Contemporary Land Use Policy in Quito: Towards a More Equitable Approach

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ABSTRACT

In 2008, a transformational moment took hold in Ecuador, when through a highly democratic process, a new constitution was established based in a more inclusive and equitable sense of rights and development. Among other changes, this included direct implications for land rights and land use considerations. This was, and continues to be, highly important as land rights questions have long been a central component in the platforms of historically marginalized groups- Indigenous communities, Afro-Ecuadorians and Montubios.

This thesis examines how (or how not) land use policies since 2008 have translated into more equitable approaches. In Quito where land rights and land use challenges persist, particularly from the vantage of historically marginalized communities and neighborhoods, the question of moving towards more equitable approaches to land use policies is an urgent one. To examine this question I first look at why equitability is important and what it implications it holds in relation to land use and land rights questions. This is done through an analysis of four frames of consideration: (1) The Spatial; (2) The Political Historical context; (3) The Theoretical; (4) Insights from those engaged in land rights struggles and policymaking.

Using these frame of analysis, this study evaluates the principle secondary laws that have been enacted post 2008 and finds that: 1) The passage of these policies is evidence of strong progress made towards more equitable approaches to land use planning in the post 2008 period. 2) While this progress is undeniable and deeply significant, critical dimensions of equitability remain unaddressed. Land rights questions of indigenous communities, questions of governance, aspects of market regulation- among other concerns- continue to persist.

To deepen equitability in land policy making, I argue that, in addition to ensuring strong implementation of recent policies, a more comprehensive notion of equitability must be embraced and translated into existing and new regulatory instruments and frameworks.

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INTRODUCTION

In 2008 Ecuador underwent a transformational moment when, through a highly democratic process that included broad civil society participation, a new constitution was developed and enacted based in a radically new vision of rights and development. Concepts like *Buen Vivir*¹, *Plurinacionalidad/Plurinationality* and the Right to the City included in the new constitution spoke of rights in more inclusive, equitably centered ways and (among other changes) included direct implications for land use and land rights considerations. This was, and continues to be, highly important as land rights questions have long been a central component in the political demands of historically marginalized groups- indigenous communities, *afro Ecuadorians* and *montubios*². It is also significant as land use considerations are fundamental to how a state defines and shapes its development.

The significance of having these concepts recognized in the new constitution and of the salience of these (land rights and land use) questions in the politics of development makes it imperative to ask: have the changes of 2008 translated into more equitable land use policies? In Quito where land rights and land use challenges persist, particularly from the vantage of historically marginalized communities and neighborhoods, the question of moving towards more equitable approaches to land use policies is an urgent one.

To examine this question this study considers how contemporary land policy (post 2008), chiefly at the national level, accounts for questions of equitability. To do this, considerable attention is first given to understanding and defining equitability as it relates to land use and land rights questions. This is done through an analysis of four frames of consideration:

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¹ *Buen Vivir* or *Sumak Kawsay* is a quecha term that comes from an ancestral ‘cosmovision’ of community development in balance with nature, for good living. As will be explored later it is also inclusive a much broader sense of set of rights.

² *Montubio* are indigenous mestizo people of coastal Ecuador, they are a community that is recognized in the constitution as being historically marginalized.
1) The Spatial- taking stock of socio spatial segregation in Quito
2) The Political-Historical context
3) The Theoretical- centering land reform as a particularly instrumental frame of analysis
4) Insights from the ground- taking up the expertise and ‘ground’ knowledge of those engaged in struggles around land rights or involved in land use policymaking

These considerations are used to inform what elements should be included in more equitable approaches to land use policy making and planning in Quito. In as such, they also provide important points of reference for taking stock of how (or how not) recent policies address equity concerns. I ask: do contemporary policies speak to the (transformative) concepts included in the constitution? What aspects address the land rights concerns and conditions of historically marginalized communities?

In looking at the two principle secondary laws aimed at regulating land use- the Organic Code of Territorial Organization, Autonomy and Decentralization (Código Orgánico de Organización Territorial, Autonomía y Descentralización or COOTAD) and the very recent Law of Territorial Planning, Land Use and Land Use Management (Ley Orgánica de Ordenamiento Territorial, Uso y Gestión de Suelo)- this study finds that:

1) The passage of these policies is evidence of strong progress made towards more equitable approaches to land use planning in the post 2008 period.
2) While this progress is undeniable and deeply significant, critical dimensions of equitability remain unaddressed. Land rights questions of indigenous communities, questions of governance, aspects of market regulation- among other concerns- continue to persist.

To deepen equitability in land policy making, I argue that a more comprehensive notion of equitability must be embraced and translated in regulatory instruments or frameworks. This includes more redistributive approaches to land value capture and land tax policies, land use
management practices that better integrate and respect territorial autonomy of indigenous communities and reforming how infrastructure and other basic services are accessed.

This study centers on the context of land rights and land use in Quito as it concerns the needs and experiences of historically marginalized communities. Analysis and findings are organized in the following manner: Chapter One takes stock of the socio spatial segregation of Quito- what type of conditions are present in different areas of the city? How did these take hold? What does this socio spatial configuration say of the land use considerations in the city?

Chapter Two looks at the Political-Historical context. This has a couple of different dimensions: 1) the territorial claims of historically marginalized groups 2) New Frameworks- Buen Vivir and Right to the City 3) the regional Context

Chapter Three sets up analytical frames of reference for look at land- what concepts dominate approaches to ‘pro poor’ (for lack of a better term) land policymaking and why should they be taken critically? What constitutes land reform and a ‘Right to the City’ approach to land? Why are those relevant and how might they inform more transformative directions in equitable policy making?

Chapter Four aggregates feedback gathered during interviews with a diverse set of stakeholders (15) from community, indigenous, governmental and research institutions. This facilitates the identification of some major land rights and land use issues in Quito.

With the spatial, political-historic, theoretical and ground analysis in hand, Chapter Five turns to an examination of the aforementioned policies- the Organic Code of Territorial Organization, Autonomy and Decentralization and the Law of Territorial Planning, Land Use and Land Management. This section aims at cataloging elements of these policies that speak to the land rights and land use questions uplifted in Chapters 1-4. I also briefly register key municipal ordinances passed in the period examined (post 2008) that have implications for land use considerations impacting historically marginalized communities in the city.
Chapter Six takes up a ‘discussion’ of how these contemporary policies speak (or not) to the major considerations outlined in Chapters 1-4, in terms of what should be accounted for in equitable approaches. This is organized as “Junctures” and “Disjunctures”.

I conclude in Chapter Seven with a reflection on barriers and opportunities in the current context of land policymaking and with recommendations on how to deepen equitability.

GENERAL CONTEXT

Quito is a Metropolitan region with a population of over 2.6 million residents—covering both urban (32) and rural–suburban (33) parishes. Quito is organized into 9 Administrative Zones- Calderon, Eloy Alfaro, Eugenio Espejo, Los Chillos, La Delicia, Manuela Saenz, Quitumbe, Tumbaco, and more recent ‘Zona Turistica’ La Mariscal.

Quito has a Mayoral system of governance with a 15-member council as the main legislative body. The urban and rural-suburban parishes have a governing structure of cabildos, a local decentralized autonomous authority.

From 2009-2014 the Mayor of Quito was Augusto Barrera from the ruling Alianza Pais political party (considered center left). In 2014-present, Mauricio Rodas has presided as Mayor of Quito. He is from the SUMA political party, a center right political party in opposition of Alianza Pais.

At a national level, it is important to note that Ecuador has been governed since 2007 by President Rafael Correa of Alianza Pais. Alianza Pais is a center left political party, with a socialist orientation. They have also held majority in the National Assembly, the main legislative body for the country.
CHAPTER 1: SOCIO SPATIAL SEGREGATION AND TERRITORIAL INEQUALITY IN QUITO

1.1 ‘Reframing’ land in the urban context

What urges the consideration of and attention to land policies aimed at addressing inequality for historically marginalized communities in Quito? The segregated character of the city’s socio spatial configuration is one of the most visible expressions of inequality in the city. Disproportionately, areas such as ‘el sur’ (the south) and the far north to north-east extensions of ‘el norte’ (the north) have been the sites where low income residents have concentrated and been able to claim space. Administrative Zones such as Quitumbe in the far south and Calderon in the far north- zones further removed from the economic, service and administrative hubs of the urban center- are the areas where the city’s low income, migrant, indigenous and afro-Ecuadorean residents have secured residence through “formal” mechanisms such as low priced rental or homeownership units in the market or in publicly subsidized social housing options as well as through more “informal” mechanisms- such as settlement on abandoned and under-utilized lands or purchases and rental in the unregulated market. Inversely, the center north of the city, particularly the Administrative Zone of Eugenio Espejo, is an area that has consolidated into one of the wealthiest zones in the city and has benefited from extensive public investment in infrastructure, services and amenities.

This spatial differentiation in access to the city- the concentration of lower income residents in the peripheral zones and agglomeration of wealthier residents in more centralized zones- is a product of exclusionary, market driven practices in land use, policies that exacerbate such practices as well as the lack of inclusionary policies to mitigate such segregation.

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3 Space is referred to here in the sense of claim to habitat, including both direct access to land as well access to rental units.

4 Zonas administrativas or Administrative Zones are the management structure set by the city. The notion behind the Administrative Zones is a more decentralized management of the city. Each Zone is headed by an ‘Zone Administrator’ appointed by the Mayor. There are 8 administrative zones: Calderon, Manuela Saenz (Centro), Los Chillos, La Delicia, Eugenio Espejo (Norte), Quitumbe, Eloy Alfaro (Sur), Tumbaco.

5 The term formal is used in reference to that which is within the regulated sphere of the real estate market.
FIGURE 1. Sur de Quito

Source: Author

FIGURE 2. Norte de Quito (Barrio Quito Tenis)

In the Global North, these spatial expressions of inequality have drawn attention as scholars look at phenomenon such as gentrification and the suburbanization of the poor. In the Global South, particularly as it has been positioned from the vantage of international development agencies, the dialogue on territoriality and inequality is often centered on considerations of the ‘formal’ and ‘informal’ city. Yet, this dichotomous characterization of territorial claims in the urban context is limited, particularly in cities like Quito. Territories in the city such as those of indigenous communities—whether settled in comunas\(^6\) or barrios indígenas\(^7\)—are outside of the formal market in that they break from the dominant matrix of (individualized) private property but are under accounted if placed in the category of “informal”. In being anchored on ancestral and identity based claims to land, these spaces are far more complex than what dominant notions of informal spaces connote and very much embedded within a formal, yet autonomous, vision of community development (and thus regulated within such a vision).

\(^6\)Comunas are ancestral lands that are collectively held by indigenous community with shared identity, history, and governance structure.

\(^7\)Indigenous neighborhoods - neighborhoods in the urban perimeter of Quito where indigenous communities from a shared region and identity have agglomerated.
This dominant framework is limiting too in how it directs strategies for addressing territorial inequality. In Quito, like in many other cities of the global south, a premium has been put on programs of regularization, that is the “legalization” of informal settlements through the titling of property rights, as a primary mechanism for addressing the land concerns of poor and historically marginalized communities. Yet, titling of property rights is not always easy to achieve nor does it always equate to solutions for the conditions these communities face. Informal settlements can struggle to be considered eligible for regularization if they are located in areas with risky topography or in zones deemed for ecological protection. Moreover for many, even with regularization, ‘precarity’ can continue to characterize their territorial condition- poor infrastructure access, lack of good public transit access, isolation from urban services and beyond.

These realities underscore the complexity shaping land rights, land value and land use considerations. Market centered orientations to urban development, which center land considerations on lands exchange value, have limited the ability to account for such complexities and approach land from a more rights based perspective, particularly one that seeks to look more comprehensively at land as an enabling right.

Understanding land as an enabling right, that is as a right that helps with the fulfillment of other rights, breaks forward critical questions that can deepen our understanding of equity and territorality: how is the land connected to a households ability to access food- can food be cultivated on the land if needed or are grocery stores, markets or other food sources easily accessible? Is the land with adequate infrastructure to ensure access to potable water, sanitation, energy? Does the land help facilitate the right to self-determination for indigenous and other historically marginalized communities? That is, are the forms of land access and

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8 The term regularization will be used because it most closely aligns with how the term is used in Spanish-regularization signifies the ‘legalization’ of informal settlements through land titling.
9 important to critically note that this concept can be mobilized politically as well. High end developments on risky topography are often not sanctioned
management in place supporting the realization of the social, economic and cultural rights of communities with respect for their social and cultural identity, their customs and traditions and their institutions?\textsuperscript{11}

To re-center considerations of land and more fully account for the conditions effecting historically marginalized communities, an analysis of the socio spatial configuration of Quito is imperative. Through this analytic we can begin to obtain a clearer picture of how territorial inequity has taken hold.

1.2 Socio Spatial Segregation in Quito

How exactly does inequality manifest in the spatial form of Quito? As in many cities, urban space and inequity intersect in complicated ways.

As stated in the onset of this chapter, one of the most evident expressions is the concentration of poor and historically marginalized communities in the peripheral zones of the city and, inversely, the concentration of wealthier residents in more centralized zones of the city. Data from the 2010 national population and housing census elaborated by the Instituto de la Ciudad (2013) demonstrates how the administrative zones of Quitumbe in the far south of Quito and Calderon in the far north of the urban core of the city, hold among the highest concentration of poor residents as measured by unsatisfied basic needs.\textsuperscript{12} This is demonstrated in the map below- the darker green represents higher incidence of poverty, the lighter green lower incidences of poverty. The shaded area in the center is the urban perimeter of Metropolitan District.

\textsuperscript{11} Article 2 of ILO Convention 169
\textsuperscript{12} The Unsatisfied Basic Needs methodology for measuring poverty is one used by the Ecuadorean government. It is a multidimensional poverty index http://www.cepal.org/en/publications/25900-income-poverty-and-unsatisfied-basic-needs
As is demonstrated in the zones indicated by a darker shade of green, 33,000-42,000 of the residents in Calderon and 18,000-25,000 in Quitumbe are considered in poverty. Other zones situated at the margins of the urban perimeter, such as the southeastern section of the administrative zone La Delicia, also experience a disproportionately higher concentration of poor residents (25,000-33,000).

This ‘peripherization’ of poverty in Quito becomes more acute when disaggregating the unsatisfied basic needs measurement to look at indexes of access to basic infrastructure services and other indicators of poverty. Turubamba and Guamaní- two neighborhoods in the administrative zone of Quitumbe- have among the lowest access to basic infrastructure services in comparison with other urban centers of Quito (88% and 86% respectively) as does El Condado in the Administrative Zone of La Delicia (at 85.1%, the lowest index of access to basic services in urban zones of Quito). In contrast, neighborhoods in the Administrative Zone of
Eugenio Espejo in center north of the Quito—such as Kennedy, Inaquito and Concepcion—predominate in list of areas with nearly 100% met needs in terms of access to basic infrastructure services (Samaniego, 2013). This pattern of inequitable dispersion of basic services is also evidenced when looking more broadly at other urban services such as access to education centers, health centers, cultural centers in beyond. The map below, elaborated by the Municipality in 2012, visualizes this—blue dots represent health centers, red dots education centers, purple dots cultural centers, yellow dots buildings of public administration, black dots banks.

