without generating significant negative impacts on productive land use. Nonetheless, its effectiveness could be strengthened through improvements in implementation, particularly by reinforcing the role of the Indigenous Land Public Registry, which is responsible for identifying which lands are subject to protection.

Building on the Chilean experience, this policy brief proposes a series of recommendations to move toward legal frameworks that, while respecting the collective rights of Indigenous Peoples, also promote their self-determined economic development. Among them are: allowing collectively validated internal transfers; clarifying the legal criteria for protection; strengthening land registries; automating the registration of Indigenous lands in succession cases; and complementing legal frameworks with active policies to foster productivity.

The economic cost of traditional protections

In Latin America, legal restrictions on the sale, leasing, and use of Indigenous lands have been a key tool to prevent territorial loss and safeguard the cultural identity of Indigenous Peoples (Plant and Hvalkof, 2001; Comisión Verdad Histórica y Nuevo Trato con los Pueblos Indígenas, 2003). However, these protections entail significant economic and political challenges, as they limit the use of the main productive asset available to Indigenous families: land.

From a theoretical perspective, the economic literature argues that clearly defined and transferable property rights are an essential driver of economic growth (Besley, 1995; Besley and Ghatak, 2010). The absence of widely legitimized titles restricts access to productive credit and fails to provide producers with the security that they will be able to reap the fruits of their efforts, thus discouraging investment. In addition, aggregate productivity is diminished when the lack of transferable rights hinders the reallocation of land to the most efficient producers.

Latin America faces the challenge of protecting the integrity of Indigenous territories without limiting the ability of their inhabitants to fully develop their economies.

While Indigenous communities can create and manage traditional tenure systems that provide security of possession and facilitate transferability, the lack of integration with the formal property systems in place in each country keeps community members under a differentiated regime compared to their non-Indigenous compatriots. As a result, protection policies may have the unintended effect of hindering the closure of historical economic gaps by restricting Indigenous families to a land system that limits their opportunities for economic development.

Several empirical studies have documented the negative economic effects associated with Indigenous property systems that impose severe restrictions. Indigenous territories under federal trusteeship in the United States, with strict limitations on title transfers, show lower levels of investment and productivity compared to those under full ownership (Leonard et al., 2020; Dippel et al., 2020). Similarly, Akee (2009) finds that loosening restrictions on the Palm Springs Indian Reservation in California facilitated private investment. For Latin America, the evidence is more limited, although experiences such as Mexico's PROCEDE program indicate that the transition from communal lands to private property—relaxing restrictions on transferability—was linked to improvements in agricultural productivity and reduced emigration (De Janvry et al., 2015; Castañeda Dower and Pfutze, 2013). Taken together, these studies suggest that while restrictions play a role in territorial protection, they can also generate significant economic costs by limiting the ability of Indigenous households to access financing, invest, and seize market opportunities.

While protections have imposed costs on Indigenous families, loosening them has often been associated with the loss of Indigenous territories. In Canada, the regime of certificates of possession, which allows transactions only among members of the same band, has been linked to an increase in the non-Indigenous population within reserves, without significant improvements in the economic conditions of resident Indigenous peoples (Aragón and Kessler, 2020). Akee (2020) found a similar result when analyzing the history of two Native American reservations in the United States, one of which introduced individual property rights in the early twentieth century. After ten years, private property led to a substantial decline in the number of Indigenous families owning their land, without generating notable economic benefits. In Latin America, Jordán and Heilmayr (2024) find that the introduction of individual rights in Mapuche Indigenous reserves in Chile significantly reduced Indigenous ownership, worsening the economic conditions of those who sold their land without state protection.

In sum, Latin America faces the challenge of protecting the integrity of Indigenous territories without limiting the ability of their inhabitants to fully develop their economies. Restrictions on private property can be understood along a continuum ranging from inalienable collective property to private property under the common civil regime of each country. Where should the balance lie to achieve effective protection of Indigenous property while at the same time minimizing economic costs? In the next section, we review some of the regulatory frameworks currently in place in the region, followed by a detailed analysis of the Chilean case studied by Jordán, Jaimovich, and Heilmayr (2025), as an illustrative example of restricted liberalization of property in Indigenous territories. as.

