



**Determining the legal context of  
Rural women's access to assets:  
The case of Chile**

## **Contents**

- I Customary Laws, Statutory rights, local practices**
  - **Indigenous women in Chile and their rights**
- II Right to inherit and manage property, access to land and income earning**
- III Law reform for legal recognition to women's right to land**
- IV Actions to support poor women and men land titling through regularization of property: Chile special law enforcement system including support to land claim and legal assistance**
- V Structural changes and development strategy: limiting access to land?**
- VI On State forest policy land distribution policy**

## **Determining the legal context of rural women's access to assets: The case of Chile**

### **I Customary Laws, Statutory rights, local practices**

Women's rights to land, housing and property are recognized and supported, albeit in a sometimes indirect or circumscribed manner, in a number of international and regional legal instruments and political documents including, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of Discrimination Against Women, as well as the Beijing Declaration of the Fourth World Conference on Women and the Habitat Agenda of the Second World Conference on Human Settlements

Despite the importance of land, housing and property to women, they generally lack security of tenure. This is largely as result of: gender biased laws which at their best only protect *married* women and at their worst do not protect women at all; legal systems which are inaccessible to women or which privilege customary law over statutory law, land and house titling systems which grant title to men rather than women or which require payment for land/houses which women cannot afford; and discriminatory lending or credit policies.

In Chile the family law restricts women ability to administer their own or joint property. In view of this situation and of CEDAW Committee observation a draft law was submitted on 17 October 1995 to the Chamber of Deputies in its first constitutional procedure to establish a new property ownership regime and replace joint spousal ownership. This bill will amend the Civil Code and other complementary legislation governing joint ownership or community of property, granting the wife and husband equal rights and obligations. Considering that this proposal was initiated in 1995, the processing of this bill has taken a long time. This is because, on its way through the Chamber of Deputies, it was subjected to amendments of various kinds therefore currently, the executive is considering submitting a supplementary bill that would strengthen and improve the original idea.

The bill referred to introduces important modifications to the matrimonial property regime, replacing the joint ownership system by one that establishes equality between husband and wife over the community of property.

This proposal focus on a "deferred community of property" and should eliminate the notion that the husband is the "head of the conjugal partnership", and entitled to administer the property of the wife. The wife's property consists of the assets that she brought with her into the marriage, and those freely acquired during the marriage, through inheritance, legacy or donation

At the same time it eliminate the institution of "separate property" which was conceived as a form of compensation to the wife for the husband's administration of her property, and which no longer makes sense if the woman can now administer everything that belongs to her. The "separate property" regime allows a woman who works separately from her husband to administer freely the assets she has acquired through her labour, and not to place them in joint ownership, provided she renounces her right to the assets acquired by her husband as administrator of the joint estate.

Local practices focus mainly in getting married on joint ownership system as to marry in the separate property mode means paying a bill of nearly 50 US dollars that usually do not have. Moreover this type of arrangement is generally used by couples who have important assets acquire before marrying. But until very recently it was common that women, who lack property, when marriage broke, lost all rights. This was because a divorce law did not exist in Chile and people had to use a procedure lying in the court by recognizing that they were married in a different place where they were living. This issue annulated the marriage and women had no right to claim any property included child alimony. To claim any right, both women and men, were compelled to start a trial in the family court. Unfortunately in June 2004 after several years of discussion a “divorce law” was approved in both Deputy and Senator Chamber. This new law even if require a long process before getting a definitive divorce, at least leave women and men in equal opportunity to claim economic compensation benefiting the spouse that had dedicated mostly to domestic work and child care. This include right to children custody, alimony and property.

The Ministry of Women affairs (SERNAM) has subsequently built on this progress to prepare a second Equal Opportunity Plan for Women and Men, for the years 2000-2010, to consolidate gender policies in public institutions. This second plan identifies six broad, horizontal issues for attention, with their respective objectives, and guidelines for concrete activities to be pursued during the decade. Those issues are the following: guaranteeing a culture of equality of opportunities between men and women; promoting women’s rights and their full enjoyment; women’s participation in power structures and in the decision-making process; economic independence for women and reducing poverty; improving the day-to-day well-being and quality of life for women; and introducing the gender focus in public policies

### **Indigenous women<sup>1</sup> in Chile and their rights**

According to data from the 2002 census, the country’s population of indigenous origin was 692,192 or 4.6% of the total population. Of the country’s native ethnic groups, the largest (87.3%) are the Mapuche, followed by the Aymara (7.0%) and the Atacameños (3.0%). The remaining ethnic groups combined account for less than 1% of the population: the smallest such group, the Yamana with 1685 individuals, represents 0,2%. Most of the indigenous population lives in rural areas (62.8%), but this proportion is below that of the non-indigenous population living in urban areas (80.9%).

