

WOMEN'S PROPERTY RIGHTS: WHAT WE NEED TO KNOW

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Translation of:

DERECHOS DE PROPIEDAD DE LAS MUJERES: ALGO QUE TENEMOS QUE SABER

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Table of Contents

Section 1: What are assets and why are they important?

Section 2: Why are assets important to women?

Section 3: What do Ecuador's laws say about property rights?

Section 4: What were the goals of our research?

Section 5: How did we conduct our research?

Section 6: What were the results of our research?

Section 7: What do women know about their property rights?

Section 8: What can women do to safeguard their assets?

WOMEN'S PROPERTY RIGHTS: WHAT WE NEED TO KNOW

Introduction

In this document we explain why property rights are important for the well being of women and their families. Property rights are the laws that define which assets or property belong to the couple once they are married (or in a consensual union) and which assets remain their own individual property. These laws also define what happens to assets if the couple decides to separate, divorce or if one of the partners dies. Property rights thus establish the parameters by which women may accumulate assets depending on their marital status. In this document we also present information about the assets that are owned by men and women and about the distribution of wealth in Ecuador. We also discuss patrimonial violence which refers to those situations where women's property rights are violated so that they lose assets. Finally, we make some recommendations about how women can protect their assets.

1. What are assets and why are they important?

Assets are all the properties, consumer durables, equipment and savings that are owned by individuals. For example, physical assets might include one's house, business, a stove, a car, farm animals and tools, among other things. Financial assets include the money one has deposited in a bank account or a savings and loan cooperative, or savings held at home or by a group of neighbors, as well as loans made to others.

Physical and financial assets constitute a person's wealth. Also, one of the main ways that people can generate income is by owning assets. Take, for example, the case of land ownership. Land is an asset that can be farmed in order to produce crops which in turn can be sold to earn income. Assets are also important in the urban, informal sector. Ownership of consumer durables such as a sewing machine, a stove, or a refrigerator can be business assets which are utilized to earn income. Other assets, besides being means of production, can also be rented to produce income, such as rooms in a house or a piece of land. Another example is when people have savings in a bank account that produces interest as income.

Assets also have use value, such as when you own your own dwelling and do not have to pay rent. Another example is when you own a domestic appliance that makes housework easier. Physical and financial assets can also serve as collateral when you need to take out a loan. These borrowed funds can then be invested in more assets to earn more income. Assets also provide a cushion for emergencies since they can be sold or pawned. For all these reasons the ownership of physical and financial assets allows us to distinguish between households and individuals who are poor and those who are not. Physical and financial assets can also be given

to one's children and others as an inheritance. Studying asset ownership also allows us to see whether families and individuals have been able to maintain their wealth from one generation to the next. Owning assets obviously has many social advantages. They also increase and individuals bargaining power in the home as well as in the community and society in general.

2. Why are assets important for women?

Studies have shown that there are often differences in the position of different family members within households. People may be treated differently because they are men or women, or because they are older or younger, or because they occupy a different position, such as being a father or son. Also, not everyone participates in making the important decisions in the family. In some households the important decisions are made by the principal couple—the mother and father who maintain the household. In others, it is the husband or father who makes the decisions for everyone in the household. These decisions are sometimes more advantageous for some members of the family than for others. Thus the person who makes the decisions—and the way in which those decisions are made also determines who benefits the most and who benefits the least. For example, one person might have more opportunity, security, or physical comfort than another.

One of the central ideas that guides our study is that asset ownership is related to power relationships and the bargaining process that takes place within households. In other words, the well being of a woman and her children may be related to the assets that she owns. These are the assets that she can count on if the household dissolves for any reason. We call these assets a woman's "fall-back position," for they determine in large measure how well-off she might be in the case of a separation or divorce. The more assets a woman owns, the stronger is her fall-back position and how well off she might be on her own. Moreover, this fall-back position is also related to a women's bargaining power within the household. The stronger her fall-back position, the more likely it is that she will participate in making decisions within the household.

Whether women can own assets on their own or jointly with their husbands depends on the property rights of married women and those in consensual unions. These property rights are defined by what are known as marital regimes. Marital regimes are the laws that determine who owns the assets that are acquired before, during and after the marriage or consensual union is dissolved.

These marital regimes vary from country to country. In most Latin American countries the marital regime is what is known as partial community property. In a few countries of Central America (Costa Rica, Honduras, and Nicaragua) it is different, however, and the marital regime is separation of property.

