LAND TENURE, HOUSING RIGHTS AND GENDER

BRAZIL

Law, Land Tenure and Gender Review: Latin America

UN-HABITAT

LAND TENURE, HOUSING RIGHTS AND GENDER

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Foreword to Latin America Law And Land Tenure Review

Security of tenure is one of the cornerstones of Millennium Development Goal 7, Target 11 on the improvement of the living conditions of slum dwellers. It also plays a crucial role in the implementation of Target 10 on access to improved water and sanitation and is thus the main focus of UN-HABITAT's Global Campaign for Secure Tenure.

While urbanisation trends and living conditions of the urban poor vary considerably from country to country in Latin America, the region is generally characterised by rising poverty and social inequality. The majority of urban dwellers hold precarious tenure rights to the land they occupy, hindering their access to basic infrastructure and services, including water and sanitation, health and education, and rendering them vulnerable to forced evictions.

Through the generous support of the Government of the Netherlands, UN-Habitat is pleased to publish its review of the legal and policy frameworks governing urban land tenure in Latin America. This report provides an overview of the situation in all twenty countries of the region as well as four case studies on Brazil, Colombia, Mexico and Nicaragua. These case studies provide a comprehensive analysis of the laws and policies governing urban land tenure, with a special focus on women's rights to land and housing. National experts in each country have conducted extensive research on the often-complex legal issues which hinder or enable the efforts of Governments, local authorities and their civil society partners in attaining the Millennium Development Goals.

It is noteworthy that Latin America has registered some progress in achieving these goals. The region is home to a number of positive and innovative laws and practices providing security of tenure, and a well-established civil society has contributed significantly to advancing a rights-based approach to housing. There remains, however, a lot to be done. Reducing inequality is a key cross cutting issue that needs to be incorporated in all sectoral reforms in the region. Land reform is pivotal to furthering this objective while providing security of tenure constitutes an important first step in reducing the vulnerability of and the constraints facing the urban poor. Secure tenure alone will not, however, be sufficient and a clear message that emerges from this review is that good urban governance is essential to achieving the full effectiveness and desired impact of tenure security programmes.

This review contains findings and recommendations for both immediate and longer-term law reform to strengthen the tenure rights of all people, especially the poor and women. While they will further guide and inform UN-HABITAT's normative work through its two Global Campaigns for Secure Tenure and Urban Governance, it is my sincere hope they will contribute to furthering broad-based dialogue and engagement in land reform and security of tenure in all countries in Latin America in support of attaining the Millennium Development Goals.

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List of Abbreviations

AEIS	Special Areas of Social Interest
AGB	Geographical Association of Brazil
ANOREG	National Association of Registries
CDHU	Housing and Urban Development Company
CDRU	Concession of Real Right
CIRTH	Commission for the Intervention and Recuperation of Tenement Houses
CMP	Popular Movement Centre
CNIR	National Cadastre of Rural Properties
COHAB	Metropolitan Housing Public Company
COHRE	Centre for Housing Rights and Evictions
COMATHAB	Porto Alegre Municipal Council on Land and Housing Access
CONAM	National Confederation of Resident Associations
DHESC	National Rapporteurs Project of Brazil
FGTS	Workers Guarantee for Time of Service Fund
FUNAI	National Indian Foundation
IBAM	Brazilian Institute on Municipal Administration
IBGE	Brazilian Institute of Geography and Statistics
INCRA	National Institute on Colonisation and Agrarian Reform
IRIB	Institute for Property Registration Brazil

NGO	Non-governmental organisation
RENAP	National Network of Popular Lawyers
PT	Workers Party
UN	United Nations
ZEIS	Zone of Special Social Interest

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EXECUTIVE SUMMARY

This report on Brazil forms part of a study of law and land tenure in four Latin American countries. The study also includes a much broader regional overview covering land tenure throughout Latin America. A number of common and broad themes emerge from these studies, applicable in different degrees within the specific country contexts.

A great deal of legislative reform has taken place in the region, and laws and policies are generally regarded as progressive. Many of our recommendations, however, dwell on the fact that legal reform has not been fully implemented, nor has it created the desired results. As a result, widespread recognition of housing and land rights has not translated effectively in local laws and policies, court decisions, or in greater empowerment of women, indigenous and black communities.

The delivery of housing is still an enormous challenge given the existing and growing backlogs. Reliance on the private sector has also meant the exclusion of the poor, who do not meet its stringent financing criteria.

Redressing the legacy of unequal distribution of land emerges as a key recommendation in all the studies. As the regional overview notes, the inequality shown in land distribution patterns influences the very high wealth disparity levels, and has historically been an ingredient in initiating political change.

Integration of the poor into the urban economy remains a big challenge. Some positive developments have emerged in this regard. Recognition of tenure rights of the poor and informal settlement dwellers has been an important driver of land reform in the region. Instruments that recognise the social functions of land have been used in Brazil and the primacy of collective rights to land recognised in Colombia. However, there is a broad consensus that recognition of rights to land has not been sufficient in integrating the poor into the urban fabric and economy. Upgrading of informal settlements has not occurred on a sufficient scale, and the studies call for going beyond legal recognition of tenure, to addressing the increasing backlog of service provision in informal settlements. In addition, more efforts in availing land for the urban poor need to be made, and this should include financing and lifting the ever-present threat of evictions.

A change in patriarchal attitudes through education programmes is also required to improve women's access to land and housing rights.

The subject of this chapter, Brazil highlights a number of other specific recommendations. While substantial positive developments in law and policy have emerged, which include many lessons for other countries in the region, full implementation of these developments is still a challenge. This is especially true with regard to the rights of women and members of indigenous groups. Laws that provide for the social function of land and regulation of leases also have yet to be widely implemented. Coordination at various levels of government is lacking, and more efforts need to be made to streamline federal, state and municipal efforts.

Figure 1.1 Map of Latin America

1 Introduction

This regional overview of Latin America introduces four separately published reports covering law and land tenure in Brazil, Colombia, Mexico and Nicaragua. It presents continental trends and a range of challenges common to all Latin American countries with regard to law reform, land tenure, the housing deficit and urban reform. It also discusses some of the principal differences within the region from the standpoint of law and policy.

Since the 1960s, Latin America has held the dubious distinction of being the world leader in inequality – not only in the unequal distribution of income, but also in education, health, housing, public services, employment, police and judicial treatment, and political participation.[1] Barring a small improvement from 1960 to 1970, the inequality levels in the region remained practically unchanged from 1960 to 1990.[2] The table below shows Gini coefficients by region and decade.

Table 1.1 Median Gini coefficients by region and decade

Region/Decade	1960s	1970s	1980s	1990s
Eastern Europe	25.1	24.6	25.0	28.9
South Asia	36.2	33.9	35.0	31.9
OECD and high income countries	35.0	34.8	33.2	33.7
Middle East and North Africa	41.4	41.9	40.5	38.0
East Asia and Pacific	37.4	39.9	38.7	38.1
Sub-Saharan Africa	49.9	48.2	43.5	46.9
Latin America	53.2	49.1	49.7	49.3

Source: Deininger, K. & Lyn Squire, L. (1996).

Historically, no single factor has contributed to this inequality as much as the unequal distribution of land.[3] Notwithstanding the growing urbanisation and the loss of political power suffered by the rural elites in many countries in the region, the problem of land distribution has not been resolved. The successive political, economic and social crises in the region during the 20th century prevented the full implementation of the majority of the agrarian reforms that were proposed.

Most Latin American countries have high levels of land ownership concentration, making the region the world's worst in terms of fair distribution of the land. This is a key factor responsible for the marginalisation of vulnerable segments of the population, such as indigenous peoples, blacks and women.[4] Up until recently, women have been excluded from the direct benefits of agrarian reform programmes due to discriminatory regulations related to land distribution, titling and inheritance.[5]

The number of people living in poverty has risen and now stands at 180 million, or 36 percent of the population of Latin America. Of those, 78 million live in extreme poverty, unable to afford even a basic daily diet.[6] With regard to urban poverty, data show that in the late 1990s, six out of every 10 poor people in Latin America lived in urban areas. Latin America provides the clearest example of the worldwide process known as the "urbanisation of poverty".[7]

1 The richest 10 percent of individuals receive 40-47 percent of total income in most Latin American societies, while the poorest 20 percent receive only 2-4 percent. By contrast, in developed countries the top 10 percent receive 29 percent of total income, compared to 2.5 percent for the bottom tenth. In Latin America, Brazil, Chile, Guatemala, Honduras, Mexico and Panama, have the highest (most unfavourable) levels of concentration while Costa Rica, Jamaica, Uruguay and Venezuela show the lowest (least unfavourable) concentrations. Ferranti, David et al (2004:1).

2 The origin of current structures of inequality is situated in Latin America's colonial past, mainly in the colonial institutions related to slavery and indigenous work exploitation, land use and political control.

3 When the land concentration is high, the proprietors manage to maintain an effective monopoly of the work and earnings, adding to their accumulation of capital. This accumulation, in turn, produces effects in other areas such as education, health, and even politics, because the economic elite ends up coinciding with the political elite. For example, in Latin American countries where the land concentration was high, such as Colombia and Costa Rica, the coffee boom of the 19th century ended up increasing the inequalities, while in countries with lower concentrations, such as Guatemala and El Salvador, this same boom contributed to the emergence of the small coffee producer-proprietor. World Bank, (2003).

4 It is estimated that there are 150 million people of African descent in the region. They are located principally in Brazil (50 percent), Colombia (20 percent), Venezuela (10 percent) and the Caribbean (16 percent). Bello, A. et al (2002).

5 Deere, C. et al (2000:119-120).

6 United Nations Centre for Human Settlements (Habitat). (2001:7).

7 Eclad. (2000:21).

The World Bank/International Monetary Fund approach to poverty reduction is based on a new framework embodied in the Poverty Reduction Strategy Papers (PRSPs).[8] Civil society groups have criticised how this actually works, citing a lack of minimum standards, inadequate participation, poor disclosure of information and the undermining of national processes.

1.2 Urbanisation[9]

Latin America and the Caribbean is the world's most highly urbanised region, with 75 percent of the population living in cities in 2000. By 2030, 83 percent of the population of Latin America and the Caribbean will be urban.[10] The high urban population growth is a result of a demographic explosion and rural migration due to the absence of consistent agrarian reforms. In general, laws and public policies created to restrain the growth of cities had an excluding and discriminatory content, which contributed to the increase of poverty, marginalisation and environmental degradation.[11]

Urban growth has also increased the demand for housing and worsened the shortage of basic services. At least 25 million houses do not have drinking water; and one-third of urban housing does not have proper sewage disposal services.[12] According to ECLAD data, a housing deficit of 17 million homes exists in the region and, if those in poor condition are added, the total deficit reaches 21 million homes. The net effect is that in Latin America, only 60 percent of families have adequate housing, 22 percent live in houses requiring repair or improvement, and 18 percent need new homes.[13]

The average unemployment rate reached 8.5 percent in 1999 – the highest rate in 15 years. A considerable number of those who are working are classified in the informal sector: 30 percent in Chile; 35 percent in Argentina; 39 percent in Colombia; and 60-75 percent in Guatemala, El Salvador, Honduras, Costa Rica, Nicaragua and Peru.

1.3 Democracy and democratic participation

In the 1960s and 1970s military regimes were the rule and democracy the exception in Latin America. Starting in the 1980s, the dictatorships were gradually replaced by democracies.[14] Constitutional reforms took place to include the recognition of fundamental rights; the decentralisation of power towards local governments; alterations in the administration of justice; and the modernisation of the state apparatus to allow for greater transparency.[15] However, many obstacles stand in the way of full democracy. The lack of political representation of marginal sectors of society in the electoral process is evident, and even though Latin American presidents are freely elected, many legislators continue to be strongly influenced by the traditional dominant oligarchies.[16]

With regard to affirmative action, the exercise of citizenship has been the vehicle through which women have achieved formal representation in the political sphere. However, women are not equally represented at the decision-making level. The greatest discrimination is at the political level.[17] Regional statistics provide a revealing picture in this regard, as captured below.

8 This new framework for poverty reduction arose in 1999 after much pressure from civil society and the Jubilee 2000 movement, which called for debt reduction on a massive scale. The PRSP framework includes about 70 countries, including a number of low-income and highly indebted countries from a range of geographical regions. Nine countries in Latin America and the Caribbean adopted this framework.

9 The Population Division of the United Nations defines as "urban" any settlement with at least 2,000 residents, a classification adopted by some countries in successive censuses. Urbanisation is, therefore, a process involving an increase in the proportion of the population that is urban or simply the "urban proportion". Oucho, J. (2001:4).

10 Ibid.

11 Benasaya, G. et al. (1992:276).

12 Clichevsky, N. (2000 :12).

13 UN-HABITAT (2001:197).

14 Pazzinato, A. L. (1995:385).

15 An extensive process of the decentralisation of governmental power has been taking place over the last two decades, with direct election of governors and mayors and with an increased transfer of tax receipts to the provinces and municipalities. Since 1980, the number of republics where the mayors are chosen by direct elections has increased from three to 16.

16 The Latin American fragility of the democratic process displays certain peculiarities: the loss of democratic state power is aggravated by the social inequalities, by the high levels of poverty, by corruption, and by the growing increase in the violence statistics and the illegal drug traffic. Ocampo, José A. (2001:52).

17 Torres, I. (2001).

Table 1.2 Women's representation in national legislatures in Latin America

Country	Number of women in legislature	As % of total	Year
Argentina	79 Lower House 24 Senate	30.7% 33.3%	2001
Bolivia	25 Lower House 3 Senate	19.2% 11.1%	2002
Brazil	44 Lower House 10 Senate	8.6% 12.3%	2002
Chile	15 Lower House 2 Senate	12.5% 4.2%	2001
Colombia	20 Lower House 9 Senate	12.1% 8.8%	2002
Costa Rica	20	35.1%	2002
Ecuador	16	16.0%	2002
El Salvador	9	10.7%	2003
Guatemala	13	8.23%	2003
Honduras	7	5.5%	2001
Mexico	121	24.2%	2003
Nicaragua	19	20.7%	2001
Panama	13	16.7%	2004
Paraguay	8 Lower House 4 Senate	10.0% 8.9%	2003
Peru	22	18.3%	2001
Uruguay	11 Lower House 3 Senate	11.1% 9.8%	1999
Venezuela	16	9.7%	2000

Source: Inter.-Parliamentary Union. www.ipu.org [18]

Some states have also adopted Laws of Equality of Opportunities between Men and Women. These laws have been accompanied by the institutionalisation of the gender theme through the creation of national mechanisms of women, which act as directing entities for gender issues within public institutions. All Latin American countries subject to this study have approved national plans on the equality of opportunities and treatment between men and women, except for Uruguay and Venezuela. [19]

2 Legal Systems of the region

All Latin American countries share the legacy of a civil law system, be it Roman or Napoleonic, while some countries in the region recognise some "pre-Columbian law" or indigenous elements in their legal systems. [20]

Legislation throughout the region is based on antique rules. For example, the majority of the Spanish regulations related to urbanisation originate from the *Fuero Juzgo de Arago*, enacted in 1212. The communal property system known as *ejido* in Mexico is based on traditional rules by which the land belonging to local governments was designated to communities, and to poor landless people for growing crops and fetching water for their animals. The origins of the *ejido* can be traced to *Leyes de Indias*, or Indigenous Laws, which were the legal regulations imposed on Latin America during the period of conquest and colonisation. These regulations established the spatial organisation of the new colonial cities. The *ejidos* were the lands surrounding the city, collectively owned and designated to common use (recreation, shepherding, hunting, etc.) and as land reserves for the city. [21]

18 Charter prepared by Ramirez, Felicia, Director of the Centre for Human Progress, which was based on the InterParliamentary Union.

19 Cepal. L. D. (2001).

20 Most English-speaking countries of the Caribbean have inherited a common law legal system, with further influences from Hindu, Muslim and Indian law. Two of these Caribbean countries have "hybrid" legal systems: Guyana (which has a Roman-Dutch tradition) and St. Lucia (which has been strongly influenced by French civil law). See Yemisi D. (2002). However, the Caribbean countries are not included in this research because of their different legal systems.

21 López M. Eduardo (1996).

The modern government structure of the region was strongly influenced by the Constitution of the United States, from which Latin America copied two institutions: the federal and presidential systems.

Latin America inherited from its colonisers a Roman private law regime based on the figure of the *paterfamilias,* or head of the family. Only the eldest male of a nuclear family could establish himself as a *paterfamilias* under Roman law. Likewise, only the oldest males that were *paterfamilias* could be citizens. The *paterfamilias* had the power of life and death over persons and possessions of the family nucleus that they led, including slaves. This antiquated Roman legal regime, was laid down in the ideological framework of the Napoleonic civil code of 1804. In fact, all post-colonial Latin American republics practically copied this body of law.

The Latin American civil codes distinguish between property and possession. In the civil law tradition, ownership is a "real right" accorded specific recognition. It is a basic, fundamental right at the root of the property rights system. Possession can be separated from ownership, can be accessed in different ways and can carry its own set of different rights. Among other rights to property included in the code are the right of use, servitude, the right of way and prescription.

"Positive prescription" is a method created by law for acquiring ownership. Known as *usucapion* (in Spanish) or *usucapião* (in Portuguese) from the Latin *usus capere,* prescription has its origin in enactments of the civil law, which have been confirmed by Canon Law.

The civil code also established the institution of the public property registry and, later on, the public property cadastre. The civil code decreed that the male was the head of the family, and that only formal marriage would be recognised as generating rights and obligations. This meant that inheritance rights of extramarital children were not recognised. The maintenance duties were established especially for the minors, elderly, incapable and, in the case of inheritance, a conjugal portion if the widow fulfilled all requirements. These legal concepts continue to be the way in which regulation of the civil code is perceived in much of Latin America, in spite of the fact that the majority of these codes have been reformed, doing away with formal legal discrimination.

2.2 Constitutional provisions

The right to adequate housing is recognised by the constitutions of many countries, including Argentina, Brazil, Colombia, Cuba, the Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Venezuela, Chile and Bolivia.[22] In some countries, such as Ecuador, Uruguay and Mexico, the right to housing appears among the essential rights recognised and granted by the states. In others, for example Nicaragua and Peru, it is mentioned together with the inviolability of the home.

In Bolivia, Colombia, Paraguay and Costa Rica the right to housing is considered a state duty. In the Colombian Constitution the right to housing appears as proceeding from the dignity of the human person and in the equivalent Venezuelan document, the right to housing constitutes an obligation of the state and the citizens that is to be implemented progressively. The Argentine Constitution offers one of the best examples of how a state can protect the right of adequate housing when it subjects the interpretation of the constitutional language to that established in the international human rights instruments.

The right to property is handled in the national constitutions in different ways. The majority of countries define property as an absolute right, regulated by a civil code – that is, by laws of a private nature. Some countries, however, such as Colombia, Brazil, Peru and Venezuela, maintain that property implies duties and that it has a social function. Mexico, although it was the first country in the world to attribute a social function to property in its 1917 Constitution, later introduced a series of amendments that represented a considerable retrogression. The Mexican experience reflects a common problem in Latin America: the formal conquest of rights does not necessar-

22 The complete texts of the constitutional articles on housing rights may be consulted on the website www.unhabitat.org/unhrp/pub.

ily mean they will become effective, nor even that they will remain on the law books, even if constitutionally guaranteed.

Latin American national constitutions do not guarantee a universal right to land to all persons as they do with the right to property. However, they generally provide specific regulations to the right to land of special groups, such as indigenous people, black communities, and those living in informal urban and rural settlements.

The manner of ownership and control over land can determine how wealth, political and economic power is shared. One of the difficulties associated with developing effective international laws and policies on land rights stems from the immensely complex and diverse ways by which land is accessed, and the often gaping expanse between the daily reality of land acquisition and the position of formal law.[23]

In terms of legislation and public policies, countries throughout the region have approached the land question in different ways. Some have dealt with this subject in a manner that is supportive of treating land as a human rights issue, guided by appropriate law and policy; other countries have allowed market forces or customary law to determine who has access to land. Some combine state intervention with market-driven policies.

An enormous distance exists between theory and practice when it comes to housing. Frequently, even the minimum requirements for adequate housing are not contemplated in the national legislation: the desired end (adequate housing) is clearly cited but without any indication of the means to attain it (security of possession, availability of services and infrastructure, maintenance possibilities, public programmes and policies, investments). One of the factors worsening the housing situation is the time spent converting constitutional housing requirements into practical law.

Security of tenure is one of the most important land rights issues, and is perhaps the central question in the analysis of the right to housing and land. Without security of possession – no matter whether formal or informal – the right to housing is under permanent threat, and the risk of eviction or forced dislocation will always be imminent.[24] Security of tenure, because it is a key element in the human right to housing, should be guaranteed to all, equally and without discrimination.[25]

3 International Law

Most countries in the region are party to the main international and regional human rights instruments. In the appendix the most relevant international human rights conventions are listed and an overview is provided of which countries are party to which instruments.

4 Land Reform in the Region

Before 1960, Latin America's principal land reforms took place as the result of social revolutions in Mexico, Cuba and Bolivia. In Mexico, land reform resulted in the redistribution of about 50 percent of the territory to communities or *ejidos* and indigenous populations, benefiting 3 million people, particularly during the period of 1915-1930 and after 1960. In Cuba, the reform included tenants on sugarcane plantations, land occupiers, landless peasants and rural wageworkers.[26] The Bolivian revolution in 1952 benefited about three-quarters of the agricultural families by means of expropriation of properties worked in pre-capitalist forms of tenure[27] and of

23 UNDP (2003).

24 The United Nations Global Campaign for Security of Tenure states "security of tenure stems from a variety of norms which regulate the right of access and use of land and property, and from the fact that it is a legally justiciable right. Tenure can be effected in a variety of ways depending on the constitutional and legal framework, on the social norms, the cultural values, and up to a certain point, the individual preferences. A person or family has security of tenure when they are protected from involuntary removal from their lands or residences, except under exceptional circumstances, and then only by mean of a recognised and agreed legal procedure, which should be objective, equitably applied, contestable and independent. These exceptional circumstances should include situation where the physical security of life and property is threatened, or where the persons being evicted had themselves occupied the property by force or intimidation." UNCSH. (1999a).

