

**Expert Group Meeting**  
**Good practices in realizing women's rights to productive resources, with a focus on land**  
Geneva, Switzerland  
25-27 June 2012

## **Ecuadorian women's goals and challenges to enjoy the right to land**

**Expert paper prepared by:**

Elizabeth Garcia<sup>1\*</sup>  
DECIDE Studies Corporation  
Ecuador

---

<sup>1</sup> Consultant and expert on gender and law, director on human rights programs at Studies corporation DECIDE and professor at Law School of Pontifical Catholic University in Ecuador, was legal responsible on Project team "Construction and implementation of Priority National Policy for Rural Women in Ecuador" FAO TCP/ECU/3202, 2011.

\* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

## I. Introduction

Inspired by human rights principles, when discussing about the right to land, I place any person at the center of analysis, who as an individual entitled with the domain over it, has the right of property, tenancy, usufruct beneficiary, or possession over the land. In this paper, land means the rural one, not the urban, suitable for agriculture, cattle, fishing on the rivers, lakes and forest. Even though, at a constitutional level, particularly in Ecuador nature is recognized to be entitled of rights<sup>2</sup>. Nevertheless, this constitutional innovation is not in the scope of this paper.

The right to land on juridical theory is a patrimonial one, suggesting that the person entitled over a domain can use or dispose directly and immediately. Hence, it is a real right over a tangible property that can be opposed against everybody, which have the duty to respect it and it also increases the patrimony of the owner. Thus, the right to land is also a subjective right.

In the context of cultural, economic, and social human rights I believe the right to land transcends the patrimonial category. In practice, this right has a new dimension altogether because when rural women<sup>3</sup> have rights over the land, it symbolizes the origin and necessary condition to exercise many other rights as human beings; it also improves their life conditions as a person within their family and community. Moreover, it offers access to public services and the control of financial and non financial resources.

Based upon the enjoyment of the right to land, many women gain empowerment to demand other human rights and genuinely develop their citizenship with rights and duties as an individual or as a collective group. Within the political rights, they access privileged spaces to actively participate and make decisions at local and national levels, in order to formulate accountability processes, and evaluate public policies.

## II. Country context

The Ecuadorian Constitution and the laws recognize that women have equal rights and opportunities over productive resources, this includes entitlement with land property, control its use, and enjoy its products and fruits. About three decades ago, the CEDAW's ratification was the impulse to advance in law reforms, but the national social situation with diverse, pluri-ethnic, and intercultural population still shows inequities that are invisible for many people.

---

<sup>2</sup> Political Constitution of Ecuador, 2008: Art. 10 “*The nature is entitle of these rights recognized by the Constitution*”.

<sup>3</sup> They define themselves as “women with any culture, ethnic, color of skin, language or other conditions, we live and develop productive activities in rural spaces, with or without money compensations, oriented to generate incomes for our home and family care with impact in our economy, locally and nationwide; we are whom protect the nature applying our wisdom in the land management, with the seeds and river, lakes and seas” as stated on Rural Women Proposals to formulate Laws and Policies presented at Political Encounter of diverse rural women for Well Living and Food Sovereignty, Quito, august 2011.

Women are 50.5% of Ecuadorian population<sup>4</sup>. People in rural areas mainly work on agriculture and cattle, with 65.7% of rural female economic population. Leading the statistics of persons who own productive units 74% are men, which are very high numbers when comparing the low 42% corresponding to women actively devoted to agriculture. Women only have property with legal title over the 25.5% of the agricultural productive units<sup>5</sup>.

The economic crisis and the dollarization of the Ecuadorian economy at the end of the 1990's enforced a massive migration pattern towards the U.S. and Europe with severe repercussions at the family structure and women's work. In addition, by 2011 in Ecuador the 69% of homes are urban, and 31% rural with 21% exclusive female household<sup>6</sup>.

Ecuador, with almost a third of the population being indigenous and afro descendants, has an important level of rural organizations. Diverse women are well organized among other based community organizations and second level organizations that group and represent them in regional scale.

