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## The challenges of access to water and the right to water (legal pluralism, indigenous rights)

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### Introduction

Glaciers and *paramos* dominate the Andean Cordillera's inter-Andean valleys. These constitute high altitude reservoirs generating abundant and regular flows. This resource has been widely used since the Spanish conquest by means of a series of hydraulic infrastructures. Traditional irrigating systems have structured the organization and use of land. However, this hydraulic heritage has been increasingly difficult to maintain and manage, while tensions the water have been developing with the increase and diversification of needs, the availability of the resource has, meanwhile, been decreasing due to the melting of glaciers and the recent exploitation of *paramo*, which have been jeopardizing their storage and regulation capacity.

The analysis of the mythical stories of the Kayambi communities of the Northern Andes highlights the importance of the geographical environment and more particularly its aquatic component. The hydrographic network appears as a mythical and ritual reference point, as an essential element in the life of the Andean populations.

Among these stories, that of the *Gigante midiendo las lagunas* tells the story of a giant who, going from lake to lake, traces the hydrographic network of this northern part of the Ecuador. On this route, the lakes and rocks are proof of the presence of mythical heroes in the distant past<sup>1</sup>.

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<sup>1</sup> Gigante midiendo las lagunas

«Ese vuelta dizque [...] andaba midiendo las lagunas. ¡La laguna de San Pablo, más allá ha habido la laguna de Cuicocha, acá en Ibarra! Acá atrás, hay otra [...] si le vi porque pasé por ahí, no es grande, es una chiquita así no más, a lado en el camino, esa es Cóndor, esa laguna. Es para allá de Zuleta. Conversaban que ese anda midiendo las lagunas. ¡Pisando así, dizque iba, pisando así! ¡Entonces, dizque decía la laguna... Aquí no más dizque le daba el agua pisando! ¡Otras lagunas así poco, poco... ¡De ahí dizque se va a pisar en esa laguna Cóndor, ahí dizque es hondo!

¡Ahí han dicho que eso es a nivel del mar!

Han dicho, yo nose. Ahí en ese cerro, es como puerta no más en el cerro Ahí decían que, estando ya para hundirse, se había alzado, así abrazar, y ha hecho ventana así el cerro. Abrazar con la mano. Con la mano dizque le ha pasado así, le ha hecho ventana el cerro, abrazado al cerro así, eso decían.

Conversaban los mayores así que antes, han sabido haber, eso midiendo las lagunas El [Sansón] para nosotros ca no es nada, sino que él ha sabido andar midiendo las lagunas, pisando. Él no tenía miedo, el ca pisaba y algunas lagunas aquí no más le daban. En el Cóndor no más decían que se ha trastornado, entonces ahí dizque ha alcanzado a abrazarse del cerro, la otra mano nose donde iría la otra. En San Pablo, yendo de aquí, patente, cuando está limpio [despejado] ca, una ventana hay en el cerro, en San Pablo así, como este, pero es de medio filo. Por eso se ve patentico, se ve como puerta, no más. Ahí decían, que ahí se ha abrazado, porque ha estado yendo a trastornar [Ezequiel laughs].

Eso conversaban los mayores [...] Dizque andaban un par de jóvenes, dizque se fueron de cacería, a cazar conejos.

Que no dizque encontraban nada de conejos, dizque dentaron al patio del cerro Cayambe, ahí dizque ha estado una señorita bonita, bonita, señorita, ninfa, que nosotros decimos *urcumama*, decimos nosotros, es una como decir una virgencita, ella dizque ha estado afuera andando en el patio. Entonces dizque le llama a los dos jóvenes, que dice venga para acá, venga para acá, conversemos, juguemos, dizque dice. Al más bonito, simpático, dizque le tiene solo jugando con ella. Dizque no ha sido ansioso de nada de plata, nada de oro, nada, tranquilo él [...] El otro que ha sido un poquito ansioso y ambicioso a la plata, a ese vuelta dizque le tiene trabajando.

Since colonial times, the complexity of the dynamics of land appropriation and access to water resources has had an impact on the redefinition of social relations. These are the result of a series of amalgamations and interactions involving the Kayambi culture itself, those of other indigenous groups and those of the white and half-breed people.

Throughout its history, the peasant resistance of these regions has been confronted with the legal and political immobility of colonial and then national society. Today, processes dictated by liberal economic standards are in conflict with community rights. This conflict is expressed in the confrontation between public policies and their legislative translation with mythical and ritual speech acts but also with Kayambi's specific institutions.

In 1990, the Indian protest movement revealed that the social balance supposedly oriented towards economic and industrial development was only an illusion and led to major constitutional changes that opened a period of profound change at all levels of Ecuadorian society. The Constitutions of 1998 and 2008 formally recognized Indians and their communities as economic and political actors.