25 In accordance with Art. 2(2) of the International Covenant on Economic, Social and Cultural Rights.

26 Agrarian Reform Law, 1959.

27 Under this tenure type the farmers worked in exchange of the usufruct of a part of the land.

unproductive or sub-used *latifundios*, comprising four-fifths of the land in the country. [28]

In these reforms most women were discriminated against in terms of access to and management of land. The regular procedure was to favour the man, as family head and beneficiary, a practice that was supported by most land reform legislation in the 19th and 20th centuries. [29]

In the 1960s, 17 Latin American countries initiated agrarian reform processes with assistance from the U.S. government's Alliance for Progress programme. [30] According to Deere and Leon "the agrarian reform was seen as an ideal vehicle for the promotion of higher indexes of economic growth, as well as equality, social justice and more stable governments". However, the results obtained were minimal due to the power of the great landowners and economic reliance on agricultural exports, which prevented a greater distribution of the land. [31] For example, in Ecuador, the government only distributed non-productive land, which facilitated the concentration of quality land in the hands of the large landowners. In Venezuela, half of the land distributed was public land, and high compensation was paid to large landowners whose land made up the other half. In Brazil, the Land Statute set a minimum limit for the land to be distributed to each landless family for the purposes of agrarian reform, but did not place a limit on the maximum size that each individual owner could possess.

Later, the Chilean government of Salvador Allende and the Sandinista government of Nicaragua implemented radical agrarian reforms. [32] The revolutionary military government in Peru also assisted the agrarian reform by distributing land to those who would work it and produce crops. However, regressive land reforms would later take place in Mexico, Chile and Nicaragua. These processes, which came to be called a counter-reformation, returned land to the previous owners and privatised land that had earlier been collectivised.

Unfortunately, many of the progressive reforms proved to be patriarchal and gender discriminatory. [33] Women's ability to acquire land rights was limited due to legal criteria and discriminatory practices that favoured men. In most cases, a woman could only become a landowner by inheriting the land from her husband or companion on his death. [34]

5 Land and housing movements in the region

A wide array of social organisations is involved in the movement for land and housing in Latin America. They include tenants' associations, housing cooperatives, social movements and NGOs.

Besides tenants' associations and social movements that concentrate their efforts on advocacy and lobbying, there are also cooperatives and community-based organisations that seek alternative solutions to the housing problem. In various countries, emerging social groups have conducted innovative housing experiments based on self-management and organi-

28 Deere, C. et al (2002).

29 In Mexico, the reform privileged the heads of household who generally were men. One of the main demands of organised rural women was to receive *ejido* land irrespective of their marital status. In the 1970s, even when the law was amended to include other family members to the conditions of being *ejido* members, many women remained excluded from membership. In Bolivia, the status of beneficiary to land allocations that have resulted from the land reform was limited to mothers and widows. Also, the majority of indigenous women did not benefit from land distribution, because they were neither considered as household heads nor as farmers.

30 These countries were: Argentina, Uruguay, Brazil, Chile, Peru, Bolivia, Costa Rica, Guatemala, Mexico, Nicaragua, Colombia, Ecuador, Honduras, El Salvador, Dominican Republic, Venezuela and Paraguay.

31 Deere, C. (2002:101).

32 In 1979, Nicaragua expropriated the land of large landowners. However, the Sandinista agrarian reform could not be implemented in its entirety because of the severe economic crisis combined with their loss of power in the 1990 election. The land destined for land reform was the result of the confiscation of large unproductive properties, which represented 52 percent of the land in 1978 and had come to represent only 26 percent in 1988. Of the confiscated land, 40 percent was distributed to land cooperatives, 34 percent formed state agro-industrial companies and 26 percent was individually distributed among landless rural workers. At the end of the revolution the cooperatives owned 13,8 percent of the land and the state companies owned 11,7 percent. See Centre on Housing Rights and Evictions, (COHRE). (2003).

33 Deere, C. (2002:131).

34 The agrarian laws referred to the male gender to qualify the beneficiaries for agrarian reform programmes. In practice women were not considered direct beneficiaries. It was presumed that men were heads of household and that the benefits granted to them would benefit all family members. This presumption was directly related to the dispositions of the majority of Latin American civil codes, in which husbands were considered the only representatives of the family and therefore legally responsible for the administration of the family properties and for all the economic issues. The system of grades implemented as a way to evaluate potential beneficiaries discriminated against families headed by women.

sation.[35] The most common experiences involve cooperative joint ventures to construct or improve housing. Thousands of families have benefited from such efforts in both Uruguay and Brazil. Interventions for rehabilitation or renovation of central areas and the incorporation of social housing into these areas have recently been initiated in Brazil, Argentina and Peru. Although many experiences are focused on matters related to housing production (financing, execution and integration with the social policies), many social movements and NGOs have successfully advanced institutional and normative projects.[36]

The activities developed by organisations and social movements are primarily self-managed processes concerned with demonstrating the viability of specific proposals for the social production of housing. However, the strategies for participation in the spaces and institutions of representative democracy (political parties, parliaments and municipal councils, and so on) to influence policy have been timid at best.[37] Models of co-responsibility between social organisations and other players in civil society and the state are also rare.[38]

Land and housing rights feature prominently in the women's movement in Latin America, which also deals with issues of political participation, sexual and reproductive rights, violence against women, and economic rights. Peasant and urban organised women's groups are the most active in efforts to improve access and rights to land and housing.

Developments in Central America towards the end of the 1990s indicate a strengthening of the movement of peasant movement, marked by the creation and consolidation of national networks and organisations of rural women. This is important for a number of reasons, not least that rural women are a new political actor both at the national and regional levels.

Set out in the subsections below are some examples of land and housing movements and their experience in the region.

Argentina: the Occupiers and Tenants Movement[39]

Started in the city of Buenos Aires in the 1990s with the primary objective of resisting forced evictions of people living in occupied buildings, and later, to guarantee the formation of cooperatives that could fight for direct possession of these buildings. The movement also drew in tenants who were not occupiers of buildings, and started to improve the cooperative system by introducing collective ownership of housing as a means to achieve land and adequate housing. Because of the declared intention of the Buenos Aires government to "eradicate poverty" by evicting the residents from the informal settlement the movement extended the battle to include not only the right to housing but also the right of the poor to live in the city, thus converting itself into a movement battling for the right to housing in the city by means of access to the other fundamental rights, such as health, education, work and culture.

Peru: Villa El Salvador[40]

Villa El Salvador is an experiment in slum upgrading that was undertaken after various homeless families had invaded some

35 The Habitat International Coalition tabulated the results of 40 experimental projects for the production of social habitats conducted by social movements and organisations in Argentina, Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Mexico, Nicaragua, Peru, the Dominican Republic and Venezuela. Habitat International Coalition (HIC), *La otra ciudad posible*, Grupo Latino-Americano de Producción Social del Hábitat, 2002. The main positive results on housing construction and land regularisation were due to proactive participation of the direct beneficiaries at all phases of the projects. Most of the houses and public buildings were constructed progressively and upon the implementation of self-management processes. Unfortunately, there is no web site where people can review these results.

36 In this respect we can mention the Brazilian experience with the National Forum of Urban Reform, a popular forum that achieved approval of the City Statute, a federal law for urban development that guarantees the fulfilment of the social functions of the cities and of property, as well as the installation of the National City Council.

37 The housing cooperative movement in Uruguay is a good example of effective popular participation in drawing up solutions for the housing problem, and is recognised as such by the Uruguayan legislation. The housing cooperatives are legal entities financed by the National Fund for Housing and Urban Development.

38 Examples include the Round Table on Social Policies and Housing (*Mesa de Concertación de Políticas Sociales y Habitat)* from Córdoba, Argentina (1990); the National Programme for Housing Improvement (*Programa de Mejoramiento de Vivienda)* from Mexico City; and experiences with Participatory Budgeting in Porto Alegre, São Paulo, Caxias do Sul, and Alvorada, in Brazil.

39 Instituto Movilizador de Fondos Cooperatives. (2002).

40 Guerra, P. (2002:108-110). Rosales, M. (undated). in "Villa El Salvador y su Parque Industrial en Lima"; Azcueta, M. (2003).

vacant land. The Villa was founded in 1971, in Lima, the capital of Peru, with the intention of sheltering poor families. Notwithstanding government efforts to evict the occupiers, the residents managed to remain in the area and create a community with a management dedicated to solidarity and community work. Today the Villa El Salvador shelters approximately 300,000 inhabitants, and has completed a series of works in housing, health, education, industry and commerce. The organisation of the population, therefore, has resulted in a vast internal system of community regulation, including self-managed housing construction. Villa Salvador was recognised as a municipal district in 1983 and in 1995 a plan for integral development was implemented aiming at its economic and social development, which resulted in the establishment of more than 100 small entrepreneurs.

Uruguay: FUCVAM [41]

The Uruguayan Federation of Co-Operative of Self Management (FUCVAM), founded in the 1970s, is one of the most important cooperative experiences in Latin America and has come to serve as a model for popular organisation in many countries. Initially, industrial workers, service industry workers and public employees – all highly unionised – constituted the cooperatives that made up FUCVAM. Now, however, the cooperatives are mainly composed of workers in the informal sector. The base cooperatives are characterised by self-management, by the use of family members as construction workers and by the direct administration of urban housing development projects. The group's principal achievement was the construction of more than 14,000 homes all over the country with the best cost-benefit relation as compared to all other systems for social housing construction in Uruguay.

CEFEMINA in Costa Rica

Costa Rica presents a good example in terms of the alliances built by women's organisations in their struggle for housing. The Feminist Centre for Information and Action (CEFEMINA), established in 1981, organised the participation of women in the construction of more than 7,000 houses in diverse regions of the country. In the same year, the National Patriotic Committee was created, and was also among the first to struggle for the housing rights of members of the general population.

These two organisations represent a movement that spread across the misery of urban sprawl, serving as an instrument for channelling the aspirations of a great number of women searching for their own housing. These two entities organised massive invasions of state held land. This tactic provoked an invasion of thousands of families into land that lacked infrastructure and urban services, obligating the government to declare a "national emergency" with regard to the housing situation in the country.

The government then tested various alternatives to find a solution in cooperation with the popular organisations. Self-construction projects were initiated, whereby popular committees organised the construction of houses with their own affiliates. Four particular events marked this experience. First, public policy during this period gave the opportunity to certain popular organisations to become genuine housing builders. Second, the creation of the Special Commission on Housing played an important role in the production of houses for poor families. Third, the synergy developed between NGOs and popular organisations allowed for stronger advocacy efforts. Fourth, during this period a law called 'real equality for women' was adopted, in which Art. 7 makes the shared entitlement of housing and land obligatory within social programmes of the state. This measure permitted women to either be the sole holders of land rights or at least share this title with a partner, thus giving women a greater position of equality with men. [42]

6 Tenure types and systems

The formal and informal urban land markets in Latin America complement each other and, to a certain degree, overlap. The

41 Guerra, P. (2002:116-119).

42 Blanco, L et al (2003).

formal markets exhibit characteristics that impede their use by the greater portion of the urban population. [43]

In the majority of Latin American cities the land was incorporated by laying out widely spaced allotments and keeping the lands between these allotments unoccupied for land speculation. [44] This is one of the reasons why so many large empty spaces are commonly seen in the metropolitan areas. Furthermore, as the public authorities build roads and provide public transport and infrastructure to attend to the poorer suburbs on the peripheries, such public investment, passing close to these large unoccupied spaces, increases the value of those speculators' lands.

The traditional approach to property rights prevailing in many developing countries has been the focus on individual property rights. But a wide range of legal options can be considered, ranging from transfer of individual ownership to some form of leasehold, rent control and collective occupation. General Comment No. 4 adopted by the UN Committee on Economic, Social and Cultural Rights states that "tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protections against forced eviction, harassment and other threats." [45]

In Latin America a range of lawful tenure types exist:

- Ownership of the house and the land on which it stands, possibly through a company structure or as condominiums. The land may be freehold or on a long leasehold;
- Owners who are in process of purchasing a house, i.e. owner-occupiers with a formal mortgage over the property;
- Tenants in social rental housing and in housing owned or operated by cooperatives or tenants associations;
- Tenants individually or collectively entitled on public land or housing, or in government employee housing;
- Tenants who rent private housing;
- Households entitled to secure tenure by regularisation of informal settlements by which property or usage can be held;
- Ownership resulting from land expropriation, including those for urban reform or social purposes; and
- Occupancy rights.

Innovative tenure systems have been developed in Brazil, including the Special Zones of Social Interest, presumptions of leases for occupiers of informally leased collective buildings, special concessions for use of public lands, and concessions of real rights and rights of surface.

There are also a range of collective land acquisitions legally recognised and protected in many countries addressing especially the indigenous and, sometimes, black communities. Brazil, Colombia, Mexico and Ecuador are examples of countries that recognise collective land rights for the indigenous and/or black citizens.

7 Slums and informal settlements

7.1 Origins of urban informal settlements in Latin America

The lack of adequate housing for the poor is associated with the urbanisation standards and method of development of the cities, whose disordered growth intensified from the middle of the 20th century as a result of increasing industrialisation that attracted more and more people from the rural areas. A number of other socioeconomic factors have contributed to the expansion of urban informal settlements, [46] including high unemployment and low salaries paid to migrant workers; macroeconomic adjustments imposed

43 Clichevsky, N. (2002).

44 According to Ward, P. (1998) the land market is segmented, not separated, but it may be considered segmented in terms of access, modes of development and acquisition and cost and affordability.

45 UN Committee on Economic, Social and Cultural Rights. (1991).

46 The rural modernisation process started in some countries in the 1940s but the results could only be observed after the 1970's when the urban population exceeded the rural.

by international financial institutions, leading to government austerity policies;[47] and urban regulations that governed some areas but not others (i.e., informal areas), contributing to price differences.[48]

7.2 The characteristics and extent of informal settlements

Latin American urbanisation was based on massive infrastructure investment to bring about aesthetic and hygienic urban reforms. As a result, the poor have been driven to live in peripheral areas. Latin American governments concentrated investment in infrastructure capable of attracting industry. Roads and transport systems became central elements for the maintenance of economic growth and for the growing flows of merchandise and people. Workers were obliged to settle in the suburbs because they could not afford plots or rental units in the more central parts of the cities. In these suburban areas the state did not provide infrastructure, thus reinforcing the formation of informal, clandestine and precarious settlements even further.[49]

It is difficult to define what constitutes a typically Latin American informal human settlement because the details vary so widely. The principal differences lie in the types of material used, the sanitary conditions, the degree of urbanisation present, the irregularity of the location, the title documents (if any) to the property, and even the names by which such informal settlements are known: *villas miserias* (Argentina), *quebradas e ranchos* (Venezuela), *barreadas e pueblos jóvenes* (Peru), *barrios clandestinos e ciudades piratas* (Colombia), *callampas e mediaguas* (Chile), *jacales e ciudades de paracaidistas* (Mexico), *favelas, malocas, mocambos, vilas* (Brazil), *barbacoas* (Cuba), *limonás* (Guatemala).[50]

In spite of these differences a few characteristics are common to them all (as many of their names suggest): lack of basic services (water supply and sanitation); inadequate construction that does not meet minimum standards for the quality of life; houses constructed in unsafe and unhealthy locations; lack of security of tenure; building plots smaller than permitted by the legislation; social exclusion due to being on the perimeter of the cities; and extreme poverty.[51]

Studies indicate that Latin American informal habitation has increased significantly in recent years, to a point where the demographic growth of informal settlements is now nearly twice that of the respective city population. However, there are neither national nor regional statistics on the number of inhabitants in the informal settlements.[52]

7.3 Types of urban informality[53]

In metropolitan areas irregular settlements present two kinds of transgression: against the judicial order and against the urbanisation norms. The first refers to the lack of legally recognised title documents of possession or ownership, and the second to the non-fulfilment of the city construction regulations.[54]

From the point of view of possession, informal settlements may have their origin in the occupation of public lands or in the acquisition of land on the informal housing markets. They include both direct occupation of individual plots in

47 Public housing schemes addressing the low-income population were badly constructed, economically inaccessible, and poorly served by the public services and infrastructure. They were also constructed in peripheral areas of the larger cities, distant from jobs. The eventual extension of the public infrastructure networks in the direction of these new suburbs ended up increasing the value of the unused lands surrounding the new settlements to the benefit of speculative builders, but penalising those who lived in the neighbourhood and those taxpayers who, in the end, paid for the works.

48 The result was a landscape divided into the formal city with its properties and buildings in accordance with the approved standards, and an informal city made up of the poor people's homes and deprived of the right to the equal use of the goods, opportunities and services of the city. The urban illegality is, therefore a subproduct of traditional regulation and of the violence inflicted on the rights to land and housing.

49 Souza, M. (2003).

50 Santos, M. (1982:46).

51 According to Milton Santos, spatial separation between rich and poor in Latin America is spontaneous (and not voluntary as in Africa) and is the result of the interplay of a series of factors that tend to unite the rich in one part of the city and the poor in another. SANTOS, Milton. Ensaios sobre a urbanização latino-americana, São Paulo: Hucitec, 1982, p. 46. However, although the separation is spontaneous it often happens that Latin American governments promote the removal of irregular settlements to outlying peripheries of the cities.

52 CEPAL et al (2001:17).

53 In this study, we use the terms illegality/irregular/informality synonymously. There are also houses in an irregular situation occupied by the middle and high-income groups, but these are not considered here.

54 Clichevsky, N. (2002:15).

existing settlements,[55] and informal land/housing markets where low-income earners can afford to purchase a plot or house built illegally, in violation of urban regulations. The latter category includes everything from clandestine or pirate plots to agricultural cooperatives transformed into urban land.[56]

Within the category of informality, there are various situations, including:

- Owners with or without registered titles;
- Possessors with written proof of purchase;
- Possessors who bought an irregular or clandestine plot through a contract that is not valid to transfer the property;
- Land occupiers who are, or will be, converted into owners when the time for prescription of the rights of the original owners have elapsed;
- Buyers of plots or public housing by means of the transfer of a document of proof of purchase not recognised by the state; and
- Informal owners who use front-persons to register their properties.[57]

From the viewpoint of urban irregularity, informal settlements are considered to be any occupation of land with inappropriate environmental-urban conditions for human housing, such as land subject to flooding, land that is contaminated, land with poor access to public transport, and so on.

7.4 Women in slums

Lack of land tenure and ownership rights renders many women unable to protect themselves, and prevents access to credit due to lack of collateral, reinforcing the control that men traditionally have over the household and their dependants. One of the major global challenges of the new millennium is growing urban poverty among women. It is estimated that some 25 percent of all households are headed by women and are located in urban areas – especially in Latin America. Women-headed households typically represent a high proportion of those in informal settlements worldwide and they are among the poorest.[58]

Inadequate housing, poor location, scarce access to potable water, electricity, public transportation, telecommunications, health and education services all have a great impact on the daily lives of women.

Women living in slums generally work in the informal sector of the economy and/or in domestic labour, without any job security or social security. The number of single-head households is rising and many paternal responsibilities have been abandoned, thereby increasing the child-rearing burden.

As described in country reports of Nicaragua, Mexico, Colombia and Brazil, women suffer a wide range of discrimination and injustice, supporting the view that the feminisation of poverty is accelerating. Moreover, these studies demonstrate that women are more affected by housing policies, urbanisation, and the decline of the quality of living conditions. Therefore, urban planning must begin to take into account the opinions of women and their specific needs, in such a way that cities develop in a manner that is sustainable and equitable.

8 Land management systems

The first information system to register the subdivision of land in Latin America came into existence in Buenos Aires in 1824. Nowadays agencies in each country deal with public information on land by means of the registration of maps, measurements, limits, properties and the values of estates. However, most Latin American countries do not have na-

55 *Casas tomadas* (seized houses) are usually buildings abandoned by their owners or land expropriated by the state for public works not executed, which are occupied by the needy populations either directly or by so-called promotional agents. Ibid.

56 The existence of the informal market is connected to political paternalism and client attention. Many government employees responsible for the control of urban regulations use the informality as a bargaining chip to obtain electoral political advantages.

57 Clichevsky, N. (2003:16).

58 UN-HABITAT (2001:28).

tional systems, and each municipality has developed its own system. [59]

In general, land registration systems in Latin America do not facilitate access to the land or guarantee security of tenure for the majority of the city residents. Most of the systems are based on colonial laws relating to inheritance, forms of proof, and methods of demarcation that are not suitable for the present-day local conditions. Moreover, despite modernisation efforts, old data collection methods are widespread.

As these systems are not set up to collect, process or register transactions effected in the informal land market, they contribute to problems rather than solutions. The result is the exclusion of a significant part of the population from establishing tenure rights. A review of land registration, cadastral and land information systems indicates that there is likely to be no documentary evidence of title for the majority of land plots in developing countries. The best estimates indicate that in Latin American countries, 70 percent of land plots are undocumented. [60]

Latin American countries predominantly deal with centralised cadastres. [61] There is a movement to decentralise political powers in the region, and this includes the institutions responsible for land administration. This not only has the potential to help fund municipalities through collection of property taxes; it also makes the planning, upgrading and supply of housing more effective and sustainable. However, in some cases decentralisation may cause problems, as there are chronic shortages of capable personnel and infrastructure. [62]

It is also important to note that rapid developments in information and communication technologies present important new opportunities to modernise land administration systems.