### **III. Main issues on realizing women's rights to productive resources, in particular land**

In a brief review of the evolution about the recognition of women's rights to productive resources it must be mentioned that before 1967, according to law married women<sup>7</sup> were on partial disability status, not able to exercise rights without husband's intervention or authorization. The 1967's Constitution established the principle of equality between spouses and gave to all women political rights.

Then in 1979 other Constitution declares that women and men are legally equals with same opportunities, beyond their marital status at public, private and family arena. Anyway, only husbands were managing the "marital society" formed with assets at marriage, they were allowed to dispose or sell the assets freely. After 1989, when any spouse could be designated to be the manager of the marital society, the tradition appoints to the man.

The civil law (1982) recognizes couples not married but in consensual union with same patrimonial rights as spouses. This allowed to guarantee a society of assets that in relation with given titles of property lands in rural areas had positive effects<sup>8</sup>.

By law, for inheritance sons and daughters, born inside the marriage or not, have equal rights. The female widows receive the half of couple assets because the marital society finished, also they have rights to inherit. Usually, the legal formalization to transfer property by inheritance

---

<sup>4</sup> Population census 2011: total population 14'483.499, Instituto Nacional de Estadísticas y Censos -INEC.

<sup>5</sup> SICA - MAG - INEC, III Agrarian and cattle National Census, 2000.

<sup>6</sup> Census 2011, INEC.

<sup>7</sup> Civil code (in force since 1861) was later partial reformed on 1970. Other laws as Criminal Code, Commerce, Cooperative Corporations and bank laws kept few more years more discriminations that under protect women rights and limited their participation. The Labor Code (1938) recognized to single and married women capacity to exercise labor rights as worker en those permitted activities.

<sup>8</sup> See at Deere Carmen Diana, León Magdalena, García Elizabeth y Trujillo Julio César, Género y derechos de las mujeres a la tierra en Ecuador. CONAMU. 1999.

is limited, people prefer to apply donation *inter vivos* or fictitious contracts as a sale, with severe consequences such as patrimonial violence against women<sup>9</sup>.

Many advances about women's rights brought the 1998's Constitution. It declares family domestic work as productive and settles the state duty to give benefits to female households.

The Constitution in force since 2008 expands as entitled rights with equal opportunities persons, communities, ethnic groups with diverse nationalities and collectives that must be enjoyed without any discrimination of sex, gender, marital status, etc. The supreme law guarantees the rights exercise and state's obligation to adopt affirmative action to promote effective equality for those who are in disadvantage. By Constitution it is mandatory to work with gender mainstreaming in public policies and women as men have the same access to property and decisions about marital society<sup>10</sup>. Also the right to water must be mentioned as an important advance.

About rural land property, in Ecuador were applied several agrarian reform processes<sup>11</sup>. No sex generated data was available but mainly men, single, married or divorced were beneficiaries. The legal titles were granted to his name arguing that he is always a household and excluding women to access to land<sup>12</sup>.

Between 1997 and 2009, the National Council of Women (CONAMU) from a perspective of rights and citizenship for women had competence to rule public policies and gender approaches in plans, programs and projects of public sector. Many goals were reached to benefit rural women such as recognizing the economic impact of their work and developing gender based statistics and analysis. As the institutional reform established in the Constitution, from 2009 to date, a Transitional Commission (Comisión de Transición hacia el Consejo de Igualdad de las Mujeres y la Equidad de Género) is acting until other equality councils will be formed. It will have the competence to build policies with gender mainstreaming, follow up the policies implementation and define the way how the civil society will participate<sup>13</sup>. A more effective coordination with other public entities is needed, as well with the international cooperation system.