3. *What do the laws of Ecuador say about property rights?*

In Ecuador the marital regime is that of partial community property and it is known as the **marital society**. Under the rules of marital society:

- All assets acquired before marriage by each spouse remain their own individual property when they marry.
- All the assets acquired during marriage, including what is bought with the income of either one of the spouses or by both of them, as well as the income generated by the individual assets of either spouse, are considered to be the joint property of the couple.
- If the marriage dissolves—due either to divorce or the death of one spouse—the couple’s jointly owned assets must be divided into equal shares between the two spouses, or in the case of death, between the widow (or widower) and the estate of the deceased.
- The share that the widow (or widower) receives is not an inheritance from the deceased spouse, but rather, corresponds to their share of the joint property of the marriage since s/he was a co-owner of all the assets that were purchased during the marriage.
- Inheritances are always the individual property of the person who receives them, regardless of one’s marital status. In other words, if a married woman receives an inheritance from her parents, this inheritance is her own individual property and not part of the joint property she owns with her spouse.

Also related to property rights is the concept of the head of household. This term refers to who manages the properties or assets of the household. In Ecuador the head of household can be **either the husband or the wife**. Of course, when a couple marries, the judge rarely asks them who is going to manage their joint property. The law says that in the absence of a designated administrator, “it will be presumed that the husband is the administrator.”

Nevertheless, there are laws protecting the rights of married women who do not manage the joint property of the couple. One such law, for example, is called the “**double signature**,” which means that the sale of real estate like a dwelling or a parcel of land or of an asset such as a car requires the signature of both spouses. This rule also applies to loans obtained by one of the spouses because both spouses will be responsible for the payment of the debt unless other, specific arrangements are made.

Property laws in Ecuador also state that couples in consensual unions have the same rights as married couples. But for these legal rights to be honored in practice the couple must register their consensual union. The requirements to register such a union include:

1. Being in a stable union for at least two years
2. Being monogamous—that is, be faithful to the same person, and
3. Neither member of the couple can be married to someone else.

When a woman's property rights are violated she is subject to what is known as **patrimonial violence**. This type of violence often occurs because of women's lack of legal knowledge or because women are unwilling to fight for their legal rights in order to protect their individual property or joint marital property.

4. What were the goals of our research?

Our research sought to learn about how the ownership of assets is distributed between men and women within their households. We also wanted to learn if the ownership of assets provides women with more security and enhances their wellbeing, in addition to more bargaining power in their households.

Studies of asset ownership in other countries have shown that women's ownership of their own their own dwelling or a land parcel is often associated with a stronger bargaining position in the household. As a result, they participate more in household decision making and are less likely to experience domestic violence. They sometimes receive more attention from their children when they are elderly or when they are widowed. In general, women who own assets have more economic autonomy. This can give single women, for example, the ability to choose if they want to marry or not, and sometimes, more choice of a partner. It also gives married women or those in consensual unions greater choice on whether to separate from their partners if the relationship is not working. This is where the concept of the fallback position has special importance. Women's ownership of assets strengthens their fallback position and indicates how well off the woman would be if she decides to separate or divorce, or if widowed.

In sum, this study centers on the property rights of married women and those in consensual unions and particularly, on their rights when they separate, divorce, or become widows.

5. How did we conduct our research?

We began our study by talking to groups of women in what are known as "focus groups." Focus groups are discussions guided by a researcher on a particular theme. We also held focus groups with groups of men, and some with groups of men and women together. We also interviewed

judges, lawyers, and public notaries in order to find out how they apply the property rights established by law. We held these focus groups and interviews in the provinces of Azuay, Pichincha, and Manabí, and in both rural and urban areas.

The information gathered in the focus groups helped us to design a questionnaire that we used to conduct a survey of 2,892 household on the coast and sierra. The aim of the survey was to determine the physical and financial assets of each household, what belonged to each person in the household, the value of each asset, and how each asset was acquired. We then processed all this information in order to reach the results that we present below.

6. What were the results of our research?

Types of property: individual and jointly owned

We now know what proportion of Ecuadorian households own physical and financial assets and which types of assets are most commonly owned. Of course, not all the members of the household are the owners of these assets. There are assets that are owned by only one person; we call these “individual property.” Other assets have more than one owner and we call these “jointly owned.”

We found that the majority of dwellings are jointly owned property, and most often belong to the principal couple of the household. Other assets are mainly owned by individuals, especially businesses. Consumer durables are also mainly individually owned. But the patterns of ownership vary greatly depending on the specific asset. For example, kitchen stoves are usually individually owned by women. However, cars are usually individually owned by men.

Up to this point, all the information we have presented refers to the national level, or Ecuador as a whole. But there are some important differences between the coast and sierra. Individually-owned property is always much more important on the coast than in the sierra. What really stands out is that individually owned property by men is much more common on the coast than in the sierra. On the other hand, jointly owned property is much more frequent in the sierra.