59 Erba, D. (2004).

60 Fourie, C. (2001).

61 For example, Brazil has recently restructured its National System of Rural Cadastre; more than half of the states in Mexico still have centralised cadastral data.

62 Erba, D. (2004).

9 Women's rights to land and housing in the region

Over the past 30 years most Latin American constitutions have conferred equal rights to their citizens, regardless of their sex, race or social condition. The constitutions of Brazil, Colombia, Cuba, Mexico and Nicaragua further guarantee full equality between men and women with respect to individual, civil and political rights. While the constitutions recognise these rights, most property, family and inheritance rights are regulated in civil codes. The majority of these civil codes have been reformed to recognise the role of both men and women as household heads, and in a majority of countries cohabitation (de facto unions) and civil divorce have also been recognised. As a greater percentage of women became heads of household, some countries have started modifying their laws regarding the elements required to be considered a head of household. This is the case in Bolivia, Colombia, Honduras, Peru, and Venezuela. [63]

At the same time, creation of national women's mechanisms has been strongly encouraged to advance legislation and policies aimed at promoting equality among women and men. Agrarian laws and land reform programmes have lacked a gender approach. For this reason, efforts have been made to incorporate affirmative action policies in favour of women, with one of the greatest achievements being the elimination of the concept of the male household head as the main beneficiary of public distribution and registration programmes. The agrarian laws of Bolivia, Brazil, Colombia, Costa Rica, Guatemala, Honduras and Nicaragua now explicitly recognise the equal rights of men and women. In the case of Mexico, in 1971 the Agrarian Law granted women the same land rights as men, and consequently they were granted a voice and vote in domestic decision-making bodies.

Because the issue of land ownership became a priority within the framework of Guatemala's peace accords, a new window of opportunity has opened up for women to file their claims for land allocation. One movement of rural and indigenous

63 FAO. (1992).

women, the *Coordinadora de Mujeres por el Derecho a la Tierra y la Propiedad*, has advanced along these lines. Specific reforms and affirmative action policies have been proposed to create a Land Fund integrating a gender perspective. In terms of allocation of land, priority is given to refugee women headed households in the Agrarian Law.

The Colombian 1994 Agrarian Law gives priority in allocation of land to all peasant women in unprotected conditions due to the war situation and violence in the country.

The Programme on Land Transfer in El Salvador awarded land to former combatants, particularly women, irrespective of their marital status. This was the result of the struggle by the Salvadorian women after the peace agreements had not considered them at all.

The case of the Women's Centre of Xochilt-Acalt in Malpaisillo, Nicaragua, is a clear example of how civil society organisations may also contribute to the enforcement of legislation and to overcome the obstacles involving land regularisation in favour of women.

9.1 Marital property rights

In Latin America, property rights are in the domain of the civil codes, while the rights to land are regulated by specific legislation. Formalisation of property rights through land titling and registration guarantees state support for landholders' claims. A major criticism of titling programmes and formal property rights is their tendency to grant individual titles – usually to the male head of household. In addition, the legal and administrative process to achieve titling is costly and lengthy.

Titling programmes have not titled women due to discriminatory laws that favour male heads of household.[64] As a result, legislation that guarantees equal rights to property and to land is not sufficient to ensure the recognition of women's rights, as marital property is almost always titled in the name of the male head of household only.[65] Women's movements have, in response, called for the expansion of joint titling.[66] More recently this call has been supported by international donors. In the Latin American context, joint property titles are now commonly recognised in the legislation of many countries.[67] Considering the predominance of family agriculture in rural areas and the focus on property entitlement extended by the state agrarian reform programmes, joint property title has become a formal mechanism for the inclusion of women and the more equal distribution of the family goods.[68] In Costa Rica, Colombia, and Nicaragua, legislation provides for joint titling as a requirement for the state's allocation of plots. Due to the action of peasant and indigenous women in Panama, reforms to the Agrarian Law include joint titling as a requirement for the allocation of State lands. In Brazil and Honduras, this was suggested as an option couples may resort to, but is not a requirement. Countries like Guatemala, the Dominican Republic, Peru, and Honduras have subsequently moved in this direction, or at least efforts are being made.

Issues related to marriage and marital property are regulated through the civil codes of most Latin American countries, with the exception of Costa Rica and Cuba, where these have been laid down in family codes. At the time of marriage or at any time during the marriage, the couple may agree on the marital property regime they want to adopt, by means of a legal and written declaration. They can choose between three regimes:

- Absolute or universal community of property, in which all goods possessed at the time of marriage and all goods acquired during the marriage are part of the marital property, including salaries, rents and utilities of either spouse. In the case of separation or divorce

64 Deere, C. (2001:119).

65 Lastarria-Cornhiel, (2003:11).

66 Nicaragua and Honduras, for example, have legislation recognising joint ownership of property acquired by a couple and have been implementing systematic titling and registration programmes by including joint titling in the official housing programmes. The study also points out problems in the implementation of joint titling.

67 The lack of control over land is precisely what prevents women from fully using land acquired or inherited together with men. In this respect Bina Agarwal declares that separate property titles would be of greater benefit to women than holding property titles jointly with their husbands. Agarwal, B. (1994).

68 This is the view expressed by Deere, C. (2002:36).

all property is divided equally between the husband and wife. Upon the death of one spouse, the surviving spouse is also entitled to half of the marital property;

- Partial community of property, in which individual private property acquired during the marriage, including through inheritance, donation or what is brought into the union, is separate, while profits derived from such property is part of the common property. Upon separation or divorce, each spouse is entitled to half of the common property, while the separate property remains with the spouse that had acquired it; and
- Separation of property, in which each spouse keeps and administers their individual property. In the case of dissolution of the marriage, each spouse keeps his or her individual property as well as earnings derived from it.

In practice, such explicit agreements are not often concluded. In the absence of such a declaration, the default marital property regime that applies in most Latin American countries is partial community of property. In Costa Rica, El Salvador, Honduras and Nicaragua the default regime is separation of property.[69]

Real estate property is usually registered under the husband's name and, as no registry annotation is outlined, the man usually decides unilaterally to sell. This leaves women in an unprotected position, as they would have to sue the husband in order to recover their part. The same happens with the type of property regimes adopted by the couple, when these are not annotated in the public registry.

With the increasing recognition of de facto unions in the region, the marital property regime is also slowly being applied to such unions.[70]

The concept of "marital authority" was at one time written into most civil codes. Although this is no longer true for the majority, it is still a strong customary norm. In Ecuador, under the formal law, any property acquired by a couple automatically forms part of the marital property and is jointly owned, but in practice if the land is titled under the name of the husband, he can dispose of it without his spouse's signature because the signature rules are rarely enforced.[71] Ecuador, Dominican Republic, Guatemala, Honduras, and Mexico favour male management of community property, as shown in the table below.[72]

Table 9.1 Management of community of property in selected countries

Country	Joint Management	Sole Management	Equal Management
Bolivia	X		
Brazil			X
Chile		Husband	
Dominican Republic		Husband, even under separate property regime	
Ecuador		Husband unless otherwise agreed by contract	
El Salvador	X	Husband when wife is a minor	
Guatemala		Husband	
Honduras		Husband	
Mexico		Husband	
Nicaragua		Husband with regard to 'family patrimony'[1]	
Paraguay		Husband	

The English Law Commission conducted a survey of the community of property management systems in different jurisdictions. The commission found that community of property countries were moving towards more of an equal management system, and concluded that systems that do not permit equal management during marriage are "unacceptable"[73] and in violation of the Convention on the Elimination of All Discrimination Against Women (CEDAW). In addition, civil codes and family laws that still allow for unequal marital

69 UN-HABITAT. (2005:26).

70 This recognition started with the Cuban Family Code, followed by the Brazilian and Nicaraguan Constitutions.

71 Deere, C. et al (2001).

72 Ibid; civil code of the Dominican Republic, Art. 1421, 1428; Family Code of Honduras, Art. 82; Family Law in Mexican States of Aguas Calientes, Oaxaca, and Sonora; civil code of Ecuador; civil code of Guatemala.

73 Oldham, J. T. (1993:99).

property management also violate other international human rights instruments and may be contrary to the constitutions of these countries.[74]

Box 9.1 Challenging sole management of marital property

Article 131 of the civil code of Guatemala empowers the husband to administer marital property. María Eugenia Morales de Sierra from Guatemala challenged this provision, as it creates distinctions between men and women that are discriminatory. The case appeared before the Inter-American Commission on Human Rights, which decided on the case on January 19 2001. The commission resolved that the government of Guatemala had violated Art. 24 of the American Convention on Human Rights (equal protection of the law). It stated that once the civil code restricts women's legal capacity, their access to resources, their ability to enter into certain kinds of contract (relating, for example, to property held jointly with their husband), to administer such property and to invoke administrative or judicial recourse is compromised.2

9.2 Inheritance rights

Issues related to succession and inheritance are regulated through the civil codes of most Latin American countries, with the exception of Costa Rica and Cuba, where these have been laid down in family codes.

In most other countries, the law provides for complete testamentary freedom, which leaves the surviving spouse defenceless in a marriage with a separation of property regime. In cases of community of property, upon the death of one spouse, the surviving spouse is entitled to a portion unless a family patrimony or estate is declared and there are minors. Surviving partners from de facto unions are excluded unless their partner left a will. In some countries, such as Costa Rica, Honduras, Mexico, Panama and Uruguay, testamentary freedom is somewhat restricted in order to ensure subsistence portions to disabled dependants, minors, elders or the surviving spouse. In Nicaragua, the need for subsistence must be proved.

74 For example, the International Covenant on Civil and Political Rights (Art. 3) requires state parties to ensure the equal right of men and women to enjoy all rights laid down in this Covenant. Art. 23(4) requires state parties to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and upon the dissolution of marriage. 154 states are parties to this Covenant.

The marital regime also affects the inheritance rules, as shown in the table below:

Table 9.2 Rules concerning estate inheritance according to marital regime

Country	Part of will that may be inherited	Intestate Order of preference
Bolivia	1/5 if there are surviving children or spouses	1: children, spouse and parents
Brazil	½ if there are surviving children or spouses	1: children, spouse (1/4) 2: spouse and parents if no surviving children
Chile	¼ if there are surviving children, and spouse's share	1: children, spouse's share 2: spouse (¼) and parents if no surviving children
Colombia	¼ if there are surviving children, and spouse's share	1: children, spouse's share 2: spouse (1/4) and parents if no surviving children
Costa Rica	The entire estate	1: children, parents, and spouse's share
Ecuador	¼ if there are surviving children and parents, and spouse's share	1: children, spouse's share 2: spouse and parents if no surviving children
El Salvador	The entire estate	1: children, spouse and parents
Guatemala	The entire estate	1: children, spouse's share 2: spouse and parents if no surviving children
Honduras	¾, and spouse's share	1: children, spouse's share 2: spouse and parents if no surviving children
Mexico	The entire estate	1: children, spouse's share 2: spouse and parents if no surviving children
Nicaragua	¾, and spouse's share	1: children, spouse's share 2: spouse (¼) and parents if no surviving children
Peru	1/3 if there are surviving children or spouses	1: children, spouse and parents

Source: Deere, C. and León, M. Género, (2000:80).

In the case of de facto unions, inheritance rights are usually recognised by the legislation under the general condition that there is no previous marriage. If there is a previous marriage of any of the de facto union members, the partners of both unions must share the inheritance right. Not all countries recognise de facto unions.

Lands that have been obtained through adjudication, for example through state distribution programmes as a product of agrarian laws, may also suffer differences regarding the inheritance system. In general the rule is that this type of land is adjudicated under certain market restrictions. For example it is adjudicated without a property title. This means the beneficiaries cannot sell, cede or transfer before a certain time, which usually ranges from 10-15 years. If death occurs during this period this type of land will then be re-adjudicated between the inheritors. If death occurs after this period the property title had already been granted.

If this type of adjudication is regulated by the civil code, the parcel will be subdivided upon death. This system is followed by Bolivia, Costa Rica, Chile, Ecuador, El Salvador, Panama and Paraguay.[75] If land adjudication is regulated by the agrarian law, the parcel is not subdivided upon death.[76] This is the situation in Colombia, Cuba, Honduras and Nicaragua. The Colombian Constitution recognises the de facto union and the agrarian reform law recognises the right of inheritance of the surviving spouse or companion.

In Brazil, Mexico and Chile, inheritance mostly favours men. Mexico is characterised by absolute testamentary freedom, while in Chile and Brazil the civil codes clearly provide for equal succession rights for male and female children. In the case of Mexico, with regard to the right of inheritance, Art. 1602 of the civil code provides for legitimate succession, which includes spouses as well as both female and male concubines. Their rights depend on the concurrence of other relatives and their closeness to the estate's original bequeather, and whether s/he has any assets or not. In addition, if the spouse concurs with any ancestors s/he is only entitled to half of the assets. Women rarely inherit from their father, except if there are no male heirs or if an expanse of land is very large.

In Brazil inheritance practices have favoured mostly men, both for cultural reasons and because many women have been forced to migrate in search of new work opportunities. However, it should be noted that, as in Mexico, land distribution and inheritance are becoming more egalitarian as agriculture becomes less dominant.

9.3 Affirmative action

The general rule in de facto unions is that the partner – woman or man – can only become an intestate heir and attain that limited status in the countries where this type of union is legally recognised. De facto unions are especially recognised in terms of state policies on land and housing.

Some countries have implemented quotas to increase the proportion of women holding elected office. Costa Rica, Honduras and Panama have quotas ranging from 30-40 percent. In Mexico, the minimum quota is 30 percent; Argentina, 30 percent; Brazil, 25 percent; Bolivia, 30 percent; Ecuador, 20 percent; and Peru 25 percent. These numbers are however yet to be achieved (see Table 1.2 Women's representation in national legislatures in Latin America)

75 Ibíd.

76 FAO. (1992:9).

Table 9.3 Inheritance rights of adjudicated land according to civil and agrarian laws

Country	Civil Law	Agrarian Law	
	Testamentary Succession	**Intestate Succession**	**Succession of plots allocated by Law**
Bolivia	No absolute testamentary freedom. The spouse is the apparent heir if s/he has any children.	The spouse becomes a legitimate successor if s/he has any children.	Governed by rules of the civil code.
Brazil	No absolute testamentary freedom. The spouse's share must be considered.	The spouse is a legitimate successor.	Governed by rules of the civil code.
Colombia	No absolute testamentary freedom. The spouse's share must be considered.	The spouse becomes a legitimate successor with spouse's share, which is an alimony whose need must be proved.	Governed by agrarian rules. Spouses and companions are able to inherit.
Costa Rica	Absolute testamentary freedom.	The spouse becomes a legitimate successor.	Governed by the rules of the civil code.
Honduras	There is absolute testamentary freedom.	The spouse becomes a legitimate successor, but s/he must prove the need for it.	Governed by Agrarian Law.
Mexico	There is testamentary freedom, except for alimony obligations.	The spouse becomes a legitimate successor.	Governed by Agrarian Law.
Nicaragua	No testamentary freedom. Spouse must be considered.	The spouse becomes a legitimate successor.	Governed by Agrarian Law.
Panama	Absolute testamentary freedom. Spouse's share must be considered.	The spouse becomes a legitimate successor.	Governed by Agrarian Law.
Paraguay	No absolute testamentary freedom. Spouse must be considered.	The spouse becomes a legitimate successor.	Governed by the civil code.
Peru	No absolute testamentary freedom. Spouse must be considered.	The spouse becomes a legitimate successor.	Governed by Agrarian Law.
Dominican Republic	No absolute testamentary freedom. Spouse must be considered.	The spouse becomes a legitimate successor.	Governed by Agrarian Law.
Uruguay	Testamentary freedom with the limitation of the spouse's share (as necessary for a congrua subsistencia)**	The spouse's share must necessarily be allocated.	Governed by the rules of the civil code.
Venezuela	No absolute testamentary freedom. Spouse must be considered.	The spouse becomes a legitimate successor.	Governed by Agrarian Law.

Source: FAO (1992).

**The term *congrua subsistencia* is understood as the amount of money that enables the beneficiary of the alimony to modestly survive in a way corresponding to their social status.

9.4 Violence against women

Urban violence against women occurs in the public and domestic domain and has been linked closely with issues of housing and urban development.[77] Violent clashes between different urban groups in the public domain have often played out in terms of attacks on women and restrict their access to public space and life. The possibility of women achieving security of tenure can enable them to avoid situations of violence.[78] Thus there exists a direct relationship between violence against women and the necessity to have adequate housing.[79]

Furthermore, various factors can fuel a spiral of violence against women, as violence and fear threaten the quality of life in society, good governance, sustainable development and the social and political life of cities. Women especially are affected by violence, often in the form of physical and sexual abuse as well as harassment, frequently in their own homes. The increase in crime is associated with growing of drug trafficking and the globalisation of organised crime, spreading to financial and housing speculation.[80]

Women working and living in cities are faced with the daily challenge of personal security. Without a doubt, security in these urban centres will require changes in rigid historical structures, led by political decisions and institutional practices that attempt to develop the new concept of citizens' security. This is not possible without organised citizenship participation, especially of women.

According to the Inter-American Development Bank, crime is growing in Latin America.[81] El Salvador and Colombia have the highest delinquency levels.

77 Vadera (1997), quoted by Trujillo, C. (2003).

78 Fundación Arias.

79 Trujillo, C. (2003).

80 UNCHS (2001:48).

81 Ibid.

10 Racial and ethnic equality

In recent years, black communities in Latin America have presented demands and employed strategies to establish their "indigenous identity".[82] As a result some progressive legal reforms have been introduced.[83] In many cases Afro-Latin American communities have built on the solid achievements of indigenous communities for their own rights.

While indigenous and black communities have been claiming collective rights over land and housing, indigenous women have been trying to guarantee their individual rights to own land.[84] The right to individual title, so strongly defended by the laws and the courts (often to the detriment of the recognition of collective rights), seems to be unattainable for women, although it is in the natural order of things in the real estate market.[85] Women's rights to security of tenure and to land titles in their own names are intrinsically connected to their right to exercise their individual liberties.

11 Land and Housing Policies

11.1 National housing policies

The housing crisis in Latin America has various dimensions. If public policies are to be efficient, they should be drawn up bearing in mind not only the lack of housing but also the need for improvement of housing, including hygienic and environmental conditions.

82 Wade, P. (1997). This tendency can be seen in Colombia (Palenques), Brazil (Quilombos), Nicaragua (Creoles), Honduras (Garífunas), Belize and Ecuador. As an example there is the black activist movement that surfaced in Honduras in 1980, who identified themselves by the terms "indigenous and Garífunas peoples of autonomous ethnicity" as a means of gaining recognition of their rights as peoples.

83 Towards the end of the 1990s, the World Bank and the Inter-American Development Bank started to support initiatives regarding the land rights of afro-descents in Latin America. Moreover, the World Bank set up projects connecting indigenous question with those of afro-descents in Colombia, Ecuador and Peru. Davis, S. (2002).

84 The Report no. 4/01, case 11.625 (2001) from the Inter-American Commission on Human Rights is an example of a judicial claiming aiming the recognition of ownership rights of Guatemalan women. www.cidh.org/annualrep/2000eng/ChapterIII/Merits/Guatemala11.625.htm

85 Deere, C. et al (2002:315). This reality is attributed to the ideology of the family, which is based on the notion of a male head of the family whose actions are always for the defence of the family, and never in his own personal interest, which justifies that if he has individual title, the land would belong to the family. The woman, on the contrary, when she has the land, the title of possession is individualised.

As general rule, Latin American countries approach the lack of housing with financing programmes, mainly operated by private institutions. To improve the quality of housing, attempts are made to develop policies of title regularisation capable of satisfying the demands of those living in informal settlements, and of those living in regularised settlements where infrastructure is still lacking. A recent study by the Inter-American Development Bank points out that the provision of social housing by the public authorities has been inefficient. This is largely due to inadequate investment of public resources in housing and basic infra-structure; lack of quality in public housing production; the implementation of construction programmes separate from public policies targeting the democratisation of access to land; and the absence of the private sector in social housing production programmes.

Housing policies have undergone modification over the past 40 years. Present plans for public housing are being revised because the most recent public and social policies for urban areas are not centred only on the construction of the housing, but seek integrated solutions for multiple problems. Successful experiments in Chile, Costa Rica, Ecuador and Nicaragua demonstrate how effective governments can be as mediators and facilitators of access to housing by the low-income sector.

Because the major concern of the Latin American states was to solve the numerical housing deficit, much legislation has been produced referring almost exclusively to financing and subsidies for the construction of new housing. Although the Inter-American Development Bank is presently supporting governments in their new role of "mediators" by promoting direct subsidies to the poor, the financing strategy has been the least successful in the region in view of the real difficulty of the low income population to meet the credit requirements, either public or private. [86]

An integral, comprehensive approach to land and housing rights is necessary to marshal the attributes and assets associated with the land sector as a key source for the improvement of the lives of the low-income population. Treating land simultaneously as a human rights concern and a development concern will be a fruitful way to implement public policies with a rights-based approach to development.

11.2 Subsidies and access to credit

Formal financial institutions have not been the main source of credit for the poor, even less so for poor women. Generally, women turn to informal sources such as credit from friends, family, direct cash loans, or payments in kind for credit purchases. Another informal channel is the participation of women in savings and credit organisations. Within this category the following can be found: [87]

- Rotating savings and credit associations. These are informal associations of rotating savings and credit, in which members meet regularly to contribute a pre-determined amount of money. The total sum of the savings is then loaned to one member, and once this debt is repaid, this process can be accessed by another member of the organisation. This is one of the main methods of informal financing found in rural Central America;
- Solidarity groups. These are groups of three to 10 people, based on the system of the Graneen Bank of Bangladesh and Banco Sol of Bolivia, who jointly access credit and technical cooperation;
- Community banks: A society of 20-50 neighbours that obtains a loan and maintains a savings rate;
- Rural banks: Informal groups of neighbours interested in accessing financial donors. The capital comes from stocks, savings, donations and utilities; and
- Savings and credit cooperatives: The resources primarily come from the savings of the associates, who define their own policies.