#### **IV. Effective initiative and approaches**

There is a level of complexity to determine the effectiveness of some initiatives, mainly on those that has been recently implemented and must be evaluated on a long or medium period. To contribute to

---

<sup>9</sup> See at Deere Carmen Diana, Contreras J., y Twyman, Property Rights and women's accumulation of assets over the life cycle: Patrimonial Violence in Ecuador, published in conference proceedings: ALASRU, Nueva época: Análisis latinoamericano del medio rural, No. 5, 2010: 135-176.

<sup>10</sup> Article 70 and article 324, Political Constitution of Ecuador, 2008.

<sup>11</sup> Applying the first Agrarian Reform Law in 1964, the second in 1973 and the Agrarian Development Law in 1979 when expropriation and distribution of land from huge farms and non owners ones over which the Estate keep domain.

<sup>12</sup> Deere y otros, op. cit., 1999, p. 31

<sup>13</sup> Comisión de Transición hacia el Consejo de las Mujeres y la Igualdad de Género. 2011. *Plan de Igualdad, No discriminación y Buen Vivir para las Mujeres Ecuatorianas. Marco conceptual, ruta metodológica y estrategia de transversalización 2010 – 2014*. Cuadernos de Trabajo. Quito. 2011.

the analysis, a description of experiences is as follows, one from several years ago and others that were recently applied, so some results are to be confirmed soon.

a) Procedures validation of land entitlement

In 1997, CONAMU promotes this as strategic action to facilitate women's access to property of land. The validation studied the procedures in the adjudication of no previous owner land with ability to agriculture. The action reviewed between men and women beneficiaries to understands the reasons behind<sup>14</sup>.

The process to regulate and grant legal titles of property was applied by the Institute to Agrarian Development (Instituto de Desarrollo Agrario -INDA), a public executive entity that recently disappeared and the competence is now under the Sub secretariat of Land at Ministry of the sector (Ministerio de Agricultura Ganadería Acuacultura y Pesca –MAGAP). The validation verified that the procedures lack gender scope. At the beginning they do not think it was important to ask about the marital status of the applicants, and directly the title was given to the man's name as household, be married or in consensual union.

Under the strategy implementation, the manual of procedures included a mandatory action to ask about the marital status. Several sensitive processes through workshops were developed within the technical teams that must verify information on the field. Then, they learned how to explore about women situation if they worked in the land, beyond the information declared. The positive impact in the process shows that 70% of the titles were granted with two names, the couple, not just one for the “family head”, which was an important progress in gender equity<sup>15</sup>, mainly in consensual union cases because later the man is not allowed to sell the land alone, because his marital status remains as single.

This action where new concepts and procedures were introduced to ensure women's rights to land became an important good practice from the State to realize equal opportunities in the access to productive resources. Nowadays, this work keeps applying gender approach and the instruments to determine sex/gender and marital status information for further analysis. The process was disseminated to other personnel in notaries in charge of other property transfers.

b) Active participation of diverse women organizations in laws and public policies proposals

It's nationally recognized the experience and working commitment of the Ecuadorian rural women organizations network, which has had a regular and relevant public presence in different historic-politic moments, especially while generating lobbying for law and constitutional reforms.

---

<sup>14</sup> This experience puts in context other recent initiatives. The property title granted of no previous owner land was given under some procedures that must be allowed to recognize women's rights if she had possession of it. The goal to entitle is to give security to whom hold the land to generate confidence and developed investment and ensure sustainable development.

<sup>15</sup> Between 1992 and 1996 the scope of study area entitled for both 8.062 spouses and 623 couples in consensual union, 2135 men (single, widow or divorce) and 1596 women. Source: INDA-PRONADER, 1997.

The project “Construction and implementation of Priority National Policy for Rural Women in Ecuador” FAO TCP/ECU/3202 developed actions to coordinate and plan processes with women leaders to ensure their effective participation, actively and directly. Also, thousands of rural organized women at a community based level had active roles in special key spaces where their voices were heard creating political incidence.