Regulatory frameworks for the protection of Indigenous lands in Latin America

The regulation of land and territories of Indigenous Peoples in the region (and beyond) is a highly complex issue. This is largely due to longstanding historical factors that have shaped the current state of these territories. The situation dates back to the times of conquest, colonization, and the early republican periods of different countries. These processes generally involved the reduction of the territories originally occupied by Indigenous Peoples before the arrival of Europeans. As national states established their political and administrative divisions, these also affected the territorial boundaries and lands occupied by Indigenous Peoples.

Adding to this complexity is the particular relationship that Indigenous Peoples have with their territory. Land is considered the fundamental pillar of their existence as peoples. In many cases, it is the basis of their subsistence, as it provides food and livelihoods; it is the place of their ancestors and the living space where their culture unfolds. Many Indigenous worldviews conceive of human beings and nature—and therefore land—as an interconnected whole of mutual dependence: what happens in nature affects human beings, and human actions affect nature. This aspect is of utmost importance, since for many Indigenous Peoples, particularly those in the Amazon, the concept of alienating land does not exist; in other words, land is not considered an asset subject to sale or purchase, either because it is understood as a collective good or because, according to their worldview, it is not subject to economic exchange (Mayor and Bodmer, 2009).

Another factor to consider, which has perhaps been little studied, is the impact of relatively recent demographic dynamics in Indigenous territories. Specifically, several peoples have experienced a strong shift from rural to urban areas. In many cases, the connection to their lands is not lost, but this migration poses a challenge for the protection of those lands. It is also important to recognize the high degree of heterogeneity in the situation of each Indigenous people. For example, peoples in voluntary isolation or initial contact (generally with small populations) require specific measures to ensure the protection of their territory. Others, by contrast, show dynamics of territorial expansion, whether for economic reasons or other factors—such as the case of the Q'eqchi' people in Guatemala (Us et al., 2021).

Finally, and no less importantly, it should be noted that regulations aimed at conserving or protecting natural resources can come into tension with those seeking to safeguard Indigenous territories. This is reflected, for example, in the establishment of protected areas that overlap with lands that belong or have belonged to Indigenous Peoples. In such cases, the primacy of the rights acquired by these peoples over their territories must be recognized.

The degree of legal recognition of Indigenous lands or territories in the region is directly related to the recognition that national states have granted to Indigenous Peoples. In other words, the extent to which supreme laws—constitutions—explicitly recognize Indigenous Peoples, as well as the type of recognition they provide, is reflected in the degree of recognition of their rights over their lands or territories. This recognition has been largely influenced by the evolution of international law on the matter, with the most recent instrument being the United Nations Declaration on the Rights of Indigenous Peoples. The recognition of Indigenous territories is highly relevant, as it determines other aspects such as the application of Indigenous jurisprudence (in the countries where it is recognized), Indigenous governance, and the allocation of public resources.

Regional overview of the recognition of Indigenous lands and territories

Countries in the region have generally advanced in recognizing the rights of Indigenous Peoples, driven largely by progress in international law. The most recent international instrument, the United Nations Declaration on the Rights of Indigenous Peoples, dedicates Article 26 to the issue of territories and highlights three aspects: (i) the right to the lands and territories that they have traditionally owned, occupied, used, or acquired; (ii) the right to use, control, and develop those lands and territories; and (iii) the obligation of states to recognize and protect the lands, territories, and resources of Indigenous Peoples. The main focus of this recognition has been on protecting territories, either by ratifying those already recognized as such in some countries (such as the autonomous regions of Nicaragua, the comarcas in Panama, or the resguardos in Colombia), or by providing for mechanisms to be developed in the future for that purpose.