In this context, anthropological analyses lead to legal questions. The question of land and water resources is at the forefront of these issues. While the lack of land forces the *comuneros* to dispose of their livestock or to leave them in the *paramo* lands whose fragility can hardly stand this activity, production of roses has continued to grow. As such, communities and

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Trabaja, trabaja, trabaja, año entero. Al año entero ya dizque llego la hora ya. Al año entero dizque dentro, el día que ha dentrado, ese día dizque le manda sacando. Ahí en el cerro Cayambe, dizque hay una ventana, ahí dentro del cerro, por esa ventana dizque le manda toda la noche que camine, dizque salió a esa loma de Canamvalle, allá atrás a lado del río Pizque, ahí dizque hay una ventana. Ahí en esa loma de Cananvalle. Ahí dizque ha salido esos dos jóvenes, entonces dizque dice [...]

Camina, camina, de ahí saliendo, dizque salen para arriba a Cayambe. De Cayambe dizque han sido los jóvenes. Entonces dizque dice, ya dizque llega a la puerta [...] Dizque dice, tan, tan, a la puerta, golpea [...] Abra la puerta mamá, dizque dice. -No, ha de ser mi hijo. -Mis hijos son perdidos, un año entero que se perdió, no son de aquí. Abra la puerta ligero mamá, yo soy su hijo. Aquí me vengo, trabajando. Ya nos soltaron del cerro, se nos llevó, dizque dijo.

Entonces, de ver que tanto grito dizque le abre la puerta. De ahí, dizque abre la puerta, hecho cunco, todita la barba, todito el pelito de la cabeza hasta la cintura. Entonces, al fin y al cabo, solo le reconoce por la carabina, por el arma y la mochila. Entonces han sido los hijos. Luego al otro día de mañana, dizque se va a la peluquería, ahí dizque le quita la barba, le quita el pelo, ahí dizque le reconoce bien la mamá.

Cierto ha sido, mi hijo, dizque dice. Dizque le ha mandado pagando, la señorita ninfa del cerro, al que paso jugando con ella, dizque le pago a cinco naranjas, a cinco plátanos, una papaya y una piña, oro pues oro. Vuelta al que paso trabajando no más, a él ca vuelta a cuatro dizque le pago. A cuatro naranjas, cuatro plátanos, y una papaya pequeña y una piña pequeña no más. Con ese orito, dizque cambió, con eso dizque llego a tener casita, más terrenitos, más vaquitas de leche, más borreguitos, más chanchitos, con esa platita ya dizque llegaron a tener otra casita más, y así. Muy buena dizque es la dueña del Cayambe, lo malo que tiene es que cuando juegan, cerro con cerro, trae moscas.

Cerro con cerro juegan, el Pichincha con el cerro Cayambe. La noche al oscurecer o más de nohecita reflejan unos rayos, así juegan [...] Eso, ha sabido ser la claridad del oro, la pelota de oro dizque es así. Dizque dice, nosotros hombres, somos bien aseados. Ganamos osos, ganamos tigres, ganamos leones, ganamos bastantes conejos. Voz solamente ganáis, solo moscos, solo moscos, desaseada cochina, dizque le dice al cerro Cayambe. Desaseada cochina, así no vale para almuerzo ni para merienda no vale, nos hacis dar moscas. Por eso ha de ser que los moscos, llenan del todo, cuando gana los moscos. Bueno de repente, muy de repente, cuando tiene suerte, dizque gana conejitos. Ahí dizque hay por esos pajonales, acá abajo por las quebradas». Ezequiel Andrango, San Esteban Community, August 2008.

resource managers negotiate the use of water by flower companies. However, the amendments to the constitution, approved in 2015, deny them this role.

Peasant agriculture represents between 60 and 80% of agricultural production units and the 2008 Constitution establishes food sovereignty as a strategic objective. Nevertheless, the refusal of public authorities to put in place an economic model that is not focused on marketing and in which the subsistence economy can develop has led indigenous and peasant organizations to put in place collective strategies to meet the new challenges they face at the local level.

At the center of these strategies, *Minga*, is an important Andean institution. It is a space of interactions that allow communities to solve community problems while guaranteeing autonomy from the State. It has enabled the construction of important irrigation and water distribution channels in the communities, as well as the application of work to recover the *paramo*, a geographical area important not only for its resources but also for its symbolic value.

While local *gobiernos*, community assemblies, *juntas de aguas*, become mediators in the regulation of access to resources and conflict resolution, the legal framework must adapt to actions under indigenous jurisdiction. It is in this perspective that the declaration of August 30, 2018 of the *Secretaría Nacional del Agua* (SENAGUA) established the Territorial Jurisdiction of the Kayambi People as a territory with a water reserve. This first community water protection area in the country, extended on about 1000 ha, will be managed by kayambi people<sup>2</sup>.