The construction process of national policies for rural women required the systematization of a methodological route, and the traditional wisdom, aspirations and the different Ecuadorian women dreams; the ones that were added to empowerment processes and converged in the policies formulation to satisfy the rural women necessities<sup>16</sup>. Between 2010 and 2011 the mentioned women played a lead role in a sequence of actions and processes that briefly are stated below:

- Sensitization and consulting workshops and meetings to reflect about their lives and demands, as well as in individual and collective projections were different participative methodologies contributed by the technical team of FAO’s Project were used;
- Training on rights and duties, gender mainstreaming, demand mechanisms and political lobby;
- Formulations of law proposals on land and communities, agrobiodiversity, seeds, fishing, aquaculture and mangrove collection and gender equality<sup>17</sup>;
- Construction of a “*public policy based upon equal rights, in the construction of an active citizenship and women empowerment*”<sup>18</sup>, to enjoy fair and equitable opportunities, within their family and community to an effective achievement of food sovereignty. The public policy must be specific and address their social reality not just with a productive vision but with an integral scope to enhance their organizations and networks and improve the governance and their political participation<sup>19</sup>;
- Political encounters and dialogues with competent authorities from Executive, Legislative and Citizen Participation and Social Control<sup>20</sup> branch, for the presentation of law and policies proposals; and,
- Agreements follow ups between civil society and political power instances to ensure the proposals incorporate women demands.

Being demonstrated that direct rural women participation is vital to address solutions to their problems, this practice must be applied regularly in local, regional and national level, until there is a mandatory invite for them to attend any decision making processes.

---

<sup>16</sup> Final Report Project "Construcción e Implementación de la Política Nacional y Prioritaria para las Mujeres Rurales de Ecuador" FAO TCP/ECU/3202, written by Susana Balarezo, team coordinator, Quito, 2012.

<sup>17</sup> Rural Women Proposals to formulate Laws and Policies presented at Political Encounter of diverse rural women for Well Living and Food Sovereignty, Quito, august 2011.

<sup>18</sup> National Priority Policies for Ecuadorian Rural Women document, submitted to be approved by MAGAP, at Final Report Project FAO TCP/ECU/3202, 2012.

<sup>19</sup> Ibid. Women demand policies based upon clear principles and update information to incide on their benefit.

<sup>20</sup> According to Ecuadorian Constitution is a fifth branch. For land property and food soberaignty a law established an entity named Conferencia Plurinacional e Intercultural de Soberanía Alimentaria –COPISA, the members were always in dialogue with rural women.

c) Public interinstitutional collaboration engaged in the goal achievement to guarantee women rights.

The institutionalization at public sector of gender approach is an effective initiative to guarantee women access to productive resources. In Ecuador the supreme law declares as mandatory the gender mainstreaming which has been absolutely required in order for public entities to show interest on it, and the authorities felt they are involved in the policies formulation process.

The mentioned FAO's Project gave the open door to participate within different levels of commitment several institutions, first CONAMU and then the Transitional Commission, the Ministry MAGAP, the National Secretariat of Planification and Development –SENPLADES. Over more specific actions also participate the National Institute of Higher Education (Instituto de Altos Estudios Nacionales –IAEN)<sup>21</sup> and also the National Promotion Bank (Banco Nacional del Fomento –BNF).

Indeed at MAGAP the Project made an institutional diagnosis about gender mainstreaming and also a training process was applied to technical teams with participative methodologies contributed by the technical team of FAO's Project.

d) Key elements consideration to formulate participatory policies

Together with the other initiatives, FAO's Project look for the elements bonded with the essential issues that later became the policies content and core framework. Since the beginning it was effective to emphasize the eradication of any discrimination on laws and procedures and the importance to establish a guaranteed access to productive resources. Consequently, rural women must be consulted about practices in their cultures and land rights, main questions to be made are: Who has access to land? , Who has control over it?, Who make the decisions about land management?.

As a result, the policy about resources was described as “Equitative access and preferred for women” meaning not just land, also others such as water, because they facilitate agriculture, cattle rising, forestry and other activities as a strategic base to well living in rural areas.