Map 2. URBAN SERVICES

*Fuente: STHV-MDMQ, 2011*

Source: Municipio del Distrito Metropolitano de Quito (2012)
Education levels of household heads, which speaks in important ways to the social capital of communities, show a similar geographic distribution. Administrative Zones of Quitumbe and Calderon show the lowest incidence of higher education attainment by household heads and largest concentration of household heads with only a primary level education (Instituto de la Ciudad, 2010). In contrast, the Administrative Zone Eugenio Espejo has the highest level of higher education attainment in the city and one of the highest in the county (Samaniego, 2013).

While less definitive in its indications (thus urging more caution in its interpretations) data on economic activity in the city also demonstrates uneven spatial distribution. Although only 20% of residents in the city live in the center north Administrative Zone of Eugenio Espejo, over 50% of employed residents in the Quito work in this zone- positioning it as the area with highest productive activity. In the Administrative Zones of Quitumbe and Calderon only 5% and 3% (respectively) of employed residents are concentrated, even though their populations are double and triple this amount (Instituto de la Ciudad, 2010).

A look at the manufacturing sector\textsuperscript{13} - one of the two principal sources of employment in the city- similarly shows a concentration of activity in the Administrative Zone Eugenio Espejo (23% of establishments are located there) whereas zones like Quitumbe (13%) and Calderon (8%) hold a lesser share. Interestingly, visualizations of the geographic distribution of companies in this sector evidences an agglomeration of more micro and small enterprises in the Administrative Zone of Eugenio Espejo and a more significant presence of medium and larger enterprises in the Administrative Zone Quitumbe and in the south east area of La Delicia (Instituto de la Ciudad, 2013). Map 4 below illustrates this distribution- red dots are large companies, green medium sized companies and blue small companies.

\textsuperscript{13} Manufacturing here is representative of a broader range of productive activity than typically thought of in the U.S context.
Zoning patterns in the city echo this arrangement- Administrative Zones of Quitumbe and Calderon have more areas zoned for industrial use compared to zones like Eugenio Espejo that are more zoned for residential and commercial use (See Annex 1). While a more detailed examination is called for, critical questions should be raised on what implications this has for the quality of life of Quitumbe and Calderon residents. How is the presence of larger manufacturing sites contaminating land, affecting air quality or creating other conditions of environmental injustice for communities residing in these zones?

Map 3. MANUFACTURING SITES

Source: Instituto de la Ciudad (2013)
An examination of the spatial distribution of employment in service, commercial and construction sectors—where many lower income residents find occupation—would benefit this analysis and perhaps reveal a similar pattern, that key anchors of economic investment and thus opportunity are disproportionately concentrated in the center north of the city. This uneven distribution of economic activity can implicate significant mobility challenges and social costs for residents—extensive commute times and with it heavier childcare costs and fragmentation from social networks.

While scrutinizing this socio spatial exclusion from the lens of economic measures is necessary, it is equally imperative to center how this inequity is situated along racial and ethnic lines. Mapping of racial and ethnic demographics by the Instituto de la Ciudad\(^{14}\) reflect how residents who self-identify as Indigenous, Afro-Ecuadorian or Montubio are more concentrated in the extreme north and south of the city. As above indicated, these are the same areas that hold the highest concentrations of poverty, lack of infrastructure and exclusion from the city’s centers of economic activity. Indicators of unemployment show a similar pattern of inequity on racial and ethnic lines—indigenous populations of Quito have the highest incidence of unemployment at 15.7%, followed by Afro-Ecuadorians at 9.7% (Samaniego, 2013).

Yet, solely classifying socio spatial segregation in Quito as an expression of peripherization of poverty along the urban core is inaccurate. As a metropolitan and thus more regional system of governance, Quito includes parishes that while classified still as rural are very much part of the urbanized extension of Quito and in many ways microcosms of the socio spatial segregation documented in the urban core. Administrative Zone Tumbaco is a particularly relevant zone to draw attention to for these reasons. Tumbaco includes the suburbanized canton of Cumbaya which, with one of the areas with highest concentration of wealthy residents, is the area with lowest incidence of poverty\(^{15}\) in the Metropolitan District of Quito (Samaniego, 2013). In this same Administrative District, is located the largest

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\(^{14}\) See “Conociendo Quito: San Roque y sus areas de influencia” (Instituto de la Ciudad, 2015).

\(^{15}\) As measured by unsatisfied basic needs.
concentration of communal indigenous lands, *comunas*, than any other Administrative Zone in the city. Of the 20 registered *comunas* in Tumbaco, nearly 15 have rates of 80-100% of poverty.\(^{16}\) Map 5 below captures this dynamic—green indicates lowest incidences of poverty (less than 20%) while red indicates the highest incidences of poverty (81%-100%). With rapid growth in the zone, significant concerns have been raised on the pressures *comunas* are facing, particularly those factors threatening their fragmentation and loss of land.

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\(^{16}\) As measured by unsatisfied basic needs.
Together, this data urges a more complicated picture of how socio spatial configuration takes hold. To more precisely understand how location situates conditions for a community, factors such as access to services, regulation of land use, ease of mobility (among other considerations) should be taken into account. A broader set of rights are connected to such considerations and speak to a vision of land use and land policy grounded in a rights to the city and *buen vivir* frame.

### 1.3 Socio Spatial Segregation in Quito: How did we get here?

What has provoked this socio spatial segregation in the city? It is important to pause and draw attention to this question as it facilitates a better understanding of dynamics that have and continue to provoke inequity in land questions in Quito.

As many studies position, to look at at spatial segregation in the Quito it is necessary to start from a historical formation of the modern city (Villarroel, 2015). While a more comprehensive look at this question would take stock of a more expansive notion of the various periods that constitute the trajectory of urban development in Quito including Pre Colombian, Colonial and Post-Colonial periods (to more fully understand how such moments shaped conditions of land) studies writ large point to various periods of the 20th century- specifically the beginning of the 20th century and the mid half of the century (1950s-70s) as the formative moments of the modern city. This draws parallel to key moments when modern capitalist urban development has taken hold and, for the interest of this study, driven how land use arrangements are approached.

One of the most important observations in a historical assessment of socio spatial segregation in Quito- particularly as uplifted in the study “Origen Estructural de la Segregación Especial en Quito: una hipótesis” by Fabian Regalado Villarroel- is that alongside seeing how market dynamics have driven land use arrangements it is important to see how dynamics of racial, social and class segregation (driven by elites and institutional arrangements ) have also shaped formation of (and generally conditions in) the city as well. As Villarroel (2015) states:
“What provokes segregation in the city are not only dynamics of the market but that such dynamics, within the design of planning and development approaches, intersect with the symbolic and imagined differences that gave birth to Latin American cities” (p. 73).

The early twentieth century was a critical moment in the modern development of Quito in several major ways- Industrial development was strongly taking hold, positioning cities as important “articulators” of capital accumulation; strong surges in population growth, from migration from rural regions as well as from regional influxes, were bringing new demographic pressures; and elite notions of what constituted modernity and the urban, often underpinned by discrimantory notions of race, were driving how land use arrangements and considerations were taking hold (among other factors). For example, notions of what was considered urban and modern was contrasted with that which was considered rural and associated with indigenous community/identity. The north inhabited by the elite of Quito was considered the modern city while areas such as Calderon, Carapungo, San Roque (which were inhabited by migrant, indigenous and urban poor) were (and some continue to be) positioned as the peripheral or semi-rural areas of the city.

The strong need for housing in this period led to a sort of ‘early’ phase of commodification of the housing market in the modern development of the city- more established property owners, businesses owners and the church began renting, positioning properties’ as an important source of accumulation of capital. Many migrants took up residence in the centro, and this area became also became an important area of commercial activity fueled by these communities. Poorer residents who could not find housing in these more central areas were forced to turn to housing options in the more peripheral areas of the Sur while wealthier residents migrated north, as the demographic changes in the Centro were making the area ‘undesirable’ for them (Villarroel 2015).

Early city development plans cemented this socio spatial segregation. The first city plan formally regulating land use in the 1940s called for the city to segregate residential zones by
class (3 classes- working, middle and residential) and for urban development to be directed North (Carrion & Espinosa, 2012). It also called for railway workers housing to be situated in the zone adjacent to the railway, a pattern that persisted as demand for social housing near the industrial development in the Sur continued to be called for (Carrion, 1987).

The 1950s-70s marks a second period that is considered particularly formative in the modern urban development of the city. A surge in migration from campo a ciudad (rural areas to the city) fueled massive population growth in Quito- this was caused by an overall economic shift taking hold in the country (and region) as well as the failure of agrarian reform to address the needs of the rural poor (Villarroel, 2015).

Simultaneously, the boom of the petroleum sector in the 1970s led to a ‘boom’ in infrastructure development and in the real estate market. Several research studies17 point to this period as particularly formative to the land market as it is today- land became firmly tied to its symbolic values and instruments applied in the development of the city (such as changes in zoning, the delimitation of the urban perimeter, etc) were increasingly leveraged to add value to the price of land. Municipal policies facilitated this process- as an ease on land use restrictions (along with other business friendly urban policies)- were critical to the growth of the construction industry in this period (Carrion & Espinosa, 2012).

The speculation that took hold exacerbated socio spatial inequities as land become increasingly inaccessible to the urban poor, forcing communities to look to the peripheries to resolve their housing needs. In the mid 1970s it is estimated that over 25% of residents in the city had to turn to secondary, informal markets to address their housing needs (Carrion, 1987), making it no surprise that this period too is when extensive growth in precarious settlements took hold. Such territorial challenges were exacerbated for poor communities as, for decades, municipal action and investment continued to concentrate in the ‘modern’ and ‘new’ Quito,

17 See Carrion (1987) and Villarroel (2015) whom evidence this through detailed looks at the evolution of rental and land prices in the Quito real estate market
while in the Sur and peripheral neighborhoods communities were often forced to resolve their own needs for infrastructure and urban services.

In many ways, this period cemented the speculative practices that drove territorial development for decades and that persist to this day. Processes of urban renewal and expansion in more recent decades have reflected this as poor and historically marginalized communities continue to face displacement from more central zones of the cities. In their study on the urban form in Quito, researchers Fernando Carrion and Jaime Erazo Espinosa describe this dynamic: “In driving residents out of central areas to the outskirts of the city implies, at least the following situations: first, in the areas of urban renewal, to intensify land use with other more profitable uses for capital and landowners; second, in the areas of expansion, to develop a land market with speculative characteristics...that benefits landlords, brokers, developers, etc., to the detriment of the population residents there” (p. 519)

A look at these formative periods in the development of Quito demonstrates that alongside speculative pressures in the land market, socio spatial segregation in the city has been shaped by (1) lack of regulation and market oriented policy regimes, (2) a systematic lack of investment and (3) underpinning discriminatory attitudes towards the urban poor (and the indigenous, afro ecuadorean and montubio communities many of them represent) and their ‘place’ in the city.
CHAPTER 2: THE POLITICAL & HISTORICAL CONTEXT

While the examination of socio spatial segregation in the opening chapter seeks to make visible the way inequality is territorialized in the city, in order to adequately center the import of the territorial question a “step back” to the broader political context is necessary. How have land questions centered in the agenda/platforms of historically marginalized communities (in Quito)? What contemporary political frames inform the current dialogue on land and development? What policy and normative shifts urge expanded and new considerations of land use and land rights? These questions are critical to understanding the forces shaping the considerations of land questions in Quito in the contemporary context.

As a brief examination of these questions demonstrate, the political context is a multi scaler one both geographically- informed by national, local and regional dynamics- and temporally- informed by contemporary as well as historical dynamics.

Together these factors constitute the parameters in which land questions are held and in important ways are representing apertures for re aligning how territorial considerations are accounted for. Why do we need to appreciate that? It is important to retain a politicization of the concept of land and land use planning. New changes in the political context, in an important part responding to claims of historically marginalized communities, present grounding for more equitable approaches to land policymaking.

This analysis of the political context is anchored in a look at: 1) The territorial claims of Historically Marginalized communities 2) the new paradigms of Buen Vivir and Right to the City 3) Other Dimensions of the Regional context.

2.1 The Territorial Claims of Historically Marginalized communities

Land rights claims have long been a vital component of the community and political platforms of historically marginalized populations in Ecuador-particularly indigenous, afro-ecuadorean and montubio communities. This is evidenced in the founding analysis and vision as
well as evolution of some of the principal federations of the indigenous and afro Ecuadorian communities and the central place territorial reclamation holds in their positioning for self-determination, economic development and fulfillment of other social and cultural rights.

2.1.1 The Indigenous Movement

Since its inception in the mid 1980s, the Confederation of Indigenous Nationalities of Ecuador (CONAIE- La Confederacion de Nacionalidades Indigenas del Ecuador)- the principal convening body of Ecuador’s indigenous communities- has placed the question of territorial rights as a priority demand in its platform. In its 1988 proclamation of the rights of indigenous people in the country, 'Derechos Humanos y Solidaridad de los Pueblos Indigenas'\(^\text{18}\), one of the first 15 principles speaks to communities’ inalienable right to land and to the responsibility to struggle for that right. The call for recognition of indigenous land rights and the equitable redistribution of land (that was called out as unjustly concentrated) became a primary and at many times the central demand the indigenous movement brought forward to the national government through massive mobilizations and direct actions in the 1990s. The historic 1990\(^\text{19}\) levantamiento led by CONAIE, in fact, centered on the question of land rights.

The political mobilization of CONAIE and Ecuador’s indigenous communities in this period was also transformative in advancing national dialogue on the notion of a *plurinational* state\(^\text{20}\), a concept enshrined in the 2008 constitution and consistently referenced in state (national) development plans, policy and programmatic frameworks. This is significant to bring attention to as conceptualizations of plurinationality, as positioned from CONAIE and civil

\(^{18}\) A copy of the original document can be found at: http://www.yachana.org/earchivo/conaie/ddhh1988.pdf

\(^{19}\) The June 1990 *levantamiento* was historic in several ways: symbolic in that the year marked the 500th anniversary of Columbus’s “discovery” of the Americas and, symbolic in that it was one of the first (and largest) indigenous uprisings in the region in that period

\(^{20}\) In its 1994 Political Platform, CONAIE identifies *plurinacionalismo* (plurinationalism) as one of its core ideological principles (CONAIE, 1994). For the federation, plurinationalism is understood as equity, unity, respect, reciprocity and solidarity with all the nations that conform Ecuador. It recognizes the right of nationalities to their territory, to internal political administrative autonomy- that is to their process for economic, social, cultural, scientific and technological development (CONAIE, 1994).
actors, have consistently had the notion of territorial rights embedded in it. As Alberto Acosta, former president of the Constitutional Assembly and prominent academic and public analyst put it: Plurinationality is not only a passive recognition of the the diversity of communities and nationalities, it is fundamentally a public declaration to incorporate different perspectives in relation to society and nature. Plurinationality, then, must not seize to be taken alongside definitions that have to do with territory and the management of natural resources (Acosta, 2009).