86 In Uruguay, an attempt was made to solve the problem of restricted credit by means of the National Housing Plan (1992). On the basis of this plan, the government drew up a document every five years about the housing situation, considering the existing demand for housing projects, the population's income, the loans and subsidies to be conceded, the plans for construction of public housing and legislation considered necessary for carrying out the plan. In Chile, since 1978, a system of subsidies for the poor has been in operation. The system is based on an analysis that takes into consideration various characteristics of the family group and gives preference to vulnerable groups, such as, for example, big families, the old, or women head of households.

87 Karremans, J et al. (2003).

These savings and credit schemes offer certain advantages to women's associations, including strengthening the local management capabilities of women. However, the schemes have limited operating capital, a low level of security and remain outside the formal financial system.

An important case study that demonstrates a model of women obtaining access to credit is described in the report on Nicaragua – the experience of the Women's Centre of Xochilt-Acalt.[88] Another model, *Modelo Tanda Préstamo,* is discussed in the Mexico report.

11.3 Regularisation policies

The legalisation of existing settlements as a means of guaranteeing access to basic services (water, sanitation, electricity) has improved the quality of life to some extent, although this regularisation is not widely applied in terms of national policies. Traditionally, three distinct types of land regularisation can be identified:[89] regularisation of the land title; physical regularisation (urbanisation and infrastructure provision); and both together.

Prices in the irregular land and housing markets reflect the drastic decrease in public development of urban land for housing purposes, especially as the formal private sector can only meet a small part of the demand.[90]

The regularisation of land title is the most widely used method of regularisation (see table below) as it costs the state less. Although not sufficient on its own, it should not be underestimated: this method provides residents of informal settlements with a legal title that they can use as a guarantee to obtain credit and improve their homes. Legal title can also facilitate the connection of public services such as water, electricity and sanitation, because even if these service pass nearby informal settlements, the supply companies will not connect the services if the land or building is not titled.[91]

Table 11.1 Regularisation programmes by type and country

Country	Initial year	Year com-pleted	Regularisa-tion of land title	Physical regulari-sation	Both
Argentina	1980	1990	X	X	X
Bolivia	1961	1982			
Brazil	1983	1988/90	X	X	X
Colombia	1972	1996	X		
Costa Rica		2003	X	X	X
Chile	1970	1995	X	X	X
Ecuador	1989	2001	X		
El Salvador	1991	1999	X		
Guatemala		2001	X		
Honduras	1998	2003	X		
Mexico	1971	1992	X		X
Nicaragua	1998	1999	X	X	X
Panama	1994		X		
Peru	1961	1996	X		
Uruguay	1984	1995	X	X	X
Venezuela	1968	2002	X	X	

Source: Clichevsky, N. (2003:32).

However, regularisation of title is only a means to the end of complete regularisation, because in the majority of instances proof of the existence of the full rights (ownership or possession) is required to initiate the process of settlement upgrading and the provision of basic services.

Tenure regularisation programmes benefit a range of stakeholders and produce the following results:

- They protect beneficiaries from the discretionary power of landowners and government administrations to promote forced evictions;
- They allow for social control over land reform;
- They are a basis for improvement of government revenue through land taxation; and

88 Arenas, C et al (2004:45-46).

89 Clichevsky, N. (2003:31).

90 Durand-Lasserve, A. (1997).

91 The growing privatisation of the provision of basic services in Latin America has increased the difficulty that residents of informal settlements face in getting the supplies connected, because the private companies who now provide the services under concession from the public authority fear they may not get back the connection investment or that their profits will be less secure.

- They provide an incentive for future investments to improve land and housing.

However, tenure regularisation can be detrimental to some beneficiaries who have the most vulnerable legal or social status, like tenants or subtenants on squatter land, new occupants who are not entitled to access land regularisation public programmes, and so on.

The form of tenure regularisation varies in accordance with the nature of the land that is occupied, whether it is publicly or privately owned. When the land is privately owned, the state can use the legal instrument of expropriation according to the legal dispositions prevailing in the country or open direct negotiations with the owner. If the land is public property, under the laws regulating the public service the state can alienate the building. This consists of an act by which the state makes the property, hitherto not negotiable, available or subject to regulation, and then transfers it to the occupiers.

For the regularisation of land title, occupants of informal settlements must meet certain minimum requirements, which vary by country. According to Nora Clichevsky,[92] the occupants must generally prove that they:

- Do not own any other property in the country;
- Are heads of household, and in this respect, priority is given to women as far as possible;[93]
- Are not in debt to the state;
- Have a minimum income capable of paying, at least in part, the expenses of the regularisation (a condition not applied in cases of extremely poverty); and
- Are citizens, because legalisation of land to foreigners is not permitted.

After regularisation, payment for land ownership or usufruct is usually required, but at a reasonable price to guarantee housing/land affordability for the beneficiaries.[94]

Programmes of physical regularisation or slum upgrading have not been implemented as frequently as legal regularisation, principally because of the cost and disruption involved for the state and the general population.[95] In many of these programmes, legalisation of informal settlements is one of the objectives, or is required before the work can commence. For the success of physical regularisation, popular participation is essential. Although that participation is a requirement in a number of projects of physical regularisation in many countries of the region, such as Ecuador, Costa Rica, Venezuela, Brazil, Peru, El Salvador and Mexico, in practice it has turned out to be merely an intention of the public authorities.

Without the existence of some reasonable urbanisation plan and an improvement of living conditions in the informal settlements, it is difficult to achieve land titling. Both interventions are of fundamental importance to pursue the integral fulfilment of the housing to land, to housing and to the city for the low-income population. This leads to the necessity of implementation of integrated urban policies.

11.4 Self-helping innovative housing schemes to benefit women

In general, self-construction and mutual aid operates in the shantytowns and informal urban settlements. This system is of enormous help to poor women in particular. However, it is not a panacea:

- It requires solidarity from the community and neighbours, which cannot be guaranteed;
- It requires free time from the families, which in general have to work over weekends; and

92 Clichevsky, N. (2003:23).

93 However, in some countries, such as Honduras, where there is a legal understanding that the male is responsible for the family, this requirement is a serious factor in gender discrimination. According to a country report submitted by the government to the United National Committee on Economic, Social and Cultural Rights on 23/07/98, with reference to the fulfilment of obligation assumed in the International Covenant on Economic, Social and Cultural Rights. http://www.unhchr.ch/html/menu2/6/cescr/cescrs.htm

94 Clichevsky, N. (2002:55).

95 "Physical intervention brings additional costs associated with installation and consumption of services. It may also introduce taxes and higher tax contributions. In order to meet such costs, families may be obliged to make savings elsewhere or engage in rent-seeking behaviours such as renting or sharing lots or be forced to sell and move out." Ward, P. (1998:5).

- It does not assure good quality housing because the projects are neither supervised nor implemented by qualified workers.

12 Regional recommendations and priorities

Although there are detailed recommendations in all the respective country chapters, a number of overarching themes that cut across the region can be captured.

(1) **Government should take on a more proactive role in land matters.** A firmer role is needed of government to reduce the intense speculation in urban land, which leads to exclusion of the poor. Further, increased efforts need to be made to address the glaring land ownership inequalities in the region. These issues lie at the core of providing housing, land and tenure security to the estimated 180 million people living in poverty in the region.

(2) **There is a region wide need to implement non-discriminatory laws and policies.** While there are aspects of gender equality in the laws of the region, the actual practice has often been lacking. The reform of institutions to include broader gender representivity, attitudinal changes as well as education campaigns are important ingredients in implementation of these laws. International treaties and conventions with their reporting and monitoring procedures can additionally be useful tools for feedback on implementation.

(3) **Increase efforts in fulfilling the right to adequate housing.** The general regional acceptance of a legal right to housing in various forms should be coupled with scaled up programs for expanding service provision through informal settlement upgrading, granting tenure security and new housing development. Donors and multilateral lending agencies have an important role to play in providing funds for such programmes.

(4) **Recognise and reinforce the role of small and micro credit institutions among the poor.** The lack of accessible financing for the poor has often left them out in housing programmes. Positively however has been the development across the region of micro credit institutions whose membership is often largely composed of women. There is a need to better target these initiatives through increased support to better capacitate, capitalise and formally recognise them.

(5) **Recognise the special needs of indigenous and minority communities.** While there is general recognition and consensus on this ideal, there is a need to better integrate these communities in all land reform and housing programmes.

(6) **Incorporate civil society into the highest levels of decision-making.** The often active and vibrant civil society in the region needs to be fully integrated into governmental decision organs at all levels. This will ensure they can better influence policy and decision making.

(7) **Further pursue pioneering concepts in land tenure and reform and enhance shared learning.** The region is considered to be the home of what many regard as positive practices in land tenure and reform, and provides an important source of learning for the rest of the developed world. There is a need to more urgently implement many of these practices on a wider scale as well as share experiences within the region.

(8) **Integrate the poor living in informal settlements into the urban fabric.** A mixture of colonial legacy and post independent land practices has seen the peripheralisation of the urban poor across the region. While there is no single solution to this phenomenon,

urban planning, land reform and housing programmes should have integration as a priority. Informal settlement regularisation that provides infrastructure and services at scale is key. Again the importance of shared learning among the country's is important, with many already featuring such priorities in their policies and programmes.

(9) **Reform of land registration systems across the region.** This is a broad area of reform and emphasis will depend on the country concerned. However, there is a general need to incorporate the poor into these systems through reconciling the formal and informal systems of land acquisition. In addition, there is need to reform old and outdated colonial laws; modernise the systems through broader use of technology; and increase decentralisation and capacitation of regional and local units.

(10) **Improve access to information and legal support on land and housing rights.** A common feature in the region is the need to better implement good laws and policies. The public should be better educated on the contents of these laws and legal support provided to prevent violations. Civil society is important in this process.

Land law reform in Brazil

Introduction

Origins of report

This is one of four reports that examine in detail land tenure systems and law reform in selected Latin American countries: Brazil; Colombia; Mexico and Nicaragua. The preceding regional overview provides a broad summary of issues across the region, i.e. over and above the four countries selected for individual study, and highlights key themes upon which the four country studies are based. The country reports flow from an extensive examination of laws, policies and authoritative literature, in addition to a wide range of interviews. Each country report is authored by a resident specialist consultant. UN-HABITAT, the sponsor of the project, conducted a workshop to set the research agenda.

Themes

In this report examination of land tenure has been considered broad enough to cover matters regarding housing, marital property issues, inheritance, poverty reduction and local government. An additional important aspect of the study is its focus on gender and its relationship to each of these issues.

Structure

The report is structured to capture the wide-ranging topics mentioned above. Every effort has been made to stick to standard headings in all four reports, but obviously there has been some variation to accommodate issues needing special emphasis in particular countries.

The first part of the report sets the scene for the study, providing a brief historical background, followed by a snapshot of how the governments and legal systems of the country function in relation to the subject matter. There is a discussion of the socioeconomic conditions. The section concludes by examining the level of civil society activity in the countries of study.

The next section, on land tenure, is the core of the report, defining the various types of land in the country and the relevant constitutional provisions, laws and policies. The chapter also attempts to define what rights accrue to the holders of various types of land.

The next section examines housing rights, including related matters such as the accessibility of services like water and sanitation. It deals with constitutional matters and relevant laws and policies.

The next subject area is inheritance and marital property issues. The initial emphasis here is on determining whether a constitutional provision that prevents discrimination on grounds of gender is provided. Issues of marital property rights hinge on whether both men and women enjoy equal property rights under the law.

A section is then dedicated to examining the country's poverty reduction strategies, national development plans or similar initiatives and their relationship to the primary themes of the report.

The section on land management systems maps the institutions involved in land management and administration, and how far their functions filter down to the local level. This section also analyses the relationship this formal bureaucracy has with informal settlements and their dwellers. The section concludes with a selection of court decisions on land and housing rights cases.

Local and, where appropriate, state laws and policies are then scrutinised to determine how they address land and housing rights, as well as their relationship with national laws.

Implementation of land and housing rights is the next topic of discussion. It addresses how successful the actual delivery of these rights has been.

The final sections draw on information provided in the previous parts of the report. The best practices section tries to identify any positive and possibly replicable practices that have emerged. The conclusions section flows from the previous section, identifying problems and constraints to land and housing rights delivery. The final part of the report makes recommendations. These are designed to be realistic, taking into account the specific conditions in each country, within the context of the region.

Figure 1.2 Map of Brazil

Background

1.1 Introduction and historical background

By far the largest and most populous country in South America, Brazil occupies an area of more than 8.5 million km² and has an estimated population of 170 million people.[96] Brazil was a Portuguese colony until 1822 when it gained independence. The ensuing local version of colonial monarchy gave way to a republican regime in 1889 and, in spite of some periods of military dictatorship, the country is a constitutional democracy today.

Initially the economy was based on sugar, coffee, gold, rubber, wood and other natural riches. African slaves imported by English and Portuguese slave traders were the main source of labour on the plantations and in the mines. After many attempts to overcome the resistance of the big Brazilian farmers – who like their North American counterparts depended on human slavery for their profits – slavery was finally abolished by law in 1888. The economy, however, continued to be based on the export of raw materials and the import of manufactured products in exchange, until the world economic crisis in 1929 and the two world wars interrupted maritime commerce and stimulated capital investment in local industrial production.

This industrialisation process generated an ever-increasing exodus of rural families to the cities and towns. While up to 1940 the population structure had been overwhelmingly rural, today 80 percent of Brazilians live in metropolitan urban areas such as São Paulo, Recife, Fortaleza and Porto Alegre. Urbanisation proceeded apace during periods of democratic and non-democratic rule. However, the last military government (1964-1984) also increased central government control over urban and housing policies, weakening the powers of provincial and municipal government – and indeed the rights of the population as a whole.

96 Brazilian Institute of Geography and Statistics. (2000).

The social movements that helped to bring an end to the military government also succeeded in establishing a Constitutional Assembly to draw up a revised Constitution in 1988, which remains in force today. Simultaneously, strong urban reform social movements were formed by citizens' committees, NGOs, professional associations, researchers, university professors and others who campaigned for action to abolish the inhuman and undignified conditions under which many millions of people were forced to live in Brazilian cities.

The 1988 Constitution introduced institutional and legal processes for the democratisation of the state. It also opened up possibilities to resolve a range of problems stemming from social inequality in Brazilian cities, particularly by recognising the right of the citizens to participate in formulating and implementing public policy, and to promote public control of the state.

At the same time, a small minority of landowners remain in control of a high percentage of the land, making Brazil one of the most unequal countries in the world. In both rural and urban areas struggles for democratisation of land access have resulted in much violence, but these efforts have failed to bring about land reforms capable of offering a dignified living standard to the general population.

1.2 Legal system and governance structure

Brazil is a federal republic, with a representative system and democratic regime in accordance with the Brazilian Constitution of 1988. The Brazilian state is organised into the following federal units: One union, 26 states, 5,559 municipalities and one federal district (the capital, Brasilia).[97] All of these units are autonomous.[98] The Brazilian federal system, as an innovative component of political decentralisation, recognises the municipality as a component and autonomous member of the federation, along with the union and

97 Source: http://www.tesouro.fazenda.gov.br/estados_municipios/index.asp

98 The federal territories are part of the union and can be transformed into states or reintegrated into the state of origin.

the states.[99] Municipalities can approve their own municipal constitution. As a general rule, matters of predominant international and national interest are the responsibility of the union; all matters that are not listed as exclusive federal powers by the Constitution are the responsibility of states.[100] In Brazil, there is no regional jurisdiction and matters of local interest fall within the responsibility of the municipalities.

As a federal system, there is a division of legislative jurisdictions and political-administrative responsibilities and obligations between the union, states and municipalities. The legislative jurisdictions are those related to the formulation and adoption of legislation by the federal, state and municipal parliaments. The political-administrative responsibilities are related to the implementation and monitoring of public policies and programmes – in other words, everything related to activities that are mandatory to the union, states or municipalities.[101] The rights and fundamental guarantees of the people are supposed to be implemented through legislation and public policies, which seek to fulfil the fundamental objectives of promoting social justice, eradicating poverty and reducing social inequalities. See Appendix I for a description of the various units of government and their jurisdictions.

Federal responsibilities

With regard to urban development, including housing, basic sanitation and public transportation, the union has the responsibility to establish general guidelines that must be followed by federal, state and municipal authorities.

Under Art. 20 of the Constitution, lands such as the country's coastline and borders, the federal roads, the rivers and islands, the beaches and areas traditionally occupied by indigenous peoples are considered federal public land, and it is the responsibility of the union to regulate their use. Similarly, the states and municipalities have jurisdiction over public lands within their borders.

State responsibilities

Respecting the principle of concurrent urban law jurisdictions, in the absence of an applicable federal law the states will have full powers to issue suitable regulations.[102] The states have concurrent legislative capacity over legal services and public legal defence.[103] However, only the president of the republic can introduce laws related to the creation of general rules for the organisation of the public legal defence system of the states, the Federal District and the territories.[104] Once generally determined by the federal president, all three powers (the union, the states and the Federal District) have concurrent jurisdiction over the application of this system. The public legal defence institution has the prime responsibility for providing legal assistance so that those who are socially vulnerable obtain justice. In addition, the institution is of fundamental importance in the defence of cases related to access to land and housing rights.[105]

In relation to the judiciary, the states also have concurrent legislative capacity over proceedings in matters of procedural law, legal assistance and special courts for small cases.[106] Based on this jurisdiction, the states may establish special proceedings for urban adverse possession, for regularising urban squatters and for special concessions for housing purposes, all of which are instruments of land regularisation.

Together with the union and the Federal District, the states are bound by law to implement programmes of housing construction and to improve housing and basic sanitation conditions. The state of São Paulo, for example, has established a state system of housing policies that has created a series of housing laws to be implemented by the state Department of

99 Art. 18 of the Constitution. Before the Constitution of 1988 the municipalities in Brazil were not provided with autonomy.

100 See Art. 25, par. 1 of the Constitution.

101 The political-administrative responsibilities are enshrined in articles 21 (union), 23 (common jurisdiction among union, states and municipalities) and 30, III to IX (municipalities), while the legislative jurisdictions are laid down in articles 22 (union), 24 (concurrent jurisdiction amongst union and states) and 30, I and II (municipalities).

102 Art. 24, paragraph 3.

103 Art. 24, XIII.

104 Art. 61(d) and article 134, sole paragraph.

105 Art. 5º, LXXIV.

106 Art. 24, X, XI, and XIII.

Housing and the Urban Development and the Housing and Urban Development Company (CDHU).

Municipal responsibilities

The municipality has the jurisdiction, where necessary, to issue laws supplementing state and federal legislation as applied to local matters such as environment, education, culture, health and urban rights and law. The councillors have the authority to legislate in the municipality, according to Art. 29 of the Federal Constitution.

Article 182 of the Constitution establishes as an objective of urban policy that all municipalities should develop a master plan as the basic legal instrument for urban development and property ownership, thus ensuring full development of the city's social functions and guaranteeing the well being of its inhabitants.

The Constitution grants the municipalities exclusive legislative jurisdiction in matters of local interest, including the power to supplement the respective state and federal legislation. The municipalities may also promote legislation and/or regulations as required for control, utilisation, urbanisation and occupation of urban land in accordance with Art. 30, I, II and VIII of the Constitution.

The municipality is thus the principal body promoting urban policies for the orderly social development of the cities.

Using its master plan, the municipality must develop local housing guidelines, regulations and norms for the use and occupation of urban land and the forms of cooperation between the public and private sector. According to Art. 182 of the Constitution and Art. 4 of the City Statute, the municipality must define criteria for determining the social use of urban property. The municipality may also:

- Adopt specific housing laws of social interest;
- Improve urban infrastructure in informal settlements;
- Create zones of special social interest;
- Regulate the conditions for the transfer of the right to build; and
- Grant special concession for housing purposes to tenants living in irregular public areas.

Furthermore, Art. 156 of the Constitution states that the municipalities have powers to create and collect property tax on urban land and buildings. This tax may vary in accordance with the value of the property and the purpose for which it is used and there can be different rates in different areas of the city. The tax may also be used at progressively higher rates to penalise owners of urban property that fails to fulfil its social function as laid down in the municipal master plan.

Legislature

The Federal National Congress is composed of:

- The Chamber of Deputies (representatives of the people, elected by proportional representation in each state, territory and in the Federal District); and
- The Federal Senate (representatives of the states and of the Federal District, elected by majority vote). [107]

As of April 30 2005, out of 513 deputies, 44 were women (8.6 percent), and out of 81 senators, 10 were women (12.3 percent). [108]

The National Congress is the only body empowered to legislate on all matters within the competence of the union. It may also:

- Authorise a referendum and call a plebiscite (Art. 49, par. XV);
- Authorise the exploitation and use of water resources and the prospecting and mining of mineral resources in indigenous lands, (Art. 49, par. XVI);
- Give approval in advance for the disposal or concession of public lands with areas exceeding 2,500 ha (Art. 49, par. XVII);
- Amend the Constitution if three-fifths of votes of members of each House of the National Congress are cast in favour of the alteration. (Art. 60, par. 2); and

107 According to Art. 45 of the Constitution the numbers of federal and state deputies to be elected in each Brazilian state depends on the local population and is decided by proportional representation.

108 Inter-Parliamentary Union. (2005).

- Control the accounts, finances, budget, operations and property of the union (Art. 70).