As in other countries of the region, the indigenous population of Chile suffers more than the rest of the population from poverty and exclusion. But in recent years indigenous poverty levels have been reduced more sharply than those of the non-indigenous population. Roughly one-third of the country’s indigenous population is living in poverty or extreme poverty (32.2%), a level that

The frame of reference governing the State’s responsibilities to indigenous peoples is set forth in the Indigenous Act<sup>2</sup>, which establishes that “it is the duty of society in general and of the State in particular, through its institutions, to respect, protect and

---

<sup>1</sup> This section is based on the MIDEPLAN document “Ethnic Group and Poverty in Chile”, prepared on the basis of CASEN 2000 survey data, Santiago, 2002.

<sup>2</sup> Promulgated in October 1993

promote the development of indigenous peoples, their culture, their families and communities, to adopt adequate measures for such purposes, and to protect indigenous lands, to see to their adequate exploitation and their ecological balance, and to encourage their expansion”<sup>3</sup>

The Ministry of Justice’s Social Defence Division is responsible for coordinating issues relating to gender and indigenous peoples within the justice sector. For 2003 it has prepared a work plan (2003-2006) for indigenous peoples that include actions to prevent discrimination and to provide high-quality service of cultural relevance.

## **II Right to inherit and manage property, access to land and income earning**

Custom and tradition reinforce women’s disadvantage with respect to land, housing and property. Customary law has been interpreted by men to deny women the right to own or inherit land, housing and property in their own names, deny married women a share in assets upon dissolution of marriage, and deny widows the right to inherit land and housing.

In Chile, women have the right to inherit property. The inheritance law *de jure* do not discriminate women. If they are married they have the right to inherit 50% of husband assets, the rest is divided between son and daughters including those children that were born outside of a marriage if they are recognized by the husband. Partners until now are not recognized by law the right to inherit.

Until the modifications to the matrimonial property regime is not change still the men is the legal administrator of the family property. Therefore as a peasant women indicated “Women land inheritance should go together with the right to administrate land property. The problem is that if women (spouse) inherit land she is unable to manage it, she is not the heir... or the heir in paper, as the spouse (men) is the legal administrator of the family assets including the women land inheritance”

## **III Law reform for legal recognition to women’s right to land**

The adoption of gender sensitive legislation is not, in and of itself, the solution to guaranteeing women’s rights to land, housing and property, it is an important component and a good starting point. What constitutes gender sensitive legislation will vary in different social, economic and political contexts. However, gender sensitive legislation begins with land, property and housing reform which have as their goal the empowerment of women. This requires legislation to include the explicit recognition of women’s rights and protection for those rights; independence from interpretive discretion; anti-discrimination protection; priority of statutory law over discriminatory custom; recognition of women’s diversity of experience, status and resources; and accessible enforcement mechanisms.

This is largely a result of economic and social discrimination against women, more particularly, gender biased laws, policies and traditions which prevent women from renting, leasing, owning, and inheriting land, housing and property independently or at

---

<sup>3</sup> Indigenous Act, Article 1, General Principles

all and which render women's access to and control over land, housing and property dependant on their link to a man.

Rights in, access to and control over land and housing have direct and indirect bearings on poverty. The direct advantages stem from production possibilities and the indirect advantages include facilitating access to credit from institutional and private sources and serving as assets that can be sold

Latin America has the highest concentration of land ownership and women tend to access land through inheritance, as beneficiaries of land reform programmes or through the land market. In the last decade, recently accessed land was promoted through the land titling programmes to activate land markets. Most women farmers have smallholdings of no more than 5 ha.