Like the inclusion of Plurinacionalidad, an important set of changes in the constitutional reform of 2008- the recognition of the autonomy and territorial rights of indigenous and ancestral communities, the recognition of the Right to the City and, the recognition of a new paradigm ‘Buen Vivir’ for development-all challenge entrenched notions of the state conceives development and territorial management. With this, critical implications for how land use and land rights should be (re) considered have emanated. The indigenous movement, led by CONAIE, was a decisive force in shaping these constitutional reforms and more broadly, in generating the political aperture for this moment of progressive political and normative transformation in the nation.\footnote{In addition to the efforts CONAIE led in the 1990s to advance the rights of indigenous communities, the movement was also a decisive force in broadly challenging corruption, neoliberal policies of the period.}

At a local level the struggle for territorial claims is actively present, two ways of which are critical to highlight here: 1) in the defense and development of the comunas in Quito and, 2) in the presence, organization and incidence of barrios indígenas (indigenous neighborhoods).

Briefly mentioned in Chapter 1, comunas, the ancestral lands of indigenous communities, represent a critical political, social and territorial structure for indigenous communities in Quito and, in many ways, have been central to these communities struggle to effectively claim a ‘right to the city’. Comunas come out a history of struggle in the early 20th century by indigenous urban communities to resist free market modernization pressures like
the enclosures and privatizations of land and in its stead (re)claim land for its place in the collective production of identity, culture and traditions (Fundación Museos de la Ciudad, 2014). Their trajectory has come with evolving recognition by the state- first through a presidential decree in 1911\(^2\), when President Eloy Alfaro recognized (indigenous) organizations settled in a defined territory, then in the *Ley de Comunas*/Law of Communes in 1937\(^3\), later in the 1960s and 70s during the moments of agrarian reform and, most recently, in the 2008 constitution\(^4\) (Rayner, Morales & Simbaño Rengifo, 2015). Article 56 of the Ecuadorean constitution explicitly recognizes *comunas* as an important actor in the state and Article 57 guarantees the collective rights of the *comunas* including their right to manage (and conserve) their land and the right to develop and exercise other forms of social and territorial organization. This is significant because it further enshrines the notion that *comunas* have a unique relationship with and approach to land and its management. As *comuneros*\(^5\) themselves have expressed, they consider these territories the base of their cultural identity, the base of their collective and community identity and the place where they practice and realize their own political, cultural, economic and spiritual systems.\(^6\) Their notion of land use management goes beyond the traditional, market orientated approach to a deeper sense of stewardship that holds the value of land beyond its productive/financial output.

Municipal data estimates that at the time of the 1937 law there was close to 230 *comunas* in Quito. It is significant that close to 60 still exist in the municipality with an

\(^{22}\) One of the earliest *comunas* recognized in this 1911 decree was the *comuna* Santa Clara de Milan (near the center of Quito)

\(^{23}\) The 1937 *Ley de Organizacion y Regimen de las Comunas*/Law on Organization and Governance of Comunas established the first national, normative framework of protection and recognition for the *comunas*. For a territory to be a considered a *comuna* it required that: the number of inhabitants be no less than 50; that the governance structure be the “cabildo” (the assembly governance structure of *comunas*) and that collective goods (lands, industry, etc) be registered. This law sought to support the “legalization/titling” of *comunas* and was important because it set a definitional frame for *comunas* that recognized collective rights and governance for *comuneros* (Fundación Museos de la Ciudad, 2014).

\(^{24}\) There was also advancement made in recognition of *comunas* when in 1998 the Ecuadorean state signed onto Convention 169 of the International Labour Organization (ILO) which recognizes territorial rights of indigenous and ancestral communities, emphatically the right to self-determination/autonomy.

\(^{25}\) Residents of comunas

estimated 50,000 residents inhabiting them (Fundación Museos de la Ciudad, 2014). Three registered comunas- Santa Clara de San Millan, Miraflores and Chilibulo Marco Pamba La Raya—are in the urban core of Quito. Others are spread through rural parishes in the outer zones of the metropolitan region of Quito. With rapidly expanding urbanization and suburbanization in these areas, the land of these communities is increasingly under pressure of speculative forces.

While an important segment of the indigenous population in Quito is tied to the comunaspace and in that sense with ancestral roots in Quiteño territory, the decades long (and continued) migration campo-ciudad is the background of many indigenous residents (or previous generations in their families). As was indicated in the Chapter 1, most of these communities are residing in the more peripheral areas of the city.

The assertion of collective identity has been important for many Indigenous residents that come into the city, as many come from the same regions and communities and the consolidation of these social networks are an important part of livelihood strategies as an urban community (Yepez Morocho, 2014). In his study with the Runa Kawsay27 indigenous community in the barrio (neighborhood) Campo Alegre in the ‘Sur-oriente’ (south east) sector of Quito, author Pascual Ramiro Yepez Morocho documents how when first arriving to the city, members of the community would live together in a house in the historic center of Quito, reproducing the dynamics of their community of origin. He describes the neighborhood as an important (more or less) defined territory where migrants locate themselves (Yepez Morocho, 2014). In this sense claim to neighborhood or barrio space becomes an important territorial claim in the urban realm.

As the community evolves in transforming from a tight network of support into a consolidated organizational space in the city, relationship with land and housing questions do as well. Runa Kawsay members went from purchasing a home together in the Centro Historico

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27 Members of the Runa Kawsay community come from the same comuna of Gulalog Quillu Pungo in Chimborazo, a province south of Quito. This community has been migrating to Quito since the 1960s (Yepez Morocho, 2014, p. 17)
to working together for the acquisition of land to build their own housing/neighborhood (Yepez Morocho, 2014). In interviews with members of the Runa Kawsay community who were part of these initial efforts to find land for purchase, residents describe confronting discrimination with landowners, who would often not negotiate with them. Researcher and author Pascual Ramiro Yepez Morocho relates:

In respect of the search for land, the community members mentioned they inquired about different places in the periphery south of Quito and also in Machachi, where they found a wide expanse of land (approximately 20 hectares). They thought to buy this land, 50% for construction of housing and 50% for a community farm, but because of their status as Indians the landowners failed to make an agreement with them to purchase the property because these owners, as mestizos, think Indians do not have the ability to buy this property and they mistrust of indigenous peoples and think they want to just invade the land (Yepez Morocho, 2014, p. 199).

This example brings to life the real barriers discrimination presents in indigenous communities engagement with the land market in the city. And, such discrimination is echoed in the experience indigenous residents face when engaging the rental market (Yepez Morocho, 2014). The decision to collectively buy land as an indigenous organization was a way to go around malpractices in the land market (Yepez Morocho, 2014). It also puts light on the more robust relationship to land the community seeks- as a space not only to build housing but for sustenance, productive use and to build community more broadly.

2.1.2 The Afro Ecuadorean Movement

While to a differing and perhaps lesser degree in the Quiteño context, writ large, in important ways the Afro Ecuadorean community has also positioned territorial claims as a priority component of efforts for recognition and advancement of rights as a community. As was with indigenous communities of Ecuador, consolidated organizational spaces of the Afro-Ecuadorean community emerged strongly in the 1980-90s28. Efforts to combat discriminatory

28 An important history of organizing in the Afro Ecuadorean community preceeded this period. The 1980s marks a particularly important period as a turning point for when racial and cultural identity became more centralized in movement demands. While beyond the scope of this paper, for more on that history see CEDEAL (2011) and Delgado Calderon (2013)
and unjust conditions in the more rural regions of Ecuador such as Chota and Esmeraldas-where systems of *concertaje*[^29], land consolidation and lack of titles left communities essentially disenfranchised from land rights- were an important initial front of organizing as AfroEcuadoreans weighed in fights for land reform, titling/regularization and beyond (Centro Ecuatoriano de Desarrollo y Estudios Alternativos [CEDEAL], 2011). With increased ‘*campo a ciudad*’ migration the population of AfroEcuadoreans in Quito expanded and along with it organizational formations of Afroquito civil society. “Upon arriving in Quito, they found themselves in an exclusionary, racist urban context that invisibilized the existence of the Afro descendent population” (Delgado Calderon, 2013, p. 40). Much organizing was rooted in efforts to combat discrimination and advance rights with organizations like the Federación de Organizaciones y Grupos Negros de Pichincha (FOGNEP) and the Movimiento de Mujeres Negras de Quito (MOMUNE) bringing representation for Afroquiteños on such issues and helped advance attention to these concerns at the level of Municipal level (Delgado Calderon, 2013). This can be seen in District Development Plan of the Afroecuadorean Community- a comprehensive vision by civil society of the public policies needed to improve the quality of lives and the territorial, social, and economic well-being of Afroquiteños (Delgado Calderon, 2013, p. 80) -and in the later City Ordinance 0216[^30] of 2008, where Municipal authorities made efforts to institutionalize this recognition of policies needed to address the needs of Afroquitenos, including the need for policies to expand access to housing.

Localized efforts such as these also gave impulse to expanded political action and incidence at the national level. In both the 1998 and 2008 constitutional reform processes Afro Ecuadorian organizations like Confederación Nacional Afroecuatoriana were active in struggling for recognition of the AfroEcuadoran community as ancestral communities. This was critical as such recognition came in hand with a recognition of communities collective rights, what Calderon also identifies as essential to connecting to territorial rights: “you cannot ignore that the recognition of collective rights gave impulse to organizational and identity

[^29]: *Concertaje* was an arrangement where workers lived on the land of the haciendas they worked on
processes regarding rights related to the territory, territoriality and identity” (Delgado Calderon, 2013 p. 65). Article 58 of the Constitution states:

To strengthen their identity, culture, traditions and rights, the collective rights established in the Constitution, the law and covenants, agreements, statements and other international human rights instruments are recognized of the afroecuadorean community.

Despite such normative advancements, conditions of inequity and within it territorial inequities remain for Afroquiteños. Directives outlined in Ordinance 0216 stayed as proposals rather than enacted policy (Delgado Calderon, 2013) and significant work lays ahead for expanding recognition of ancestral territorial rights. Most Afroquiteños are marginalized to the peripheral neighborhoods of the city, experiencing the socio-spatial segregation described in Chapter 1.

2.2 New Paradigms: ‘Buen Vivir’ and Right to the City

As grounded in the introduction to this study, the 2008 constitutional reform was a deeply significant moment in the contemporary political context. A multitude of pointed changes in the new normative framework and statement of rights for the nation brought important implications for how land rights, land use and land management should be considered. Key amendments included ones that spoke to the questions of the territorial rights of indigenous communities, the social function of land, planning. In the Table 1. below, these are highlighted.

31 One key model of Afroecuadorean ancestral land is the comarca. The *comarca* is a model of political, ethnic territorial organization formed by local palenques and other organizations of Afroecuadorians, to achieve community development to which they are entitled, based on access to land tenure, to administrative organization, to ancestral management of territories and to sustainable use of natural resources in these territories. (CEDEAL, 2011)
### FIGURE 4. Table of Articles in 2008 Constitution with Implications for equity centered Land Policy

<table>
<thead>
<tr>
<th>ARTICLE</th>
<th>LANGUAGE</th>
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| Article 31 | **RIGHT TO THE CITY**  
People are entitled to fully enjoy cities and their public spaces, under the principles of sustainability, social justice, respect for different urban cultures, and, balance between urban and rural areas. This right to the city is founded on the democratic management of the social and environmental aspects of property and the city through civic engagement. |
| Article 57 | **RECOGNITION OF INDIGENOUS RIGHTS + TERRITORIAL AUTONOMY**  
Indigenous communes, communities, peoples and nations are recognized and guaranteed, in conformity with the Constitution and human rights agreements, conventions, declarations and other international instruments, the following collective rights: (Section 4) To keep ownership, without subject to a statute of limitations, of their community lands, which shall be unalienable, immune from seizure and indivisible. These lands shall be exempt from paying fees or taxes; (Section 5) To keep ownership of ancestral lands and territories and to obtain free awarding of these lands (i.e. issuance of land titles); (Section 6) To participate in the use, usufruct, administration and conservation of natural renewable resources located on their lands; (Section 7) To free prior informed consultation, within a reasonable period of time, on the plans and programs for prospecting, producing and marketing nonrenewable resources located on their lands and which could have an environmental or cultural impact on them; to participate in the profits earned from these projects and to receive compensation for social, cultural and environmental damages caused to them; (Section 9) To keep and develop their own forms of peaceful coexistence and social organization and creating and exercising authority in their legally recognized territories and ancestrally owned community lands; (Section 11) To not be displaced from their ancestral lands. |
| Article 3 | **BUEN VIVIR + EQUITABLE DEVELOPMENT**  
The state’s primary duties are:  
(Section 5) Planning national development, eliminating poverty, and promoting sustainable development and the equitable redistribution of resources and wealth to enable access to “Buen Vivir”.  
(Section 6) Promoting equitable and mutually supportive development throughout the territory by building up the process of autonomies and decentralization. |
| Article 282 | **SOCIAL FUNCTION OF LAND + LAND REFORM**  
The State shall make laws for the use and access to land that must fulfill social and environmental functions. A national land fund, established by law, shall regulate equitable access of small scale farmers, male and female alike, to land.  
Large estate farming and land concentration is forbidden, as is the monopolization or privatization of water and sources thereof. |

Source: Ecuadorean Constitution, Article 3, 31, 57, 282

These amendments are important to draw on for deliberating and defending a community driven approach to land. They also present a critical advancement in pushing forward new political frameworks for informing local and regional policy. Plurinacionalidad, which was
articulated briefly above, is one of these. Two other concepts that have been strongly drawn on and that are given special attention here for their relevance to land concerns are the concepts of *Buen Vivir* and of Right to the City. Both are explicitly included in the constitution, are drawn on in local and regional policy initiatives and, more broadly, are part of governmental and non-governmental frameworks both locally and regionally.

### 2.2.1 Buen Vivir

For many, *Sumak Kawsai* (as it is known in Kichwa) or *Buen Vivir*/Good Living is, beyond a solemn constitutional declaration, an opportunity to collectively build a new paradigm of development (Acosta & Martinez, 2009). Long considered part of the cosmovision of Andean indigenous communities *Buen Vivir* implies a series of social, economic and environmental rights and a vision of a economic regime based in solidarity and a harmonious relationship with nature (Quintero, 2009). These rights are outlined in Articles 340 to 415 of the constitution along with the state obligations to fulfill these rights. This is comprehensive in how it envisions what is needed to guarantee *Buen Vivir*, with strong directives in recognizing the need to promote land use planning that is balanced and equitable and that makes possible social and territorial equity. This is echoed in the agenda of the National Secretary of Planning and Development (SENPLADES), the national development plan for *Buen Vivir*.

Objective 2.4 of the 12 national objectives in the Plan speaks directly to strategizes to democratize land policies through access, titling, addressing land concentration, trafficking of land and beyond (Secretaría Nacional de Planificación y Desarrollo [SENPLADES], 2013). Objectives 2.4c to 2.4h delineates:

- 2.4c Create mechanisms to encourage and facilitate access to ownership and regulation of ownership of assets such as land, water for irrigation and goods, especially for women and youth, and, with an emphasis on rural areas as part of a guarantee of autonomy and economic independence.