Legislative process

Legislation can be initiated by the president of the republic, the National Congress, the Supreme Federal Court, the Superior Courts, the Attorney General and any citizen.[109] The Constitution defines which issues are subject of complementary legislation. Decrees are acts issued by the executive (president of republic, governor of the state or mayor).

According to amendment 32 of the Constitution of September 11 2001, in important and urgent cases, the president may issue provisional legal measures with immediate effect, while simultaneously submitting them to the National Congress for later approval. If congress does not transform the provisional measure into formal law within 45 days of publication such measure becomes null and void and the National Congress shall introduce legislation to regularise the legal effects arising from this (Art. 62). Provisional measures issued before September 11 2001 have the force of law, whether transformed into another law or not.

When a bill has been approved in the National Congress, it is sent to the president for his/her approval and sanction (Art. 66). The president has the power to veto the bill wholly or partially if s/he considers it to be unconstitutional or contrary to the public interest. His/her decision must reach the president of the Senate within 15 working days and, if the veto powers have been used, a detailed exposition of the reasons must be included. An absolute majority of the National Congress may reject the veto and where this happens the bill is sent back to the president for publication in its original form.

Judiciary

The judiciary consists of the following institutions:

- Supreme Federal Court
- Superior Court of Justice
- Courts of Appeal
- Federal Regional, District, State and Territory Courts
- Labour Courts
- Electoral Courts
- Military Courts

Federal Regional Courts are presided over by federal judges. These courts are responsible for the judgement of disputes concerning the rights of the indigenous population.[110] Federal District, State and Territory Courts are established throughout the country and are constituted with career and lay judges authorised to conciliate, judge and execute the less complex civil suits by means of oral and summary proceedings. Where permitted by law, they may also hand down judgements and settlements of appeals from panels of judges in first instances.[111]

For the settlement of conflicts related to land, the Court of Justice shall designate judges in states, with exclusive competence over agrarian matters.[112]

In the last two decades the number of women judges has increased. Out of the current total of 14,400 members of the Brazilian Association of Judges, 4,089 are women.

Public defence

The office of the public defender is responsible for legal guidance and defence of litigants unable to pay for private lawyers in all types of cases. They provide pro-bono service at all levels of the justice system in accordance with Art. 5(LXXIV). Supplementary legislation organises the public legal defence in the union, in the Federal District and the territories and provides guidelines for the respective organisations in the states.[113] In addition to a federal public defender, each state must provide a public defender. Twenty-four states in Brazil

109 On the basis of Art. 61 §2° of the Constitution, any citizen may initiate legislation by presenting a popular initiative of the draft bill of law in Chamber of Deputies. To be voted into law the initiative must be subscribed by a total of at least 1 percent of the national electorate, located in at least five states and with not less than 3/10 of 1 percent of the voters in each state.

110 Art. 109, par. XI of the Constitution.

111 Art. 98 of the Constitution.

112 Art. 126 of the Constitution.

113 Art. 134 and 135.

have a public defender's office, while three (among them São Paulo) do not.

1.3 Socioeconomic context

The urbanisation of Brazilian society is the result of unbalanced industrialisation and development, carried out in the name of modernisation, but without any consideration of the social or land rights of the majority of the population. The process accelerated in the second half of the 20th century, when the government's import substitution programmes were creating many jobs in the cities at the same time as the long-term effects of the abolition of slavery (1888) rendered large numbers of rural workers unemployed.[114] Arriving virtually penniless in cities that were totally unprepared for the numbers involved, these workers obtained employment at extremely low wages. As a result, they could not rent or buy adequate homes and were forced to the city outskirts, or to swampy, undesirable or dangerous land without roads, water, sanitation or other civic services.

Although Brazil is an industrialised society that competes on an international level in terms of both quantity and quality, the factories are unable to provide work for the millions of unemployed, and the majority of Brazilians still work for low wages. The powerful farmers and rural oligarchy, who have always received favourable treatment from successive governments,[115] contribute very little to alleviate the tragic situation in the major cities. Some 160 million ha of land lies fallow and entire townships of hitherto well-populated lands are virtually deserted, while 50 million people are crowded into miserable shacks and hovels in all the major cities.

Brazil's industrialisation and development model has been implemented in many developing countries with similar results. This model aims for economic growth above all, disregarding the needs of the much of the citizenry. State investment was employed in urban infrastructure projects to create the conditions required to attract industrial development. This often included the construction of roads, railways and civic services connecting the central areas with the distant peripheries where factory and service workers were forced to live. Such improvements often ran through previously unoccupied areas, many privately owned but of low value. The construction boom, however, forced the poorer classes farther still from the city centre and its work areas.

This situation is getting worse every day. Since the 1980s, the larger cities have grown faster than the country as a whole.[116] In 1991, of the total population, 75.6 percent lived in urban areas. Today, 81 percent of the population (about 138 million people) live in the cities.[117]

The growth of informal/illegal urban settlements

The illegality and informality characterising a great proportion of Brazil's urban settlements is largely because urban land occupation standards fail to require that the social functions of property are fulfilled by landowners.

The Brazilian Institute of Geography and Statistics (IBGE), considering only areas with more than 50 irregular buildings, estimates that the illegal areas known as *favelas*[118] increased by 22 percent from 1991 to 2002. However, the *favela* is only one form of irregular occupation. Others include:[119]

- Collective occupations of public buildings in central areas of the city by popular movements struggling for housing;
- Individual or collective occupations of empty spaces under bridges and viaducts;
- Irregular sales or negotiation of small lots by private entrepreneurs, real estate owners, housing cooperatives, and private individuals or companies (who may or may not be the legal owners of the land) in volatile areas,

114 The major portion of rural lands are owned by a relatively few strong farmers ("*latifundiarios*") who reacted to the loss of the slaves on which their agriculture depended either by closing down and leaving the land non-productive or dedicated to cattle ranching, or by growing crops needing little labour. In both cases the local population was reduced to extreme poverty and migrated to the cities.

115

116 Cities with populations between 100,000 and 500,000 inhabitants.

117 Brazilian Institute of Geography and Statistics-IBGE. (2001) *Cidades: uma alternativa para a crise urbana.* Editora Vozes, Petrópolis, Maricato Ermínia , Brasil.

118 *Favelas* are concentrated areas (some as big as small cities) of precarious structures built on public or private land invaded by individuals or groups. Some *favelas* are also slums and some have been incorporated into regularisation programmes.

119 Saule Jr. (2001:110).

areas of environmental preservation, hilly or swampy land, or areas otherwise unsuitable for normal human habitation;

- Allocation of irregular housing sites and urban lots by the public authority itself;
- Irregular allocation of housing sites by community associations, groups of evicted or landless people and so on; and
- Inadequate conversion of old houses or buildings, which are generally in bad condition and often dangerous, into tenements rented out to low-income families.

HIV/AIDS

Brazil has and adult HIV prevalence rate of approximately 0.7%, with an estimated 650,000 adults living with HIV at the end of 2003. Of these, women constitute 39%. Brazil's response to HIV has generally been considered positive with strong political support from the highest levels of government, good regulatory policies as well as funding at national, state and municipal level. Antiretroviral provision is universal and guaranteed by national law, which is helped by the production of generic versions of the drugs by several publicly owned companies. [120]

The social function of property in Brazil

That property ownership creates a social function has been a fundamental principle of the Constitution since 1934. However, in practice, the requirement is rarely implemented by the private sector, and government action to enforce compliance has been at best sporadic and at times entirely absent.

In terms of Art. 182 of the Constitution the social function of urban property is defined by the municipality through the master plan. Pursuant to Art. 185 and 186 of the Constitution the social function of a rural property is determined by its productivity, how well its owners respect workers' rights and the environment, and other factors.

High levels of housing deficit

According to the census carried out by IBGE in 1995, about 4.8 million rural families have no land and the urban housing deficit stands at more than 5.4 million units, or 14.5 percent of total urban residences. [121] The 2000 IBGE census indicates that there are 4.8 million unoccupied residences in the cities, or about 10.3 percent of the total amount of urban residential construction. [122]

In the Brazilian context, housing is "a special good that requires urbanised land and financing both for construction and sale. In this sense it is a part of the macro-economy and competes for investment with other capital goods in a marketplace which depends on public regulation and financial subsidies." [123] After the Brazilian Census of 2000, the João Pinheiro Foundation conducted a study on the housing deficit in Brazil. The research started with the concept that "everybody lives somewhere," and from there proceeded to define the criteria for definition of the housing deficit and what situations contribute to it.

The "housing deficit" quantifies the need for the construction of new housing either because of precarious construction, wear and tear of the physical structure, or undesirable multifamily use.

An estimate of the housing deficit in Brazil in 2000, by region, is provided in the following table.

Table 1.3 Estimate of the housing deficit by region

Region	Housing deficit	% of total permanent private residences
North	411,625	20.2%
Northeast	2,631,790	23.0%
Southeast	2,412,460	11.9%
South	690,312	9.6%
Central West	488,482	15.4%
Brazil*	6,656,526	14.8%

* Rural housing deficits of Rondônia, Acre, Amazonas, Roraima, Pará and Amapá states are not included.

120 UNAIDS. (2004).

121 The figures related to the housing deficit were taken from the study "Housing Deficit in Brazil" undertaken by João Pinheiro Foundation, Belo Horizonte, 2001.

122 The total amount of urban residential construction is the number of permanently occupied private residences (whether located in houses, apartments or rooms) capable of adequately housing a person or a family or those linked by parental connections or domestic dependence.

123 Maricato, E. (2001).

The urban housing deficit was estimated at 5.4 million homes and the rural deficit at 1.2 million homes in 2000. The need to increase and replace existing homes is most pressing in the urban areas (81.3 percent of the estimated 6.6 million new homes in 2000). The metropolitan regions represent 29.3 percent of the total demand – about 2,000 new units.

Some 4.4 million homeless urban families in Brazil have a family income of less than $225[124] (three minimum salary earners per family), which is clearly insufficient for them to maintain themselves and purchase any kind of home in the public or private real-estate markets.[125] They primarily come from the northeast and southeast regions of Brazil (73.3 percent of the total) and make up 83.2 percent of the urban population in critical habitation conditions. They are generally classified as living in "precarious urban habitation" – a euphemism for shacks – and it is common to find many extended families, distant relations or even friends crowding into a single shack unfit for even one family.

Table 1.4 Estimate of the housing deficit as a percentage of the population

Region	Population without Housing	% of Total Population
North	1,277,480	14.0%
Northeast	8,876,959	18.4%
Southeast	6,672,060	8.9%
South	1,908,901	7.4%
Central West	1,371,761	11.8%
Brazil*	20,190,986	11.7%

* Residents of shacks not included.

According to the above-mentioned study, to eliminate or at least alleviate the housing crisis the following are required: provision or improvement of basic infrastructure (roads, drains, power, water, etc.); regularisation of land ownership (titling, legislation, etc.); and provision of credit for the repair of housing, the purchase of used but serviceable houses, and an increase in the construction of quality low-income housing.

Regarding the quality of the infrastructure, it is estimated that 28 percent of residents lack at least one essential basic service. Of this figure, 39.1 percent are located in the northeast, precisely where the poorest population lives, followed by the southeast with 21 percent. Sanitation is the service most often deficient or lacking in Brazilian residences (79.3 percent), followed by piped water supplies (15.3).[126] As might be expected, inadequate housing is most often found in the three minimum salary income levels of the population and represents 58.9 percent of the country's poorer people. Furthermore, the situation rapidly worsening: the total housing deficit was 5.374 million in 1991 and rose 6.539 million in 2001, for a total increase of 21.7 percent or 2.2 percent per year.

The overall housing deficit has risen mainly in the poorest segment of the population. As has been shown above, even the most favoured income group of this large segment (i.e., those families with three people working or earning) cannot afford to buy even a modest home.

Agrarian land management

The mass migration to the cities was caused largely by an unjust agricultural development policy that concentrated land in the hands of a few private owners[127]. Furthermore, many of these owners are not productive and much of the land lies fallow or is used only for cattle ranching. The type of agricultural development implemented in Brazil has always given priority to rural oligarchies and the industrial, commercial and financial capital associated with them. Of the 38 million people still living in rural areas, 73 percent have an annual income below the poverty line ($260), placing the country among the world's worst in distribution of income.

124 As of July 2004.

125 A small one-bedroom flat in a modest suburb costs about US$ 16,000 and may be financed by an allegedly socially responsible government savings bank in 10 years at 26.5 percent per annum. A down payment of US$ 4,950 is required and the repayments run to about US$ 280 per month. When a family with three people working brings in only US$ 225 per month, it is obvious that the World Bank/IMF market solution has no chance. When we consider that the Government itself keeps down the minimum salary level, the cynicism of advancing such a solution is worrying.

126 The totals do not represent the total of residences not provided with such services at all; they refer to the ones that were not provided with *one* of the services.

127 According to the census of 1996 by the IBGE, there are 4.8 million agricultural establishments in the country occupying a total area of 353.6 million ha. Small landholdings (maximum of 100 ha) total 89.1 percent of all property and 20 percent of the total area, while 1 percent of property owners with more than 1,000 ha retain 45 percent of all lands.

This agrarian situation is responsible for the presence of large-scale hunger in the countryside and for the migration of 50 million people to the cities over the last 30 years.[128]

The process of agrarian reform in Brazil neither maintained the rural population nor provided for their needs. According to data supplied by the National Institute on Colonisation and Agrarian Reform (INCRA),[129] from 1964 to 1994, 218,534 families were resettled on rural land, while from 1995 to 2002, this number grew to 635,035. INCRA reported that in 2003 alone 36,301 families had been resettled. Although impressive, this number of families settled on the land does not come close to meeting demand. Both the IBGE and the Ministry of Agriculture state that more that 5 million families need land in Brazil. Furthermore, the means are available to do much more, as official data show that land is available to settle more than 2.5 million families.

The indigenous population

The Brazilian Socioenvironmental Institute (Instituto Socioambiental), using heterogeneous data subject to various interpretations, estimates that some 350,000 indigenous people distributed in 218 groups now live in Brazil. This amounts to about 0.2 percent of the total population but probably does not represent the true figure, because there are still many tribes about which little is known, and many indigenous people living in cities. The 2000 IBGE census asked people to identify their own racial origin and 700,000 individuals identified themselves as "indigenous".

The Constitution has created a special situation for the indigenous peoples and their territories. In accordance with Art. 231, indigenous land is considered property of the federal union, but is meant for the permanent possession of the indigenous peoples, who have the exclusive usufruct of the riches from the land, the rivers and the lakes existing within them. The indigenous lands are assets of the union and the constitutional granting of these lands aims precisely at preserving them and maintaining the link that is found in the Constitution, this being a reserved property created with the purpose of guaranteeing the indigenous peoples' rights over it. They are, therefore, unavailable and inalienable lands[130].

Since the adoption of the Constitution of 1988, the recognition of collective territorial rights of the indigenous peoples of Brazil has improved considerably, so that today about 12 percent of Brazil as a whole (including 22 percent of the Brazilian Amazon) is now legally recognised as indigenous territory. However, these rights are not equally distributed – for example, the indigenous people who live in the regions where the original colonial occupation was strongest (the northeast, the east and south,) are confined to micro-territories, often on the peripheries of large cities. In the Amazon, large numbers of indigenous people live on the peripheries of large cities such as Manaus and Boa Vista as minorities, while in some small cities like São Gabriel da Cachoeira in the state of Amazonas, they are in the majority and combine their traditional ways of living (long-houses and farms) with the more usual urban residences.

The traditional black populations/quilombos

Afro-Brazilians make up 45 percent of the population, forming the largest black population outside of Africa. Blacks make up the poorest of the poor population, with lower educational levels, and the worst and lowest-paying jobs. The Brazilian Constitution of 1988 (Art. 68 of the Transitory Constitutional Dispositions) ensures the remaining descendants of the *Quilombo*[131] communities the rights to their traditional lands and guarantees them the right to maintain their culture. The state must protect the cultural manifestations and forms of expression of all the different groups making up Brazilian society (Art. 215 of the Constitution), all of whom are considered assets to Brazilian culture, and

128 Valente, F. (2003:375).

129 National Institute on Colonisation and Agrarian Reform –INCRA. (2002).

130 The indigenous lands of the country occupy 105,172,719 ha, corresponding to 12 percent of the national territory. From this total, 359 or 60.54 percent are already titled or at least identified by the National Indian Foundation (FUNAI). The majority of non-demarcated lands are located in the northeast and southeast – regions where pressure from economic interests is lower.

131 The *quilombos* were originally villages and towns set up by slaves who had sought their liberty by fleeing from their colonial masters and establishing themselves in remote areas. The people and their descendents born in liberty were known as *quilombolas* communities.

therefore are entitled to the dignity and respect afforded to all the other diverse social elements. In this way, the state laid down specific rules for the protection of the physical and cultural integrity of these communities and recognised the importance of the *quilombos* in the formation of Brazilian society.

According to the concept adopted by the Brazilian Anthropological Association, *quilombos* are "any rural black community, traditional villages of descendants of escaped slaves living by a subsistence culture and maintaining their cultural manifestations with strong links to the past." Despite constitutional guarantees, of the 743 remaining communities of officially identified *quilombos*, only 42 have been legally recognised and 29 actually titled.

The majority of Afro-Brazilians in the cities live in inadequate houses or *favelas*. Racism and racial discrimination are intimately related to unequal access to property and resources by social groups who are object of discrimination and racism. In Brazil any effective urban reform must start by promoting racial equality so that the Afro-Brazilian populations, and indeed all minorities, may live and work with dignity. The social movements of Afro-Brazilians and of urban people are the main supporters of the struggle against racial inequality in Brazil. By the 1990s they had grown strong enough to demand the implementation of affirmative action policies.

The situation of women

Women constitute 51 percent of the Brazilian population, but account for only 6 percent of the Senate and 14 percent of the Federal Council. In the present government of President Luiz Inacio Lula da Silva however, several ministries are headed by women: Environment, Mining and Energy, Social Development and Combat against Hunger, and the Special Departments of Combat against Discrimination and Racial Inequality and Combat against the Discrimination of Women. On the other hand, women make up two-thirds of the illiterate population and, although they constitute 40 percent of the workforce, only 20 percent achieve management positions. Occupational segregation persists, and women are paid less than men for doing the same type of job (in 1999 they earned the equivalent of 60.7 percent of what men earned). Access to training and professional qualification is difficult and, as a consequence, a majority of women perform menial labour and/or work in the informal sector.

The number of women heads of household has grown and is estimated today at 26 percent. Consequently there is considerable demand for popular housing programmes of social interest by women-headed households.

Since 2000, female rural workers have obtained rural pension rights as well as the right to possession of rural land allotments. And since 1988 the Constitution (Art. 189 and 183(1) has guaranteed women the right to have agrarian reform land titled in their own names, even if they were not legally married. However, only in 2001 did the government alter the traditional male land ownership practice and start to issue titles in accordance with the Constitution. No statistics are available on how many women have been allocated such land and how many women have a joint title with their spouse.

Laws protecting persons from sexual and domestic violence have yet to be fully enforced. According to the Centre for Housing Rights and Evictions (COHRE) "such protection is critical in the field of housing rights, as women often have to choose between having a house in which to live and being free from sexual harassment by landlords or from domestic violence by family members. For example, Afro-Brazilian women in both urban and rural areas are often not considered good credit risks when they try to purchase housing." [132] The 2001 National Survey of Homes by Sampling shows that 72 percent of women who sustain their children without a permanent male partner have a family income less than two minimum salaries, and overall some 52 percent of women have a per capita income less than one minimum salary.

The situation in slums and tenements

In Brazilian cities many settlements are considered irregular because they do not meet the urbanisation and environmen-

132 Osório, Letícia Marques. (2002b:40-41).

tal standards set out in the legislation and have generally been constructed informally and improperly constituted. These areas go by many names, but in all of them the low-income population somehow subsists in conditions hardly fit for animals. They occupy the land and build their shacks but are rarely the owners, even though many of the settlements are on public lands.

Not only are residents' lives and health in danger: such settlements also put the environment at risk.

The *favela* is a housing nucleus built (generally without permission of the owners) on private or public land by individuals or organised groups of low-income people who build the shacks, dig out access tracks and steps, and illegally run power lines (and perhaps install a few water taps), all without the assistance or the agreement of the authorities, which often just look the other way. *Favelas* take advantage of urban land left unused for a long period of time. The main difference between the *favela* and other types of settlements (apart from the appalling construction) is that there generally is no legal relationship between the occupier and the real owner, whether public or private.

The worst living conditions in Brazilian cities are found in the *cortiços* (tenements), which are generally older or dangerous buildings roughly divided into rooms and flats, overcrowded and dirty, and providing at best subhuman living conditions. Typically one or more of the following conditions may apply:

- Structurally unsound buildings have been arbitrarily subdivided into various rooms for rent or sub-rent;
- The number of inhabitants is completely incompatible with the size of the building resulting in severe overcrowding;
- Hygienic conditions are bad because of the entirely inadequate number of toilets or bathrooms for so many people;
- The building owners usually subcontract the rent collection to third parties who employ thugs to evict anyone at any time and without legal process, to arbitrarily increase the rent, to cut off the water and power, etc.;
- Lack of any legal security persists because the person who actually rented the room out is not the owner;
- The courts do not recognise that the residents have legal rights of tenure; and
- The rates for water and power are very high due to the precarious condition of the electrical installations and consequent waste of energy.

These living conditions are found, for example, in the cities of Rio de Janeiro, Salvador, Santos and, especially, in São Paulo.