Pioneering studies in the region by Magdalena León and Carmen G. Deere<sup>4</sup> extensively examined the relationship between women's land ownership, their empowerment and autonomy. They revealed that neither land reform nor access to the land market have occurred in a context of gender quality

Agrarian law, civil legislation and customary law all condition women's access to land and the main beneficiaries of land reform have been men. Most land reform programmes or legislation, directly or indirectly relate to access to land and have explicitly or implicitly excluded women, or have made no effort to guarantee their access.

In Chile the Land Reform began in 1962 but very little land was distributed. In 1964 during President Frei mandate the agrarian reform was extended) but identified the man as the rightful beneficiary of land reform. Women were excluded as it required beneficiaries to be head of household (article 71). Moreover there was a very complicated system to evaluate who was entitle to benefit from the agrarian reform by providing special points to experience in agriculture activities and living and full time employment in the agriculture exploitation.

In 1970, during Allende's government, a new agrarian reform law was implemented (16.640) and the concept of Agrarian Reform Centers were created (Centro de Reforma Agraria/CERA). This approach consisted mainly in considering beneficiaries of the agrarian reform not only the full time employed peasant of the agricultures exploitation but also the temporary workers. In this new approach the legal and structural barriers for women participation in the agrarian reform were eliminated. But women participation was very scarce due mainly to men opposition and women resistance due to cultural practices. Women were mainly organized in Mother Committees (Centros de Madres) organized by several institutions (church, political parties, the state) where the domestic roles were enhanced and very little attention was paid to their productive role. Women were seldom considered as heads of household and according to cultural norms transferring land right to men head of household all the family would gain benefits. The Chilean experience showed also that among peasant women the there was a lack of awareness of their productive role.

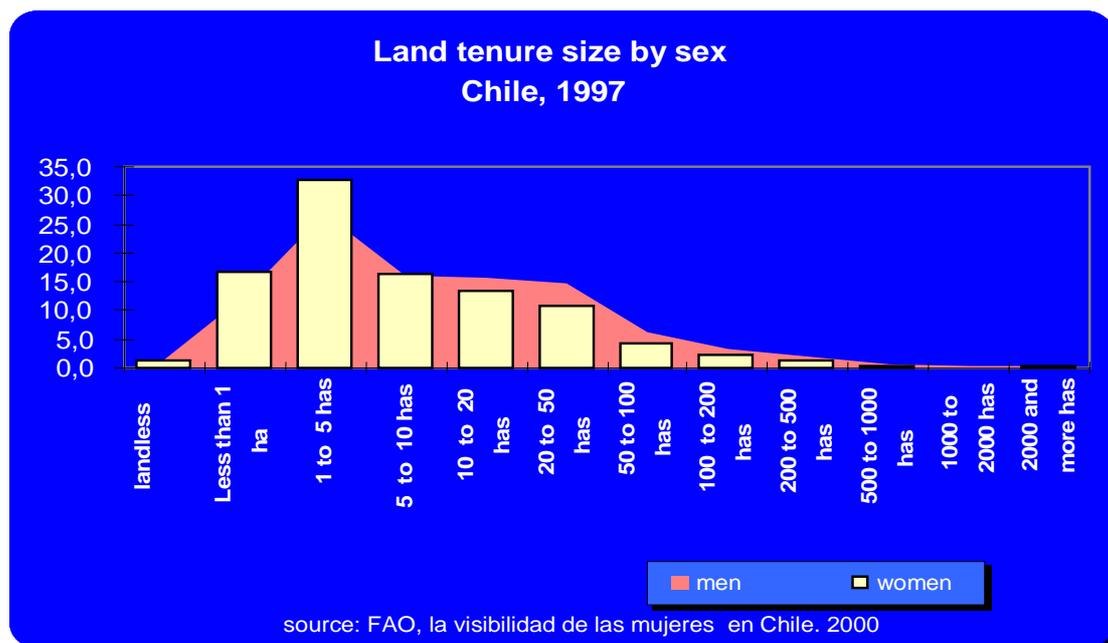
---

<sup>4</sup> Deere C y León D. Género propiedad y empoderamiento :tierra , Estado y Mercado en América Latina.; FLACSO/PUEG, México 2002

After Chile coup de etat, one of the first actions of the military dictatorship was to revert the agrarian reform, and return the expropriated farms to their previous owners: (28%) and 41% were distributed among old agrarian reform beneficiaries <sup>5</sup> . But also university professionals, former farmer's managers entrepreneur and others also were considered possible beneficiaries and approximately 10% of the land was assigned to this group, only 11% of the CERAs were maintained but by the end of the 70 s these were divided in small properties. One of the very controversial issues during this period was the privatization of indigenous property creating deep conflicts among the indigenous people who, by tradition have cultivated their land in a communitarian base.