The proportion of the population that are asset owners

Knowing who owns which assets allows us to estimate the proportion of the adult population who own the different kinds of assets. In Graph 1, the highest bars show the assets which are owned by the greatest share of adults. So, for example, it shows that the great majority of adults own at least one consumer durable, such as a piece of furniture, a stove, or a television. The colors compare the proportion of men who are owners (in blue) with the proportion of women that are owners (in red).

Thus one can see that there is a higher proportion of women who are owners of animals as well as non-agricultural businesses. There is a higher proportion of men who own savings accounts and agricultural equipment. But for some assets there is little difference between men and women. For example, about an equal share of men and women own their own dwelling or land parcels.

Nevertheless, one can see that relatively few people are owners of the most important assets, such as their dwellings, savings accounts, businesses, and agricultural parcels. While 93 out of 100 women are owners of at least one consumer durable, only 36 women in every 100 are the owners or co-owners of their own home. What this graph tells us is that relatively few women or men in Ecuador own assets of any significant value. These are the assets that most serve as a form of security during times of financial emergency.

The value of assets owned by men and by women

Thus far we have discussed the proportion of the population that are asset owners and the differences in the share of men and women owners, depending on the asset. Now we consider the value of these assets. We asked the participants in our study the following question: “If you were to sell this asset today, for how much could you sell it?” By adding up all the values of all the assets in the household we obtained a measure of the total wealth of the household. And by adding up these values for all the households in Ecuador we arrived at the total value of household wealth. We estimate that the total household wealth is around US\$83 billion. Since we now know who owns each asset, we can divide that total wealth into the part that belongs to men and the part that belongs to women. Graph 2 shows this distribution.

In Ecuador, women constitute 52% of the population and men constitute 48%. As we see in the graph, it seems that there is equality in the distribution of wealth since 52% of the wealth belongs to women and 48% to the men. But, is everything really so fairly distributed in Ecuador?

In order to better understand what this means, we first examine the median value that male and female asset owners have invested in their different assets. We then analyze the distribution of wealth among households, from the poorest to the wealthiest.

The median represents the midway point where half the asset owners have more invested in the asset, and the other half have less invested. As we see in the Graph 3, there are some assets where the median amount invested is about the same for women and men. Such assets include the primary residence or dwelling and land parcels. These are also the assets with the most value. In part, this explains why the total wealth in Ecuador is relatively equal between men and women.

For other assets, as we see below, there are significant differences in the median value invested by men and women. In the case of non-agricultural businesses, for example, although there are many more women than men who have businesses, the median value of these assets is higher

for men than for women. On average, men have \$1,000 invested in their businesses, whereas women have only \$500. This suggests that generally the businesses owned by women are much smaller. The same is true for financial assets. Men have nearly double the amount invested in savings accounts (\$200) compared to women (\$100), regardless of whether those accounts are in banks or kept in the form of informal savings. However, the median value invested in consumer durables by women is \$190 compared to only \$169 for men. Since what is most frequently owned by people in Ecuador are consumer durables, these values show how little the majority of both men and women have invested in assets.

Remember:

While the overall distribution of wealth between men and women is relatively equal, there are important differences in what men and women own and in the value of their investments in certain assets. Women are at a disadvantage when it comes to their investments in businesses and savings. These are also assets which are easier to turn into money in an emergency.

Differences between households

Some households have more assets than others, just as some households have more income than others. To distinguish between households we arrange them from the poorest to the richest; in other words, from the household that has no assets up to the household with the highest value of total assets. We have then divided the households into five different groups, known as quintiles. We can then see how much of the total wealth is owned by each quintile.

The poorest households are those in quintile 1 and quintile 2; together they make up 40% of all households. This 40% of households own only 3% of the total household wealth. The richest group is quintile 5, and these households own 70% of all the wealth. We can also see the differences among households considering the average value of the assets owned by households in each quintile. In quintile 1, which includes the 20% poorest households, the average wealth is only \$222. In quintile 5, the richest 20%, the average wealth is \$20,288.

The composition of wealth—in other words, the specific assets owned by each group—also varies according to these quintiles as shown in Graph 4. In the graph, each circle represents the wealth of all the families in each quintile. The colors represent the assets that make up that wealth. The circle representing the poorest households (quintile 1) shows that the value of housing, the dark blue area, is very small. Housing represents less than one tenth of their total wealth. Most of the wealth of those households is formed by consumer durables, which is represented by the light blue area.

If we look at what distinguishes those who are asset poor, comparing quintile 1 and quintile 2 (whose assets average \$1,315 compared to the \$222 for quintile 1), we see that for quintile 2 the value of their dwellings comprises a larger share of their total wealth. The value of the home is represented by the dark blue area. This means that the biggest difference between

these two groups is that the very poorest households do not own their own home, while the others do. One of the things that women in the poorest quintile could do to improve their situation is to acquire and maintain assets that have more value, such as a dwelling.

