

# THE RIGHT OF WOMEN TO AGRICULTURAL PROPERTY IN THE CONTEXT OF CUSTOMS AND CULTURAL PRACTICES IN EJIDOS AND COMMUNITIES IN MEXICO

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## ABSTRACT

Throughout Mexican history, the participation of women in the agricultural field has been constant and effective, since women have fought on equal terms in various armed conflicts of a social nature, in which large territories have been recovered and distributed equally among the heads of households, but the decontextualized agrarian law of an egalitarian reality for the social norms of the 50's, opened the doors to communities and ejidos to be governed by their customs and cultural practices, promoting exclusion and discrimination more radically. Based on a sexist agrarian law where the term owner, possessor, and sons favors men and the rights of women are nullified, it is taken into account that women can only access the property if they are head of household, but in the eyes of the Agrarian Law of customs and cultural practices, a woman can only be head of household when widowed, and she's only considered owner until one of her male children reaches the age of majority, and if she does not have a male child, her rights as an owner are diminished, since she would be excluded from the ejidal and / or communal nucleus. Due to this reality, women are excluded from land tenure due to their vulnerability within the nuclei of possession; the Agrarian Law excludes and leaves women out because their right of possession is not exercised. Due to this situation and in accordance with the international agreements to which the Mexican state is part of, it is proposed, that women whose human rights and rights to land tenure have been violated are empowered, since article 27 of the Political Constitution of the United Mexican States, states that special agrarian laws must be created to undermine the social norms (customs and cultural practices), which the agrarian law could depend on.

**KEYWORDS:** Equality, Right to Property & Customs and cultural practices

## INTRODUCTION

Ejidos and agrarian communities, as well as small properties, are the forms of land tenure in Mexico, covering mainly the productive agricultural areas of economic importance in the country.

The area constituted by ejidos and communities represents productive areas of great diversity in terms of agricultural production, as well as a vast diversity of both biotic and abiotic natural resources of natural wealth and importance, the diversity of soils and climates allow the adaptability of many agricultural species and varieties. (Gamiz 2001)

The participation of women in the agricultural context has been fundamental for the development, care and conservation of this activity as well as for the subsistence of humans, since during the evolution of species, women have been meal providers, primarily plant based, since according to the activities they performed during the Paleolithic period

they were characterized by being collectors and there's data that credits women as the first workers of the land. (Vicent 1988)

Also during the Paleolithic period, there were no surpluses in the economies, this was the main reason of social equality and resource conservation, where each member of the group was able to do whatever it took to survive, regardless of gender role, simply determining activities by age range, since work was not specialized only in some cases it was necessary to have certain skills to become shamans or craftsmen (Martínez 2000).

Afterwards, according to the development of the various Mexican civilizations, some characteristics of labor, social norms and appropriation of collective territories were modified.

The Mixtec culture referred in its own language to the territory as Nuudzahui, which means rain town. Nuu: is the land, place or town. Dzahui: is rain. The Mixtec culture originated in Yanhuitlan Oaxaca, approximately 9000 years BC. At this time, its inhabitants were hunters and gatherers.

Later, between the years 9000 BC-1500 BC, during the nomadic period, thousands of years passed before they created village communities where the domestication of species began with experimental agriculture.

In the 1500s B.C- 600 a. C., villages were growing and big cities flourishing, this was denominated as the stage of the urban centers. From 600 a. C. to 800 A.D., the settlers were leaving these centers and lordships or cacicazgos were founded.

Throughout history, the participation of women in the agricultural field has been constant and effective, since women have fought on equal terms in various armed social conflicts in which large territorial extensions have been gained, which were distributed equally among the head of households, men being the majority, since the agrarian law interpretation considers men the rightful owners and when it isn't interpreted in this way, it opens the criteria of the communities and ejidos to be governed by their customs and cultural practices which promote exclusion and discrimination more radically against women. Based on a sexist agrarian law where the term owner, possessor, child is aimed or makes reference only to men the rights of women are nullified (Riva Palacio 1972)

A woman can only access property if she is head of household, the woman is considered head of household in the eyes of the Agrarian law and their customs and cultural practices, only when she is widowed and only until one of her male children reaches the age of majority and if she did not have a male child her property rights would be nullified since she would be excluded from the ejido and / or communal nucleus and her property would become common land.