The recognition of Indigenous Peoples has been heterogeneous across the constitutions of the region. According to an analysis by the Latin American Indigenous Fund (FILAC, 2019), countries are classified according to the type of recognition they grant to Indigenous Peoples in their constitutions. A first group still does not recognize them (Chile, Costa Rica, and Uruguay). A second group consists of countries that do recognize them, but only as subjects of protection with restricted rights (Colombia, El Salvador, Guatemala, Honduras, Panama, and Peru). A third group includes countries that recognize them, but only with respect to certain rights: Argentina (education, identity, and lands); Brazil (lands); and Paraguay (identity, organization, lands, and participation). Finally, there are five countries that recognize Indigenous Peoples in a more comprehensive way, as subjects of collective rights (Bolivia, Ecuador, Mexico, Nicaragua, and Venezuela).

With regard to the specific recognition of the right to Indigenous lands and territories, the scope and depth vary from one country to another. According to a report by ECLAC (2020), an analysis of constitutional texts was carried out in light of dimensions such as the recognition of collective lands, original ownership, special protection of lands, demarcation and titling, expansion, protection of natural resources, prohibition of displacement, and autonomy. Table 1 presents the situation of several countries with respect to these dimensions.).

TABLE 1: DEGREE OF RECOGNITION OF INDIGENOUS TERRITORIES

Country	Collective lands	Original ownership	Special protection of lands	Demarca-tion and titling	Expansion	Natural resources	Prohibition of displace-ment	Autonomy
Argentina	X	X	X		X	X		
Bolivia	X	X	X	X	X	X		X
Brazil	X	X	X	X		X	X	
Chile								
Colombia	X		X	X		X		X
Costa Rica								
Ecuador	X	X	X					X
El Salvador								
Guatemala	X	X			X			
Honduras	X							
Mexico	X					X		X
Nicaragua	X	X				X		X
Panama	X		X					
Paraguay	X		X				X	
Peru	X		X					X
Uruguay								
Venezuela	X	X	X			X		

Source: ECLAC (2020), Table II.2.

It is important to note that constitutions emphasize the collective nature of the lands or territories of Indigenous Peoples and underscore the objective of protecting those territories. For example, the Constitution of Argentina states "the possession and community ownership of the land they have traditionally occupied" (Article 75.17); that of Bolivia establishes "the recognition or protection of community or collective property" (Article 394); and that of Venezuela indicates "the right to collective ownership of the lands" (Article 119). In all these cases, Indigenous Peoples are conceived as a whole, as a subject in themselves, without recognizing individual rights.

This recognition or conception of Indigenous Peoples as subjects holding collective rights has important implications for land and territories. In other words, the legal corpus emphasizes collective protection and disregards or even prohibits any form of individual appropriation. In Argentina, for instance, it is established that Indigenous lands are not transferable, alienable, or subject to seizure (Article 75.17); in Bolivia, such lands are defined as "indivisible, imprescriptible, unseizable, inalienable, and irreversible" (Article 394.III). Similarly, the constitutions of Brazil, Colombia, Ecuador, Peru, and Venezuela include provisions that reinforce this principle. In the case of Panama, it is explicitly stated that the private appropriation of Indigenous property is prohibited. This prevailing legal framework appears to leave no room for commercial transactions involving Indigenous lands or territories.

Gaps in the implementation of the regulatory framework on Indigenous lands and territories

The legal framework is designed to ensure the protection of Indigenous lands and territories. To this end, administrative processes of delimitation, demarcation, titling, and regularization have been created to guarantee legal certainty and the effective protection of the collective property of Indigenous Peoples. In practice, however, the implementation of these measures has been limited in scope and has faced multiple challenges.

Table 2 presents a summary of the situation in some countries of the region regarding the implementation of the regulatory framework on Indigenous lands and territories, as documented by ECLAC (2020). The following section examines the case of Chile in greater detail, which offers an intermediate experience: a legal framework that restricts the transfer of Indigenous lands to non-Indigenous persons but allows circulation within the same ethnic group.