1.4 The National Rapporteurs

The National Rapporteurs on Economic, Social and Cultural Rights project are intended to contribute towards the adoption of higher human rights standards in Brazil based on the Constitution, the National Programme on Human Rights and the International Covenants on Human Rights, which Brazil has ratified. This is done through the nomination of experts in each specific rights field (education, health, food, adequate housing, labour and environment). The Brazilian Platform on Economic, Social and Cultural Rights coordinates this project, with support from the United Nations (UN) Volunteers Programme and the Special Secretariat on Human Rights. The National Rapporteurs were nominated by civil society organisations to carry out fact-finding missions, to hear and act on complaints received, to investigate human rights violations and to elaborate reports and proposals. The project was based on the experience acquired by the UN Special Rapporteurs in other countries and is the first experience to set up National Rapporteurs to interact with the UN human rights system.

At present, six National Special Rapporteurs monitor the following rights: education, health, food, adequate housing, labour and the environment. The mandate of these rapporteurs is two years. The first report was presented in the 59th Session of the Human Rights Commission in Geneva in

2003.[133] The Special Rapporteur on the Right to Adequate Housing also carried out a number of fact-finding missions to Brazil to verify compliance with the rights agreements, especially in the following situations:

- Dislocation of traditional Afro-Brazilian communities from their lands in the municipality of Alcântara in the state of Maranhão, for the expansion of the Space Launch Centre;
- Threats of forced eviction of settlements known as *canvas cities* on the periphery of Maceio in the state of Alagoas; and
- Forced evictions and violations of housing rights in the rural settlement of Engenho do Prado organised by the rural landless movements in the metropolitan region of Recife.

In 2004, the National Rapporteur on Adequate Housing undertook a joint mission with his international colleague, the UN Special Rapporteur on Adequate Housing. The joint mission included visits and inspections in São Paulo, Rio de Janeiro, Alcântara, Fortaleza, Salvador and Recife. The situations investigated included:

- In Fortaleza, state of Ceara: Threat of eviction of the residents of the beach of Goiabeiras. The beach of Goiabeiras is located on the west coast of the city of Fortaleza where fishermen and low-income people have lived for many years. It has grown into a consolidated suburb but will suffer a great impact from the implementation of a tourist promotion project that includes the construction of a new roadway to be called the Avenida Costa Oeste. Many families are being dislocated or threatened with eviction by the project; and
- Salvador, state of Bahia: Threat of forced eviction of the traditional Afro-Brazilian population of the Pelourinho Area. Additional forced evictions of this Afro-Brazilian population who have lived in the old centre of Salvador for many years are threatened by the execution of Phase II of a municipal project to revitalise the area of Pelourinho.[134]

133 More information about National Special Rapporteurs can be found on www.polis.org.br and www.fase.org.br.

134 This particular area has deep emotive roots among Afro-Brazilians populations because during the slave period it was the centre of brutal public flogging of slaves. The word *pelourinho* signifies a public whipping post.

1.5 Civil society

During the country's democratisation process in the 1980s, many NGOs, popular movements, professional associations, researchers, religious groups and political organisations emerged in Brazilian cities.[135] These organisations drew up a Platform for Urban Reform to confront the social and territorial inequalities mentioned above.

This platform was presented to congress during the constituent process, which led to the Constitution of 1988, by means of a popular amendment in the reform platform with the following objectives:

- The right to the city – recognition of the rights of the city's inhabitants as fundamental rights;
- The social functions of the city and of property – to make development and economic activities and the right of urban property dependent on an urban policy that promotes the social functions and obligations of the city and of property; and
- Democratic management of the city – to strengthen and democratise the role of the municipality in the promotion of public policies that ensure the rights of the city's inhabitants, in a way that also ensures the popular participation of those groups in situations of economic and social exclusion.

During this time various land conflicts occurred, mostly in public and private urban areas occupied by socially vulnerable groups. The land reform proposal in the popular amendment went from recognition of rights of those living in informal settlements, to the housing of these social groups through urban adverse possession. The adopted criteria recognised the right of informal urban settlement dwellers on private land, to be fully entitled by the means of adverse possession.

In the institutional field, the movement for urban reform has succeeded in including the chapter on urban policy in the

135 The popular amendment proposal on urban reform for the Constitution project in 1987 was underwritten by 131,000 voters and presented by various organisations. Among them were the National Articulation on Urban Land (ANSUR), Defence Movement of Slum Dwellers (MDF), National Federation of Architects (FNA), National Federation of Engineers (FNE), National Coordination of Borrowers (CNM) and the Institute of Brazilian Architects.

Constitution, and in the area of civil society, it has organised the National Forum on Urban Reform that coordinates the following groups:

- Popular Movements: National Union for Popular Housing, National Confederation of Resident Associations (CONAM), Popular Movement Centre (CMP), and National Movement on the Fight for Housing;
- Professional Entities: National Architectural Federation, Geographical Association of Brazil (AGB), Brazilian Association of Engineers and Architects, National Federation of Engineering Unions, National Federation of Federal Savings Bank Employees, and National Federation of Engineering and Architectural Students; and
- NGOs: Polis Institute, Brazilian Institute on Municipal Administration (IBAM), FASE, IBASE, CAAP, Bento Rubião, COHRE, and National Association of Public Transportation (ANTP).

Some actions by the National Forum on Urban Reform deserve special mention. The first was the 12-year fight (1989 to 2001) in congress that succeeded in obtaining approval for the City Statute (Law no.10,257/01), a national law that institutes the legal framework and principles of urban land reform. Another important gain was the establishment of the Ministry of Cities in 2003.

The National Forum on Urban Reform also played a major role in the first National City Conference, held in 2003. The objective of that conference was to establish the guidelines and goals for national urban, housing, sanitation and transportation developmental policies. It also led to the establishment of the National City Council (April 2004), composed of various segments of the government and civil society.

Another process that deserves credit is the proposal or "project of law" drafted by the popular housing movements within the National Forum on Urban Reform. This proposal was presented in accordance with the law by a popular initiative underwritten by 1 million voters.[136] It proposed the creation of a National Popular Housing Fund and National Popular Housing Council, with the objective of implementing and formulating a national housing policy for the low-income population. This Project of Law by Popular Initiative was finally approved by National Congress and became a federal law in June 2005 (Law no. 11.124/2005).

The activities of the organisations that are members of the National Forum on Urban Reform are concentrated in Brazilian cities. The forum is also organised by local or regional forums in some cities such as São Paulo, Rio de Janeiro, Curitiba, Belo Horizonte, Porto Alegre, Florianópolis, Salvador, Recife, Fortaleza, João Pessoa, São Luis, Terezina, Maceio, Belém and Porto Velho. Such regional and local forums take the following forms:

- Actions in the defence of the right to the city and of communities whose housing rights are threatened with forced displacement by the implementation of projects for development or tourist-promotion and/or infrastructure construction or improvement;
- Participation in programmes and projects for land regularisation in informal and irregular urban settlements;
- Organisation of counselling and capacity building on public rights and policies for popular leaderships and organisations; and
- Participation in city management processes.

A number of organisations have developed some initiatives to promote women's housing rights, such as giving priority of title to women in the legalisation of informal settlements.

The National Forum of Urban Reform also intends to disseminate and share the urban reform platform internationally, particularly for those cities that have shown concern about city rights at the proceedings of the various UN conferences.[137] Since the first World Social Forum took place in Porto Alegre, Brazil in 2001, the National Forum on Urban Reform has begun to draft a proposal for a World Charter on the Right to the City.[138] The objective is to disseminate the

136 According to the Constitution, citizens may present bills of law by popular initiative. Registration of 1 percent of the national electorate for national projects of law is required.

137 Such as the UN World Conference on Development and Environment held in Rio de Janeiro in 1992, the World Summit on Human Settlements - Habitat II in Istanbul in 1996, and the World Social Forum held in Porto Alegre, Brazil from 2001 to 2003.

138 The World Charter on the Right to the City. (2003).

concept of the right to the city as a new human right based on a programme of urban reform.

Box 1.1 World Charter on the Right to the City

The Right to the City in the draft world charter is defined as the right to an equitable use of cities under the principles of sustainability and social justice. This is understood to be a collective right of all the city's inhabitants, and particularly of the vulnerable and disadvantaged groups; it legitimises their action and organisation, respects their manners and customs, with the overall objective of achieving full implementation of the right to an adequate standard of living. Since all human rights are interconnected and interdependent, the Right to the City includes the rights to land, means of subsistence, labour, health, education, culture, housing, social protection, healthy environments, sanitation, public transportation, leisure and information. It also includes the right to meet and organise freely, the respect for minorities and immigrants, and for ethnic, sexual, and cultural plurality, and the guarantee of the preservation of historical and cultural heritage.

At national level, the following organisations are involved in the formulation of this draft World Charter:

The National Forum on Urban Reform; the National Prefect Front; the Brazilian Architectural Institute; the Permanent Forum for the Handicapped; the Federal Council on Architecture, Engineering and Agronomy; the National Sanitation Front; the National Forum on Popular Participation; the National Association of Post-Graduation on Urban and Regional Planning; and the National Confederation of Liberal Professions and the Inter-municipal Forum on Culture

On the international scene, the following organisations play a part in the formulation:

The International Habitat Coalition; the Centre on Housing Rights and Evictions; Latin American Secretariat of Popular Housing; International Research Group on Law and Urban Space; UN-HABITAT (UN Human Settlements Programme, including the Urban Management Programme); Latin American Mega-Cities Network; Huairou Commission; Women and Habitat Network; World Artists in Alliance Network; and the Investigative Institute on Housing and Habitat of the National University of Córdoba, Argentina.

Other actors in civil society

The role of Afro-Brazilian organisations is central in dealing with racial and gender matters through studies and campaigns against all forms of racial and social discrimination and inequality. Their objective is the full implementation of their rights in the slums and in the areas defined as *remanescendents de quilombos* – that is, the areas of the original *quilombos* still in the hands of Afro-Brazilians today. Some of these organisations are the Unified Black Movement, the National Coordination of the Articulation of Rural Afro-Brazilian Quilombo Communities, the Association of Rural Afro-Brazilian Communities in Maranhão, and Geledés, an Institute for Afro-Brazilian Women.

Various women's networks such as the National Female Network on Health and Sexual and Reproductive Rights also exist in Brazil and are extremely active. Others concentrate on gender (SOS Corpo) and racial issues (Geledés, Fala Preta, Crioula), including the Afro-Brazilian Women's Organisations in Rio de Janeiro and popular organisations such as the CMP. Many gains have been made in the past decades, among them the recognition of electoral suffrage and workers' rights, the conquest of full civil capacity, divorce laws, the recognition of a stable union independent of traditional marriage and the guarantee of reproductive rights.

In recent years women have been taking a growing part in the popular housing movements. Research completed in 1992 has shown considerable participation by women in housing programmes of Self-Management *Mutirões* (popular housing programmes with government-supplied materials and volunteer labour).[139] In these programmes, women stood out as managers and leaders, making decisions and representing the movements. Because of this marked female presence and the obvious efficiency of their leadership in the Self-Management *Mutirões*, many other programmes are being initiated in which women can obtain title to the housing built or urbanised by the government.

An example is the recent joint articulation of the Housing Union Movement, the Women and Habitat Network, the Special Coordinator for Women (an organisation of the municipality of São Paulo), the Living Feminine Organisation, the Popular Movement Centre and Lilith House. Law no. 13,770 of January 29 2004 obliges municipal housing programmes to give priority to women both in the titling of

139 Salvador, Z. (1993).

houses and in participation of professional and assistance programmes. Being a very recent law it is still in process of implementation by the municipality.

In the rural areas all over the country, a social movement called the Landless Workers' Movement (MST) is well organised and actively promotes the practical realisation of agrarian reform. This movement has already succeeded in creating many rural settlements operating sustainable and family-group agricultural production experiments, as well as invading unproductive rural lands that, by law, ought to have been expropriated by the federal government for purposes of agrarian reform.

Many members of the National Network of Popular Lawyers (RENAP) work on human rights, housing and rural issues with a range of other organisations.

The Brazilian Institute for Urban Rights organises debates, seminars and conferences on urban law, urban policies, urban development, and shares experiences and studies about urban reform.

2 Land Tenure

2.1 Introduction

In Brazilian law various instruments can be used for the legal recognition of the use, possession or ownership of urban land. These instruments are specifically laid down in the City Statute and the civil code. For a complete understanding of the regularisation process, it is first necessary to clarify the significance of the actual rights foreseen in the civil codes.

The civil code established rules for personal and real rights. Personal rights may be subject to some free choices between the parties, who can create some own rules. For a personal right it is necessary to have two persons, the creditor and the debtor of some obligation. A real right is the relation between one person and a piece of property. In accordance with Art. 1225 of the civil code, rights to the following are considered real rights: property, land, the use thereof, use of housing, access facilities, the right of the buyer of the property, the pawn or pledge and the mortgage. Real rights cannot be a subject of free choices between the parties, and they cannot create their own rules. The rules governing real rights are regulated. For example, to be valid, the manner of buying and selling an urban or rural property must be in accordance with the rules. According to Art. 1277 the ownership of the urban or rural property is considered to be acquired by the purchaser only when the act is registered in the Public Register. It is important to stress that the types of rights considered below, with the exception of rental, are considered real rights by Brazilian law.

Many, previously informal, tenure types have been formalised with the adoption of the City Statute.

Rural areas

The tenure types are:

- Ownership (freehold tenure);
- Rural adverse possession as a means to obtain tenure (Art. 191 of the Constitution);
- Rental (Art. 190 of the Constitution);
- Rights of Use; temporary loan for use; (Art. 188, par. 1º, FC);
- Assignment of possession, CDRU (Art. 7° of Decree 271 of 1967).

All these types of possession are in theory obtainable either by men or women.

Urban areas

The tenure types in urban areas are described in more detail later and listed in Appendix II.

The ZEIS

The Zone of Special Social Interest (ZEIS) is one of the instruments for land ownership regularisation foreseen in Art. 4(V)(f) of the City Statute. ZEIS is a special zoning category that allows variable rules to be applied to the use and occupation of land in projects of urban land ownership regulation.

It applies to areas that are presently occupied in discordance with the formal legislation as regards the allotment, use, occupation or construction standards. The objective is to safeguard the right to adequate housing.

The ZEIS as a special zoning category must be declared by municipal legislation. Some municipalities, such as Recife and Belo Horizonte, have specific legislation on ZEIS,. The ZEIS may also be marked out in the municipal master plan. Usually the municipal executive has the authority to present a project of law on the declaration of a ZEIS, especially if this is done through the master plan. In some municipalities, the municipal constitution also allows the legislature to declare a ZEIS. In accordance with the Constitution and the City Statute a popular initiative can be used to present a project of law in urban matters. The local community can therefore present a popular initiative to declare a ZEIS to the local legislature.

In Belo Horizonte the ZEIS was adopted through the Land Regularisation Programme of Slums. One example is the Settlement Jardim Filadelfia. The municipal law recognised this settlement as a ZEIS in order to implement the legalisation of land titles. Some 750 families are beneficiaries of this law. The families have to register their title in the public register. The women have priority to receive the title of the land. Through the Land Regularisation Programme 32 settlements have been recognised as ZEIS and legalised titles to the land have been provided to 11,835 families. Other cities with ZEIS experiences include Recife, Rio de Janeiro and São Paulo.

Where the city administration implements the use of these zones of special social interest, the areas occupied by *favelas*, allotments, irregular popular settlement groups and tenements can be legally recognised as dedicated for the construction of social housing. The ZEIS allows the resident population to obtain legal title by means of the various forms of possession discussed in detail below.

2.2 Tenure types

Ownership

Buying and selling

Ownership through purchase is the most common tenure system provided for in the civil code for the formal land market of urban property acquisition.[140] It is a contract agreed between the seller and the purchaser for transfer of the property deeds on the payment of an amount covering the value of the real estate in question. Having signed the preliminary or final deeds, the owner is obliged to sell his/her property under the agreed conditions, and undertakes to provide the final ownership deed when all agreed payments have been received. The buyer of the real estate will then be recognised by the authorities and community as the new owner and the deed drawn up in his/her name is registered and filed in the public property registry. If the buyer or seller is a woman, the transaction can be completed in her single or married name at her choice. If a couple is legally married the joint registration of their property is obligatory. The public registry must include the name of both in accordance with the civil code.

In cases of irregular occupation of private or public lands, and the inevitable conflicts related to this, the purchase of this land by agreement can provide a solution. Where the land was occupied by a group of persons, the occupiers usually organise themselves into a civil association, which then negotiates purchase from the registered owner. If the land is public property, the public administration may dispose of the land for the construction of popular housing, settlement or regularisation if it adopts specific legislation to that effect.

Donation

If the landowner agrees to donate his/her property to another person, s/he signs a donation or transfer contract to the other person without payment.[141] This approach has been utilised by the municipal and state governments in providing popular housing to families in situations of risk, such as

140 Art. 481 to 528 of the civil code.

141 Art. 538 to 564 of the civil code.

during floods and landslides. In these programmes the land belongs to the state or the municipality and in some case a partnership is created between the two authorities. Through this partnership the state government constructs the housing on municipal land and afterward donates both land and housing to the beneficiaries of the programme. The donations include the titling of the land and property in the name of the beneficiary. In this case the cost of the land and the titling is free to the beneficiary. The ownership registration process is the same as used in the formal real estate market. In some programmes resources for the cost of registration of the donation title are included.

Urban adverse possession (Usucapião)

Urban adverse possession is recognised in the urban chapter of the Constitution, in the civil code (Art. 1240) and in the City Statute (Art. 9-15). It refers to rights acquired by irregular residents who have taken over third parties, private, lands and have been allowed to remain there for long periods. To regularise such situations, low-income occupants must fulfil the following criteria, listed in Art. 183 of the Constitution:

- The private urban area occupied may not exceed 250 m^2:
- The occupation must have been continuous for a minimum of five years without legal intervention from the owner;
- The property is used only as habitation for themselves or their families;
- The occupier does not own any other property, urban or rural.

Occupation of private urban land may be individual or collective. To obtain ownership of the land by urban adverse possession the occupants must make a formal legal presentation before a judge. The rightful landowner has the right to contest this request at the public hearing. If the occupants fulfil the requirements set out above, they can be legally declared in possession of the land via a court order.

Collective adverse possession

This is permitted in irregular low-income settlements and slums, where it is often impossible to identify the lands occupied by each occupant. (Art. 9 and 14 of the City Statute). In this case, the occupants generally form themselves into residents associations registered in accordance with the law, and this association submits a claim for collective adverse possession in the names of all its members. However, individual groups of irregular occupiers may also present claims. Art. 10 of the City Statute provides two legal alternatives for the presiding judge:

- Attribute an equal fraction of land to each possessor, independent of the size of the land that each occupies, except in the case of a written agreement among the condominiums, establishing differentiated ideal portions (Art. 10, paragraph 3). Thus a condominium is created in which all members share equal parts of the total area; or
- The creation of a special condominium, which is indivisible and cannot be terminated except by favourable determination made by at least two-thirds of the members of the condominium, in the case of the execution of upgrading after the establishment of the condominium (Art. 10, paragraph 4). Thus the appellants may demand collective adverse possession but specify in writing the area each one actually occupies.

In these two alternatives, upgrading plans and land regularisation norms can be developed for the occupied area. In this upgrading plan, the existing and planned/required access alleyways and common areas necessary for upgrading must be identified. Either of these condominiums may be terminated by decision of two-thirds of the residents. In case of termination, each resident receives a fraction of the land and any upgrading benefits carried out before the dissolution. By force of the legal sentence, women participants in the condominium, whether single or married, have equal rights

to decide on the continuation or dissolution of the condominium after execution of the upgrading plan.[142]

The social impact of poor communities' right to adverse possession depends largely on the existence of the legal and technical services provided by the state and municipal governments. The public defence institutions play a role in claiming the land rights of these communities in the courts.

So far, most favourable court decisions on adverse possession claims have been individual. Only a few cases have concerned collective adverse possession and they have not yet been finalised.

Joint title for spouses or stable partners

While joint titling is not mandatory, Art. 183 §1° of the Constitution and Art. 1240 §1° of the civil code recognise the right to the joint title of the property by urban adverse possession.

Leases

The lease is used both in the formal and informal real estate markets. In the majority of slums, (whether on private or public lands) an informal leasing market springs up as soon as a few slum dwellers take irregular possession of a large area and build shacks to lease to less enterprising low-income persons. This sort of unjust leasing is an obstacle in land regularisation projects and an especially harsh form of real estate speculation. To combat its negative effects, many land regularisation programmes (such as São Paulo) take the position during upgrading and regularisation that the resident is the person entitled to the ownership documents, and not the speculator/lessor.

Informal leasing is also common in old buildings, which have been converted in various irregular ways for rental or lease to the low-income population. These tenement houses are usually old or semi-abandoned properties, and often present very precarious living conditions with considerable risk to health and even to life. They are concentrated in the central or historical areas of large cities, especially in São Paulo. The usual procedure is for the owners of these tenement properties to lease them by contract to a third party, thus distancing themselves from the subsequent irregularity and informality. The prime lessee then converts the precarious property into a collective residential building as cheaply as possible and rents out small rooms at exorbitant rents to people with low incomes. The rents are very high when the precarious state of the property and the barely habitable state of the rooms is considered. Furthermore, the residents in the tenement houses have no security of tenure because they have no written contracts and their verbal contracts are with the prime lessee and not with the legal owner of the building.

The leasing of urban real estate is regulated by the Federal Law on Lease of Urban Property 8,245/91, which covers both individual leasing for housing purposes, and the leasing of multifamily collective housing such as tenement houses. It also allows for the legalisation of tenure by the residents of informal leased collective buildings, which often provide only precarious living conditions.

This law states that the residents of tenement houses have rights as tenants or subtenants of multifamily collective dwellings (*cortiços*) and considers that even an informal relationship in these properties constitutes a tenancy or sublease. This means that even if no written (sub)lease agreement between the owner, the tenant and/or the subtenant exists, the characterisation of the tenement property as a multifamily, collective dwelling (houses, rooms, boarding houses), gives the resident the right to be legally treated as a tenant or subtenant. Residents may demand directly from the owner that the necessary repairs and reforms to make the property adequate for habitation be done, provided that the building has been declared to be in a precarious state by the public authority.