Our contribution aims at identifying the developments faced by the Andean communities of Northern Ecuador in their attempt to answer the many questions raised by access to water and its management. It attempts to highlight the processes of integration, or even disintegration, that are played out around legal and anthropological objects.

### **Water resources: the integration of legal objects by the Andean communities**

According to FAO, the amount of water available in all hydrographic systems in Ecuador is 432 km<sup>3</sup>/year. There are 31 river systems in the country, 24 of which belong to the Pacific side, with a total area of 124,644 km<sup>2</sup> (49%) and 7 to the Amazonian side, with an area of 131,726 km<sup>2</sup> (51%). These river systems are simultaneously divided into 79 river basins: 72 basins belong to the Pacific Ocean slope, part of which belongs to the coastal areas with 123,216 km<sup>2</sup> (48%) and another part to the surrounding island territories covering 1,428 km<sup>2</sup> (1%). These basins bring water to 88% of the population. Seven basins belong to the Amazon basin with 131,726 km<sup>2</sup> (51%) and 12% of the population.

Annual water consumption in the country is 9,700 Hm<sup>3</sup>, irrigation at 82%, domestic use at 12.3% and industrial use at 5.6%. Ecuador's net irrigable area is about 3,000,000 ha, of which 93% is in the Pacific Basin and the remaining 7% in the Amazon Basin. Of the total irrigable

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<sup>2</sup> The Declaration of Water Reserve to the Territorial Jurisdiction of the Kayambi People, reinforces the actions that communities, water boards and organizations have been developing for the care of moors and water. According to the organizations, this declaration will allow debate and generate public policies for the conservation of natural resources, mainly water, in the face of the threats of loss of flow, contamination, mining and commodification, which in the future would put at risk the Human Right to Water contemplated in the Constitution of the Republic.

area, only 560,000 hectares are irrigated. This represents 30% of the Ecuador's cultivated area. Private irrigation covers about 460,000 ha. (83%), while 108,000 hectares of crops are irrigated by public systems; 88% of irrigation beneficiaries are smallholders, using between 6% and 20% of the available water; while 1% and 4% of the number of beneficiaries, landowners use between 50% and 60% of the available flows. The problem is not the lack of resources but their unequal distribution.

The *Tabacundo* irrigation canal, for example, which crosses the San Esteban community, benefits only the lower part. In 2006, the communities benefiting from the canal's water wanted to obtain the right to manage this resource by themselves.

Built in 1900 to serve the communities, the *Tabacundo* Canal, was initially managed by the *Tabacundo* town council. To be able to pump water from the canal, small producers had to buy the rights of use. Thus, access to water for communities was limited and unequal because the town council gave priority to landowners and flower companies. For this reason, community organizations such as UNOPAC<sup>3</sup>, *Buena Esperanza* and *Turucta* decided to take legal action to facilitate access to water for communities. Representatives of the organizations broke the locks that prevented access to water. In 2008, the communities finally obtained the right to manage the water of the canal.

Until the early 1980s, in the territory of the Kayambi communities, the *paramo* was an important source of water supply, but from 1988 onwards the level began to fall and several water points disappeared. For this reason, from that date onwards, the communities were forced to participate in the execution of major water supply works from the springs located in the *Cayambe* massif and more particularly in the *Laguna de San Marcos*. Indeed, the Northern part of the province of *Pichincha* and the province of *Imbabura* have an important hydrographic network. The work in the form of *mingas* (farm labor paid in food) took about a year.

San Esteban is one of the communities linked to Kayambi confederation strongly committed for the conservation and restoration of the *paramo* but, at the same time, criticized because it is one of the few communities to leave animals on permanent pasture there. This apparent contradiction is explained by the lack of land and the fact that after wage labor, the sale of milk is the second source of income for the families in the community<sup>4</sup>.

Today, one of the main concerns of community councils is soil erosion and the disappearance of water sources. The planting of exogenous species, particularly eucalyptus trees, which absorb a lot of water, and the establishment of numerous companies producing roses for export have further aggravated this situation. For this reason, for several years now, community councils have been working to introduce trees from the area and encourage communities to plant trees.

A *Plan de manejo del paramo* (management plan of the *paramo*), has been put into place. It

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<sup>3</sup>*Federación de organizaciones populares de Ayora y Cayambe*

<sup>4</sup>However, nowadays the profitability of the dairy activity has significantly reduced, because of the fall in the price of the product, in part due to the illegal entry of milk from neighboring Colombia. Families now seek other alternatives to compensate for the loss of income. In several communities, some of the families have opted to reconvert their farmland or sell their animals, to become small producers of flowers. The informality of the working conditions within the flower generates constant flows of unemployment, this has led to the Kayambi Confederation to reflect on this issue and has promoted small projects family, urging residents to use the knowledge acquired in the flower greenhouses.

consists in identifying the areas where water sources and grazing areas are located. Since 1997, a campaign to avoid burning the *pajonal* (scrubland), has been developed. A group of volunteers, called «*Urkukama*, caregivers of the *paramo*, the water and the land», travel around extensive kilometers of grasslands, as they are responsible for caring for high elevations, *paramos* and hills, where the water for the community is born. However, despite the actions taken by the community to prevent environmental degradation, the problems can be considered to have worsened due to the activity of floricultural companies, including the excessive use of chemicals that seriously pollute the environment.