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32 Ecuadorian Constitution, Title VI Regime of ‘*Buen Vivir’*/Good Living
33 Ecuadorian Constitution, Article 276, Section 6
34 Ecuadorian Constitution, Article 275
• 2.4d Expand mechanisms of regulation and control of use and access to land, so as to fulfill their social and environmental function.
• 2.4e Strengthen mechanisms for the prevention, control and punishment of the concentration and traffic of land and of large estates.
• 2.4f Strengthen and expand cooperative, associative and community forms of ownership as a means to democratize access to wealth and its generation, by encouraging production.
• 2.4g Strengthen mechanisms to ensure the conservation of the indivisible ownership of community land and possession ancestral territories by communities, peoples and nationalities, so as to avoid their displacement.
• 2.4h Strengthen regularization of land and land titling, in an articulated and coordinated manner between (different) levels of government, recognizing various forms of property ownership and access, with considerations to gender and to the capacity obtain territories (SENPLADES, 2013).

In considerable ways these objectives speak to the territorial claims of historically marginalized groups and to an equitable approach to territorial development.

It is important to note that the Buen Vivir frame is held in a regional context as well. In Bolivia the concept of buen vivir is acknowledged in Article 8 of the Constitution and, with the leadership of civil society sectors, the country is also helping spearhead efforts to bring the Buen Vivir concept into dialogue of the urban context as well35. In Venezuela the Ministry of Popular Power for Health has engaged with the Buen Vivir framework in its work on the rights of indigenous communities in urban centers of the country 36

The existence of these processes is important indication of the political appetite for alternative approaches to development in the way the Buen Vivir frame represents and with its extension in the urban context the desire to localize its application. Learning from these dialogues and experiments can be an important space of regional cooperation.

35 A Regional Gathering of Urban Movements and Organizations was brought together in Spring of 2013 to examine “Buen Vivir from the Urban Context”. For more see http://www.rosalux.org.ec/es/actividades/eventos-de-aliados/664-boliviaencuentro.html
2.2.2 Right to the City

Originating with Henri Lefebvre in the intellectual left of France and later taken up by urban movement spaces globally, the concept of Right to the City has also increasing gained traction in recent years within established institutional spaces such as the United Nations. Evidence of this is in the prominent place the Right to the City frame is holding the formation of UN Habitat’s New Urban Agenda\(^37\). The inclusion of the Right to the City concept in the new 2008 constitution of Ecuador has meaningful implications and potential for urban efforts for more equitable development, including claims to land rights and equitable land use planning in the city. Article 31, which identifies the Right to the City, states\(^38\):

> People are entitled to the full enjoyment of the city and public spaces, under the principles of sustainability, justice social, respect for different urban cultures and balance between what's urban and rural. The exercise of the right to the city is based on management of this democratic right, in the social and environmental function of property and the city, and in the the full exercise of citizenship.

The Articles’ direct language on the inclusion of the social function of land in the urban context supports the territorial claims of historically marginalized groups and urban movements in calling for more equitable applications of land use\(^39\). Leading thinkers like David Harvey are also emphatic to note that this right is one that is very much rooted in collective claims rather individual ones. He states: “The right to the city is far more than a right of individual or group access to the resources that the city embodies: it is a right to change and reinvent the city to our heart’s desire. It is moreover, a collective rather than an individual right, since reinventing the city inevitably depends upon the exercise of a collective power over the processes of urbanization (Harvey, 2012). As groups representing historically marginalized sectors position territorial claims in the urban context, this connection to how their claims are connected to and

\(^{37}\) To view the Draft New Urban Agenda, see https://www.habitat3.org/bitcache/88892f4f026a2353321205b0bc6fd6dc236d0b60?vid=584835&disposition=inline&op=view

\(^{38}\) Ecuadorian Constitution, Article 31

\(^{39}\) This is also reflective of the Principles of the Global Platform for Right to the City, where principal 3 calls for the social function of property (Nelson 174).
reflective of an understanding of land in its social and environmental, can be an increasingly important way to see how the right to the city is connected to the right to the land in the city.

A potential challenge with the Right to the City concept is where BuenVivir comes from the regional Andean experience, rooted in indigenous philosophies and frame of analysis, the Right to the City frame is far more internationalist and in some ways rooted in academic conceptualizations. Nevertheless, there is increasingly a regional approach to Right to the City emerging and a recent historic experience with the concept as well. Interventions and calls for progressive urban change were coming out of Brazil and Colombia as early as the 1980s (Nelson, 2008) and, as is widely looked at, the Right to City is recognized early on in the Brazilian Estatuto de la Ciudad (Statute of the City) passed in 2001. More recently, an important example of where the framework was taken up at the municipal level is in the passage of a bill of Rights to the City in Mexico City, the ‘Carta de Derecho de la Ciudad de Mexico por el Derecho a la ciudad’.* It is also relevant to note that the Global Charter for a Right to the City was established in 2005 at the World Social Forum in Porto Alegre, Brazil (Nelson, 2008).

The Right to the City Article in the constitution, and the general framework it posits, is highlighted here as one that is particularly important to put in conversation with other progressive Articles in the Constitution with implications for more equitable approaches to land policymaking as it is unique in being a normative space that speaks directly to the urbanized application of concepts like the social and environmental function of land.

2.3 The Expanding Regional Context: Brazil + Colombia

Beyond transformations happening within Ecuador it is important to further acknowledge the regional context in which these changes are embedded. In particular, normative and regulatory innovations on land use policy in Brazil and Colombia- among other countries in the region*-have inspired local policy makers to consider instruments such as land value capture or solutions to more inclusionary territorial planning.

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* For more on the Mexico City Charter for a Right to the City, see http://derechoalaciudadff.blogspot.com/
* See Smolka, M., & Furtado, F. (2014) for an insightful look at examples from across the region of innovative land policymaking.
In Brazil, this is rooted in a (now) long tradition. In 1988 the Brazilian constitution recognized the social function of land and, with it made the state responsible for expropriating rural land if it was not serving its social function and also required urbanized land to conform to its social function (Ankerson & Ruppert, 2006, p. 102). This is an important reference point for Ecuador as the constitution speaks on the social (and environmental) function of land in its notions of Right to the City and Buen Vivir.

Similarly, Colombia’s 1997 Law 388 or Territorial Development Law (Ley de Desarrollo Territorial) was significant for its basis in the principles of the social and environmental function of land. It broke ground regionally with innovate instruments for financing urban development via land value capture, for expanding social interest housing and for generally regulating a more equitable distribution of the costs and benefits of urban development.

These ‘base’ laws have also translated into new approaches for land use planning at a municipal level. In Colombia, cities like Bogota have legislated instruments from Law 388 into local policies such as the 2008 Bogota city resolution 147 which sets directives for identifying land of priority development for social interest housing (Maldonado & Hurtado, 2014). In Brazil several instruments that have been put in place at a municipal level are drawing increased attention to policy makers such as the CEPACS (Certificates of Additional Potential Construction Bonds) and ZEIS (Zones for Social Interest) in Sao Paulo. The main idea behind the CEPACS is “that new development potential, such as for different types of uses and additional buildings, created by rezoning and public investments in a well-defined area should not be available for free, as in the past, but auctioned among those interested in taking advantage of the future economic benefits resulting from the public interventions” (Smolka, 2013, p. 53) This has been praised as a highly effective way to capture land value increment. Yet, criticism has also been raised on how surplus investments gained are reinvested back into already wealthy, more well established areas. There have been calls to make CEPACS a more equitable instrument and
direct the funding obtained from such mechanisms of land value capture to projects of social interest.

The ZEIS are an instrument to demarcate certain zones of the city, especially those that are vacant but that have access to infrastructure, for social interest housing. It can be seen as a type of inclusionary zoning instrument and is positively seen as the type of policy that can be a preventive measure (creating access to land, housing) instead of one that just mitigates conditions (Rolnik & Santoro, 2014).

The advancement of innovative approaches to more equitable urban land policies in places like Brazil and Colombia has helped build political aperture for similar approaches in Ecuador. In as such, these regional experiments have become an important reference points for the Ecuadorean experience and ones that are increasingly reflected in contemporary land policymaking.
CHAPTER 3: THEORIZING ON LAND

Having first introduced this examination of land rights questions in Quito through a socio spatial and political-historical analytic, this Chapter now turns to theoretical considerations of equitable approaches to land rights and land use policymaking. I come at this in three ways: 1) identifying and giving brief critical evaluation of approaches that dominate contemporary “pro-poor” land policy making 2) examining the conceptual basis of (classic) land reform and centering it as a highly instrumental (and regionally informed) framework for defining “equitability” 3) some deepening of attention to the ‘right to the city’ frame as it relates to land, arguing this is increasingly important as ‘the right to the city’ becomes more mainstreamed into the discourses of major governmental and international agencies.

With this, this chapter aims to posit key concepts that should be accounted for in moving towards more ‘equitable’ land policy making and in doing so begin to establish elements of a theoretical frame of reference towards such ends.

3.1 Dominant Frameworks

As perhaps the most visible front of the land and habitat struggles in cities of the Global South, addressing the proliferation of residents settled in precarious zones and in precarious conditions⁴² - what is broadly referred to as the “issue” of informal settlements- has become a focal point for policy interventions aimed at the urban poor and historically marginalized communities.

Globally and in Latin America, these interventions have been dominated by a focus on regularization or the titling of areas and individual plots. In large part, this approach has been shaped by the ideas of Peruvian economist Hernando de Soto, who since the 1990s has greatly influenced thinking around the economic development of informal communities in developing countries. De Soto contended that legal rights over land- vis a vis titling of property rights- were

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⁴² Zones and conditions are deliberately separated out here. Precarious zones references the often high risk, environmentally sensitive or environmentally unjust areas (i.e lands) where communities settle; Precarious conditions references situations such as lack of infrastructure, lack of security, lack of land titling, etc.
particularly important in supporting the economic development of households in informal settlements by giving them access to formal credit (that ideally could be used to finance business activity, consolidation of the home, etc.) and contributing to their integration in the market (Fernandes, 2012). These ideas were embraced by major international banks and aid agencies and have given impulse to the expansion of large scale regularization programs in many countries (Fernandes, 2012). Many contend\(^{43}\) that such proliferation of this approach is due to its ideological alignment with market centered politics of urban development. As one author argued, “Establishing property rights fits nicely into the institutional building development models promulgated by the World Bank and other development agencies from the 1990s” (Goldfinch, 2015, p. 88).

In Quito too regularization programs have held a prominent place in efforts aimed at addressing the land rights questions of historically marginalized sectors. This is evidenced programmatically, in the central role of *Regula Tu Barrio* (Regulate your Neighborhood) holds in the Municipalities’ territorial strategies and, generally, in the attention drawn to regularization needs by neighborhood groups in the peripheral areas of the Sur and Norte. Such attention has brought significant progress over the last years in regularizing many informal zones- in the Administration of then Mayor Augusto Barrera nearly 300 neighborhoods were regularized\(^{44}\) - though concerns have been raised in the last year, particularly through demands brought by neighborhood groups, that progress has considerably stalled under the new administration. This persistent organized pressure by residents in zones deemed informal make it clear that regularization is a critical component of the livelihood and betterment strategies of these communities, particularly when the existing regulatory framework ties other basic rights- like access to infrastructure services- to land titling.

\(^{43}\) See Fernandes (2012) or Goldfinch (2015) for further elaboration

\(^{44}\) See http://www.eltelegrafo.com.ec/noticias/quito/11/la-regularizacion-de-barrios-tiene-retraso-a-escala-nacional
But what are the limitations of this approach, particularly when it is centered as a primary strategy for addressing the land rights challenges of marginalized communities in the city?

In his article, “Property Rights and the Mystery of Capital: A Review of De Soto’s Simplistic Solution to Development”, Shaun Goldfinch (2015) takes a critical examination of the model and provides some interesting reflections for consideration. First, there is a questioning of some of the assumptions regularizations schemes lie on: that individual titling will lead to greater economic security and access to rights. He remarks that a large and still growing body of studies in sub Saharan Africa, Latin America and even in de Soto’s native Peru find little link between access to legal title for the poor and the ability to generate credit (Goldfinch, 2015).

This Goldfinch argues is connected with the problematic focus on individual title rights as a necessity for economic development (2015). He contends that there is no a necessary conflict between traditional ‘informal’ communal ownership and forms of legal title, nor is communal ownership and other informal rights and property usage necessarily opposed to or a barrier to economic development. The piece essentially questions if argues that generally experience shows that titling per has little or no structural impact on poverty.

In addition to how such experiences complicate assumptions behind the approach there are other “unanticipated consequences” that experts have identified as often occurring through the regularization process that are important to take note of. As Edesio Fernandes outlined in his presentation on Property Rights and Land Regularization, “....namely the impact of titling on growing informal land markets, leading in cases towards gentrification or ‘eviction by the market’, and further socio spatial segregation; the widespread legalization of unsustainable settlements; the lack of financial sustainability of titling policies; frequent political manipulation of such policies; unnecessary privatization of public land; and serious problems with the registration of the new land titles” (2012).

With these cautionary lessons in mind, it is critical to consider: is regularization giving a solution to the land rights needs of marginalized communities in the city- how and how not? Is
this strategy addressing territorial inequity? how can regularization programs be approached so as to not lead to such unanticipated consequences outlined above?

If looked at critically one could agree with Goldfinch’s assertion that “(its) appeal remains because it is a simple ‘solution’ (that) helps take focus away from complicated questions of land and income redistribution” (Goldfinch, 2015, p. 94). But, the purpose here is not to undermine the importance of regularization for communities. Instead, this critical look at regularization and land titling programs is done in the spirit of contributing to better understandings of how we can move towards more transformative strategies for securing territorial equity and land rights for historically marginalized communities in the city.

3.2 Land Reform

In considering more transformative conceptualizations of land rights and land policymaking, I want to argue here for taking up the land reform framework as a particularly powerful one to look at for defining equitable approaches. I see this rooted in two things: 1) Land reforms direct approach to equity as a question of redistribution 2) its contribution as an analysis based in and reflective of the Latin American tradition.

Like many parts of the Global South, during important moments of political transformation (revolution, socialist reform and even democratization) Latin America experienced various periods of efforts at agrarian land reform. The Ecuador legislature passed various agrarian reforms over the later half of the 20th century- in 1964, 1973 and 1992. It is important to understand that while the effect of land reform did not largely bear the sweeping positive changes it aimed for the livelihoods of the rural poor- indígenas, afroecuatorianos and montubios- because of the way it was carried (Villarroel 2015), it has also persisted, over the decades, to be a central land rights demand of communities in the region and in Ecuador. For example, for at least the last decade the Movimento Sem Terra in Brazil have pushed for renewed land reform and, in Bolivia, the 2009 constitution included important land reform elements like a limit on size of landholdings and the re-exertion of the state’s power to
expropriate and take back land to ensure it is fulfilling its social function. In Ecuador too, the demand for land reform has persisted. Just as recent as this March (2016), the National Congress or Asamblea Nacional passed the Law of Rural Lands and Ancestral Territories (Ley de Tierras Rurales y Territorios Ancestrales).