*(Information booklet of the temple and convent of Santo Domingo Yanhuitlan Oaxaca. Yanhuitlan Municipal Government and Surveillance Commission. Pg. 1 paragraphs 3 to 6)*

In controversy, there is a law regarding the right of women to ejidal or communal property justifying that this is a constitutional right emanating from article 27 of the constitution of 1917, where the right to property is given to women who are single or widowed with a family to support, note that currently the main decisions makers, regarding the future of assets within ejidos or communal nuclei, are ejido commissioners in the case of the ejidos or in the representation of communal property with respect to indigenous communities. (Rivera 2003)

In this context, women are excluded from land tenure due to discriminatory practices dating back to the conquest of our country where some indigenous people decided not to inherit land or property to their female daughters because if

they married a Spaniard, lands would become property of his, since the social struggles of independence and the Mexican revolution where both men and women fought for their rights on equal terms.

In this case the agrarian law, excludes and leaves women vulnerable because the right to property is not exercised, women only protect the possession of the land, until a male child reaches the age of majority and if they don't have male children, the ownership of the land is taken making use of the customs and cultural practices of the ejido or community, where they are almost always stripped of their property (Tovar 2005).

It is important to argue that women are frequently and repeatedly violated of their human and constitutional rights since the agrarian law in its autonomy derived from constitutional article 27 issues that special agrarian law must be created to repeal the common norms (customs and cultural practices), on which land ownership could depend.

In this paper, which has been developed during the last decade in Mexico, the importance of making this problem visible is prioritized as Indigenous women's right to property in rural areas primarily depends on the decisions of men in the ejido nuclei, it aims to; Identify the different contexts of customs and cultural practices that intervene in women's right to property in the ejido and communal nuclei in Mexico, to guarantee this human right in compliance with the constitutional protection of the Mexican state and international agreements in which it takes part.

## **BODY**

A fundamental ability in the evolution of humanity has been the agricultural activity, since the gathering period, careful management of natural resources as a means of subsistence for food, warmth and shelter.

The coexistence with living things has been an essential part of human evolution, relationships between living things, certain behaviors were analyzed between humans, animals and plants which were identified and their properties were experimented as well as their uses for daily work, in the case of the fauna its behavior was observed and the territorial displacements that these carried out to be able to dominate them and feed on them later (Vicent 1988).

As time went by and they were gaining skills and developing their observation abilities, they ceased to be nomads, they managed to reproduce plants which they only collected, but now establishing them in similar conditions to their natural habitat and domesticating some animal species creating farms that provided food and clothing. They settled in specific geographical places close to large rivers, lakes or lagoons where they had access to water for their groups, which later became great civilizations (Weigand 1997).

These civilizations began to gain large territorial extensions for their establishment and development, because of their growing population. It's important to note that those civilizations, due to their level of development, organization and productivity generated more resources, and it is presumed that women were the first land workers in terms of agriculture.

Since the establishment of these civilizations on earth, the dispute for the territories begins, where those who from these times until today give greater value and interest to areas where natural resources such as forests are abundant due to their water conservation properties, and those territories have natural formation of water such as lakes or lagoons, where water is constant but in movement from one geographical place to another.

Geographic privileges and the productivity of each civilization were factors of constant conflicts between these civilizations, for three reasons; water supply, wood and fruits that forests produced, but the main factor for confrontation or war was the vast territories that were gained by dominating the defeated or conquered civilization.