There is very little information on gender implications during this period as there is no information desegregated by sex, but taking into consideration that the potential beneficiaries were chosen among the head of household former participants in the previous agrarian reform, it is supposed that few women could had accessed as beneficiaries <sup>6</sup>

Since the Allende period no new land reform has been implemented in Chile. The agriculture sector changed drastically, small peasants sold their land to big agriculture enterprises concentrated in the export industry. Many small peasants, women and men migrated to urban areas in search of better economic conditions and work



Most of the rural women have between 1 to 5 ha. The meager piece of land, usually with scarce access to irrigation, poses difficulties to women to build a micro enterprise in agriculture production. Also is difficult for them to produce agriculture products for internal consumption or compete in the area of the export agro industry. The survival strategy of many of them is temporary employment, or the off farm employment. Many migrate to cities

<sup>5</sup> Silva P. The Military Regime and restructuring of Land tenure. Latin American perspective 18,1:15:32

<sup>6</sup> op cit Leon and Deere

There is one important issue that currently is contingent to land reform and **is the issue of access to water**

In most countries in the region, irrigation is an important means of increasing productivity, fostering diversity and intensifying cropping. Access to water and irrigation are linked to the presence of water and to technological development, however the key criterion is land tenure; therefore women find themselves disadvantaged when it comes to water and irrigation.

There are few studies in the region on surface or groundwater availability, or their use in different types of irrigation. Virtually no studies exist on the economic, social or environmental considerations that would allow examination of this situation from a gender perspective.



In Chile as shown in the graphic above that female heads of household have less access to any type of irrigation, and 66.3 percent of female heads of agricultural household have no irrigation compared to 58.9 percent of male farmers. Not enough attention has been given to the role women play managing the region's water resources. Few studies have been conducted in Latin America on this subject, as compared to other regions of the world. Furthermore, León M and Deer C. reports that water disputes are gender based, as water is allocated to an individual and is contingent upon land tenure.

#### **IV Actions to support poor women and men land titling through regularization of property: Chile special law enforcement system including support to land claim and legal assistance**

In the past decade massive programmes have taken place in Latin America to regulate land ownership, granting property titles to people with limited resources. This was intended to alleviate poverty; a property title is a useful social tool for these sectors of the population providing access to state and private housing subsidies, credit, technology, agricultural advice and funding. Titling programmes were launched to reduce irregular ownership and facilitate proper functioning of the land market.

The Ministry of National Assets (Ministerio de Bienes Nacionales) is the institution that has as principal functions the regularization of property rights specially addressing the situation of poor people. This work is performed in the frame of poverty reduction program as access to and control over land, housing and property is considered by the Chilean Government as a determining factor for poor people and especially women to enhance their living conditions for equality in gender relations and empowerment.

In Chile access to land property is an important tool as it facilitates access to special state support schemes such as credits, technology, and financial support for housing and agriculture development.

The fact that in Chile, there are several situations on irregular property titling, since 1994 the government have been concentrate its efforts to end this situation. Between 1994-1997 the Ministry did benefit 91.057 families through a special program of property titling : a) a massive rural titling program that provided property titles to small peasants , coordinated with the Institute of Rural development (INDAP) responsible of providing technical assistance and credit ; b) through a special government decree (2.695) poor urban and rural neighbourhoods were included in a special property titling; c) through law 19.253, land where indigenous people were living was transfer to the National Indigenous Institute (CONADI) to be transfer in favour of indigenous communities. The new property titling program included that beneficiaries were legally prohibited during the first year, to sell their property.