Environmental problems have an impact over all on social life but also on the ritual life of communities. The ritual associated with the *Fiesta de San Pedro* described by Cruz and Lucila Andrango which consisted in leaving the musical instruments in the *pagchas*<sup>5</sup>, and coming to pick them up a few days later, is no longer practiced<sup>6</sup>.

One of the reasons for abandoning this practice is the disappearance of places conducive to the performance of these rituals.

Until 2008, and although a significant proportion of water services in the rural sector were provided by peasant or indigenous communities, the legal framework in place allowed the concession of water services to transnational corporations. The National Modernization Council (CONAM) using IDB funds manages this process.

In the Constitution adopted in October 2008, the concept of water management radically changed. From now on, access to water is considered an inalienable right. Water has become a national heritage. Considered as a common good of public utility, the resource cannot be privatized and its management is public or community based.

The constitutional text establishes that the human right to water does not only refer to the exercise of access to water for human or domestic consumption. However, it is linked to health, cultural practices, food sovereignty to guarantee the right to food and the rights of nature, in accordance with the mandate contained in articles 66, 71 and 318 of the Constitution.

The Law on Water Resources, Uses and Utilizations of Water entered into force after its promulgation in the Official Gazette No. 305 on Wednesday, August 6, 2014, after having been approved by the National Assembly by 103 votes in favor, 21 against and 6 abstentions. By law, the public domain of water composed of all types of water sources, including public water infrastructure, includes public easements, water protection zones and source conservation and protection restriction zones (art. 13). A set of institutions aimed at improving the governance of this common good is being created. First, a "National Strategic Water System" is set up to ensure the management of processes, entities and instruments for

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<sup>5</sup>Waterfalls

<sup>6</sup>Una sirena había arriba en el cerro, tocaba la sirena bonito, tocaba la sirena y nosotros ca huambras, seguimos donde toca, sabemos ir a ver y no asomaba nada, la sirena. Ya como de aquí, allá, para allasito. Vamos a beber y nosotros seguimos curiosos, huambras, seguíamos para ver.

Vuelta otra así mismo había abajo en tierra de mi mujer dijeron [...]

Otros dijeron que van a dejar la guitarra ahí en la sirena, esa guitarra destemplándola de cuerdas que va dejar, la mala pata, así mismo, había amanecido las cuerdas destempladas

A siren was up on the hill, played the mermaid pretty, played the siren and we huh being so young, we continued where it played, we went to see and nothing showed, the siren. In addition, as from here, there, a bit further. We went to drink and we followed sights, we young people, we continued to see. But there was another one on my wife's land [...] Others said that they were going to leave the guitar there where the siren was, that guitar out of tune, that it was this we were going to leave, bad luck, likewise, had driven the guitar out of tune.

Interview with Cruz and Lucila Andrango, San Esteban Community, August 2008

organizing and coordinating water management. A Single Water Authority, an Intercultural and Plurinational Water Council, a Regulatory and Control Agency and Basin Councils are also created.

A National Water Resources Plan is also in place to establish water balances, plan hydraulic works and control water conservation and protection factors.

Prior to that, from June and July 2014, Ecuadorian indigenous and peasant movements had organized large-scale demonstrations and roadblocks to protest against President Correa's proposed amendment to the Water Law. The indigenous people accused Rafael Correa's administration of trying to surreptitiously authorize the privatization of water, and of seeking to expropriate the community water management systems (*juntas de agua*), weakening their rights, to the benefit of the large mining multinationals.

These concerns were based particularly on the provisions of Article 7, which provided for the participation of "private initiative" in the development of sub-processes of public service administration where the competent authority does not have the technical or financial conditions to do so.

### ***Huasipungo and Minga: legal and anthropological objects***

Around 1532, with the arrival of the Spanish, the *encomienda* system was set up and operated in parallel with other institutions such as the *obrajes*, *batanes* and gold mining systems. The process of managing land ownership since colonial times has created the conditions for an ever-increasing concentration of land and the consolidation of large property through the *hacienda* regime.

Thus, around 1805, about half of the Indian population was under feudal control. The situation remained the same when the republic was established in 1822. A century later, the promulgation of the workers' law sought to abolish the sharecropping (*concertaje*) of the Indians. However, the major changes did not occur until 1964 with the promulgation of the Land Reform Act [Grijalva, 2006, p. 35].