TABLE 2: REGULATORY FRAMEWORK IN COUNTRIES OF THE REGION

País	Avances y Desafíos
Argentina	Although it has the Territorial Survey Program administered by the National Institute of Indigenous Affairs (INAI), by 2017 only 18.7% of the lands had been demarcated, and no property had been titled.
Bolivia	The country has one of the most robust legal frameworks for the recognition of Indigenous territories. However, there is a gap between what has been demanded, what has been recommended, and the area effectively titled. According to Almaraz Ossio (2019), as of 2019, 42% of the land demanded had been titled.
Brazil	As of June 2019, the National Indian Foundation (FUNAI) had identified a total of 737 Indigenous communal properties. Of that number, only 60% of the total area covered by these properties had completed the regularization process, with a total coverage of 105,845,049.3 hectares.
Colombia	A total of 767 Indigenous resguardos have been legalized, covering approximately 32,653,436.78 hectares; 80% of them were recognized before the country's Constitution included the recognition of the territorial rights of Indigenous Peoples.
Costa Rica	Although 24 Indigenous territories have been formally recognized, covering a total area of 187,415 hectares, much of this land is in the hands of non-Indigenous persons. In some extreme cases, such as China Kichá and Zapatón, 97% and 80% of the territory, respectively, is occupied by non-Indigenous persons. There are few territories where Indigenous Peoples hold majority ownership (e.g., Osa or Talamanca).
Guatemala	Despite having an Indigenous population of 42%, the political-administrative division does not recognize the category of Indigenous territories. While there is a Communal Lands Regulation as a cadastral instrument, its scope is very limited.

Source: ECLAC (2020).

Indigenous property in Chile: closed outward, open inward

An innovative legal framework: broad but restricted liberalization

In 1993, Chile enacted a new Indigenous Law aimed at recognizing and protecting the territorial rights of Indigenous Peoples. This legislation defined so-called "Indigenous lands" as those currently occupied by Indigenous persons or communities that meet certain origin criteria, such as having been granted by the state or having been historically possessed. One of the central innovations of this law was the establishment of a special property regime that prohibits the sale, leasing for more than five years, or mortgaging of Indigenous lands to persons who do not belong to the same ethnic group. However, unlike in other countries of the region, Chilean legislation allows the free transfer of lands among Indigenous persons of the same ethnicity, making it an exceptional case of restricted liberalization.

To operationalize this protection, the law created the Indigenous Land Public Registry (RPTI), administered by the National Corporation for Indigenous Development (CONADI). The purpose of this registry is to officially identify lands subject to legal restrictions, enabling local land registries and other public institutions to properly apply the provisions of the law. In theory, all land that meets the legal criteria should be registered in the RPTI, either through state initiative (in cases of state-granted titles) or at the request of landowners. In practice, however, the registry has faced significant budgetary, technical, and legal limitations, which have prevented its consolidation as an effective instrument of territorial protection.

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Institutional challenges

The Chilean institutional design seeks a balance between the protection of Indigenous property and the possibility of transactions within the ethnic group. This partial liberalization represents an intermediate approach: while it prohibits transfers to non-Indigenous persons, it allows the free circulation of land among members of the same Indigenous people. In principle, this model seeks to facilitate a more efficient reallocation of land within communities without exposing them to the risk of territorial loss.

However, the effectiveness of the system depends largely on its practical implementation. Although the law establishes that certain lands automatically meet the requirements to be considered Indigenous—such as those acquired by communities with state support or through historical collective titles—in practice, effective protection requires that these lands be registered in the RPTI. From an analytical perspective, a distinction can be made between de jure protection, based on the legal criteria defined by the legislation, and de facto protection, established through registration in the RPTI.

The RPTI, however, has undergone a gradual weakening. Registration is not automatic, the procedure to verify the Indigenous status of a property is costly, and the registry lacks dedicated funding. In addition, there are legal ambiguities regarding the timing and criteria that define a property as Indigenous. The result has been incomplete coverage of the protection system: three decades after the enactment of the law, it is estimated that less than half of the lands that should be protected are listed in the RPTI (Morales Marileo, 2023). This institutional weakness leaves room for Indigenous properties to be left unprotected in legal transactions, especially in succession processes, where records tend to fragment and are not re-registered in the RPTI. Thus, a legal design that seeks to combine flexibility and safeguards may, in the absence of effective implementation, end up eroding the Indigenous territorial base it was intended to preserve..