In Mexico, when these civilizations began, the Aztec people were one of the referents in the field of agrarian rights since land ownership rights were respected equally regardless of gender, but the social class they belonged to was not respected, if a woman was of a higher social class or status she had a greater right to land tenure. (Arias 1821)

The conquest of the Spaniards came to break the agrarian rights enjoyed by women in the *calpulli*; they were stripped of them, which meant a double exploitation of women throughout the colonial period. First, parents didn't inherit lands to their indigenous daughters, because the Spaniards took them as war trophies, they stripped them of their lands and sexually abused them to procreate their own offspring, who would later be the owners and holders of those lands. (De la Torre 2004)

In the War for Independence of 1810, both men and women fought equally to recover lands from which they were stripped during the colony, they were unsuccessful and the problem worsened, this generated the establishment of delimiting companies, who were in charge of correcting an endless number of irregularities, which brought an indiscriminate stripping of land to the indigenous communities (Arango 2005).

The Agrarian problem was getting worse when a new armed movement broke out in 1910, the Mexican Revolution, history repeats itself again and men and women on equal terms set out to fight for their right to land where they could cultivate. The promulgation of the constitution of 1917 and the promise that this would include recognition of land endowment and restitution of land rights owned by indigenous communities gave hope to the men and women fighting in the armed struggle (Bocanegra 1982).

Not everything was favorable for those who fought, since the laws in article 27 of this constitution limit the rights of women within the laws of customs and cultural practices of the *ejidos* and the communities, in terms of three fundamental principles, cession, donation and inheritance of land rights, despite the fact that the agrarian right of women continued to be exercised within indigenous communities.

The agrarian codes of 1934 and 1942, again exclude the agrarian rights of women, under the head of household term who was the one with rights to land tenure. In 1971, the Federal Agrarian Reform Law gives women the power to be a place holder or depositary of rights, until the first male child reached the age of majority (De la Torre 2004).

The amendment to the agrarian law in article 27 of 1992, takes away the legal possibility of obtaining the right to land, however women are given legal mention, *ejidos* and communities were included in the market, where turbulent agreements happened, depriving the most vulnerable and marginalized people of their rights, they were the majority of owners and holders of national lands.

I consider this background as a fundamental part of this paper, where gender roles in the time of gathering and settlement of the nomadic populations were not defined nor stereotyped much less sexualized, until the great battles for the struggle of power and territorial extensions began.

It seems that we have forgotten the history of our ancestors and the historical struggles of men and women in Mexico where in the twenty-first century discriminatory actions are carried out, such as ignoring a woman if she's not head of household to inherit a property title or land certificate. The use of fraud or turbulent contracts to deprive the indigenous of their property, ignoring the hereditary property of children, the elderly and the handicapped by corrupt, dishonest, opportunistic and ambitious people, these actions happen at international, national and local levels (Diaz Gordillo 2008).

It is important to review, as we present below that within the magna Carta of the United Mexican States, which is recognized as the Political Constitution of the United Mexican States, promulgated on Monday, February 5, 1917, in the Official Gazette by the representatives of the provisional government of the Mexican Republic, in volume V, 4th period, number 30. Where, constitutional Article 27 establishes:

“The ownership of the lands and waters within the limits of the national territory originally belongs to the Nation, which has had and has the right to transfer ownership to individuals, making them private property”.

In this paragraph of the original constitution which has not yet been modified, it speaks of the ownership of land and water in general terms there are no specifications with regards to access or right to property given to men or women, it is a general provision, which under legal terms would be applied under that effect.

Subsequently, in the third paragraph of the same constitution, we note that the constitutional principles determine the relationship between ownership and appropriation of available resources in National lands and waters, which stipulate the following principles:

“The Nation will have at all times the right to impose on private property the modalities dictated by the public interest, as well as to regulate the use of natural resources susceptible to appropriation, to make an equitable distribution of public wealth and to care for its conservation. For this purpose, the necessary measures for the subdivision of large estates will be dictated; for the development of small property, for the creation of new centers of agricultural population with the land and water necessary for them; for the promotion of agriculture and to prevent the destruction of natural habitats and the damages that the property may endure affecting society. The towns, rancherías and communities that lack land and water, or don't have enough for the needs of their population, will have the right to be given them from immediate properties, always respecting small properties. Therefore, the land endowments that have been made so far in accordance with the Decree of January 6, 1915 are confirmed”.