From 1975 onwards, the Kayambi drew a line between the *paramo* and the *haciendas*. This delimitation is considered as one of the first claiming activities, before the constitution of the community.

The owners of the *hacienda* to prevent them from entering their estates abandoned the *paramo* to the *comuneros*. In the case of San Esteban, this concession was at the origin of the formation of the community. Because, if on the surface the *hacienda* was generous towards the communities, the problems appeared when the public administration was concerned, since they did not accept to formalize this concession to a group of families not recognized as a community.

For the *comuneros*, the definitive appropriation of the *paramo* was the result of a long process and a permanent struggle with the public administration, which at each change of government forced the *comuneros* to start administrative procedures again. The occupation of the *paramo* has gradually led to conflicts between neighboring communities over the use of water and grazing land.

After the agrarian reform, on the initiative of the State, several cooperatives existed, but they did not survive. The main reason for the failure of cooperatives is that they did not take the needs of the Kayambi into account [Becker, 2009, p. 216]. The cooperatives, which became

the source of conflicts between members, eventually dissolved. The land was divided among the members. Some cooperatives have been incorporated into communities since the 1980s.

In the early 1980s, most analysts had noted the failure of land reform. Agricultural production was insufficient and poverty in rural areas had increased. In 1994, Indian and peasant organizations mobilized to demand a new agrarian reform. The government promulgated a new agrarian development law in August 1994, with the creation of the National Institute for Agrarian Development (INDA). According to Marc Becker and Silvia Tutillo [2009, p. 218], this law put an end to all calls for agrarian reform in Ecuador and established a model for neoliberal economic development. The old *huasipungueros* became the labor force of the agroindustry.

However, the hacienda system seems to have had a lasting impact on the social, economic and political history of the Kayambi communities. Marc Becker [2009, p. 31] notes that the *encomienda*, as well as the hacienda and the parish, were designated as political spaces for the christianization and hispanization of the Indians at the same time as these institutions constituted an administrative structure for the forced extraction of labor and taxes.

Despite the precarious living conditions known at that time, it is not uncommon to hear the elders say that they regret the time of the *hacienda* during which they could access the pastures, glean what remained after the harvest and receive the *oyanzas* once a year from the owner. The latter, as part of an asymmetrical exchange, organized a meal, gave food and drink and made his workers dance, who, in exchange, gave him their work and their loyalty.

Major changes in land ownership have occurred in recent decades. Several floricultural companies bought the land from the last owners and are transforming the Cayambe area, which was characterized by its high milk production into a floricultural production area. From now on, milk production is taken care of by women and continues to be one of the main sources of income for the family.

Since the 1990s, rose production in Ecuador has grown steadily. In 2012, the flower sector generated about \$740 billion in revenues. With its 60,000 mainly female jobs, it is an essential economic and social factor. Many inhabitants of the valleys concerned are no longer forced to migrate to the city. In addition, as the resource manager, the community must negotiate the use of water by flower companies. However, community organizations have now begun to manage rose-growing projects managed by the *comuneros*.

While in the 20th century, the territorial context of the Kayambi was marked by the transition from the *hacienda* to the *huasipungo* regime and by the redistribution of land following agrarian reform, this evolution was also accompanied by the presence on the territory of new actors such as NGOs and companies producing and exporting flowers.

In this context, community institutions have emerged that allow the community as such to function but also act as an interface with external institutions (NGOs, the State). It should be noted in this regard that the San Esteban community was founded at the end of the 1980s to provide access to aid distributed by the Ecuadorian State and international organizations following the 1987 earthquake.

The community (*comunidad*), in contrast to the *comuna*<sup>7</sup>, is generally considered as an indigenous specificity, a form of social organization allowing the use of shared resources such

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<sup>7</sup> The community and the *comuna* are two distinct forms of rural organization. The *comuna* is a group of families legally recognized by the Ley de *Comunas* of 1937. The *comuna* does not imply the collective ownership of a resource. Currently, the process of transformation from *comuna* to *comunidad*, has accelerated as one of the most remarkable of the community is its ability to apply indigenous jurisprudence, to solve internal conflicts. Community is an organizational form most appropriate to the needs and current demands of groups organized in



as water resources or other common services that families cannot manage alone (E. Ferraro 2004: 62). In the case of the San Esteban community, with the exception of *paramo* lands, there is no collectively managed land. However, most of neighboring communities manage water collectively through the *juntas de agua*.

The community assembly is the decision-making body concerning community aspects. The community assembly, which has the power to delegate, decide and intervene, but whose power of action arises only from the agreement to which the group is able to reach, elects the community president and his board. The group delegates leaders to have the ability to act for them.