It is important to however emphasise that implementation of this law depends upon its application by the public authorities, public prosecutors and defenders and judges.

142 Art. 9, paragraph 1.

User rights

Special concession for use of public lands for housing purposes

Housing rights are also recognised for people and families who are in irregular possession of urban public areas, conferring, in this case, not the ownership of areas involved but the right to possession and use. Each level of government must recognise this special right to lands under its jurisdiction in accordance with the terms of Provisional Legal Measure no. 2,220 of September 4 2001.[143] Article 1 of this measure stipulates the criteria that must be met by the beneficiaries, which are generally as follows:

- The area occupied must not exceed 250 m^2;
- The resident must prove his/her uninterrupted possession for five years prior to July 30 2001;
- The land is used only for residential purposes;
- The occupier neither owns nor has a right to any other public property; and
- The occupier has not been legally notified by the public authority to vacate the property.

Candidates fulfilling the requirements for possession may apply for a special concession with the public authority. If the authority refuses or does not decide within 12 months of registration of the completed application, the candidate has the right to require the possession through court (Art. 6).Where the candidates are low-income groups the public defence or some legal service can claim their rights in the court.

The application must include written proof of possession for the stipulated period – these may be the birth certificates of parents or children born on that address, electricity or water bills for services to the location or public records of the existence of the settlement.

This special use concession is a real right formalised by a document drawn up between the public authority and the occupant, or alternatively by a court sentence. In both cases, the concession of use shall be registered at the public property registry.

However, the prime ownership remains with the public administration, which concedes to the occupant only the right of use. The advantage of the new law is that, henceforth, the public authority is obliged to give the special use concession to every irregular resident who meets the basic criteria, and this will be free of cost for low-income groups.

The law provides that the title of special use concession applies independently of sex or marital status, and may be individually or jointly held.[144] This rule allows poor women formal access to titles of special concession, which assures security of tenure. The objective is to combat the social vulnerability of women and to avoid prejudices against them in the case of legal or de facto separation. Therefore women who are irregular occupants of public lands and who qualify under this new law, may obtain possession title in their own names. In São Paulo many women heads of household have received such special concession (see later section on Housing Programmes in the City of São Paulo).

The provisional measure on the special use concession introduces another important advance in social justice by making its terms applicable to cases of collective housing. The collective concession is appropriate whenever it is not possible or practical to identify the lands occupied by each possessor individually, as for instance, is often the case in lands occupied by slums. By conceding title collectively, the process of land regularisation is simplified.

In the same way as urban adverse possession, the collective concession may function as a condominium, although in this case the residents are not the owners, but are the users or tenants of the land for housing purposes. The property occupied collectively will be conceded to the occupants by

143 The special use concession for housing purposes was voted and approved by the National Congress, but was vetoed by the president. The veto could not be rejected by the congress, but through negotiation with the political leaders the president issued a Provisional Legal Measure to establish the special concession under his conditions.

144 According to Art. 183(1) of the Constitution and Art. 1240 of the civil code the titles of ownership and concession shall be conferred to the man or woman or both, independent of their civil status. While joint titling is not mandatory, Art. 183 §1° of the Federal Constitution and Art. 1240 §1° of the civil code recognise the right to the joint title of the property by special use concession.

allocating an equal fraction of the total land to each family that may or may not correspond to the exact area that they occupy. The fraction, however, cannot be more than 250 m^2. The principle of division is identical, but once the residents have worked out an upgrading plan with the authorities, they can establish different fractions for each resident through a collective agreement.

The Concession of Real Right

Another instrument for the regularisation of informal settlements on public land is the Concession of Real Right (CDRU), which may also be used in cases of the occupation of public or private areas, where the requirements of the special concession or adverse possession are not applicable or cannot be met by the occupiers. The CDRU was created by Decree 271 on February 28 1967 and is regulated by the City Statute. It consists of the real right of use applicable to public or private lands, for the purposes of urbanisation, industrialisation, building, land cultivation or any other social interest use.

This right shall be registered through (a) public contracts signed before a notary public, or (b) by private contract as long as it is capable of ensuring a real right to both parties. Under Art. 4, paragraph 3 of the City Statute, the CDRU of public property can be issued individually or collectively by the respective public authority, in cases of housing programmes and projects of social interest, and such CDRU documents must be accepted as guarantees for housing financing loans.

A grant of the CDRU is dependent on legislative authorisation – in other words, the conceding authority must submit a bill to the legislative power and the concession is only effective when this law has been promulgated. The CDRU is normally free of cost and may only be charged for by agreement and if based on the cost of upgrading or of construction of the housing units (Art. 7 of Federal Decree 271).

Cession of possession

Article 26 of Federal Law 6,766/79 on the division of the land establishes this instrument for the regularisation of irregularly occupied private land or property. The municipality, the state or the union may concede the possession of such private assets to the irregular residents, if the property in question had already been expropriated for the execution of social housing projects, and governmental temporary possession (by force of the expropriation) had been registered in the public property registry. The Art. 26 instrument must be signed between the municipality or other governmental authority and the beneficiary population by the means of a contract specifying all the obligations and duties, the financial clauses and the possibility and terms of its conversion into an ownership title.

Surface rights

The right of use of land surface has only recently been introduced by means of Art. 21-24 of the City Statute, although it is also generally regulated in Art. 1369 to 1377 of the civil code. The City Statute defines surface rights as property rights that can be separated from the ownership of the land and links their implementation to the collective interest of assuring access to the land. Art. 21 of the City Statute establishes that: "The urban property owner shall concede to another party the right to the use of the surface of his/her land, for a specified or unspecified time, through public deed registered in the public deeds office."

The surface right includes the right to the land, the subsoil or the aerial space related to the land. The person receiving the surface rights will be entirely responsible for the fees and taxes on the surface of the property, also accepting responsibility proportional to their effective share of occupation. The surface rights can be transferred to third parties. Upon the death of the person receiving the surface rights, their rights are transferred to their heirs.

Surface rights may be applied in land regularisation programmes to make housing access viable to the low-income population. If the urban area occupied by a slum is privately owned the right of surface can be conceded to the public authority for the promotion of urban improvement/infrastructure and occupation regularisation. In this case, the owner may obtain some compensation, such as the concession of the right to occupy another property instead of that which s/he is losing. Where the public administration or others have provided the necessary infrastructure, the respective contracts shall specify that the resulting right of surface must be transferred to the population occupying the area.

This is important in cases of buildings with more than one floor where the tenant/occupant who has benefited from regularisation can transfer the right of surface of his/her plot to others. This situation is very common in Brazilian slums where the residents use a popular and informal variation of the right of surface called the right of *laje*, meaning the right to construct additional floors on existing structures.

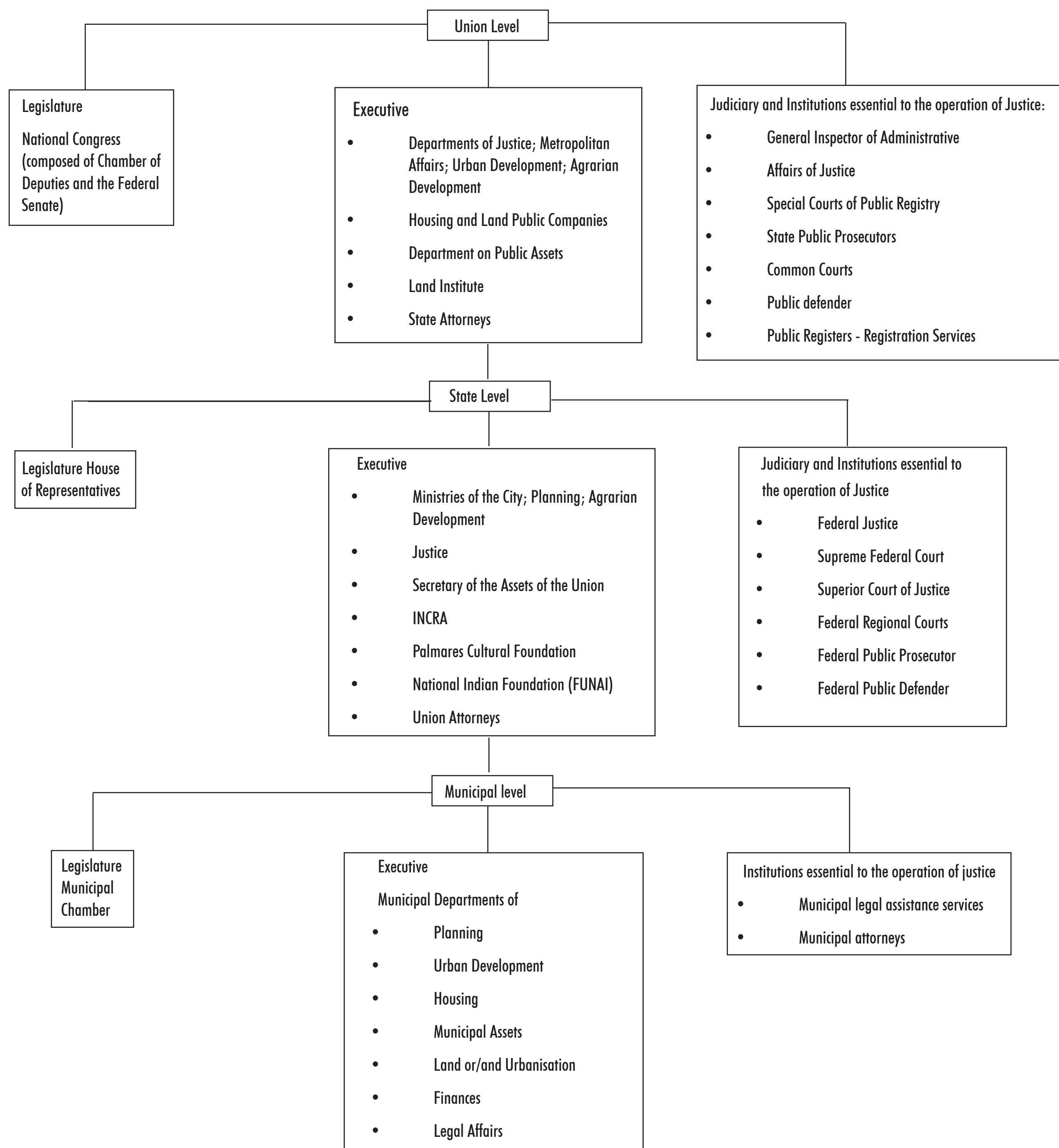
The right of surface was used, for example, by the municipality of Pontão (Rio Grande do Sul state). The Law 06 of 2002 established the criteria to use this instrument for land legalisation. So far, 74 families with the right of surface of the public land for housing have been proposed.

3 Land Management Systems

3.1 The decentralised system

Although Brazil is a federal state, the responsibility for the management of land is divided among the federal union, the state and the municipalities. Each federal entity has its own organisation in the spheres of the executive, legislature and judiciary that form a complex system of land management, as shown in Table 2.3.1 below. The public register systems and cadastres fit into the state level. However, the union and the municipalities have their own cadastre systems to register the lands and the buildings belonging to them, but these administrative cadastres do not replace the public system, which is always at state level.

Figure 3.1 Levels of land management jurisdiction



The National Association of Registries is an association of registers. The association provides guidelines to the registers. The union also has federal legislation about public registration.

3.2 Federal management of land

The jurisdiction over the management of public lands at federal level is shown in the figure below:

Figure 3.2 Focal points in federal land management

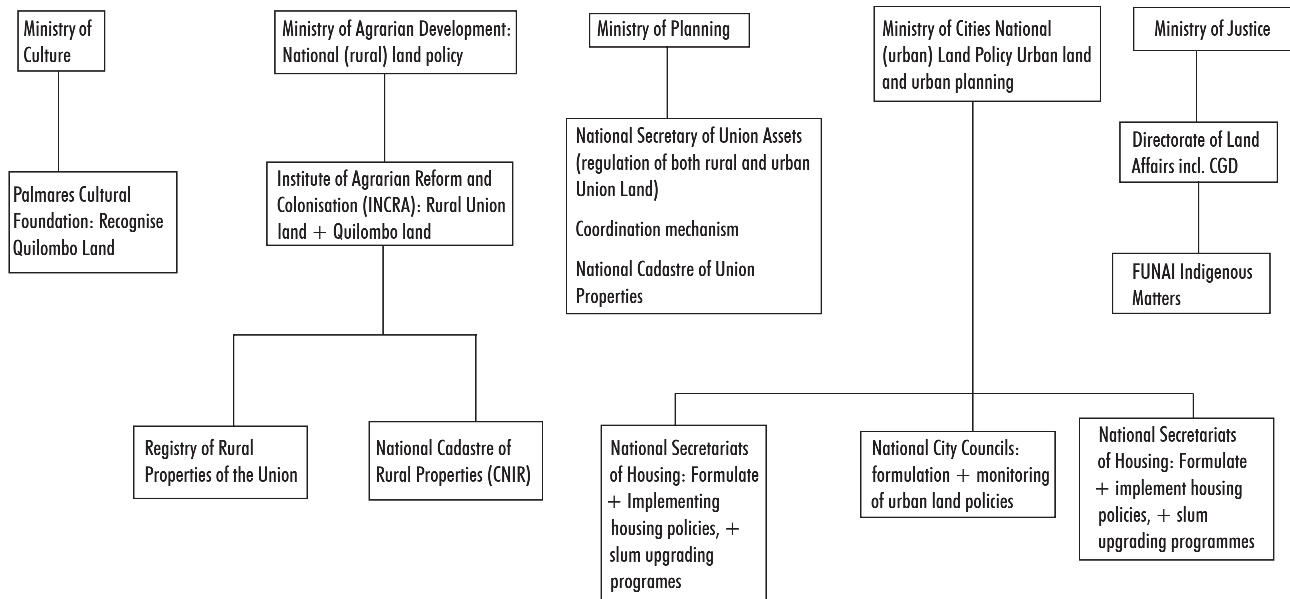


Table 3.1 Federal jurisdiction over public land

Type of land	Responsibility
Urban union lands	National Secretary of Union Assets, together with the Ministry of the Cities
Rural union lands	INCRA, together with the Ministry of Agrarian Development and the National Secretary of Union assets
Indigenous land	FUNAI, together with the Ministry of Justice and National Secretary of Union Assets
Quilombo land	INCRA, together with the Ministry of Agrarian Development and National Secretary of Union Assets

Union land: the National Secretary of Union Assets

The National Secretary of Union Assets, an organisation subordinated to the Ministry of Planning, is responsible for the administration and conservation of (urban and rural) union land assets, and for adopting the necessary measures for the regulation of these assets. All administration activities related to union lands fall under the responsibility of this office, including the provision of the required certifications and registrations at the competent registries; the authorisation of lawful occupation and the corresponding registrations; the establishment of guidelines for the use of these lands; the demarcation of boundaries; identification; classification; and all other related aspects.

Urban land: the Ministry of Cities

The Ministry of Cities is responsible for the policies of urban development, including housing, sanitation and transportation policy. The ministry has a National Council of the City, formed by 70 members of the government and various segments of civil society, and which defines the actions and programmes related to national urban land policies. The National Secretary of Housing is responsible for the implementation of the national housing policy. The National Secretary of Urban Programmes is responsible for implementation of the City Statute, such as the National Campaign for Participatory Master Plans in Cities. Their mandate also includes the definition and implementation of a land tenure regularisation policy in urban areas.

Rural Land: Ministry of Agrarian Development and INCRA

Federal Law no.10,267/01 created a Public System of Land Registry that, among other things, unifies the rural properties registry and exchanges information with the public registry, adding to the information on rural properties and conferring greater control over information on public and private property. It also created the National Cadastre of Rural Properties (CNIR), with a common information base managed by INCRA and the Department of Federal Revenue, and shared with public institutions of production and users of information on rural environments.

The Ministry of Agrarian Development, through INCRA, is responsible for the identification, recognition, delimitation, demarcation and titling of lands occupied by the descendants of the *quilombo* communities, without interfering with and respecting the state, Federal District or municipality jurisdictions. [145]

Indigenous Land: FUNAI

FUNAI is a federal government foundation subordinate to the Directorate of Land Affairs under the Ministry of Justice, and is responsible for the control and coordination of all indigenous matters, for contacts with the tribal leaders and for the regularisation of indigenous lands. Pursuant to Federal Decree no.1,775/96 within the Directorate of Land Affairs, the General Coordination of Boundary Demarcation has drawn up an agreed Manual of Technical Rules for the Demarcation of Indigenous Lands. This manual is applied to complement anthropological identification studies with the cartographic measurements necessary for the delimitation of the boundaries of the traditional indigenous lands. These borders are inspected (by contracted third parties) to ensure conformity with the law and to report violations to the Directorate of Land Affairs. Notwithstanding this structure, invasions of the indigenous lands occur repeatedly, especially where valuable deposits of natural resources are involved.

145 Legal basis: Federal Decree no. 4.887/03 and Normative Resolution no. 16 from 24/3/04 issued by INCRA.

Palmares Cultural Foundation

The Palmares Cultural Foundation was established by Federal Law no. 7,668 of 1988 to further the constitutional principles of the reinforcement of citizenship and the identification and preservation of ethnic minority groups that have contributed to the formation of Brazilian society, such as the cultural and economic values deriving from the African and native Brazilian influences. It is of fundamental importance in programmes related to land regularisation, assisting and accompanying the Ministry of Agrarian Development and the INCRA in their efforts to guarantee the preservation of the cultural identity of the native Brazilians and the descendants of the *quilombo* communities. Through its Administrative Resolution no.6 of March 1 2004, the Palmares Cultural Foundation also set up a general registry of the remaining *quilombo* communities, to form a permanent record of the declaration of self-identification of these and related communities for land entitlement and ownership purposes.

Federal and state public defender system

This institution provides free legal services and assistance to the low-income population. Article 134 of the Constitution designates the institution of the public defender as competent to provide free legal advice and promote the defence of those who need assistance. This applies at every level of the justice system and is thus a key element for the provision of equal justice for all citizens. The public defender may also act to promote land access for the low-income populations in land regularisation processes that involve the federal public lands, for example, by forming a team to handle the case.

The law prescribes that this institution be organised in all the states, and of the 27 states three have not complied – one of which is the state of São Paulo. The state public defenders are completely independent of their federal counterparts and are subordinate to the state governments.

3.3 State management of land

The role of the state executive

The states in the Brazilian Federation have autonomy to organise their administrative structures. To deal with housing and land issues the states have established institutions such as the secretaries or departments of urban development, metropolitan affairs, housing and land companies, agrarian development and public assets.

Some states have created land institutes, with cartographical services, to handle matters such as the identification and registration of unregistered or abandoned land, surveying of idle and inadequately used lands, and provision of technical assistance in the execution of policy.

The role of the state judiciary

The state judiciary may act in matters concerning the rights of possession of private or public state and municipal land; to settle family disputes concerning possession or ownership of land, buildings and houses; or disputes arising from marriage, inheritance or domestic violence situations. Each state government has a judicial branch exclusively concerned with the organisation and operation of the state judiciary.

The State Courts are administratively divided into regional districts, called *comarcas*.

A *comarca* can attend to two or more small municipalities or a large municipality like São Paulo. Each *comarca* may have specialised judgeships organised into special jurisdictions. For instance, the *comarca* of the municipality of São Paulo has civil jurisdiction to handle only matters of rights of possession, proven ownership and family rights. To handle cases

of interest to the states and the municipalities such as the possession and ownership of public lands, each *comarca* has a public affairs jurisdiction.

The structure and operation of the judiciary in the states has not been adequate in the resolution of disputes related to housing, inheritance of urban land, the right of possession and ownership of formal and irregular settlements, and the collective occupation of land organised by popular action movements. Complex matters involving possession and housing rights for socially vulnerable groups are also often settled unsatisfactorily or not at all, particularly where such rights conflict with large-scale development projects, such as the construction of hydroelectric power stations, the extension of airports or the revitalisation of deteriorated historic centres.