In 1999 the Ministry evaluated the impact of its programme of property regularization titling for the period 1994–2000, and it show that 75% of the beneficiaries were under the poverty line of which 39% were women. Also the study indicated that property irregularities were explained due to inheritance and property selling practices. But the positive side of the rural titling regularization program was that beneficiaries, both women and men showed a high participation in state programs for housing credits, access to water, electricity and constructions of rural roads and paths.

Also in 1999 the Ministry of National Assets and Ministry of Women Affairs (SERNAM) launched a research on women behaviour and use of their new property titles.<sup>7</sup> The aim of this study was to provide information to both ministries to develop programmes focused on women needs and concerns, as well as to develop gender differentiated policy on land titling. The research included a total of 1.254 beneficiaries from rural and urban areas (667 urban areas and 587 rural areas). Results from this study highlighted that after 4 years a slight higher percentage (82%) of women beneficiaries of the program, still maintain their property. Interesting information was that among the beneficiaries of the program 72% were head of house hold and from this percentage 35% were women and 65% men. In urban areas the number of women head of household was higher than in rural areas.

The evaluation showed that women, more than men, tended to maintain and permanently occupy their property and more rural than urban women were occupying permanently their property. Another interesting fact highlighted in the study was women planning when acquiring their property: While for them the new property provided with security for the future , for herself and their children as well as access to

---

<sup>7</sup> SERNAM, Ministerio de Bienes Nacionales; Uso de la propiedad por parte de beneficiaries/as del programa de saneamiento según una perspectiva de género, 1999

basic services (water, electricity) for men earning a property was a mean to build a house (and expanding it) for a financial investment that could provide them easy access to credit or other benefit. There were no differences between rural/urban women and men when deciding to sell their property, but differences between rural and urban beneficiaries were found in access to government social programmes due to lack of information in rural areas.

Both women and men acknowledge that owning a property supported a better quality of life. In depth interviews with beneficiaries revealed that while title of ownership did not particularly facilitate access to life-enhancing resources, it mitigated inequality within households. Women were empowered in their family group as they participated in family decisions; there was a tendency to equity between men and women, where they were usually consulted in important family issues like migration, work or employment possibilities, child education health issues. Beneficiary women tend to make decisions on the welfare of their families. Having a property title in their name gave them more say in decisions relating to the holding and the family. Reduced out-migration, stimulated new sources of work and children education. At the same time, beneficiary women reported increased respect from their husbands or companions to whom they were prepared to grant fewer concessions. They enjoyed the assurance of a home for themselves and their children.

Women's lack of rights in, access to and control over land, housing and property can also contribute to women's experiences of violence. Without security of tenure it is difficult for women to leave abusive and violent households.<sup>1</sup> At the same time, a lack of security of tenure means that women can be forcibly evicted from their homes and lands on the whim of an angry spouse or male relative<sup>8</sup>, upon marriage breakdown or widowhood which invariably leads women to homelessness, landlessness and destitution, exposing them to further violence. In this frame the study from Chile highlighted the importance in women security when owner of land tenure as it indicated that intra family violence did diminish as women felt more secure and at ease with no pressure to leave their property when her spouse or partner reacted in a violent way.

The lack of information on social programs in benefit of poor rural women was one of the more important findings of the study main which motivated both Ministries to start a extensive and important information campaign in rural areas linked to the local level institutions (Municipalities, NGO's) producing several brochures and using the rural radio programmes

## **V Structural changes and development strategy: limiting access to land?**

The neoliberal Chilean model of the 80s promoted the restructuration of the economy specially change in the agriculture sector. Chile agriculture had to change to a fruit and forestry export sector. Market liberalization and the new approach to land property of the late 70's had a strong impact in the agriculture sector. The country went through a deep structural change in all sectors but one of the most affected was the agriculture sectors.

---

<sup>8</sup> Bina Agarwal,

The emergent agriculture labour market opens new employment possibilities that in order to be competitive for export, offered low salaries. A new land concentration resulted due to the extended fruit agro export companies. Many small peasants had difficulties in access to state technical assistance. Access to credit was scarce. Very few small peasants were able to compete with agro export industries, food import promoted by the agriculture trade resulted in a even more difficult situation and they were forced to sell their land to export companies, migrate or if staying in their agriculture exploitation, be employed by these export companies

The structural changes of the 80 s, the globalization process of the 90s, exacerbated by the liberalization of the agricultural trade and the several Free Trade Agreement in the beginning of the XXI century, increased poverty among small peasants.