Examining the group of poorest households (quintile 1) we also found that, compared to other quintiles, there are more adult women than adult men in this group. In quintile 1 there are 1.3 women for every man. Furthermore, the poorest women have fewer assets invested in savings and businesses compared to the poorest men.

We also discovered that of the women who head their own household (because they are single, separated, divorced or widows), one-quarter of them are concentrated in quintile 1, those households that are the poorest in terms of assets. They must manage their family's finances alone and often are not able to save any money to purchase assets. Also, when they own a business, they rarely can accumulate sufficient assets in order to increase the value of their businesses.

Remember:

There are enormous differences in wealth among households. These differences between those who are asset rich and asset poor are greater than the differences between all men and women. A major difference between the poorest households of quintile 1 and those that are in quintile 2 is that those in quintile 2 own their own home. Understanding this helps us think about what sorts of assets the poorest women need to acquire. And women who already own their home need to know how to defend their property rights.

7. What do women know about their property rights?

Here we present what we learned through the focus groups and interviews about what women understand about their property rights and where there are many misconceptions.

Married Women

Most married women in the focus groups knew that the assets that were acquired while married belonged to both them and their husbands. Nonetheless, we found a tendency, particularly among popular sector women, to consider that the owner of an asset is the person who earned the income to purchase it. For example, some women said, "Everything is in the name of my husband, since he's the one that works." This is an example of women not really understanding very well their property rights in marriage—that is, that everything that is purchased during the marriage belongs to both of them. It results in what we call patrimonial violence, because if a married woman who is getting divorces doesn't claim her half of the joint property it would constitute a violation her property rights.

There is also some confusion among popular sector women about what happens to the property that they acquired before they were married. There is a tendency for women, once

married or in a consensual union, to think of their own assets as belonging to the “family.” However, when it comes to the assets that their husbands acquired before marriage, they sometimes consider these to be his individual property. Legally, all assets acquired by either men or women prior to marriage continue to belong individually to each of them.

In general, most married women and men are familiar about the rule requiring the “double signature” for the sale of any real estate (that is, that both husband and wife must agree to and sign any sales agreement). However, there are some husbands who sometimes falsify the signature of their wives. There are also women who sign whatever their husband puts in front of them without really understanding what they are doing. Women have a tendency to trust their husbands and to assume that they will look out for their interests. These situations also result in patrimonial violence when transactions take place that do not respect women’s property rights.

Divorce

When a couple divorces, the civil code stipulates that the person who receives custody of children under the age of 18 has the right to remain in the family home, irrespective of how the dwelling was acquired. This favors women because they are usually the ones awarded custody. However, women don’t always understand that they only have the right to live in the home as long as they have under-age children. If purchased while they were married, the dwelling remains the joint property of the couple. When the children reach 18 years of age, the property has to be divided in equal parts between the former husband and wife. A situation of patrimonial violence arises when the ex-husband pressures the woman to sell the home in order to divide the money between them.

In other cases women facilitate the violation of their own rights when, for example, in order to get out of a bad relationship, they do not assert their property rights (or use right, in the example above). Instead, they let their husband keep all of their joint assets. This situation is particularly common in cases when the woman has been subject to domestic violence.

We were also told about cases where women have lost their inheritances upon getting divorced. This situation sometimes comes about when the woman has inherited a land parcel but together with her spouse has built their home upon it. When the couple divorces all the property—both the land and dwelling—is considered to be part of the marital society and divided in half. This tends to happen because women often do not have a property title to their inheritance. Nor have they tried to document their inheritance in some other fashion, such as through a “capitulation.”

Capitulations are specific declarations made before a public notary (similar to a prenuptial agreement, except that they can be made out at any time during the marriage)—that explicitly state what belongs to whom. In the above example, for instance, a capitulation could certify that the land is the individual property of the wife which she acquired through inheritance.

Recall that individual property is not divided between the spouses in the event of a divorce, thus such a document would protect her property rights.

In our survey we learned that capitulations are rarely used, with fewer than 2% of the respondents reporting that they had utilized this legal instrument. Those who tend to use them are people who marry for a second time and want to protect their assets for the children of their first marriage. Also, sometimes women who have suffered patrimonial violence in a previous relationship take this step to protect themselves.

Women in consensual unions and separation

Consensual unions are very common in Ecuador, corresponding to 28% of the adults who responded to our survey. Consensual unions are much more common on the coast than in the sierra. Although legal marriages and consensual unions have the same property rights before the law, we found that women in consensual unions feel much more insecure about their property rights than those who are legally married.