Protection without evident economic costs and with potential for improvements in implementation

Jordán, Jaimovich, and Heilmayr (2025) estimate the impact of the Indigenous Law on the percentage of Indigenous land ownership and agricultural production, using difference-in-differences methods and a new database that combines administrative registry information from the municipality of Temuco, georeferenced parcel data, and agricultural productivity measures derived from satellite images. The three main findings of this study are presented below.

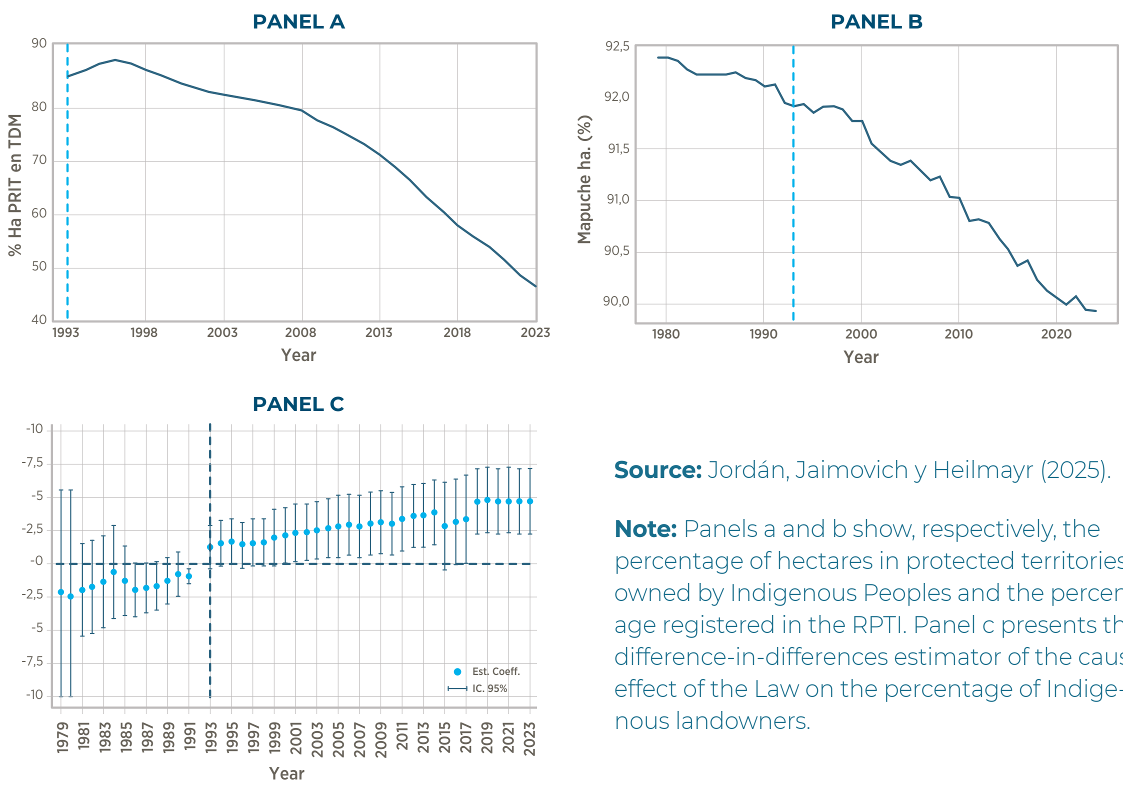
1. The Indigenous Law protects the integrity of Indigenous territories

Figure 1a shows that the percentage of Indigenous land ownership in the territories protected by the Indigenous Law has declined moderately since its implementation in 1993: less than three percentage points over more than thirty years. However, there is a clear acceleration of territorial loss toward the end of the period. This trend coincides with a sharp decrease in the share of hectares covered by the RPTI, which fell from more than 85% of the protected territory at its peak in 1994 to less than half by 2023 (Figure 1b).