Between the key elements on land rights, it was clear the importance to make different approaches depending upon individual property, communal and ancestral property for “pueblos” and indigenous nationalities with particular characteristics.

The policies for women property of individual land focus on having titles granted legally based upon the antecedent of possession, inheritance or donation. They require full control of its use on their own land and family interaction to share if this is the situation due to marriage or co-property with relatives. They appointed to sustainable environment development. Finally, many rural women look forward to having affirmative action measures such as tax

---

<sup>21</sup> Curricula design for a Master degree on Rural Development with gender approach to be implemented by IAEN as state graduate studies university to teach professionals with a new perspective to lead political reforms.

exemptions or preferred access to be entitled as owners if they are households. Still, they need support for productive associative family projects.

## **V. On-going challenges and possible ways to address those challenges**

The last decade human rights defenders speak up the analysis to guarantee equal opportunities to women in their access and control of productive resources. Several positive and negative experiences show that the right to land underlies misconceptions, attitudes and social/institutional practices. Nobody discuss that this right is a requirement to access to other financial and non financial resources and secure participation in decision making process.

Ecuadorian women have the right to property of land beyond their marital status. Land under State control to be distributed must observe affirmative action with gender perspective. When a women worked the land without property and any economic compensation it must be valued, she must enjoy the right to decide if she prefers an individual title or legalize the ownership with her couple, husband or not or any other relative. Peasants women, indigenous or afro descendants must be preferred in the access to land. Otherwise, the equity on access to land property will not be a success. To avoid unfair treatment against single women or women without children, a new conception of female family head must be considered. Some of them work alone and have under their own responsibility ascendants or descendants.

Gender relations on rural areas are social phenomenon, the economic sphere is attached to other domestic activities. State efforts carry on many programs implemented to develop rural life, but to achieve their economic and integral autonomy the actions must incident on policies constructed jointly with organized rural women, with phases from sensitization, consultation, and training for looking forward to shared proposals. New frame of public institutions are called to close the gender gaps and women will enjoy rights to productive resources without any limitation. This will impact on food security and sovereignty to achieve the well rural living.

Ecuador system needs to define special protection mechanisms to guarantee the enjoyment of the rights. Nationwide policies are important but also the local ones where a specific action can be taken. To achieve equal opportunities for women on rights to land as a reality (de facto) and not just formally (de jure), a good interpretation of laws must be done with procedures well known to be applied by public servants. National equal plans of gender must include objectives to formulate, follow up and evaluate public policies with women active participation.

These are not intended to be conclusions, just final thoughts to stimulate the reflection and promote creativity about new strategies that cross cultural and geographical barriers.

## **Sources**

Comisión de Transición hacia el Consejo de las Mujeres y la Igualdad de Género. 2011. *Plan de Igualdad, No discriminación y Buen Vivir para las Mujeres Ecuatorianas*. Marco



*conceptual, ruta metodológica y estrategia de transversalización 2010 – 2014. Cuadernos de Trabajo. Quito. 2011.*

Deere Carmen Diana, León Magdalena, García Elizabeth y Trujillo Julio César, Género y derechos de las mujeres a la tierra en Ecuador. CONAMU. 1999.

Deere, Contreras and Twyman, Property Rights and women's accumulation of assets over the life cycle: Patrimonial Violence in Ecuador, published in conference proceedings: ALASRU, Nueva época: Análisis latinoamericano del medio rural, No. 5, 2010: 135-176.

Final report Project “Construcción e Implementación de la Política Nacional y Prioritaria para las Mujeres Rurales de Ecuador” FAO TCP/ECU/3202, Quito, 2012.

Political Constitution of Ecuador, 2008.

Population census 2011, Instituto Nacional de Estadísticas y Censos -INEC.

III Agrarian and cattle National Census, SICA - MAG - INEC, 2000.

Rural Women Proposals to formulate Laws and Policies presented at Political Encounter of diverse rural women for Well Living and Food Sovereignty, Quito, august 2011.