Within the framework of this legal principle that establishes the previous paragraph, it specifies that everything follows the provisions of the Decree of January 6, 1915, which specifies:

"Considering that one of the most common reasons for the unhappiness and dissatisfaction of the agricultural populations of the country has been the dispossession of land, communal property or distribution, which you had been granted by the colonial government as a means of ensuring the existence of the indigenous class, and that, on the pretext of complying with the law of June 25, 1856 and other provisions that ordered the division and reduction to private property of those lands among the residents of their town, these were kept by a few speculators; in the same case there are many other towns in different parts of the country, called congregations or rancherías, that originated from a family or families that had in common more or less large extensions of land, which continued to remain undivided for several generations, or in a certain number of inhabitants who gathered in auspicious places, to acquire and jointly enjoy, water, land and mountains, following the ancient and general custom of the indigenous peoples ”.

As we can see in the previous Decree, it is expressed verbatim in the lastlines; the limitation of the cultural practice of indigenous peoples for decision-making regarding the right to property is not the most appropriate.

With respect to the Political Constitution of the United Mexican States, which currently governs the Nation, generates even greater uncertainty regarding property, not only for women but for all people, where access to property is limited, since its third paragraph has been amended with three different reforms and dictates the following:

“The nation will have at all times the right to impose on private property the modalities dictated by the public interest, as well as to regulate, for social benefit, the use of natural elements that can be appropriated, in order to make an equitable distribution of public wealth, take care of its conservation, achieve the balanced development of the country and improve the living conditions of the rural and urban population. Consequently, the necessary measures will be dictated to order human settlements and establish adequate provisions, use of land reserves, water and forests, in order to carry out public works and to plan and regulate the foundation, conservation, improvement and growth of population centers; to preserve and restore ecological balance; for the subdivision of large estates; to use, under the terms of the regulatory law, the organization and exploitation of ejidos and communities; for the development of small rural properties; for the promotion of agriculture, livestock, forestry and other economic activities in rural areas, and to prevent the destruction of natural elements and the damage that property may suffer affecting society. Paragraph amended DOF 06-02-1976, 10-08-1987, 06-01-1992”.

Respectively, the Agrarian Law, regulated by the Political Constitution of the United Mexican States establishes the following:

"1<sup>st</sup>Article.-The present law amends article 27 of the Constitution with regards to agrarian matters and in general observance in the whole Republic".

“THIRD TITLE OF THE EJIDOS AND COMMUNITIES Chapter I Of the Ejidos First Section General Provisions Article 9o.- The ejido nuclei or ejido have legal personality and own patrimony and are owners of the lands that have been endowed to them or which they have acquired by any other means”.

In this previous paragraph of the Regulatory Law, it is important to note that legal personality is given to community centers as well as the right to property of their acquired territorial extensions.

Article 10.- The ejidos operate in accordance with their internal regulations, with no more limitations in their activities than those provided by the law. Their regulations will be registered in the National Agrarian Registry, and must contain the general bases for the economic and social organization of the ejido that are freely adopted, the requirements for admitting new ejidatarios, the rules for the use of the common land, as well as any other provisions that according to this law must be included in the regulations and others that each ejido considers pertinent.

In this previous paragraph, ejido authorities are empowered to abide by their internal regulations, leaving out if they so wish the Constitutional interpretation of the Regulatory Law and the Regulation of the Law, creating a discrimination problem and limiting the right of women to ejido property.

Article 11. - The collective exploitation of ejido lands may be adopted by an ejido when it is agreed to by its assembly, in which case the rules regarding the way of organizing the work and exploitation of the ejido's resources must be established in advance as well as the mechanisms for the equitable distribution of benefits, the constitution of capital reserves, social security or services and those that include the common funds”.

It is important to establish that in the articles above, the assembly is empowered to resolve the internal agreements of community life and internal development of both the ejido and the community. Likewise, and reviewing this same Regulatory Law it establishes in the various articles:

"Article 12.- Men and women holding ejido rights are ejidatarios".