The community of San Esteban is part of the *Confederación de Pueblos kayambi* whose focus is the territorial recognition and recovery of Kayambi cultural identity. This organization brings together approximately 168 communities, all designated as belonging to Kichwa nationality.

In the 1940s, the territory currently occupied by the San Esteban community was part of the San José *hacienda*, which was divided after land reform in 1964. One year after this reform, the first *huasipungos* were delivered to the *huasipungueros*. Thus, began a process of reorganization that would lead to the creation of the San Esteban community, which was located north of Quito, the capital of Ecuador, at an altitude of 3,000 meters with a population of approximately 600 inhabitants. It has a total area of 90 hectares and 170 hectares of *paramo* communal land. The inhabitants of the community of San Esteban, as well as those of the other communities close to the city of Cayambe, capital of the canton of the same name, which has undergone an accelerated modernization process, due in large part to the presence of floral societies, have also been integrated into this production process.

We will limit ourselves to specifying that the Cayambe region has undergone a singular transformation of its physical, economic and social landscape, from an area dedicated to cereal cultivation, to an area of great dairy importance to become the privileged place for the production of roses for export.

The geographical distribution of families in the community was defined by the distribution of land at the time of land reform, i.e. at the time of the final transfer of *huasipungos* to each family.

The commodification of land is one of the consequences of land reform. The commercial value of land and its ownership as an asset of production outweigh the social value that, for the Kayambi, is expressed in the special relationship that they have with their natural and geographical environment.

Land reform has not solved the problems of the peasantry. Negative effects such as land concentration by agro-food companies have worsened the situation of communities by reducing access to fertile land.

If at the time of the *encomienda* and later during the *hacienda* system, the *encomendero* and the *hacendado* could completely dispose of indigenous labor, after the agrarian reform and with the liberalization of land sales, the *huasipungueros* became the labor force of the new agricultural enterprises.

*Huasipungo* is a land transfer system set up at the beginning of the 18th century by the Spanish. In this system, a piece of land was given to the *huasipungueros* who, in exchange, had to do a job. Those who did not own *huasipungo* were called free or *suelos*. In general, these were the unmarried *huasipungueros*'s children who were still living with their parents. In addition, Kayambi worked independently in the *haciendas*. This category of the population was not allowed to use the land in the same way as the *huasipungueros*.

*Huasipungo* remained the fundamental mode of agricultural production for Indian workers within the haciendas of Cayambe (Becker, 2009: 58). It seems that for the Kayambi, *huasipungo* has become a key element of access to genealogical memory and kinship facts. Thus, even if *huasipungo* has disappeared as a legal form, it remains as a spatial and temporal reference point and therefore constitutes an essential anthropological object.

The San Esteban community includes 12 *huasipungos*. All constituted according to the same standard structure and initially endowed, in 1975, with an area of between 7 and 10 hectares. Each *huasipungo* has a founding member called *gañan*. The number of people who belong to a *huasipungo* is very variable.

A *huasipungo* is considered as a territorial unit in which several families reside. *Huasipungo* can also be considered as a group whose skeleton is constituted by bilateral [Barry, 2008, p. 770] or undifferentiated filiation, which is supposed to include the descendants of the founding couple of *huasipungo*.

As a rule, all *huasipungos* are linked to each other. Alliances are made through marriage and spiritual kinship. The links between *huasipungos* ensure the exchange of goods, services and sometimes people between these entities.

The exogamy practiced in *huasipungos*, allows creating and maintaining alliances with other *huasipungos*. In this way, a network of relatives and allies is created, with whom one can count on if necessary. Thus, for the accomplishment of the *Minga* or certain rituals it is necessary to activate the family networks existing between the *huasipungos*.

The *Minga* is an important Andean institution. It is active in different contexts where compromises and agreements are always present. The *Minga*, indisputably linked to the kinship system, plays an important role within the social system. It allows us to identify the different forms of exchange and opportunities that, through the compromises established, create social ties. It is also a space for interaction that allows communities to create new collective forms and solve community problems while guaranteeing autonomy from the State.

Changes in the social and productive life of the Kayambi have changed the forms of organization and the division of labor within families. However, the Kayambi continue to base their relations on developed principles of mutual assistance and solidarity.

The *Minga* is the most obvious expression of mutual aid and solidarity within the community and domestic groups. It ensures the availability of work force but also a more or less egalitarian redistribution of human and material resources.

### **Legal and anthropological objects: integration or disintegration?**

The transformations of the Ecuadorian economic and socio-political context linked to the crisis of the 1990s, the disengagement of the State, dollarization, as well as the new Constitutions of 1998 and 2008, have directly affected the Kayambi.