While these reforms have been aimed at land questions in the rural context, the concepts behind land reform are powerful ones that I believe can translate into important points of reference (and perhaps even models) for how land questions can approached in centers equity with redistribution. Michael Lipton’s “Land Reform in Developing Countries-Property Rights and Property Wrongs” is widely considered a seminal book on the subject and one I turn to for definitions of what land reform is and the elements of classic land reform.

So what are land reforms? In its most general sense, Lipton describes land reforms as laws that are intended, and likely, to cut poverty by raising the poor’s share of land rights (2009). In as such, land reform is often evaluated in reference to its likely effects in advancing or retarding (1) a more just distribution of income, power or status and, (2) reducing poverty. An important point of departure in this classic analysis behind land reform is the belief that fundamentally inequality is rooted in deeply unequal arrangements in land. It is understood that “…very unequal land distribution is often the result, not of farming or entrepreneurial ability, but of colonial, often racial, land grab and subsequent inheritance” (Lipton, 2009, p. 6). In this way, classic land reform centered a call for redistribution. Lipton (2009) defines the elements of classic land reform (CLR, as he refers to it) in the following terms:

“In the simplest CLR, the government declares (1) a land authority, (2) a maximum ceiling of owned farmland, (3) rules for (full, partial or nil) compensation to land losers, (4) a minimum floor of owned farmland, to which eligible persons are to be raised, (5) dates for the Authority to take farmland above the ceiling (6) and, later, to distribute it to identified land gainers so they reach the floor holding (7) rules for (full, partial or nil) payment for land by, and loans to, gainers” (p. 127).

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For a detailed look at the Bolivian constitution, see http://www.harmonywithnature.org/content/documents/159Bolivia%20Consitucion.pdf
While this more technical description of the elements of land reform is instrumental for considerations of what components should be in policies with redistributive ends, to center a strong definition of land reform it is useful to look at the preferred definition Lipton gives to land reform and some important ‘descriptives’ he gives to key concepts included in it. He defines land reform in the following way: “Legislation intended and likely to directly redistribute ownership of, claims on, or rights to current land, and thus to benefit the poor by raising their absolute and relative status, power, and/or income, compared with likely situations without legislation” (Lipton, 2009: 328).

Appended to this definition are expanded articulations and clarifications on what such an understanding of land reform should implicate. He details this in the following manner:

- ‘Legislation’ excludes revolutions (seizures of state power), land invasion, and voluntary land gifts. These may complement land reform but are not the same thing, even if the State or its agents encourage them. However, land reform includes new laws made, or old laws enforced that meet the above definition by validating previous revolutions, land invasions or land gifts
- ‘Directly’ provides a screening mechanism. Some laws may shift land and benefits to the poor, on certain conditions. For example, many advocate, as land reform, laws to improve land-market or titling arrangements. Does that shift land to the poor, and hence benefit them? Only if institutions or laws exist, or are created, such that the change of arrangements favors the poor more than the powerful. Only then is the process ‘direct’, and hence land reform.
- ‘Intended and likely’: Before we call a law land reform, we need reason to believe that (i) its proponents intend it to redistribute land rights and thus benefit the poor, taking into account likely responses (including legal avoidance and illegal evasion) by large landowners and implementing authorities to such responses; (iii) there is evidence that such laws have the intended effects.
- To ‘redistribute’ implies that land rights move from richer to poorer people” (Lipton, 2009, p. 328-29).

This fundamentally redistributive character to land reform and its rooting in regional approaches to more equitable land rights, makes it a powerful theoretical frame to learn from. I’ll take the concepts described above in the evaluative considerations of Chapter 6 and recommendations of Chapter 7.
3.3 Right to the City and the Right to Land

As the Right to City frame is increasingly taken up and mainstreamed into international development discourse, it is necessary to uplift (and further define) the way it speaks to different fundamental rights in the city. One of these, undoubtedly, needs to be the right to land. As an integrated approach to rights, a right to city frame in relation to a right to a land frame could bring a more integrated approach to understanding land rights. For example, the connection of the right to water, right to infrastructure, right to public space and beyond as all connected to the right to (good) land could be important for helping make visible the centrality of land rights questions in an accounting for a ‘right to the city’. As Benjamin Nahoum (2012) states in his examination of land rights from a Right to the City frame, “...it is clear this right to land isn’t just about any land....conditions (and quality) of that land are critical” (p. 17). He adds, “there is an abundant normative framework to support right to housing but not on right to land” (Nahoum, 2012, p. 17). For researchers and practitioners like Nahoum that are considering urban land questions from a Right to the City frame, the social function of land framework that is increasingly being taken up in the region is pointed to as a limited one. They call for a more rights based approach to land centered in a Right to the City analytic.

The ideological current of the right to the city frame- one rooted in a collective approach to rights and that challenges dominant market centered orientations to urban development- also pushes forward an understanding of land beyond the individualized sense of property and calls for a greater state role in driving land policy. “There won’t be the remote possibility to expand land access to the grand majority if we keep thinking the land market can self regulate and resolve land access challenges...leaving the state in a ‘facilitator’ role” (Gonzalez, 2012: 233). There is definite consensus (within this frame) that the state is a determinative actor for securing a land market for those with low incomes.

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46 See, for example, the mobilization of the Right to the City frame in the New Urban Agenda for Habitat III https://www.habitat3.org/bitcache/88892f4f026a2353321205b0bc6fd8dc236d0b60?vid=584835&disposition=inline&op=view
47 For a rich breadth on this analysis, see Centro Cooperativo Sueco (2012)
CHAPTER 4: LAND USE QUESTIONS OF QUITO

To establish a grounded diagnostic of contemporary land rights and land (use) policies in Quito, this study sought directive from the experiences and expertise of local stakeholders. Over the month of January 2016, 15 interviews were conducted with stakeholders representing governmental, academic, research and civil society agencies/institutions with direct engagement in land rights struggles or/and policymaking on land use questions. This chapter outlines principal insights shared by interviewees, with particular attention to synthesizing concerns and proposals that were most consistent across stakeholder conversations.

These ‘points of consensus’ serve as foundation for identifying what I assert are dominant issues (to be addressed) for contemporary considerations of more equitable approaches to land rights and land use questions in Quito.

The interviews were semi structured and focused on the following (meta) questions:

• **How do you see the application of concepts like the social function of land in the urban context of Quito?**

• **How do you see the application of concepts like development for buen vivir or the Right to the City in the urban context of Quito?**

• **How do you see social spatial inequity/segregation manifested in the contemporary context of Quito?**

• **What do you feel are the biggest challenges to achieving more equitable approaches to land use policies?**

• **What do you see as the most effective tools- at a municipal, national or regional scale- for pushing forward more equitable policies for the use and access of land in Quito?**

For ease of synthesizing responses, feedback from interviewees on the questions above are grouped under two headings: 1) Challenges 2) Solutions Needed
4.1 Civil Society Perspective

To garner a more representative and nuanced understanding of the land rights and land use concerns impacting historically marginalized communities in the city, long established organizations representing residents of the Sur and the Norte of Quito (sectors identified in Chapter 1) were sought for interviews along with the organization Pueblo Kitu Kara, which represents the ancestral indigenous community of Kichwa nationality in Quito. In its work defending the territorial rights and autonomy of comunas over the last years, Pueblo Kitu Kara has had extensive engagement with Municipal Authorities.

The neighborhood groups engaged with here were Comite del Pueblo in the Norte (in the Administrative Zone Calderon) and Lucha de los Pobres in the Sur (in the Administrative Zone Quitumbe). Both have an over 30 year history, dating back to when residents first came to these areas in the 1970s and 80s (which were then underutilized or abandoned hacienda properties) to negotiate for purchase and settlement on the land. Over decades they organized to consolidate their neighborhoods and secure access to services and infrastructure. The residents of these communities represent a diverse spectrum of Quito- from migrants from coastal and sierra regions to Afro Ecuadorians and indigenous communities. Comite del Pueblo also spoke of the significant population of international migrants coming to the community in recent years- Colombians, Peruvians, Haitians, Cubans and beyond.

4.1.1 Challenges Identified

In speaking to the land challenges most present for their communities and how segregation is experienced, Comite del Pueblo and Lucha de los Pobres coincided in emphasizing lack of investment (in infrastructure and municipal services) and contamination as priority concerns. As one leader of Lucha de los Pobres candidly put it: “The city is not investing in these neighborhoods”. Decades of organizing, mobilization and demands put on local authorities were necessary to secure the build out of basic infrastructure such as access to electricity,
potable water and sanitation services. More recently settled sectors of these communities-still lacking title and regularization- continue to struggle with access to basic services, as municipal regulations require that a neighborhood be regularized to be eligible. For newly incorporated neighborhoods, recent municipal regulations set directives for up to 50% of the financing for infrastructure and other related capital improvement type projects to be obtained from contributions of residents⁴⁹. Such ‘innovations’ to financing infrastructure provision were pointed to by the Comite del Pueblo leader as examples of how “authorities need to be more equitable in planning”, adding that in sectors like the Carolina (in Administrative Zone Eugenio Espejo) infrastructure improvements are carried out without such additional burdens put on residents.

FIGURE 5. Flyer in Quitumbe (Sur de Quito) protesting taxes, calling for popular referendum

![Flyer in Quitumbe (Sur de Quito) protesting taxes, calling for popular referendum](source)

Source: Author

The lack of city services and investment, particularly inadequate waste management and the absence of green space, were also underscored in connection with the contamination problems confronted in each community. Extensive illegal dumping in several ravines in Comite del Pueblo has created toxic zones and threatened ground water, while in Lucha de los Pobres leaders point to negligent city services leading to waste accumulation in streets and the few

⁴⁹ See Ordinance 055 of the Metropolitan District of Quito
empty lots that serve as informal public space for the community. Serious contamination issues stemming from the heavy presence of industry in the area also beset the Lucha de Pobres. Leaders pointed to a large factory, Inacasa, adjacent to the neighborhood as an example of how industry is polluting air and ground quality, causing serious health issues for residents. Leaders commented: “They need to send the industrial sector from this area...they shouldn’t be in an area where that is a residential area and has educational centers”

FIGURE 6. Factory Adjacent to Lucha de los Pobres Neighborhood, Sur de Quito

Like Comite del Pueblo and Lucha de Los Pobres, the struggle for access to adequate municipal infrastructure and services is one many comunas of Pueblo Kitu Kara face. The recognition by local authorities of comunas unique place as ancestral communities with territorial authority and autonomy has a been a contentious one, and one that municipal authorities have positioned to put barriers to equitable service provision and broader integration in the city’s territorial planning. Pueblo Kitu Kara points too to how the current regulatory framework such as the above mentioned ordinances (requiring titling and regularization for eligibility to access infrastructure services) as presenting significant challenges
to *comunas* who have distinct conceptualizations of property, governance and territorial management rooted in the collective. Moreover, while many of the Kitu Kara are organized as *comunas*, many indigenous communities in Quito (Kitu Kara and other) are organized as *barrios*. There too is a void, Pueblo Kitu Kara indicates. City regulations don’t recognize *barrios indigenas* unique relationship to land, community and territorial development. Barrio indigenas, like comunas, are often sanctioned for having livestock, animals and other productive activity. In their analysis, these lived realities illustrate how the city fails to understand their concepts of land use:

The Pueblo Kitu Kara leader I spoke with elaborated: “While different types of land, the urban and rural, are recognized in formal regulation...what has been implemented are politics of the urban. The land use plan (of the Metropolitan District of Quito) and all the planning are from the perspective of the urban. Despite the shift in the law in 2008 (with the new constitution) where the recognition of *comunas* went from social organizations to ones with territorial authority, this is still not understood from the institutional perspective of the state (government)”

### 4.1.2 Solutions Needed

Lucha de los Pobres, Comite del Pueblo and Pueblo Kitu Kara underscored, in variant but complimentary ways, the need for municipal authorities to deepen engagement with and to practice more deference to the organizational structures of communities when it comes to defining the needs and priorities of territorial planning in their neighborhoods and, in the case of Pueblo Kitu Kara, their *comunas*. Lucha de los Pobres and Comite del Pueblo leaders each commented: “They need to come get the opinions from the neighborhood and to redirect investment.”

For Pueblo Kitu Kara this is tied to the need for ‘secondary’ legislation to clarify and support implementation of Article 57 of the constitution, which guarantees the inalienable rights and territorial authority of ancestral communities. At a local level, effective mobilization and pressure has facilitated the conformation of a table of dialogue with the municipality to
discuss points where they feel change is needed in city regulations. As outlined by Pueblo Kitu Kara leader I spoke with, “Our political agenda is that the municipality understands that beyond what is the urban and rural there are the *comunas* (and the territorial representation of indigenous communities). The idea of the *comunas* breaks with the urban and rural. The district and all the parishes in this region are still in a uni-national structure, which does not respond to the needs of *comunas*, *pueblos* and communities of other nationalities. We have to re-structure the Metropolitan District of Quito, we have to structure it thinking in how we construct a plurinational state from the local”

The need for regulatory change is also seen from the vantage of Comite del Pueblo and Lucha de los Pobres. In considering the contamination residents face due to the heavy presence of industry in their neighborhoods, Lucha de los Pobres leaders question how land use regulations are managed and suggested the urgency for a reevaluation of zoning policies: “They need to send the industrial sector from this area....they shouldn’t be in an area that is residential area and where there are spaces like educational centers. We think there should be some mitigation done by the city to create areas for sports, parks, a cultural center.” El Comite del Pueblo leader commented on the need for regulatory change at a broader scale, he states: “there is a generalization of territorial planning and that should not be that way. Equitable planning needs to take a more localized approach”.

4.2 Government Perspective

Interviews with actors from the governmental sector included representatives from both municipal and national institutions and appointed and elected leaders as well as staff. These constituted the following institutions:

**Municipal level**: Secretary of Territorial Planning, Habitat and Housing (including Direction of Land Use Policy); members of the City Council

**National level**: National Secretariat of Planning and Development (SENPLADES); National Ministry of Urban Development and Housing (MIDUVI)
For consideration of anonymity, synthesis of responses are grouped by perspectives of local governmental actors and national actors. It should be acknowledged that this compromises the ability to convey a more nuanced picture of the political dynamics and variant positionalities of institutional players. Such analysis could be deeply informative, but is beyond the scope of this study.

4.2.1 Challenges Identified

At the ‘top’ of local officials listing of the most significant challenges facing the city in its territorial planning is the proliferation and management of informal settlements. Particularly, interviewees cited the obstacles faced in infrastructure and services provision and in settlements expansion into high risk and ecologically protected zones. While one official summed it as an issue of enforcement, stating “We have a lot of settlements in risk zones- we need to push for more control”, another gave a more nuanced perspective:

“There are neighborhoods that are in high risk zone but the municipality does nothing to address this. A primary reason is the legal conflict- people have (legal) claims there that are not being recognized and there is not enough social housing (in reference to regulations that call for the relocation of communities that can’t be regularized and receive titling due to their location in zones deemed high risk).”