Article that hangs on a very thin thread, in terms of the right to property that according to what was established in the agricultural distribution in Mexico, based on the articles of this Law that are still in effect, establish the following:

“Article 15.- In order to acquire the status of ejidatario, it is required: I. To be Mexican of legal age or of any age if you have a dependent family or if you are heir to an ejidatario; and II. Be a resident of the corresponding ejido, except in the case of an heir, or complying with the requirements established by each ejido in its internal regulations”.

In spite of the amendment that was made to article 12 where women are recognized as ejidatarias, during the course of the agrarian distribution the parcel certificates were given, only to the heads of households, with very few exceptions and according to the conditions of each federative entity, given to the widows of the fallen men during the armed struggle of the Mexican Revolution, these certificates were limited and under the restriction that these women were possessors, only until a male child of legal age could exercise said property title and become the head of household and therefore an ejidatario.

If a woman who had property titles and did not have a male child at the time of her death her piece of land or ejido would become part of the common areas of the ejido or communal nucleus. This situation prevails to a large extent in the national territory and women from poor academic backgrounds in rural areas ignore the legal principles of property rights.

Likewise, it is important to mention that the Regulatory Law of Constitutional Article 27 “Agrarian Law and its Regulations”, are still discriminatory in their wording, since at all times it is addressed to the ejidatario, that is to say without a gender perspective.

## CONCLUSIONS

Social property in the Mexican state, land ownership is made up of individual private properties called small property, ejidos and agrarian communities, the latter two being designated as social property or agrarian nuclei. The ejidos and communities are exclusively of this country and are the result of the agrarian reforms (1934 and 1992).

Social property covers 198.5 million hectares; of these, social possessions cover an area close to 102 million hectares (ejidos 84.5 million and communities 17.4 million), equivalent to 53.4% of the surface. Private property (including agricultural colonies) includes about 79 million hectares, 39.8% of the national land area, while national land amounts to 7.7 million hectares (3.9%). (PROCEDE 2004)

The agrarian nuclei are made up of 5,653,637 ejidatarios, commoners and possessors: the first two represent 74.5% and the possessors, 25.5% of the total. The ownership of the land rights among the ejidatarios shows a strong male inclination because 80.2% of their owners are men and 19.8% women. (INEGI 2007)

Given these figures, it is important to mention that within the authorities and decision-making figures in the agrarian nuclei, the participation of women is even more limited, since less than 1% of those who are fortunate to have a title, participate even in the Ejidal Commissioner or in the Representation of Communal Assets.

This trend transgresses the principles of the Convention on the Elimination of All Forms of Discrimination Against Women CEDAW, of which the Mexican state has been a part of since July 17, 1980 and went into effect on September 3, 1981. Whose articles 1; Art. 2 subsections a, b, c, e and f; Art. 5 subsection a; Art. 7 subsections b and c; Art. 10; Art. 11 paragraph 2 subsection c; Art 14 Sections 1 and 2 subsections f, g, h; Art.15 Sections 1, 2 and 4 and finally Art.

16 Paragraph 1 subsection h, which are being violated since as stated in this paper the rights of women and their right to ownership is being transgressed.

It is also important to note that according to the provisions of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women or Convention of Belém do Pará, it is transgressed in the following articles: Art. 4 subsections f, g, j; Art. 5 subsection b, Art. 7 subsections c, d, f, g and h these last three of vital importance to emphasize; Art. 8 subsections a, b, e, i; Articles 11 and 12.

Finally, it is important to emphasize that the misogynistic distribution of property and the current legislation in effect in this area, limit the access and right to property of women in Mexico in a misogynistic and decontextualized context of customs and cultural practices, that prevent the empowerment of the woman in the agrarian nuclei and leaves women distant from decision-making and participation in the agrarian nuclei, leaving their sons and daughters in a vulnerable situation, it seems that because they were born women they do not have the right to have a property that they can use for self-production and self-sustainment (World Bank 2006).

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