To analyze the causal impact of the Indigenous Law on territorial loss—even considering the challenges in its implementation—Jordán, Jaimovich, and Heilmayr (2025) use a difference-in-differences strategy combined with an observable matching technique. This methodology allows for comparing the evolution of Indigenous land ownership in parcels protected by the law with that observed in similar properties not subject to the protection regime.

The result, illustrated in Figure 1c, indicates that by 2023 Indigenous land ownership in protected territories was approximately five percentage points higher than in unprotected parcels, compared to 1992. This effect is statistically significant at the 5% level, and its magnitude is substantial: had the law not been implemented, the loss of Indigenous ownership during the period would have been approximately three times greater.

FIGURE 1: TERRITORIAL LOSS IN PROTECTED LANDS



Source: Jordán, Jaimovich y Heilmayr (2025).

Note: Panels a and b show, respectively, the percentage of hectares in protected territories owned by Indigenous Peoples and the percentage registered in the RPTI. Panel c presents the difference-in-differences estimator of the causal effect of the Law on the percentage of Indigenous landowners.

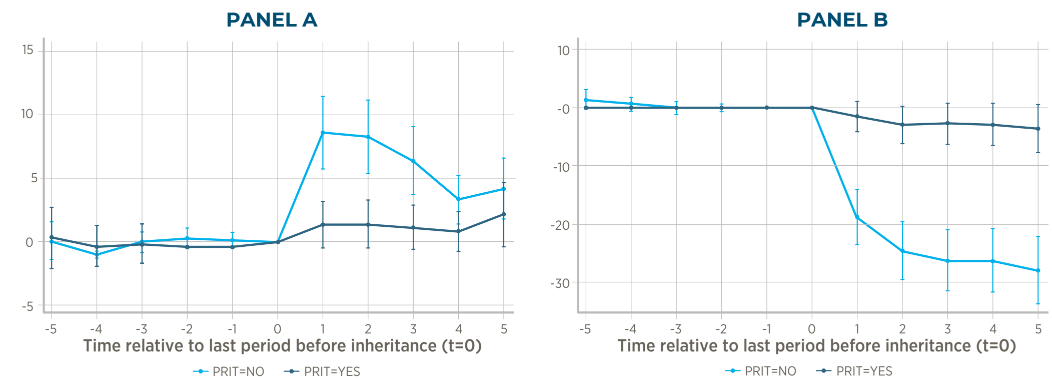
2. Strengthening implementation can expand the positive impacts of the Indigenous Law

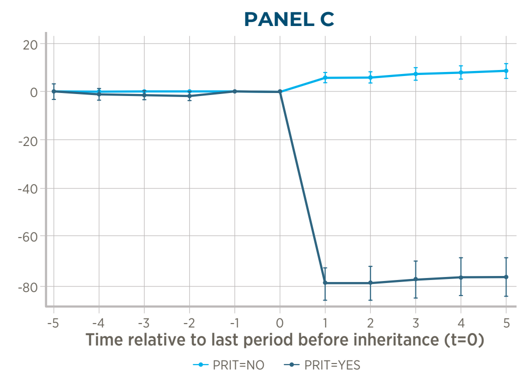
The importance of the RPTI is evident when examining the evolution of Indigenous ownership following inheritance processes, comparing properties registered in the RPTI with those that are not. Figure 2a shows that properties registered in the RPTI maintain a low probability of being sold after inheritance, unlike unregistered properties, where the probability of sale increases by more than five percentage points and remains elevated for three consecutive years.

Figure 2b shows that these divergent trajectories translate into substantial differences in the percentage of Indigenous ownership. While properties registered in the RPTI maintain their share of Indigenous ownership intact after inheritance, it drops by more than thirty percentage points in unregistered properties.

Figure 2c shows that inheritance is a key event in which the RPTI loses track of properties that, under its legal mandate, should be registered. In 80% of inherited properties that were originally part of the RPTI, neither the succession record nor its subsequent updates are registered. In addition, only 10% of inherited properties not originally in the RPTI are later entered into the registry. This helps explain the decline in RPTI coverage documented in Figure 1b: as properties are inherited, the registry becomes progressively outdated.