Inconsistent normative and regulatory frameworks were also pointed to in the context of barriers to service provisions and infrastructures access: “The constitution guarantees buen vivir that supposedly includes the right to water but the Municipality says if a community is not regularized, then it does not have right to water- there is a contradiction here.”

Several interviewees also spoke briefly to the place of comunas as a ‘complicated’ territorial question facing the Metropolitan District. One local authority captured the complexity of this dynamic well when commenting:

“Rural concerns have to be on the table too, there are urban processes that are displacing rural areas. These include areas that are connected to their ancestral identity-the comunas- and there are many conflicts there. They struggle with autonomous governments at the local level. Their logic of understanding land is very different than the logic the municipality applies. There are many things that characterize the communal spaces...and there are internal land conflicts there too. For example in Santa
Clara Milan there are private interests inside the comuna that want to parcel of their plot and secure individual titling. We do not intervene in such conflicts—every 2 years we have to have a new reunion with the new cabildo of the comuna. The municipality has said if you want to be recognized as part of the municipality of Quito, you have to become a barrio of Quito. Comunas don’t pay taxes so the municipality says there is no reason why they have to give services”

A theme that emerged in almost discussions was the need to generally reorient the approach to territorial and land use planning. At a local level, several authorities and officials spoke of the municipal land use plan—Plan de Uso y Ocupacion del Suelo (PUOS)—as needing to be more “socially” focused. As one interviewee candidly put it: “Right now the PUOS is not structured in a way that is exactly equitable”. Another echoed the sentiment when saying: “in a way, it (the city’s land use plan) is a more sanction focused politics on land rather than a support focus”.

Interestingly, a few interviewees also spoke of the need for new, regionally informed models of planning. As one local authority stated: “European models still dominate how we approach territorial planning, we need to analyze from our (Latin American) reality what makes most sense.”

4.2.2 Solutions Needed

As was evident in discussions with all interviewees, a decisive change for the contemporary normative framework of land use planning was the 2010 passage of the national legislation Organic Code of Territorial Organization, Autonomy and Decentralization (this will be explored further in Chapters 5 and 6). Article 596 which sets a regulatory framework for the territorial management of informal settlements and Article 264 which reaffirms territorial planning as the prerogative of autonomous local authorities were pointed to by different local officials as examples of COOTADs critical impact in municipalities territorial planning.

50 Santa Clara Milan, mentioned in Chapter 2, is one of the oldest recognized comunas in Quito and one of 3 in the urban core of the Metropolitan District of Quito
51 Cabildos are the governing authority of comunas, as recognized in the 2008 constitution and 1937 legislation, and are elected every 2 years.
Interviewees from national level institutions spoke extensively too of the need for the (then proposed) Law of Territorial Planning, Land Use and Land Management to establish stronger instruments for land value capture and give directive to the better (and more social) use of land.\textsuperscript{52}

Regula tu Barrio, the Municipality agency that oversees land titling and regularization efforts for informal settlements, was particularly acknowledged across interviews with municipal level actors as a critical program. Policies like Ordinance 055 of the Municipal District of Quito and Article 569 of COOTAD that both mandate residents of newly regularized neighborhoods to contribute up to 50\% of the financing (vis a vis fees) of the infrastructure development in their communities were pointed to as recent innovations in municipal and national regulations. With this acknowledgment too though, came calls from several officials for reforming dimensions of the administrative and regulatory framework for regularization. This ranged from a general call for more enforcement\textsuperscript{53} to those of more progressive orientation such as the call to change regulations that mandate that neighborhoods be fully ‘regularized’ to be eligible for municipal infrastructure access and the call for the dedication of more funding for social housing (particularly for relocation of settlements that cannot be regularized).

For addressing the territorial inequities faced by marginalized communities, several officials were emphatic in speaking to the need for a more “polycentric” territorial order, seeing socio spatial segregation as symptomatic of a persistent center-periphery dynamic. This echoes a direction the national government has pushed- decentralizing the location of national government buildings in the capital\textsuperscript{54} and pushing for a concept of ‘ideal districts’ as outlined in the SENPLADES National Plan for Buen Vivir.

\textsuperscript{52} Since the time of these interviews in January 2016, the Law of Territorial Planning, Land Use and Land Management has passed into law (June 2016).

\textsuperscript{53} In almost all my conversations, enforcement was spoken of in two ways: 1) the need for controlling the “urban perimeter”, that is addressing settlements that are in zones deemed of high risk or in protected ecological corridors 2) the controlling of the ‘illegal trafficking’ of untitled lands (curbing the secondary, informal land market)

\textsuperscript{54} The national government is currently underway with building a Platforma Gubernamental in the Sur (in Quitumbe). It will include the Ministry of Social Development, The Ministyr of Urban Development and Housing, the Vice Ministry of Human Mobility (Immigration), Ministry of Public Health, Ministry of Social and Economic
Other critical points that came up with both national and local governmental stakeholders included:

- The question of vacant land (and even vacant building space) as an important part of addressing the need for land for social housing.
- Updating the cadastral, as a linchpin, in moving forward needed instruments for land value capture and addressing speculation.
- Understanding that, as one official aptly put it: “Right to land, territorial rights in the city...is not just access to property. It is other forms too- renting, use questions, associative property”
- Expanding regulations and restrictions on land use to curb speculation and better leverage, for the public interest, the municipalities authorities to gain more financing for urban development when granting construction and development rights

4.3 Research Perspective

Three well established and respected institutions of investigation focused on questions of urban development and territorial planning were identified for interview-Instituto de la Ciudad, Grupo de Investigacion Ciudad and the Centro de Investigaciones de Politicas Publicas y Territorio (CITE). The different vantage points they hold in the research community- one embedded in an academic institution, one adjoined to the Municipality and the other functioning more as a non-profit that works with neighborhood groups and leaders - provides added depth to the opinions they shared.

4.3.1 Challenges Identified

Interviewees were not hesitant to speak in strong terms of the socio spatial segregation they see reflected in the city. As one researcher at Instituto of the Ciudad put it: “Despite all the declarations and changes, there is a persistence of socio spatial segregation since colonial

Inclusion. See http://www.elciudadano.gob.ec/en-diciembre-de-2016-estara-lista-la-plataforma-gubernamental-social/
times. Quito has thrown people to the periphery of the city.” In almost all conversations this was tied to a political analytic of: 1) speculation and the driving influence of (real estate) market interests in defining land use policy 2) the lack of secondary laws to advance progressively oriented instruments for expanding social housing, access to land, greater spatial equity and capture of land value. As one interviewee put it: “There is not currently an understanding of the social function of land (said in relation to how the city approaches land use planning)…there is a legal framework through the constitution of Right to the city, etc... but there is a deficit in terms of secondary laws. There is not a Land Law for Social housing. There are not ordinances that guarantee this social function of land in the urban context”. Echoing this sentiment, several interviewees spoke to the limitations, and even problematic dimensions of existing approaches to social housing. As another put it, “Social housing is put in the peripheral areas of the city and they (the city, companies contracted) use minimum standards in constructing these social housing.”

**FIGURE 7. Social Interest Housing in the outskirts of Quitumbe**

Source: Author
The question of social housing also came up with several researchers in the context of what they see as a budding challenge in the historical center, where the city is making concerted efforts (and investment) to “recuperate” and “revitalize.” As two different interviewees put it: “The question of tenants and housing in the center is becoming more urgent”. He added: “…the narrative of the patrimonial city has been used to displace communities, this is what is happening as they recuperate the historic center.”

Another primary challenge pointed to by all organizations was the issue of speculation. The issue with land speculation one said “is a national issue”. One researcher noted: “the issue of land is that it hasn’t been legislated and regulated adequately...there could be something by law that says it (the price of land) can only be 50% of the cadastral value. But now people have the cadastral value artificially low to pay lower land taxes. When you have that, speculation is the part of the regulation”

For all, the issue of speculation and other land challenges were spoken of in relation to the political context and dynamics in which they are held. “Expansion of urban land has been subject to the logic of real estate interest” said one interviewee. Adding “...the alliance between real estate interests and politicians is entrenched. There is (for example) fervent opposition to the plan of plusvalia (capturing land value increment).”

Just as market forces were commented on, several interviewees remarked too on how the current political climate is experiencing a ‘deactivation’ of neighborhood groups. This was described as affecting the type and degree of demand making being brought to municipal authorities, as one researcher lamented: “The neighborhood movements are not how they were before- there has been a demobilization of social movements”

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55 The development of the historic center has been pushed over the Administration of Augusto Barrera, current Mayor Mario Rodas and even previous administrations. The plan includes incentivizing consulates and embassies to move downtown, to build hotels, new housing and beyond. Historically the centro has been an important zone for access to low income rental housing for recent migrants to the city, there are concerns these communities will be displaced (this came up in a conversations with several research organizations and community groups).
As outlined in comments from community and governmental actors, these institutions concurred in identifying infrastructure access (and costs), location of industry and the question of pressures facing comunas among the other primary land rights challenges facing historically marginalized groups in the city.

4.3.2 Solutions Needed

For addressing these land rights and land use challenges and for moving towards more equitable policymaking, interviewees pointed to both existing models and to new interventions needed. These generally could be characterized as a call for an increased state (governmental) role in land use planning.

The need for clear policies for addressing speculation and expanding access to land for social housing was a recurrent theme in discussions with these research institutions. Land banks, specific zoning for social housing and ‘bringing back the state role of expropriation’ of vacant lands were highlighted as the type of tools that should be looked at. Regional models—such as those in Brazil and Colombia—were pointed to by several as important ones to look at for innovative land use planning.

Several interviewees coupled these recommendations with a caution that access to the right to housing and right to the city is more than just the right to land, mentioning considerations of tenant protections and new models of housing as ones that should be in the mix. Just as governmental officials emphasized, the question of updating and examining the cadastral was also underscored among these research institutions as a fundamental step in policies towards reigning in speculative practices.

In addition to pointing to the need for such new approaches, this segment of discussions benefited from having nearly all interviewees also highlight aspects of recent or existing policies

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56 Commentary on the pressures facing comunas centered on: 1) the speculative pressures many are facing due to urban expansion 2) the pressures many are facing to become ‘regularized’ as neighborhoods in the city

57 An example was given of communities in the Centro that are purchasing, collectively (through their church), a building as a way to secure housing.
they felt have been positive for achieving more equitable territorial planning: expanding public transit in the Sur; obtaining special contributions for public betterment projects; approaching regularization at a neighborhood wide scale were the different examples given.

4.4 Issues Identified

These interviews provide a grounded pulse on where land use and land rights questions are most urgent and, as such, an important point of departure for defining issues that should be accounted for in a more equitable approach to land use policy. An analysis of the feedback detailed above surfaced the following issues I grouped under four themes (not ordered in priority):

Territorial equity-

Land Quality

- Many communities continue to face barriers to accessing infrastructure and related urban services due to current (inconsistencies) in regulations
- Issues of contamination and position of land in relation to industry are important ones for neighborhoods in the ‘periphery’
- Cultural considerations in land use are important for territorial equity in the city- *comunas* and *barrios indígenas* break from the traditional urban and rural paradigm. For these communities, land use needs often go beyond the strictly residential uses accounted for in current regulation (for example land for farming, land for community or educational spaces, etc)
- Increasing investment in social housing and ceasing to locate social housing in peripheral zones of the city are critical to addressing territorial inequity

Land Value-

*Market Regulation, Capturing value for the Public Interest*

- Addressing speculation is a priority item for better regulating the land market and for moving toward more equitable land use planning
• There is growing consensus that land value increments need to be captured by public authorities and, in general, that the costs of urban development need to be more greatly distributed among beneficiaries.

• The need for updating the cadastral is seen by many as fundamental to both addressing speculation and to moving forward instruments for stronger market regulation.

Land Access-

Creating Access, Securing Access

• Facilitating regularization processes for neighborhoods continues, for many, to be seen as priority strategy for addressing the land concerns of marginalized communities.

• There is a need for more policies to support land access for social housing- such as looking at vacant land and asserting the states ‘powers of expropriation’ for obtaining land for social housing.

• Land access in the urban setting is more than just direct access to land- tenant rights and other forms of property ownership should be part of the considerations of how access to land in the city be expanded and sustained (such as preventing displacements).

Land Management-

Governance, Autonomy and Participation in Territorial Planning

• The recognition by municipal authorities of the territorial autonomy and authority of comunas is still lacking

• Greater engagement by municipal authorities with neighborhood and community groups is critical to more equitable land use management- communities should be defining what territorial priorities need to be acted on and where investments should be directed.
CHAPTER 5: CONTEMPORARY LAND POLICY

Having identified some major issues to be considered for moving towards more equitable approaches to land use policy, this chapter now turns to an examination of the key national policies directing contemporary land use policy in the post 2008 period. Specifically, this entails two policies: the 2010 Organic Code of Territorial Organization, Autonomy and Decentralization or COOTAD and new (2016) Law of Territorial Planning, Land Use and Land Use Management.

The goal of this section is not to give an exhaustive evaluation of these legislations but rather to examine and catalogue elements in each that speak to the issues raised in Chapter 4 and outlined in contextual overviews of Chapters 1 and 2.

The purpose of this exercise is to help answer the question: have there been more equitable approaches to land use policy making in the post 2008 period?

While, perhaps obviously, looking at the language of the policies does not measure the extent of implementation of such normative directives (nor the political will, funding, resources, etc. behind them) what it can inform, I want to argue, is a better understanding of the intent of the national and municipal policy environment. In the subsequent chapter, Chapter 6, these policies are evaluated in light of where (and where not) they align with considerations, questions and issues raised in the introductory chapters.

It is essential to acknowledge that other instruments inform, and directly structure\textsuperscript{58}, the land use policies of Quito. These include, but are not limited to:

- Municipally:
  - Metropolitan Development and Land Management Plan (Plan Metropolitano de Desarrollo y Ordenamiento Territorial)- This plan is set forth by each Municipal Administration and defines the land use and land management strategies of the

\textsuperscript{58} In terms of priorities set, programming, funding, etc.
municipality in terms of its economic, social, environmental and urban planning objectives; articulates instruments and procedures for implementing activities that affect the structure of the territory; and defines programs and projects for implementing any land use strategies.

- **Land Use Plan (Plan de Uso y Ocupacion del Suelo or PUOS)** - The PUOS is the main instrument of territorial planning in the city that sets the parameters and specific rules for the use, occupation and division of land (such as zoning). It is required to be review and updated every 5 years.

- **Nationally:**
  - The National Plan for Buen Vivir, explored briefly in Chapter 2, is the national development plan and primary ‘platform’ document of SENPLADES (the National Secretariat for Development and Planning). It sets strategies for national and regional (territorial) planning, outlines the national development objectives and sets guidelines for public investment. In its strategies for regional development are included Agendas by Zones, including an agenda for Zone 9 the Metropolitan District of Quito. This national development plan is elaborated every 4 years, currently the 2013-2017 plan is underway.