One of the important changes in the agriculture labour market was the incorporation of rural women to the Agro industry export industry employed either as temporary workers in the intermediate process (e.g. packing). By the end of the 80's 52% of the temporary agriculture workers were women most of them working in the packing fruit export enterprises. More permanent positions were occupied by men and women constituted only 5% in these positions<sup>9</sup> other women migrated to intermediary and central cities and it has been acknowledge in a recent study that women and men off farm employment contribute substantially to overcome poverty among poor small peasants still living in rural areas<sup>10</sup>

Socio cultural and economic changes in the 90's resulted in changes the role of rural women. From a former productive approach role for family consumption to the employment in the agriculture market oriented export industry. Many rural women employed in temporary or permanent work, are bringing home their salaries and in some cases helping their rural families to overcome poverty. This is what the recent study developed by FAO in 2002 have highlighted.

But this temporary work is intensive and very demanding. Women usually work extended hours, in bad labour conditions and exposed to pesticides. Only by the end of 2003, the Parliament approved a law for health insurance and the right to get a pension. But their working situation still continues to be precarious because many employers still do not comply with the employment laws.

Even if Chile is one of the countries that grow more in the region, unemployment is still high, specially in rural areas and income inequalities is one of the highest in the region. Among the poorest groups are rural women head of household

All these situations make it very difficult for women to access to land, especially as there is no special policy to buy land, than the one provided by the free land market. As it has been explained in the chapter of indigenous people, indigenous rural women have a different situation and through CONADI and the Water and Land Fund they can more easily access to land

---

<sup>9</sup> Venegas S. "Las temporeras de la fruta" en Santa Maria L F *El Rostro femenino del mercado de trabajo rural en América Latina*. Nueva Sociedad, UNSRID pp 213 146, Caracas, 1995

<sup>10</sup> FAO, La visibilidad de las mujerees rurales bajo los niveles de pobreza , 2002 ,[www.rlc.fao.org/mujer](http://www.rlc.fao.org/mujer)

## **VI On State forest policy land distribution policy**

Chile has no land distribution policy. What is currently in place in land market policy where peasants and interested persons can buy land in the free market? For indigenous people and a special support program is has been put in place through CONADI a institution created by the Indigenous Law (19.253) to deal with this sector define what are indigenous land . The law created also a Land and Water Fund to provide with financial support to buy privatized indigenous land ( process implemented during Pinochet Dictatorship) where indigenous people are or were living and provide then with communal or private titling to groups or natural persons from the different ethnic groups (article 12 to 22)

**Marcela Ballara**

marcela.ballara@gmail.com

**2005**

## REFERENCES

Bina Agarwal, *A Field of One Own: Gender and Land Rights in Asia*. Third Worlds Studies. 1994

Ley Indígena 19.253, CONADI, Chile, 2002

Deere C y León D. *Genero propiedad y empoderamiento: tierra, Estado y Mercado en América Latina.*; FLACSO/PUEG, México 2002

FAO, *La visibilidad de las mujeres rurales bajo los niveles de pobreza*, 2002, [www.rlc.fao.org/mujer](http://www.rlc.fao.org/mujer)

Leilani Farha, *Women and Housing in Women and International Human Rights Law*, Vol. 1, eds. K. Askin and D. Koenig (1999) at 516.

MIDEPLAN “Ethnic Group and Poverty in Chile” prepared on the basis of CASEN 2000 survey data, Santiago, 2002.

SERNAM, Ministerio de Bienes Nacionales; *Uso de la propiedad por parte de beneficiarios/as del programa de saneamiento según una perspectiva de genero*, Santiago, 1999

Silva P. *The Military Regime and Restructuring of Land tenure*. *Latin American Perspective* 18, 1:15:32

Venegas S. “Las temporeras de la fruta” en Santa Maria L *El Rostro femenino del mercado de trabajo rural en América Latina*. Nueva Sociedad, UNSRID pp 213 146, Caracas, 1995

---

<sup>i</sup> Leilani Farha, *Women and Housing in Women and International Guman Rights Law*, Vol. 1, eds. K. Askin and D. Koenig (1999) at 516.