Part of the problem is that people in consensual unions continue to be considered single for legal purposes, and this is how their marital status is reported on their identity cards. Thus if a man in a consensual union goes to purchase an asset, and shows his identify card, he will rarely be asked if he is living in a consensual union. Thus it is likely that the asset will be registered only in his name, ignoring the fact that he has a partner. This leads to women in consensual unions (particularly, in the popular sector) considering that the person who purchases the asset is its owner. Moreover, if a woman does not have any income and did not contribute to purchasing the asset, she rarely considers herself to be a joint owner. At the same time, it is not uncommon for the assets that women do purchase for the household to be considered the property of the whole family and not their own individual property.

In addition, when a couple separates it is difficult for women to provide proof that they were in a consensual union, since it is not usual to officially register these unions. In our study we found that only one in ten couples in a consensual union had registered their relationship. In addition, if the man claims to have another wife and children with her, it is not possible to legally register the consensual union because they have not complied with the requirement that the relationship be monogamous. These factors set the stage for patrimonial violence. The result is that few women in consensual unions claim their property rights when they separate. They are much more likely to fight for child support than their own property rights.

Remember:

If your consensual union is properly registered, the judge or public notary presiding over the separation must ensure that the property and other assets acquired during the union are divided according to the law; ie., that each partner receives 50% of the assets. It does not matter who purchased the assets.

Widowhood

Most women know that if widowed, the couple's joint assets are divided into equal shares: half of these assets will belong to them, and the other half will go to the sons and daughters of the deceased husband. There is considerable confusion about what the widow's half represents. Many women consider this half to be an inheritance left by the deceased husband or partner, rather than their property right in the joint property of the marriage/union. Moreover, few women realize that they are not entitled to inherit from the individual property of their deceased husband. If he had any children, they will inherit all of this property.

Usually the main asset of the couple is their home, so upon the husband's death this dwelling becomes jointly owned by the widow and the children. As previously noted in the case of separation or divorce, if there are children under the age of 18, the widow has the right to remain living in the home until all the children reach the age of majority. Nonetheless there is some confusion on whether the widow has the right to remain in the familial home until her death. Patrimonial violence occurs when children pressure their mother to sell the dwelling in order to divide up their inheritance. If the widow agrees to sell it, this will make her very dependent on her children.

The widow can find herself in a particularly vulnerable position if she and her husband have given their home to the children as an inheritance while the husband was still alive. If the dwelling is in the name of the children and the mother is then widowed, she is no longer the owner of her home and has no legal recourse. Patrimonial violence occurs when the children pressure their mother to sell the home where she lives. It can also occur if the children mortgage the dwelling, for if they do not pay the debt, the widow can be thrown out of her home and the property seized by the creditor.

Children's Inheritance

In our research we found that very few people write out wills. A more common method of passing assets from one generation to another, as noted above, is to give an inheritance to the children before the parents have died. This transfer can take the form of a donation or through the signing of a sales contract. We found that male and female children tend to inherit equally from their parents; that is, parents tend to treat their children equally, irrespective of their sex.

Inheritances from parents are very important for women. Inheritance is often the main way in which women accumulate individual property, particularly land parcels, but also the housing lots where they construct their dwellings. This practice strengthens women's fallback position, for these inherited assets are often the resources that a woman can count on if their marriages or consensual unions dissolve.

Remember:

There are different ways in which patrimonial violence can occur when a woman separates, gets divorced or finds herself widowed:

- If she loses assets that belonged to her when she was single.
- If she has assets which were inherited, but which have gotten mixed up with the assets that pertain to the marital society.
- When her share of the joint assets (those acquired by either one of them during the marriage or union) are not recognized.

It is during the moments of rupture of the marriage or union that women are the most vulnerable.

In sum, patrimonial violence often occurs because of women's lack of legal knowledge and their failure to claim their property rights. It also happens because they do not take advantage of the legal tools that exist to protect one's property rights, such as capitulations, or not registering a consensual union. Women sometimes fail to take into account the importance of assets in case of they separate, divorce, or become widowed. These legal mechanisms can help ensure that women's rights are respected and honored. Moreover, it is important that women participate in household decisions. Women need to be aware of all decisions regarding the couple's finances and particularly, about the documents that they sign.

8. What can women do to safeguard their assets?

When you are single:

- You must acquire a legal title to any property you purchase. If you purchase some other kind of asset, keep the receipt in a safe place, since some day it might be needed to prove that it is your own individual asset. If you marry or enter a consensual union, you might consider making a capitulation to certify that these assets belong to you individually.
- If you inherit property from your parents, take the time to do the legal paperwork required to transfer the property or other asset title to your name.

When you are married or in a consensual union:

- You need to know that it is ok to be concerned about your property rights.
- Take a moment to consider that your and you children's futures may depend on the assets that you own. You need to be willing to take legal action to defend these if necessary.
- When you take legal action, remember that lawyers, judges, and public notaries have a legal obligation to respect the law and defend the property rights of women. This is not a favor one must ask of the authorities. It is a legal right.