The municipal policies observed here are treated only in brief, with an aim simply of ‘registering’ some key ordinances in the post 2008 period that treat the land rights and land use questions of this study’s interest. This decision of a limited scan of the municipal sphere was made on an assessment that a responsible look at the evolution of municipal policy making would require both a detailed combing through of the many ordinances that span this period and an accounting for the significant political change in Municipal Administration that has happened over the time period examined, both of which are beyond the scope of this study.
The Chapter is structured in the following format: (1) Overview of the major objectives of legislation; (2) identification of articles that speak to the political context or demands of historical marginalized communities (as presented in the scope of this study)

Chapter 6 will pick up from this ‘snapshot’, to put the policy components outlined here in conversation with the land rights and land use issues raised in previous sections.

5.1 National Legislation

The two national policies examined here were selected because they are the primary policies in the post 2008 period addressing urban land use questions.

5.1.1 Organic Code of Territorial Organization, Autonomy and Decentralization

The Organic Code of Territorial Organization, Autonomy and Decentralization or COOTAD established the legal framework for territorial organization, planning and decentralization as directed by the 2008 constitution.

This law was widely pushed for after the passage of the constitution as it was seen as vital to setting in place a more equitable structure for financing local governments and to establishing needed instruments and mandates for territorial planning. After a substantive process of engagement with political and social actors in 2009, COOTAD became law in 2010. The strongest push for the legislation came from local authorities and members of the National Assembly affiliated with Alianza Pais, the ruling political party. Resistance to the legislation was raised by local authorities and National Assembly members from leading center-right opposition parties like Madera de Guerrero and Movimiento Popular Democrático MDG, who in particular, raised concerns on the expanded taxes and fees the legislation called for. Such resistance was measured though, as even these opposition parties acknowledged the importance of many other elements included in the legislation.

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59 In Ecuador, local authorities are referred to as Decentralized and Autonomous Governments or GAD.
COOTAD consists of 9 Titles and 599 Articles, setting into a single regulatory body: the structure of territorial organization (TITLE II); the procedures for administration, planning, coordination and citizen participation in decentralized territorial authorities (TITLE VII); the territorial districts of Indigenous, Afroecuadorian and Montubia comunas, comunidades, pueblos and nationalities (TITLE IV); the special disposition of Metropolitan and Municipal governments (TITLE IX); and, the general authorities, obligations and financial resources of the Decentralized Autonomous Governments (TITLE III, VIII IX).

Provisions that speak to issues of concern:

- **Article 458 Control of Invasions and Illegal settlements** - establishes the responsibilities of local authorities to take all the administrative and legal measures necessary to avoid invasions and illegal settlements
- **Articles 494, 496 Updating the Cadastral/Updating assessments and land registration** - Requires Municipalities and Metropolitan districts to keep updated cadastral and assessments of urban and rural properties, biannually
- **Article 507, 508 Tax on properties not built** - Establishes an annual surcharge for properties in urbanized areas that have not been built on. Article 508 puts on additional surcharge on unbuilt properties in priority urban zones as a measure to counter speculation
- **Article 561 Land Value Increments from infrastructure works** - Outlines how Municipal investments, programs, projects that generate land value increments should be accounted for in biannual updates of land assessments and registration
- **Articles 569-593 Special Contributions for Improvements** - Outlines the parameters for collecting contributions (for benefits gained of a property) with the construction of any public works; Municipal authorities may reduce or waive the payment of the special contribution in consideration of the social and economic situation of taxpayers.
- **Article 594, 595 Expropriation of property for social interest housing** - Gives Municipalities and metropolitan districts the authority to expropriate properties in urban zones that have been unbuilt for 5 or more years, properties in urban zones or in areas of expansion (covering a surface area of ten thousand square meters or more) or deteriorated buildings
(that don’t qualify as historical landmarks) during a period of 6 years from notification.

- **Article 596 Special Expropriation for regularization of urban settlements**- With the objective of regularizing informal settlements, metropolitan and municipal governments can declare those properties of public interest to portion basic services and define the legal status of landholders. This will be done via resolutions of the local legislative body. Via ordinance, each metropolitan or municipal authority will also establish criteria for what qualifies as a consolidated settlement (that is meeting requirements to petition for regularization).

- **Article 93 The territorial districts of Indigenous, Afroecuadorian and Montubia communities, pueblos and nationalities**- Recognizes the ancestral territories of Indigenous, Afroecuadorian and Montubia communities as special instances of decentralized, autonomous governments. **Article 99** establishes that these territorial districts will exercise the authorities of a decentralized autonomous government with the final purpose of guaranteeing the collective rights and *buen vivir* to its residents, as recognized in the constitution. **Article 103** recognizes the inalienable and indivisible rights of comunas, communities, pueblos and indigenous nationalities over their community lands. These lands will exempt of fees and taxes; and legally recognized without charges.

### 5.1.2 Law of Territorial Planning, Land Use and Land Use Management

After several years of deliberation, this June 2016 the National Assembly passed the Law of Territorial Planning, Land Use and Land Use Management (*Ley Organica de Ordenamiento Territorial, Uso y Gestion del Suelo*). As stated in Article 1, the Objective of this law is “to establish the principles and general rules governing the exercise of the land use planning and land use management of urban and rural lands so as to advance a more equitable and balanced development of the territory and the realization of the right to the city, the right to a healthy and safe habitat, the right to adequate and dignified housing, the fulfillment of the social and environment of land and property and giving impulse to urban development that is inclusive and integrative for the *Buen Vivir* of residents”.

The Law was strongly pushed for from within government institutions, namely the National Secretariat of Planning and Development (SENPLADES) and the Ministry of Urban Development and Housing (MIDUVI). Local authorities from leading opposition parties, including the current Mayor of Quito Mauricio Rodas and the Mayor of Guayaquil Jamie Nebot, have been vocal in their intense opposition. Chiefly cited are their concerns that this policy overreaches into what are competencies of local authorities and in doing so, violates established mandates of COOTAD and the Constitution.

The Law rests on 5 instruments of land use management, as outlined in Article 47: (1) Instruments for equitable distribution of costs and benefits (2) Instruments to intervene urban morphology and property structure; (3) Instruments to regulate the land market. (4) Financing instruments of urban development. (5) Instruments for land use management settlement of informal/precarious settlements.

Provisions that speak to issues of concern:

- Article 5, Guiding Principles-
  - Section 2 Territorial equity and social justice- All decisions taken in relation to territory will tend to guaranteeing, for the population that is settled in it, equal opportunities for taking advantage of options for sustainable development and access to the basic services that Buen Vivir guarantees.
  - Section 6 The Right to the City- Defined as the following elements: (a) The full exercise of citizenship that ensures dignity and the collective well-being of the inhabitants of the city in conditions of equality and justice; (b) The democratic management of cities through direct and representative forms of democratic participation in the planning and management of cities, as well as mechanisms for public information, transparency and accountability; (c) The social and environmental function of property that puts the public interest before private interest and guarantees the right to safe and healthy habitat. This principle includes the prohibition of all forms of confiscation.

- Article 7, Implications of social and environmental function of property- Brings
definition to the social and environmental function of property in urban areas and areas of rural land for urban expansion. It defines these implications as including: The right of society, in general, to participate in the benefits produced by urban planning and urban development; the control of speculative real estate practices and the encouragement of socially just and environmentally sustainable land use; Promoting conditions to facilitate access to land with services to people with low and middle incomes.

- **Article 60 Instruments to regulate the land market** - Identifies instruments to regulate the land market, prevent speculative practices on property and facilitate the acquisition of public land for urban development. These instruments are the right of pre-emption, the declaration of priority development and construction, zones demarcated for social interest, the announcement of the projects, surface rights and land banks.

- **Article 65 Declaration of Special Zones of Social Interest** - Directs Municipal and metropolitan governments to declares special zones of social interest that should be fully integrated in the urban or in areas of urban expansion. In fulfillment of the social and environmental function of land, these zones will be dedicated to social interest housing and for the relocation of residents who are settled in risk zones. This declaration permits local governments to proceed with expropriation on behalf of those that will benefit, whom will be able to acquire lots according to their socio economic condition and ability to pay.

- **Article 71 Instruments for financing urban development** - Identifies instruments for financing urban development as mechanisms that permit society to take part in the economic benefits produced by urban planning and urban development, particularly when: 1) when rural land is transformed to urban land 2) when rural land is transformed to land of urban expansion 3) when land uses are modified 4) when greater land uses are allowed.

- **Article 76 Declaration of Priority Regularizations** - Directs local governments to identify zones that should be object of priority consideration for regularization in their land use plans.

- **Article 85 Social Interest Housing** - Defines social interest housing as adequate and
dignified housing intended for priority groups and residents in situations of poverty or vulnerability, especially those that are members of indigenous, afroecuadorean or *montubio* communities. Outlines that programs of social interest housing are to be implemented in urban land that counts with the necessary infrastructure and services for construction, access to public transportation and that promotes the socio spatial integration of the population via the preferred localization (of these programs) in consolidated areas of the city.

- **Article 87 Access to land for social interest housing**- Directs Municipal and metropolitan governments to facilitate the acquisition of urban land for social interest housing programs. In metropolitan districts of more than 20,000 inhabitants or in those where problems for access to housing persist or are observed, the land use plan will establish that private residential developments will dedicate no more than 10% of development to social housing

- **On Governance and Administration**- Articles 92 and 93 calls for the conformation of Technical Board of Land Use and Management which will have the authority to oversee national regulation on land use management. Article 95 establishes the authority of Superintendent of Territorial Planning, Land Use and Land Use Management, a national level Superintendence to monitor and control land use planning processes. This entity has sanctioning capacity; the Superintendent will be named by the (Executive) Council of Citizen Participation and Social Control

### 5.2 Municipal Legislation

As stated in the introduction to this chapter, a deep look at the Municipal policy environment was not the target of this research. I briefly take stock of it here by listing those ordinances that directly speak to the issues and considerations that have been highlighted to this point.

These local ordinances are important to evidence as they can give some insight into how national policies are taken up (or not) locally. Most of the ordinances put into effect in the post 2008 period take directive from instruments and mandates outlined in COOTAD. Given the very
recent passage of the Law of Land Use Planning and Land Use Management, it is too early to
gauge if the same will hold true with the instruments introduced by this legislation.

Ordinances are grouped by the years of the Administrative period when they passed.
The 2009-2014 period was under the Administration of Mayor Augusto Barrera of the center
left Alianza Pais party, the 2014- present period is of the Administration of Mayor Mauricio
Rodas of the center right SUMA party.

Key Ordinances 2009-2014 Period

- **Ordinance 434 Regula tu Casa/Regularize your House**- Sets up the regulatory and
  programmatic framework for the Municipalities primary program for regularizing
  informal settlements/neighborhoods without legal land title.

- **Ordinances for capturing land value increments**:
  - **Ordinance 154 Special Contribution to Improvements (Infrastructure)**- Sets up
    the regulatory framework to require contribution (from private developers) for
    large public infrastructure projects
  - **Ordinance 338 Tax on Utilities and Capital Gains in Urban Property Transfers**-
    Sets the regulatory framework for charging a tax on capital gains and utilities in
    the moment of sell or transfer of a propert.
  - **Ordinance 152 Land Valorization**- Updates the regulatory framework for how
    land value will be assessed

Key Ordinances 2014-present

- **Ordinance 055 & 099 Informal Settlements, Procedures for Expropriation and
  Allotments**- Updates the process for expropriation and allotment of land for
  regularization of informal settlements
  - Article 24 of Ordinance 055 States that only once regularized can neighborhoods
    begin process of connecting to urbanization/infrastructure services. It also
    mandates that costs of infrastructure services be covered
• **Ordinance 061 Property Taxes for Informal Settlements and Social Interest and Popular Housing** - Updates property tax structure for informal Settlements and properties of social interest housing.
CHAPTER 6: JUNCTURES + DISJUNCTURES

With a look at the contemporary policy context in hand and with the frame of analysis that has been built in Chapters One to Four, this Chapter now looks to take stock of how policies are or are not aligning with key principles set out in the constitution (that have implications for land rights policies) and with addressing land concerns and needs of historically marginalized communities. In doing so this hopes to support a better understanding of what transformations are advancing and where gaps may exist.

To organize this discussion, reflections are grouped as points where there are “Junctures” and points where there are “Disjuncture”. Topics highlighted are based on the major issues identified in Chapter Four- questions of Territorial equity; Land Value & Market Regulation; Land Access; Land Management & Governance- as well as perspectives that came up in the examination of the socio spatial conditions and political historical context.

6. 1 JUNCTURES

In many ways, new policies- particularly the most recent Law of Territorial Planning, Land Use and Land Management- speak to land rights concerns that have been raised and in doing so have helped move towards more equitable approaches to land use planning. Highlighted here are some significant ways this is happening:

Territorial Equity

In important ways the constitution and the demands of marginalized communities in the city have called for greater territorial equity (in the constitution, see for example Article 3). Part of the challenge with considering policies that best address territorial inequity is that that concept can mean different things to different stakeholders.

Dimensions though that clearly surfaced across these analyses were the need to address socio spatial segregation and greater access to services (and Infrastructure) across the city. There are several ways the new legislation looks to address these questions:
- Article 5, the Guiding Principles are based in a commitment to territorial equity and in defining that as tied to the rights of Buen Vivir.
- Article 7, Details Implications of the social and environmental function of property
- Article 85 Prioritizes location of social interest Housing that is located in a place with necessary infrastructure and services, access to public transportation and in a way that promotes socio spatial integration
- Article 87 Access to land for social housing and also allows for regulations for larger cities (20,000 residents or more) to require no more than 10% of a new development to be included/dedicated to housing of social interest

**Call for Greater State Role in Regulating the market**

Consensus seems to be growing on the need for greater state intervention in regulating the market and exacting the public function (and benefit) in land use planning, this is reflected in the recent policies.

The New Law of Territorial Planning, Land Use and Land Management puts forward various instruments for regulating the market, these are outlined in Article #60 and include the right of pre-emption, the declaration of priority development zones or zones demarcated for social interest; the announcement of the projects, surface rights and land banks. All of which are meant to support controlling speculative practices (the call for controlling speculative practices is also outlined in Article 7, Section 4).

There are several other important ways recent legislation has strengthened the state’s role in directing land markets- one is affirming and expanding the state’s power to expropriate. This has been important one for facilitating the regularization of hundreds of informal settlements- for example Articles 594, 595 & 596 of COOTAD and has translated into local regulatory tools like what Unidad Regula tu Barrio at the local level (passed through resolution 178 in March 2010).
In COOTAD (Articles 507, 508) a regulatory framework was also set up to tax properties that have not been built on- asserting the state’s role in putting forward sanctions when the social (or environmental function) is not being met.

**A Rights based Approach to land**

An important part of the contribution of new frames like Right to the City, *Buen Vivir* and the social function of land is that they expand out considerations of rights to be more comprehensive and inclusive of a multipronged fulfillment of rights. In defining out these concepts-see Article 5, Section 6 for a definition for Right to the City and Article 7 for the “Implications” of the social and environmental function of property- important headway is being made in positioning land as complex but decisive right.