The drastic reduction in the resources allocated to development projects is in contradiction with the fundamental principles set out in Ecuador's constitutions. It highlights the paradoxical position of the State, which, on the one hand, abolishes material aid granted to indigenous populations and, on the other, seeks to guarantee the preservation of their cultures, recognizes their "collective rights" and claims to base their development on "ancestral knowledge and customary law" with a view to revitalizing cultural identity and Andean world view [2008 Constitution].

Faced with the State, which no longer has the means to provide concrete assistance to indigenous communities, but grants them unprecedented legitimacy by promoting their cultural specificities and ancestral knowledge as invaluable resources of the nation, the Kayambi, political actors, can base their collective action on their mythical and ritual speech acts. Those that are precisely recognized by the Constitution as «ancestral knowledge», speech acts that persist and interact, constantly adapting to reproduce the different rituals, which together form a system, and are absolutely necessary for the Kayambi to continue to recognize themselves as such.

With regard to water resources, their preservation and use, indigenous communities must be able to integrate the legal developments that are theoretically favorable to them as soon as they constitute progress in terms of public easements, water protection zones aimed at conservation and resource protection, maintenance of ecological flow, basin protection, restoration and protection of ecosystems, etc. In particular, they must be able to make their voice fully heard in the Basin Councils.

For these communities, the legal approach, however important it may be, cannot account for the intertwining of rules and practices relating to the preservation and use of water resources with the other social norms that social groups are constantly renewing by keeping their community institutions alive. Such as the *Minga* and their mythical and ritual speech acts that are themselves very intertwined. Law and anthropology can contribute together to the pursuit of this objective.

The constitutional reform that has been in place since 1998 has not yet provided specific responses to indigenous peoples. In addition, since the movement generated in the 1990s, we have entered a period of political revival of peasants and indigenous peoples, in search of ethnic rights based on justice and inclusion. This forces governments and society in general to recognize cultural diversity. Through their new elite, indigenous peoples emerge as protagonists constantly negotiating and questioning the institutional terms of the Ecuadorian nation.

So it is necessary to think about the definition of a plural legal model that integrates at the same level the specific legal practices of indigenous peoples with the legal culture of the Nation-State.

## **Bibliography**

ACOSTA Alberto, «Extractivismo y neoextractivismo: Dos caras de la misma maldición», in *Grupo Permanente de Trabajo sobre Alternativas al Desarrollo, Más allá del Desarrollo*, Quito, Editorial Abya-Yala/Fundación Rosa Luxemburg, 2011.

BARTH Frederik, *Théorie de l'ethnicité; suivi de les Groupes ethniques et leurs frontières*, Presse universitaires de France, 1995.

- BARRY Laurent, *La parenté*, Editions Gallimard, 2008.
- BECKER Marc, TUTILLO Silvia, *Historia agraria y social de Cayambe*, Quito, FLACSO - Abya-Yala, 2009.
- BRASELL Frank, LAFORGE Michel, HERRERA Stalin, *¿Reforma Agraria en el Ecuador?: viejos temas y nuevos argumentos*, Quito, Sistema de Investigaciones de la Problemática Agraria en el Ecuador, 2008.
- BRASLL Frank, MONTENEGRO Freddy., «La industria florícola en la sierra ecuatoriana: formalización, certificación y política antisindical», in *¿Agroindustria y Soberanía Alimentaria? Hacia una Ley de Agroindustria y Empleo Agrícola*, Quito, SIPAE, 2011.
- CNRH, *Estrategia para la Gestión Integral de los Recursos Hídricos del Ecuador*, 1998.
- CNRH, *Inventario de los Proyectos de riego en las diferentes corporaciones*, 1997.
- CNRH, *Características principales de los Sistemas Hidrográficos del Ecuador. Constitución de la República del Ecuador*, 1997<sup>a</sup>.
- CARRION Diego, HERRERA Stalin, *Ecuador Rural del Siglo XXI. Soberanía alimentaria, Inversión Pública y Política Agraria*, Quito, Instituto de Estudios Ecuatorianos, 2012.
- CHIRIBOGA Manuel, «La crisis agraria en el Ecuador: tendencias y contradicciones en el reciente proceso», in Louis Lefebvre *Economía política del Ecuador: campo, región y nación*. Quito, Corporación Editora Nacional, 1985.
- ESPINEL R., HERRERA Paul, «Acumulación perversa: Comuneros, agua y tierra en la Península de Santa Elena», in Frank Brasell, Stalin Herrera y Michel Laforge *¿Reforma Agraria en el Ecuador?: viejos temas, nuevos argumentos*, Quito, SIPAE, 2008.
- FERRARO Emilia, *Reciprocidad, don y deuda. Formas y relaciones de intercambios en los Andes de Ecuador: la comunidad de Pesillo*, Quito, Ediciones Abya-Yala, 2004.
- GARCIA Pascual, «El sector agrario del Ecuador: incertidumbres ante la globalización», in revista *Íconos*, Quito, FLACSO, n°. 24, 2005.
- INERHI-CEDEX, *Plan Nacional de Recursos Hidráulicos de la República del Ecuador. Informe General*, 1989.
- LARREA Fernando, «Políticas agrarias y economías campesinas en el Ecuador», Foro Mundial por la Reforma Agraria, 1998.
- Ley de Aguas, (1972<sup>a</sup>), Actualizada a septiembre de 1999, Reglamento 2. Reglamento General para la Aplicación de la Ley de Aguas. RO 233: 26 de enero de 1973.
- Ley de Aguas, (1972), Actualizada a septiembre de 1999, Reglamento 7. Reglamento para la Prevención y Control de la Contaminación Ambiental, en lo relativo al recurso agua. RO 204: 5 de junio de 1989.
- LUGO Carlos, *Áreas propensas a la desertificación: Punto de vista meteorológico*, INAMHI, 1995.
- MAG, PRONAREG, ORSTOM, *Elementos básicos para la planificación de los recursos hídricos en el Ecuador*, 1997.
- MAG, IICA, BID, *Identificación de las Instituciones relacionadas con el manejo de las Cuencas Hidrográficas del Ecuador*, Quito, 1997, p. 60