FIGURE 2. EFFECT OF INHERITANCE ON INDIGENOUS OWNERSHIP, IN PROPERTIES REGISTERED AND NOT REGISTERED IN THE RPTI





Source: Jordán, Jaimovich y Heilmayr (2025).

Note: All panels show, for properties registered in the RPTI (red) and unregistered properties (blue), the impact of an inheritance on the probability that the property is sold (panel a), the percentage of Indigenous owners (panel b), and the probability that the property is registered in the RPTI (panel c).

3. Legal restrictions have not imposed significant economic costs

Evidence from inheritance processes suggests that the Indigenous Law, by limiting the universe of potential buyers, makes land transfers more difficult. Likewise, the inability to use these properties as collateral to access productive credit could represent a constraint on economic development in Indigenous territories.

To assess this hypothesis, Jordán, Jaimovich, and Heilmayr (2025) estimate two complementary models aimed at measuring the productive effects of being registered in the RPTI. The first compares more than 600 pairs of parcels belonging to the same owner, where one is registered in the RPTI and the other is not. The second analyzes parcels inherited during the study period, matching those registered in the RPTI with similar ones that are not. Using satellite imagery, data were obtained on land cover and productivity.

The results show that registration in the RPTI does not entail significant reductions in the productive use of land. No declines greater than 1.1 percentage points are observed in intensive land uses such as infrastructure and crops, nor drops greater than 0.17% in the productivity of pastures—the main land cover, representing more than 80% of the average area. Taken together, the findings suggest that the protection regime in force in Chile helps preserve Indigenous ownership without substantially compromising its productive use.

The findings suggest that the protection regime in force in Chile helps preserve Indigenous ownership without substantially compromising its productive use.

How to move forward?

The Chilean model of restricted transfers among persons of the same ethnic group represents an intermediate alternative between inalienable collective ownership and full privatization of Indigenous territories. Building on this case, some hypotheses and lines of research can be outlined to guide the design of regulatory frameworks capable of balancing territorial protection with the self-determined economic development of Indigenous Peoples in Latin America.

A first line of study involves assessing the implications of allowing transactions within broader communities—such as peoples or ethnic groups—provided these are collectively validated and respect the rights enshrined in international law. Exploring whether these arrangements strengthen economic autonomy without compromising territorial integrity is particularly relevant in contexts where absolute inalienability currently prevails.

In many countries of the region, moving toward restricted market schemes would require revising the constitutional status that currently protects Indigenous lands. For those considering such a transition, it will be essential to study comparative experiences that are compatible with the principles of legal certainty and the free, prior, and informed consent of the Indigenous Peoples involved.

Another critical aspect is the legal delimitation of lands subject to protection and the institutional capacities to enforce restrictions. Future research could examine the benefits of integrating civil cadastres with Indigenous registries, as well as the opportunities offered by information technologies to strengthen the implementation of territorial protection policies.

The Chilean experience also highlights the need to better understand the economic effects of restrictions. Although Jordán, Jaimovich, and Heilmayr (2025) do not find significant negative impacts on agricultural productivity, the decline in inheritance-related transactions raises questions about possible costs associated with market liquidity. Exploring these effects in different contexts can provide valuable evidence on the trade-offs involved. In addition, it will be crucial to investigate the role of complementary policies that mitigate potential economic costs, so that territorial protection is accompanied by a comprehensive package of measures to reduce poverty in Indigenous communities.

Finally, it is essential to deepen the understanding of the perceptions and aspirations of Indigenous Peoples themselves regarding the use, transfer, and governance of their lands. This knowledge is critical for designing legitimate and effective public policies that are aligned both with their collective rights and with their economic aspirations as full citizens of modern Latin American states.

In this regard, the Chilean case provides an illustrative starting point, but it is necessary to move toward a regional agenda of comparative research to better understand which mechanisms can reconcile territorial protection and development under terms defined by Indigenous Peoples themselves.

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