**Creating land access**

Important Advances are set up in this regulatory framework for expanding access to land for social interest housing:

- Article 65 Special Zones of Social Interest, calls for well-equipped and well integrated land to be set aside for social interest housing.
- Article 87 Access to land for social interest housing- Municipalities required to use mechanisms (set out in this law) to acquire land for social interest housing. In larger cities, up to 10% of a development can be dedicated to social interest housing.

**Taking a regional approach**

As was apparent in various interviews conducted, there is a strong desire (and call) to look to Latin American models as the way towards new approaches to land use policymaking. Many of the policies adopted in both COOTAD and the new legislation echo land use strategies that have been applied in neighboring regions of the continent (like Colombia and Brazil). These include the special interest zones-such as the ZEIS in Sao Paulo- and the announcement of projects and declaration of special zones of interest such as the Colombia.
Together this evidences the formations of strong regional policy approaches. The secondary legislations on land use planning and management examined here hold potential, if implemented effectively and equitably, to positioning Ecuador as an important actor in the regional pushes towards more progressive land policy making.

6.2 DISJUNCTURES

Yet, just as important advances are being made through these secondary laws, it is equally important to point attention to some areas where policymaking may not be fulling aligning with how land rights needs have been articulated by community groups or what intentions were set out.

Territorial Equity

Current regulations still set the right to access infrastructure as one first requiring that a neighborhood be regularized. There is a fundamental contradiction here, the constitution guarantees the rights of buen vivir for all residents (including right to water and other related infrastructure) but this ordinance makes it contingent on “legal” status in the city. For example, many comunas and barrios indígenas face barriers with infrastructure access because they are not regularized like other neighborhoods because of their alternate territorial structure.

In addition, while there is reason to applaud regulatory instruments like the Special Contributions for Improvements (Articles 569-593 of COOTAD) there is also reason to question how equitable it is to apply these types of fees to low income neighborhoods in the process of regularization when such infrastructure development was just taken care of in other parts of the city without such extraction of contributions from residents.

Land Management & Governance

Several issues relating to governance and land use management come up in a reflection of the analysis and policy findings:
Although there is important recognition of the *comunas* and ancestral lands of historically marginalized groups in Article 93 of COOTAD, the experiences of *comunas* (and the studies on these territories) and *barrios indígenas* show that important challenges remain in land use and land use planning questions affecting these communities and they feel it is not translating on the municipal level. As noted above, they face barriers to access to full “rights to the city” and also face pressures of speculation.

It is unfortunate to see the recognition of these territorial districts void in the new land use legislation, suggesting that issues of indigenous communities continue to be relegated as more ‘rural’ issue and not counted for sufficiently in the land use planning of urban development.

Another governance concern is with the structure of the new land authority. The centralized nature of the “Superintendence” in the new land use legislation brings up questions (and potential concerns) about the degree of participation/incidence movement and community groups will be permitted to have with this institutional entity, as this was already flagged as a concern with municipal authorities.

**Land Value**

While it is positive to see the advancement of several instruments for capturing land value increments in the new legislation (Article 71), it is interesting to note that writ large all policy making on land is still centered on the market/exchange value of land. This could be connected to the invisibility that is given to spaces like *comunas*—because their value of land is one tied to identity and history, not necessarily market value.

Another point of concern with the land value capture tools is that while they should be lauded as an innovative municipal financing tool, it is unclear how much they can be considered an equitable tool for land policy making. Will this mechanism reinvest fees collected back into
social housing? It is unclear legislation will require this and thus ultimately unclear who/what type of development will benefit from these new funds collected.
CHAPTER 7: CONCLUDING THOUGHTS & RECOMMENDATIONS

In examination of how contemporary policies speak to the land rights concerns and conditions of historically marginalized groups (as raised in Chapters 1-4), it is clear serious advancements have been made in moving towards more equitable land use policymaking. Mandates to expand social housing and to greater regulate the land market as seen in the most recent Land Use legislation are evidence of this as were previous reforms introduced by COOTAD like those that facilitated land regularization and those that spoke of more even distribution of costs and benefits in infrastructure development.\(^{60}\)

Yet, alongside these advancements, the need for deepening equitability remains pertinent. As outlined in the disjuncture(s) discussed in Chapter 6 there are important sets of issues where attention (and different approaches) are called for: greater integration of indigenous communities (with respect to their territorial autonomy) in urban land use planning; addressing barriers to accessing basic infrastructure and services;

It is imperative to explore what steps can be taken to deepen equitability on these and other critical fronts. But before identifying such recommendations, a reflection on the current context (of contemporary land use planning) is important to help inform what considerations might need to be taken into account to carry any needed changes forward. In looking at equitable approaches to contemporary land use planning the way this study did we should ask: what was learned about the opportunities that are present (and that can be built on) for moving forward more equitable policy? what was learned about potential barriers for moving forward more equitable policy?

\(^{60}\) See Municipal Resolution 178 that sets up Regula tu Barrio/Regulate Your Neighborhood (the main city program for regularizing informal settlements); and, Ordinance 055 which facilitated the regularization of informal settlements across the city. Ordinance 154 w setting up greater distribution of costs and benefits in large public infrastructure projects, as supported in COOTAD Articles 569-593
After taking stock of this context, a list of recommendations for deepening equitability in land use policy are identified. Considerations of equitability are drawn from the frames of analysis explored in Chapters 1-4. This list of recommendations serves to close out the study along with an assessment of limitations of the research undertaken.

### 7.1 Opportunities and Barriers

**Opportunities**

While significant barriers need to be accounted for in considering why inequities persist and how to move more equitable policies forward, there are also aspects of the current policy framework that represent critical opportunities to be built on. These too should be accounted for in setting the path forward.

- **Reinsertion of the state role**- As evidenced in Chapter One and subsequent points of the study, a driving factor of the territorial inequities that have taken hold in Quito has been the systematic lack of regulation. In strongly reinserting the role of the state—through instruments like expropriation of vacant land for social housing, the zoning of special districts for social housing, and the capture of land value increments—these policies present an opportunity to significantly shift from what has long been a market driven land policy regime to a regime that centers on concerns of territorial equity. This shift is historic and should be uplifted as such.

- **New instruments, new opportunities**- In establishing a diverse set of directives for regulating land use, these policies give local authorities opportunities to move beyond regularization as a focal strategy for addressing the housing and land needs of historically marginalized communities. Innovative interventions, such as the zoning of special districts for social interest housing, will support governments in better tackling root causes of the land challenges these communities face.

- **Regional approach, regional leadership**- as has been highlighted, taking from and building more localized approaches to land policymaking is something that is identified
as highly important to local actors. In pulling best practices from the region into a comprehensive new approach for Land Use regulation, Ecuador is in a unique position to be such a regional

Barriers

While important progress has been and can continue to be made, it is imperative to recognize the barriers that may limit opportunities to move forward effective implementation of the policies examined as well continued efforts towards more equitable land policy making.

• Political (un) alignment- From 2009-2014 the Municipal Administration aligned politically with the national administration (both of the Alianza Pais party). Such alignment undoubtedly facilitated the translation of instruments introduced at the national level with COOTAD to municipal level ordinances. The shift in Municipal administration since 2014 to one of an opposition party puts into serious question how the most recent national level policies will be taken up at the local level.

• Regulating Speculation- while both policies examined establish a rich set of instruments for regulating the market and reigning in speculation, it is paramount to not underestimate the resistance such changes will confront in face of powerful entrenched interests of the real estate and construction industry. Sustaining strong political backing of these policies through implementation at the local level will be critical to ensuring their effective and equitable application.

• Governance- Among the many critical transformations established in the new constitution, the mandate to shift towards more decentralized governance and participatory approaches to planning was a principle one. The directive in the new Land Use legislation for establishing centralized authorities for overseeing land use management- such as the conformation of a national ‘technical board of land use management’ and the appointment of a ‘Superintendent of Territorial Planning, Land Use and Land Use Management’- is inconsistent with the intention of the constitution.
Such centralized governance structures around land use management limit the ability for historically marginalized communities to have

7.2 Recommendations

To deepen equitability in land use policies, the following points are identified as important steps and considerations to be taken. These, again, are based on the issues and frames of analysis examined in the introductory chapters. They are offered here in support of expanding upon the critically important advancements that have already been undertaken to move towards more equitable land use policies.

1. **Institutionalize the recognition of the territorial rights and autonomy of indigenous communities at the local level**

   While firm recognition of the territorial authority of indigenous communities is included in the national normative framework, the translation of such recognition at the local level has been challenging. The place of *comunas* and *barrios indígenas* in the city remains under accounted for. Steps should be taken within the municipality to better integrate the concerns and participation of these communities in the city’s land use management regime, in a way that respects their authorities as autonomous territories. This should go beyond consultative forms of participation to the establishment of formal structures for engagement in the administrative and legislative bodies that oversee land use management.

2. **Deepen Redistributive Approaches to Land Policies**

   As outlined in Chapter Three, important insights can be drawn from an examination of land reform. Namely, the consideration that land policies seeking to address inequities must fundamentally be tied to addressing inequitable concentration of land ownership via land redistribution. In traditional rural land reform this implied, among other measures, setting maximum ceilings on owned farmland and establishing mechanisms for direct redistribution of land. As greater market regulation is taken up in new policies
such frameworks can be highly instrumental in how we consider deepening equity. Examining concentration of land ownership in the urban setting, for example, could be an important component of new mandates to update the cadastral. Direct redistribution of land- vis a vis instruments like the expropriation of vacant land- should be centered as necessary strategies towards addressing existing inequities. And, given the constraints of broader scale direct redistribution in a dense urban territory like Quito, attention should be given to how redistributive approaches can be applied to land value. Instruments that seek to capture land value increments for the public interest (as those included in the new legislation), should have redistributive policies in place with them to ensure taxes and fees collected are distributed back to investments that benefit marginalized sectors of the city (such as expanding access to land for social interest and building more social interest housing).

3. **Move towards more Participatory and Decentralized structures of governance**
   As articulated in the preceding section on barriers, it is paramount to move towards more participatory and decentralized structures of governance for land use management. Rather than take the direction of more centralized structures for oversight as proposed in the new legislation, bodies should be established at the municipal level that bring an inclusive and more community centered approach to land use management. For example a board of land use management that includes (voting) seats for community groups and other civil society actors engaged in questions of land rights and land use policies. The municipality should work with community groups to identify what such structures should look like.

4. **Prioritize capacity building**
   In moving forward the directives of the new legislation, it is imperative for the government to prioritize capacity building in its implementation plan. Community groups representing historically marginalized should be supported in examining the new policies and exploring how it can benefit their communities. With greater ownership of
these policies by groups most effected by territorial inequities, broader political support will be in place to ensure their effective, timely and equitable implementation at the local level.

5. **Ensure a Right to the city and Right to Buen Vivir**

Remove barriers in existing regulations that prohibit communities from accessing infrastructure services. For example, the constitution clearly states that buen vivir constitutes the right to access of water. To ensure residents are adequately ensured the rights of buen vivir as guaranteed in the constitution, it is important to remove regulatory barriers to infrastructure access. Provision of basic infrastructure services should not be contingent on the regularization status of land. Moreover, any regulatory framework built out to advance the right to the city or right to buen vivir in the Quito context should do so appreciating the importance of breaking strict urban-rural dichotomies (as new Latin American approaches to Right to the City are encouraging). In practical ways this includes understanding that land use for some urban communities—such as indigenous communities—includes land use practices deemed rural in traditional land use considerations. It can also include the right to territority in the sense of land’s place as a place for consolidation of identity or culture. In this sense, for some communities Right to the City is not just a right to the strict urbanized sense of what city is traditionally thought of.

6. **Build out the secondary, equity centered land market**

The establishment of a strong and diverse set instruments in the new Land Use legislation to address speculation makes urgently needed strides to better regulating the profit driven land market that has helped fuel territorial inequity in Quito. The challenges of implementing and ensuring compliance with such policies will, as noted above, likely be heavy. While they are undoubtedly necessary, they alone can have limited impact in tackling some of the root causes that drive territorial inequity—chiefly the lack of equitable access to “good” land for historically marginalized communities.
For this reason, the inclusion of directives to establish Zones of Social Interest and to obtain vacant land for social interest housing are critically important. Such initiatives help establish what I would like to posit as a secondary, equity centered land market. That is, land that is managed outside of the profit centered logic. To begin to fundamentally shift towards greater territorial equity it is imperative to prioritize and build upon these policies, including exploring other mechanisms—like caps on land prices or the Community Land Trust models.

7.3 Limitations of the Study and Areas for Further Research

There are several limitations of this study that are important to point to in closing both as a way to responsibly account for what is lacking in the analysis that has been drawn and as a way to support any continued efforts to deepen looks at equitability in urban land use planning in Quito.

- **Scope of study:** This study intentionally took a broad look at a spectrum of land rights and land use issues affecting historically marginalized communities in Quito. This wider snapshot does not benefit from some of the more nuanced understandings that can come from deeper case study approach. A more detailed look at the comunas or the case of a (or several) informal settlements could have perhaps deepened an understanding of some of the issues just “listed” here in this study.

While I tried to highlight some zones where land rights questions are urgent (where precarious conditions are pervasive) and where socio spatial segregation is most felt, there are undoubtedly many other important struggles for land rights in the district. Some mapping and more comprehensive identification of such ‘hot spots’ for land disputes could be important and help inform more district understandings of the type of issues communities are facing writ large (seeing patterns if applicable).
• **Political context and ‘targets’ of study:** As outlined in Chapter Two, a critical limitation of this analysis is that it does look at the full spectrum of political forces and interests shaping the land market and land use policies. What are market forces (such as the Real Estate and Construction Industry) and political forces that accompany them (such as Chambers of Commerce) pushing for in terms of land policy? What other land use interests, such as mega infrastructure projects, are driving development in the city? What investments are connected to such projects and, what impacts are being faced as a result of them? These are critical questions to look at in order to take a more comprehensive stock of the context of contemporary land use policy in Quito and to better understand what factors are hindering or facilitating a move towards more equitable approaches.

• **Mechanisms examined:** In examining only the legislative instruments, this study does not take sufficient account of the many other regulatory instruments (and conditions) that affect land policy making. Considerations of the institutional environment, the judicial system and beyond are critical to fully understanding how land policies are being shaped and implemented (or not).

• **Implementation and Governance:** In looking just at the language of a policy, that is its intent, one cannot fairly account for how (and how not) legislation is translating into actual lived change on the ground. Many important questions and considerations come up when thinking about implementation of policies: are there resources in place to support implementation? As aforementioned, are other key institutions like the courts or the planning agencies supporting implementation? Key to this too are questions of governance. What decision making bodies oversee land use management now? Who compromises those bodies and are their seats for community groups at those tables? A critical look at what governance structures are in place now for land use management could bring needed insight on what mechanisms are in place for effective advocacy and where changes may be needed.
References


Ecuadorean Constitution, Articles 3, 31, 57, 275, 276, 282, 340-415


Ley Orgánica de Ordenamiento Territorial, Uso y Gestión de Suelo, Republica del Ecuador Asamblea Nacional, Registro Oficial No 790 (2016).


APPENDIX 1. LAND USE MAP OF QUITO