- In case of divorce, you have the right to half of the assets that were acquired during the marriage, even if these assets were bought only with the money earned by your husband or partner. It does not matter who bought the assets, for they belong equally to both spouses.
- It may be a good idea to make a capitulation in order to protect the property which you acquired while single.
- If in a consensual union, you should register your union with a public notary. Once registered, you will have the same rights as a married woman.

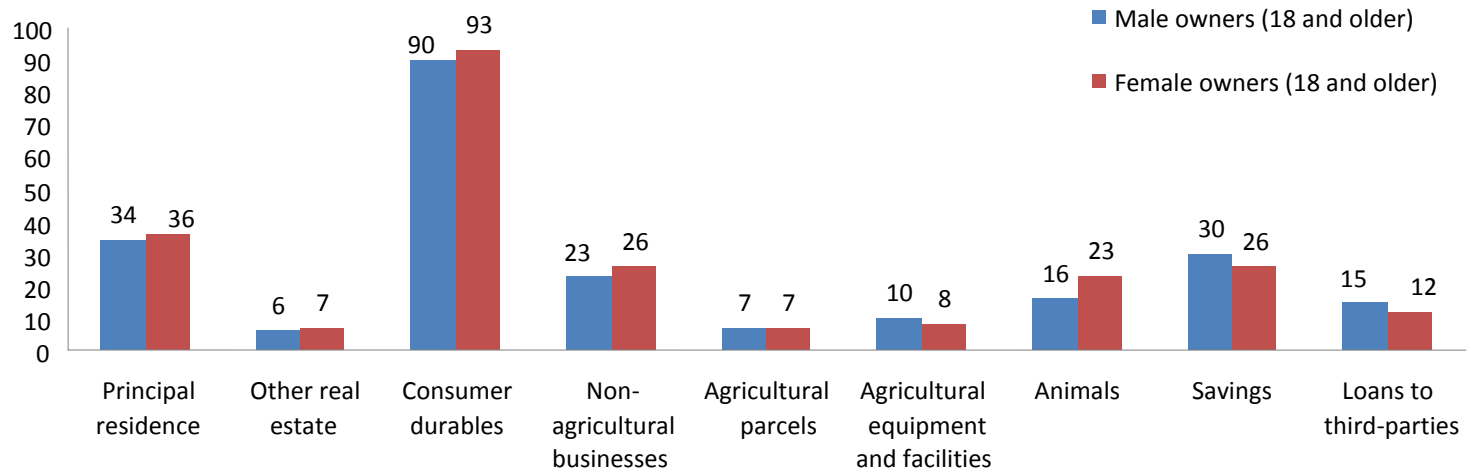
Thinking about what will happen if you become widowed:

- You must clearly understand that if your husband dies, half of the assets acquired during the marriage belong to you. This is not an inheritance from your deceased husband, but your property right to half of the marital society. These belong to you by law.
- The half of the joint assets that belonged to your husband is what is shared by the children.
- You need to think about the fact that someday you might need to support yourself alone. It is thus better to wait to give assets to the children until after your death.
- If you do decide to give assets to the children, it's important to maintain the right to remain in your home as long as you live. This right must be formally legalized with a public notary to insure that it is protected by the law.
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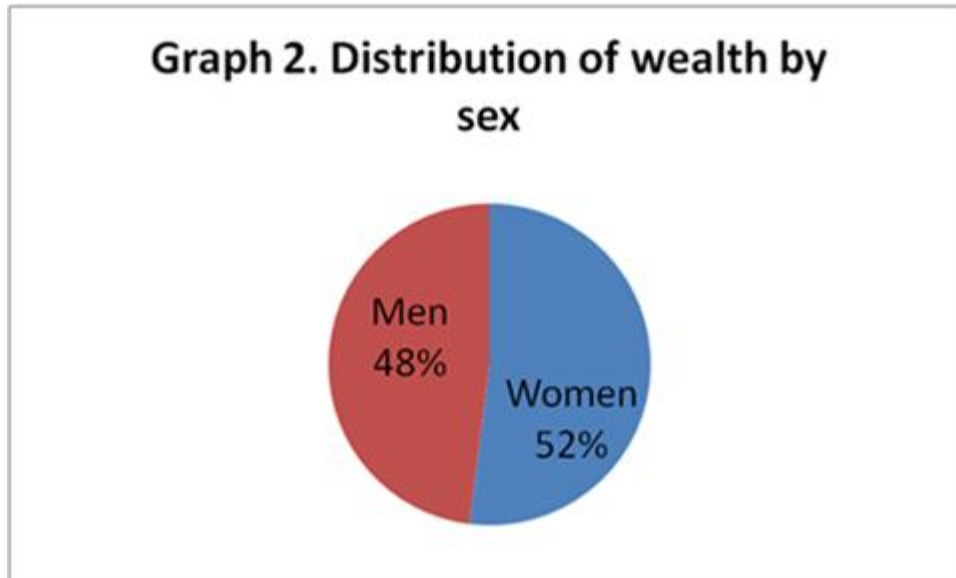
Remember! In every phase of their lives, women must:

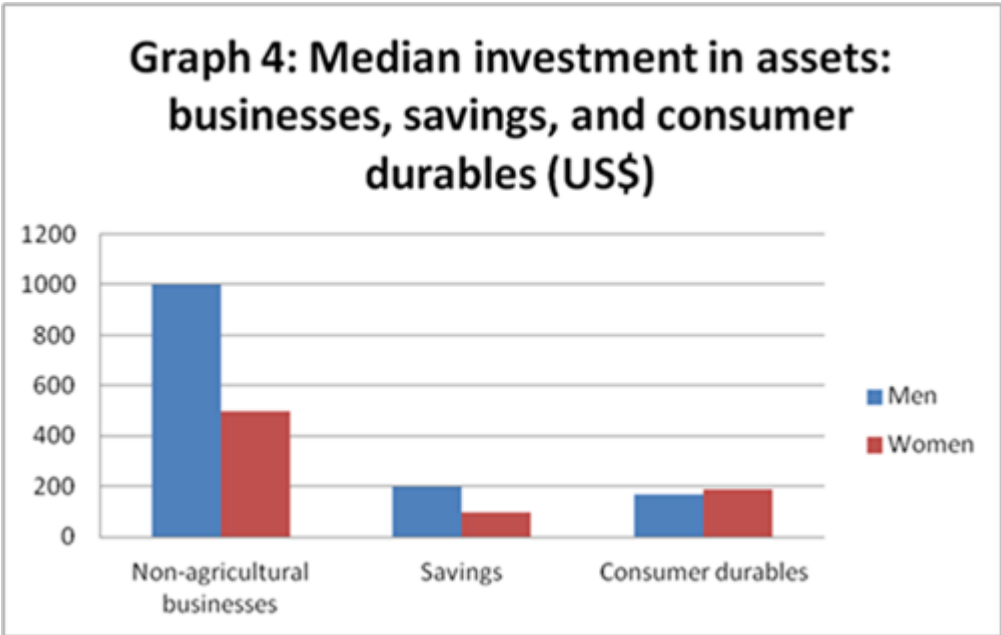
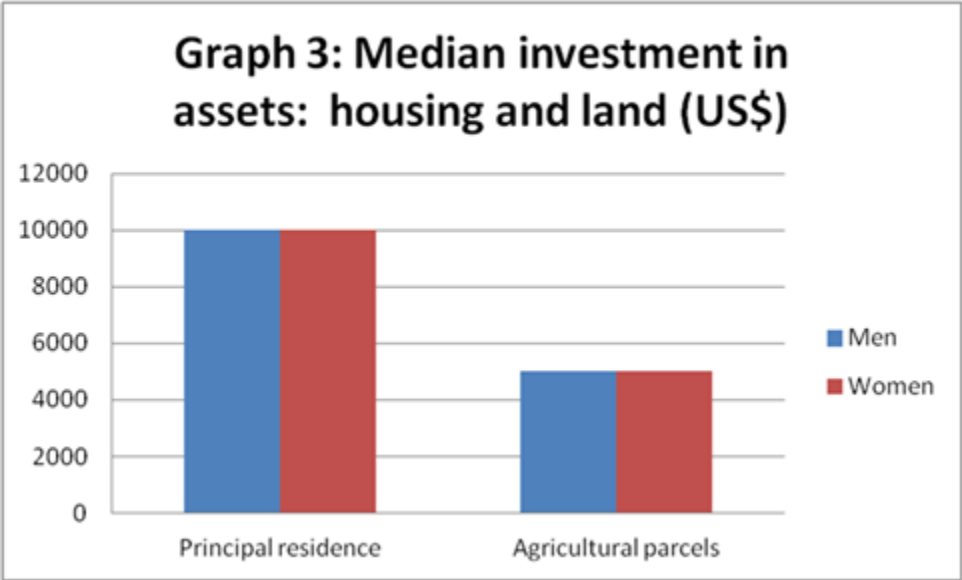
1. Take care of their assets because their and their family's well being depends on their assets.
2. Participate in household decisions regarding assets.
3. Make sure to get a legal title for any property received as an inheritance.
4. Stay informed about their property rights.
5. Demand that their property rights be respected.
6. Know that all lawyers, public notaries, and judges have the obligation to respect and uphold the property rights of women.
7. Register their consensual union before a notary in order to secure their property rights.
8. Advise children to respect the property rights of their mother.
9. Refuse to be mistreated or coerced into giving up their property.
10. Seek advice whenever unsure about how to defend their property rights.