MIÑO GRIJALVA, Cecilia, *Tránsito Amaguaña. Heroína India*, Quito, Banco Central del Ecuador Ediciones, 2006.

POURRUT Pierre, *El Agua en el Ecuador*, Quito, Corporación Editora Nacional, Colegio de Geógrafos del Ecuador, 1959, p. 118.

UEP, MAG, CNRH – SRH, (1997). *Estrategia de Manejo de los Recursos Hídricos*. Quito.

## **Abstract**

### **The challenges of access to water and the right to water (legal pluralism, indigenous rights)**

The analysis of the Kayambi communities' mythical stories of the northern Andes highlights the importance of the geographical environment and more particularly its aquatic component. Since colonial times, the complexity of the dynamics of land appropriation and access to water resources has had an impact on the redefinition of social relations.

The Constitutions of 1998 and 2008 formally recognized Indians and their communities as political actors. In this context, anthropological analyses lead to legal questions raised by access to water and its management.

For these communities, the legal approach, however important it may be, cannot account for the intertwining of rules and practices relating to the preservation and use of water resources with the other social norms that social groups are constantly renewing by keeping their community institutions such as *Minga*, *Huasipungo* alive and the mythical and ritual speech acts.

Keywords: kayambi, huasipungo, minga, communities institutions, Ecuador's constitutions.

## **Résumé**

### **Les enjeux de l'accès à l'eau et du droit de l'eau (pluralisme juridique, droits indigènes)**

L'analyse des récits mythiques des communautés Kayambi met en lumière l'importance de l'environnement géographique et plus particulièrement de ses composantes aquatiques. Depuis l'époque coloniale, la complexité des dynamiques d'appropriation foncière et d'accès aux ressources en eau a eu un impact sur la redéfinition des relations sociales.

Les Constitutions de 1998 et 2008 ont formellement reconnu les Indiens comme acteurs politiques. Dans ce contexte, les analyses anthropologiques conduisent à des questions juridiques soulevées par l'accès à l'eau et sa gestion.

Pour ces communautés, l'approche juridique, aussi importante soit-elle, ne peut rendre compte de l'imbrication des règles et pratiques relatives à la préservation et à l'utilisation des ressources en eau avec les autres normes sociales que les groupes sociaux renouvellent constamment en maintenant en vie leurs institutions communautaires.

Mots clés: kayambi, huasipungo, minga, Institutions communautaires, Constitutions Equateur.

## **Resumen**

### **Derechos y desafíos del acceso al agua (pluralismo jurídico, derechos indígenas)**

El análisis de los relatos míticos de las comunidades kayambi pone de relieve la importancia del entorno geográfico y más particularmente de su componente acuático. Desde la época colonial, la complejidad de la dinámica de la apropiación de la tierra y el acceso a los recursos hídricos ha tenido un impacto en la redefinición de las relaciones sociales.

Las Constituciones de 1998 y 2008 reconocieron formalmente a los pueblos indígenas como actores políticos. En este contexto, el análisis antropológico plantea interrogantes sobre aspectos jurídicos ligados al acceso del agua y su gestión.

Para estas comunidades, el enfoque legal, por importante que sea, no puede explicar el entrelazamiento de las reglas y prácticas relativas a la preservación y uso de los recursos hídricos con las demás normas sociales que los grupos sociales renuevan constantemente al mantener vivas sus instituciones comunitarias.

Palabras claves: kayambi, huasipungo, minga, Instituciones comunitarias, Constitución Ecuador.

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