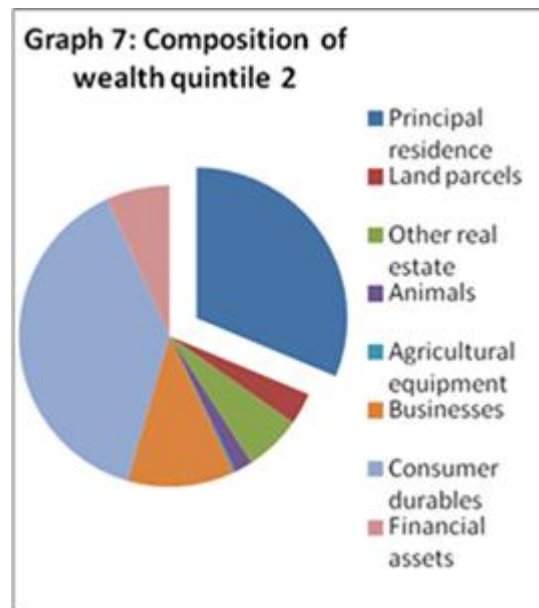
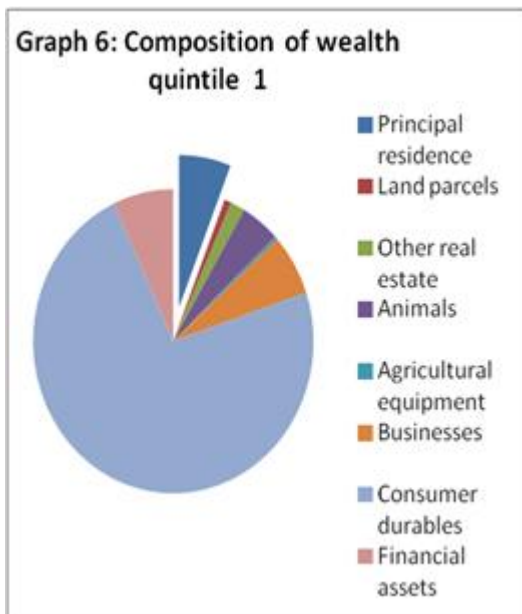
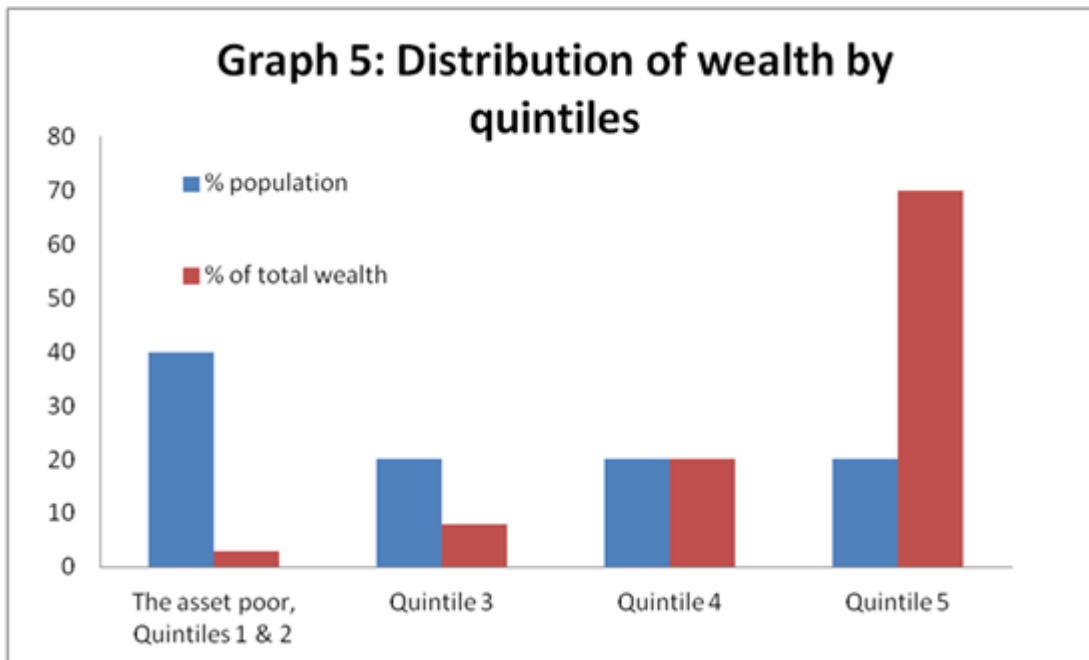
Graph 1: Incidence of asset ownership



Graph 2. Distribution of wealth by sex







Graph 8: Composition of wealth quintile 5