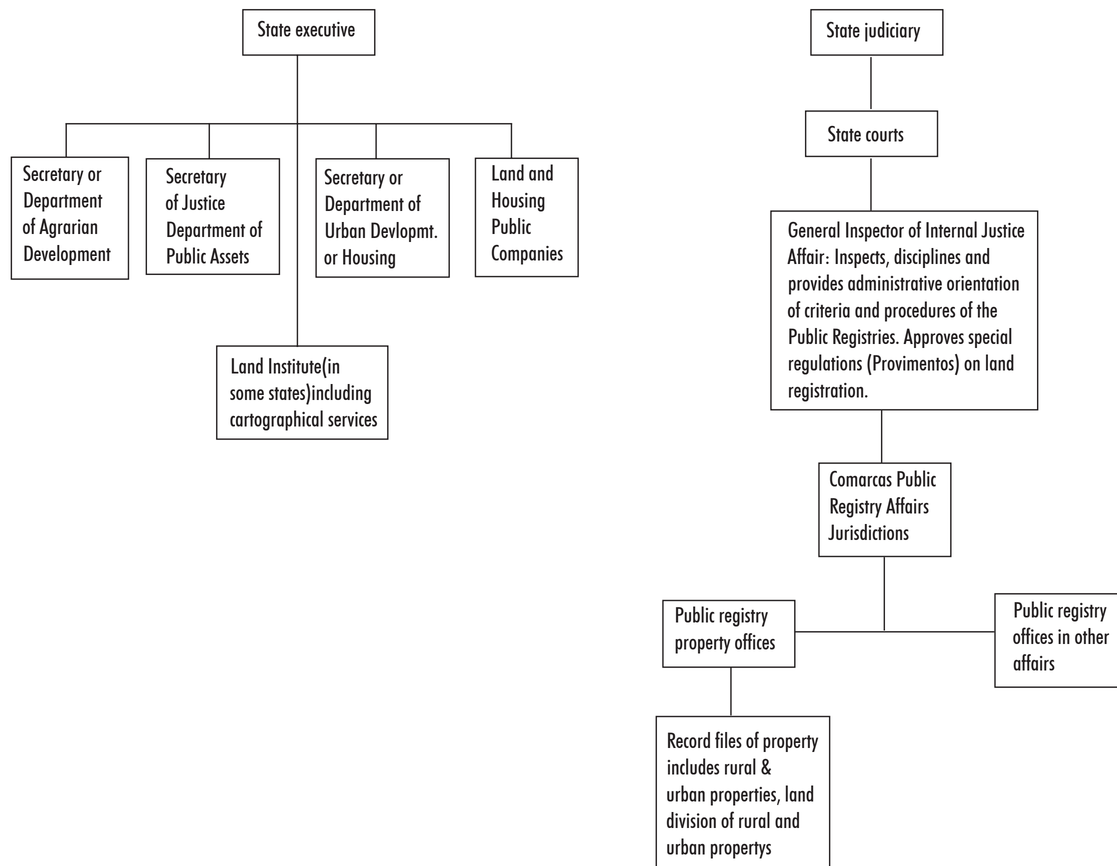
The principal reason for these failures is that many judges, while learned in purely legal matters, are not socially and technically qualified to handle issues such as gender cases, inheritance rights involving questions of disputed possession, property rights and housing for socially vulnerable groups. Members of the Brazilian judiciary need to improve their knowledge of international jurisprudence in human rights.

Another reason for poor performance in these areas is the difficulty of the lower-income population in obtaining access to legal remedies, caused by the lack of free or subsidised legal advice and assistance. The public defender at federal and state level, responsible for the provision of this legal advice and assistance needs more financial support from the federal and state governments to meet the needs of the poor.

In Brazil, many groups of legal professionals are active in the field of human rights – for example, RENAP and the Brazilian Institute for Urban Rights. However, most of them endorse the idea that conflicts about housing rights, possession and ownership of urban or rural land, should go through new, institutional/alternative methods of negotiation, mediation and resolution, such as committees or councils of justice; and the creation of neighbourhood and district courts.

At state level the role of the General Inspector of Internal Justice Affairs is of cardinal importance. Although each State Court has jurisdiction, they operate through special regulations called *provimentos* approved by the General Inspector. Through these special regulations the state judiciary can establish the procedures to register the tenure of the urban and rural land and properties. For example, they can determine that the cost of registration is free for areas regularised by public programmes of land regularisation.

Figure 3.3 Focal points of state land management



The role of public registry offices

The legalisation of possession and ownership of land in Brazil involves an extensive system of public registries at the state level, regulated by federal Law no. 6,015/76. In accordance with the Constitution, registries are operated by private enterprises under concessions from the public administration, while the competence to establish legislation on public registries is with the Union.

Federal law 6,015/76 contains general rules on registration of different kinds of property tenure. This law is mandatory to the public registry property offices, which are considered auxiliary services of the state judiciary. The state law on the organisation of the state judiciary defines the organisation and the territorial jurisdiction of the public registry property offices.

For example, the law in the state of São Paulo divides the jurisdiction of the territory of São Paulo City into 35 public registry property offices.

The state Inspector General of Internal Justice Affairs is responsible for the formulation of administrative regulations and to promote regular inspections of the public registry property offices. These administrative regulations may establish, for example, special rules and procedures for property registration that are appropriate for the poor.

The registration of property

Under Brazilian civil law, the transfer of property from the seller to the buyer requires registration in the competent real estate registry before the transfer is recognised. In other words, a buyer who does not register his/her property title is not the legal owner of that property even if s/he has fully paid the previous owner. Therefore, only the proper registration legalises the purchaser's title and without it he/she cannot prove ownership, have access to credit, receive social recognition of his/her purchase etc. Registrations are made in the public registry offices. The public registries have specific offices to register property affairs at the respective state level by deed of right permanently filed at the registry and available to the public. Because of the importance of the registry, a considerable amount of documentation is required both as to the property itself and concerning any existing mortgages or liens. This sometimes presents obstacles especially for low-income populations. For example, all titles must be accompanied by copies of the receipts that prove the payment of the Urban Property Tax from the current year or, failing that, a certificate of the market value of the property. In addition to these documentary requirements, the costs of the registry are considerable and weigh heavily on the majority of people buying property. The charges are defined by the General Inspector of Internal Justice Affairs, based on proposals made from time to time by the Association of Owners of Public Registries.

The foregoing requirements apply as a general rule to real estate operations for properties for which previous registration exists – that is, for properties negotiated in the formal market. However, in order to regularise and register small land allotments or buildings irregularly occupied by low-income population, some exceptions are allowed, such as the terms of Art. 26(4) of Law no. 6,766/79. This law considerably reduces the documentation required for regularisation and registration of such land, especially where the asset has been expropriated in the public interest or is in the process of expropriation. The costs are also much lower and may even be absorbed by the municipality in the interest of regularising an illegal situation.

In São Paulo, Vitoria and some other cities, closer cooperation has developed between the registry officers and organisations such as the Association of Registries, the National Associations of Registries (ANOREG) and the Institute of Property Registry in Brazil (IRIB) [146] in matters of land regularisation involving low-income populations. One good example is the recent convention promoted by the municipality of Gravatai in the state of Rio Grande do Sul between local registrars and ANOREG. This convention resulted in some special arrangements to eliminate certain costs and to simplify the procedures for registration and titling of small properties owned by the low-income population. The Ministry of the City has also made agreements with these professional associations, allowing the issuance of property titles without cost to the low-income groups, provided that the titles are immediately registered at the respective property registry office.

Some initiatives seek to standardise the registry system on a national basis. For now, almost every state registry has its own system and deals with similar questions in different ways. As a result, the present system of public property registries cannot be considered an adequate registry of land areas, although it works reasonably well as a record of commercial real estate.

Whatever solution is finally chosen, the federal, state and municipal records must be consolidated and equipped with

146 The IRIB is an Association of Owners of Public Property Registries in Brazil. For more information see site : www.irib.org.br. The site of ANOREG is www.anoreg.org.br

modern computerised access so that the information is available to all citizens quickly and accurately. Geodesic coordinates drawn on a national basis and keyed to the descriptive beacons of each property must be calculated to clearly mark out the boundaries. In this way, the records would assure the initial reliability of the information and avoid later disputes that end up in the courts.

The record files

The registry of property is based on a descriptive system of property characteristics without technical definition of the geographical location, and this imprecision sometimes permits registrations to overlap. The record files of property include both urban and rural properties. The public property registry only registers property of informal settlements in accordance with specific legislation that authorises the municipality to promote the regularisation of the area.

Law no. 10,267/01 established the Public System of Land Registration, and provides a legal basis for the revision work of the registrars and workgroups described above. It recognises that many new technical tools are available today (e.g. Geographic Information Systems) that greatly simplify the problem of consolidating the existing records for the rural areas. The law also says that the result of the precise measurements provided by these systems must be incorporated in the records of the public registry property offices without delay.

3.4 Municipal management of land

The municipalities are responsible for the formulation, promotion and implementation of urban land policies, including land regularisation and the upgrading of irregular settlements occupied by low-income populations. The municipal legislature is responsible for the approval of all municipal urban legislation, such as master plans, laws regulating the use and disposal of municipal public lands, and norms for land use regularisation, occupation and subdivision.

In public areas occupied by slums and tenements, or those expropriated for the development of social housing projects or to solve land conflicts, municipalities may apply the CDRU to arrive at an equitable solution. However, on private property occupied by slums, tenements, subdivided allotments and low-income populations, only the terms of Law no. 6,766/79 (the federal law of division of the land) or the legal instruments of adverse possession may be utilised.

The municipal administrative departments (or public companies) for urban or housing development also play an important role in the day-to-day processes of land regularisation and upgrading. All municipal land is registered in the city archives along with information about its use, the beneficiary and the kind of tenure. The land assets are controlled by the financial secretary and specialised departments of municipal attorneys who also have the duty of promoting the protection of municipal green areas, buildings or monuments considered part of the historical or cultural heritage, and for social housing. To facilitate all of these activities, complete and detailed land and public asset registry files are essential.

Furthermore, while the master plan determines the macro aspects, the municipality also needs a great deal of detailed information on the type of possession or ownership of the individual allotments, so that the administrators may decide the most appropriate use for each area and contain real estate speculation.

The great majority of Brazilian municipalities have a specific record file for individual urban property owners for tax purposes. These record files are used for the calculation and collection of taxes and to register the person responsible for paying the tax. In case of division of land without authorisation of the local authority, the person having tenure of the plots can be held responsible to pay the property tax.

Some municipal records, which were compiled by the local public administration themselves, cover only the respective municipal area of their competence and exist primarily for tax collection purposes, while the rural area records are left to INCRA. In the vast majority of municipalities the secretary or director of finances is responsible for the records, which

are rarely used for urban control. In many cases the record file of the property of the municipality includes the residents living in informal settlements, for tax purposes. The registration of the residents is not related to the regularisation process of the informal settlement.

There are differences between these records and the federal and state records where lands are contiguous or overlap, and these have to be resolved.

3.5 Most relevant jurisprudence

Some courts have made relevant decisions on the land regularisation of formal and informal urban settlements. In 2000, the court of the state of Rio Grande do Sul unanimously accepted special urban adverse possession in the following sentence: "Considering that all requirements were met and that all the neighbours were cited and no objection to the formalisation of the possession was made; the prime ownership may be registered in the Registry of Property; and the plaintiff's possession may be duly confirmed."[147] In 2003, the same court decided favourably on the procedure of property regularisation by considering an irregular land allotment and/or division as a "situation of irreversible fact". The justification for the decision was the fact that the location had a public water system, sewage networks, streets, electricity, etc., as well as some properties already paying taxes to the municipality. Based on the constitutional principles of the social function of property and access to the courts, the Administrative Provision no.17/99 called "More Legal II" was applied by the General Inspector of Internal Justice Affairs, in a way that simplified the regularisation process for these properties.[148]

147 Court of Rio Grande do Sul; Civil Appeal no. 70000063826, twentieth Civil Chamber; court reporter: Rubem Duarte, decreed on November 8 2000. Circuit Court of origin: Porto Alegre.

148 Court of Rio Grande do Sul, 20th Civil Chamber, Civil Appellation no. 70,003,865,086, court reporter: José Conrado de Souza Júnior, decreed on October 8 2003.

4 National Development Plan

Brazil does not have a Poverty Reduction Strategy Plan to combat poverty and social inequality along the lines proposed by the World Bank. Instead, such strategies are included in the Multiannual Plan proposed for the period 2004 - 2007 by the government (Ministry of Planning) called "Brazil – A Programme for All." The Multiannual Plan, in accordance with the Constitution, is a planning instrument that establishes the objectives and goals of the public federal administration on a regional basis, and defines a budget and other matters relevant to programmes of such long duration. Many civil society organisations were consulted during the formulation of this plan, which in the areas of urban and housing policy emphasises the following:

- Strengthen the urban municipal management by training courses and seminars;
- Regularise and integrate all precarious informal settlements and upgrade the slums and tenements;
- Construct sufficient housing of social interest;
- Organise procedure for home financing; and
- Rehabilitate the central urban areas.

As for the policies on rural areas, considerable emphasis has been laid on family farming through the Programme on Family Farming. The plan also presents programmes in Sustainable Development of Rural Areas; Sustainable Settlements for Rural Workers; and Land Credit.

The matter of gender is approached in a singular manner in the plan, because it contains specific public policies for eliminating discrimination against women. The following programmes are presented: the Combat of Violence against Women programme, which will target the systematic prevention of different forms of discrimination and violence; the Management of Gender Policies programme, which aims at the planning, execution and evaluation of projects related to the achievement of gender equality; and the Gender Equality

in Work Relations programme, which seeks the equal inclusion of women in the labour market.

Brazil has not yet developed a housing plan integrating policies for the use and occupation of rural and urban land and this failure makes it more difficult to incorporate a gender perspective in these policies.

Regarding sanitation policy, the government allocated 4.3 billion reais ($1.4 billion) in 2003-2004 to benefit 4.7 million families. Studies conducted by the National Secretariat of Environment show the need for an investment of 178 billion reais (US$ 59.3 billion) over 20 years to make water and sewage services universal in Brazil.

5 Federal Land and Housing Policies

5.1 Introduction

Under President Lula da Silva, the Ministry of the City and the National Council of the City are considering the formulation of an adequate national land and housing policy, integrating the management of land by the many ministries and institutions that deal with indigenous land policies, rural lands for agrarian reform, and *quilombo* communities. The adoption of such policies is necessary considering that Brazil is a large country with regional specificities spread across 27 states and more than 5,000 municipalities.

The government introduced an important measure concerning urban land and housing policies by creating the Ministry of Cities in January 2003. This Ministry is responsible for formulating and adopting national urban policies on housing, sanitation and public transportation development. It will coordinate activities of the union, the states and the municipalities for the implementation of these policies, but in such a way that important and relevant experiences developed locally or regionally are taken into account.

A general national policy related to urban land and housing is provided in the City Statute and in administrative resolutions established by the National Council of the Cities.

However, even in a government committed to social justice, the management of public policies tends to proceed in the traditional manner, in which projects and resources are set aside to meet the requests of political groups allied to the government, such as mayors, governors, councillors, representatives and so on.

The 1988 Constitution introduced specific provisions on urban policy. Initiated by the platform elaborated by the National Forum of Urban Reform, discussions continued on how to guarantee land access and adequate housing to socially vulnerable groups. The movement for urban reform developed proposals for a national system of cities and a national social housing system. Both proposals are discussed in more detail below.

5.2 The National City System

The City Statute establishes a new chapter in the democratic management of the city and defines the urban policy councils and urban conferences as democratic management tools.[149]

To implement the City Statute, the Ministry of the Cities considered a proposal from the National Forum of Urban Reform, which called for a conference to draw up the constitution of the National Council of the City.[150] The basis for establishing this body was derived from the system of direct democracy and the principle of popular participation enshrined in the Constitution.

After several preparatory city conferences in states and municipalities, the first National City Conference was held

149 See Provisional Measure 2220/2001.

150 The councils and conferences as instruments of democratic management are foreseen in Art. 43 (I) and (III) of the City Statute. The National Council of Urban Development appears in Art. 10 of Provisional Measure 2220/2001 although the name was altered by the Provisional Measure that created the Ministry of the City. Federal Decree 5.031/2004 regulates the National Council of the City.

in October 2003.[151] Conference participants formulated the guidelines and priorities for the management of urban policies in accordance with the City Statute. The main outcome was the election of councillors for the National Council of the City. The National Council of the City is composed of 71 members: 14 from the federal public administration (ministries); 6 from the state public administration and Federal District, or entities of civil society organised in the state area; 10 from the municipal public administration or entities of civil society organised in the municipal area; 19 from popular movement organisations; 7 from the private sector; 7 from labour organisations; 5 from entities in professional, academic and research areas; and 3 from NGOs.[152] The table below indicates the participation of women in the council.

Table 5.1 Women's representation in the National Council of the City

Social Sectors	% of women	Number of women out of total
Federal public power	14,3	2 (14)
State public power and Federal District	16,6	1 (6)
Municipal public power	10,0	1 (10)
Popular Movement Organisation	21,0	4 (19)
Private sector	0	0 (7)
Labour organisations	14,3	1 (7)
Entities in professional, academic and research areas	10,0	1 (5)
NGOs	33,3	1 (3)
Total	15,5	11 (71)

Source: Taciana Golveia, ONG SOS Corpo, 2004. site: www.soscorpo.org.br

The National Council of the City is a deliberative and consultative body with responsibilities to propose guidelines, instruments, norms and priorities for the formulation and implementation of national urban development policies; accompany and evaluate the implementation of the policies regarding housing, basic sanitation and urban transport; and provide guidelines and recommendations for the application of the City Statute. The National Council of the City, when dealing with land use planning, has an enormous potential for formulating urban housing and land policies that take into account the diversity of use and occupation of land for urban and rural purposes.

The National Land Use Plan, which covers the diverse forms of urban and rural land occupation, is the instrument that the government may use to formulate an integrated land policy. Regional land use plans, as well as plans for economic and social development, can also be used. Although there are no regional jurisdictions, the development of regional plans is necessary in order to reduce social and economic disparities.

The responsibility for the elaboration of these plans lies with the Ministry of Regional Integration. The National and Regional Land Use Plans can be important instruments of urban national policy, together with the National City System.

Along with the establishment of the National Council of the City, federal councils have been established on specific matters such as environment, health, social assistance, education, and food security. Similar councils exist at state and municipal level.

As a measure for the implementation of the national urban policy, the National Cities Conference approved the establishment of the National City System to integrate the union, states and municipalities. The national, state and municipal funds related to urban development, housing, sanitation and transport must be integrated in the National City System. The legal instruments, such as the City Statute at national level and the master plans in the local level, must be integrated

151 3,457 municipal Conferences were held, as were 27 state conferences. There was adequate social mobilisation with approximately 320,000 participants, who elected 2,500 delegates for the National City Conference.

152 The National Conference of the Cities decided to make a distinction between the NGOs and the professional and academic entities such as universities.

into this national system, as well as the national, state and municipal programmes dealing with these policies.

Implementation of the National City System is strategic for the application of the new urban legal order, as well as programmes addressing the regularisation of informal settlements.

5.3 The national social housing system

Federal housing programmes

The Ministry of Cities runs various social housing programmes for the benefit of low-income rural and urban populations, including the provision of land for housing and smallholdings. These include (a) programmes for the efficient production of economical housing and infrastructure improvement; (b) programmes on regularisation of informal settlements; and (c) slum upgrading programmes. These are all subsidised programmes controlled by the federal Programme for Social Housing and, in addition to financing self-help and cooperative construction, they seek to give some priority to women heads of household, to families with the lowest income, and to the rural and poor urban population. There is also a low-cost credit aid programme directed at family groups organised into formal cooperatives or housing associations, where the members' income ranges from zero to three times the present minimum wage.

The Upgrading, Regularisation and Integration of Precarious Settlements Programme is aimed at implementing regularisation of slums, land subdivisions and public housing developments. The programme is developed through a partnership between the Ministry of the City and the municipalities in particular. Moreover, there are partnerships to develop the programme with ANOREG and IRIB to assure the free registration of the title in the register and to simplify the process. In 2004 the National Secretary of Urban Programmes transferred U$ 1.5 million to support the regularisation of the land in 126 informal settlements in 49 municipalities in 17 states.

The Habitar Brasil Programme seeks to further the efforts of municipal governments to eradicate or improve informal settlements such as slums and tenements. The main objectives are to make these areas more habitable and healthy and to improve the standard of living without removing the people from the city areas where they provide many services and earn a livelihood. Most of these projects are also directed to the less than three minimum salary segment of the population and have had considerable success: in 2003, of a much larger number of properly prepared and solidly based plans submitted by 323 municipalities and the Federal District to the programme, 132 were approved and 104 are in active execution.

A good example of this kind of project is the upgrading of the Favela do Gato in São Paulo. This *favela* has existed for over 30 years on the banks of the Rio Tamanduatei and because of constant flooding, was considered a high-risk area. In the Habitar Brasil Programme project, 150 families who worked collecting trash and delivering it to the local processing station did not have regular guaranteed income although they were usually able to support their families through their work. An area for income-producing work associated with the collection of recyclable trash was also constructed nearby so that the workers could make more money from their daily work

However, the current challenge is how to guarantee that sufficient resources will be available for these programmes, and how to ensure that what is available will be adequately and economically applied in the states and municipalities in spite of regional and social inequalities. The main funding comes from the Workers Guarantee for Time of Service Fund (FGTS), a pension fund derived from contributions paid by the workers and their employees in the formal job market.

The National Popular Housing Fund

The proposal for a national social housing system was initially put forward in a popular initiative called the National Popular Housing Fund.[153] This project has been pending over 13 years, but the bill was finally passed in the Chamber of Deputies in June 2004 and was adopted in June 2005 as Law 11.124/2005. The objective is to promote and make viable the access to rural and urban housing for low-income populations by implementing a subsidy policy. The adoption of urban and rural land access policies aiming at the full implementation of the social function of property is also proposed.

Recognising that the low-income housing problem is very great and cannot be solved only by the efforts of these worthwhile programmes, Federal Law 11.124/2005 seeks to generate adequate resources through a National Popular Housing Fund. The original version of this bill said that money for this fund would come from two principal sources; the Federal Budget and the FGTS. However, in the Chamber of Deputies the use of the FGTS for this purpose was vetoed and the Senate did not reinsert this clause. The principal reason for the existence of the National Popular Housing Fund is to generate funds for works of social interest for the 0-3 minimum salary population segment. Another important measure is that the Ministry of the City and the National Council of the City would have the competence to define the utilisation of the resources of the FGTS.

Federal Law 11.124/2005 includes the conception of a democratic and decentralised system, as it establishes the obligation on states and municipalities to constitute their own housing funds and councils before they can receive resources from the National Popular Housing Fund. To utilise those resources the states and municipalities must develop housing polices to be implemented by housing secretariats or public companies, community organisations, resident associations or cooperatives.

153 Bill of Law no. 2,710/92, and in the Senate its number was PLC 0036/2004. As of June 2005, this is Federal Law no. 11.124/2005.

The purpose of the National Social Housing System radically modifies the present model. It democratises the process, with the participation of popular and civil society organisations, and it increases the participation of states and municipalities in the system, allowing for more knowledge about local and regional needs.

National housing policies should not neglect relevant international human rights law. As will be seen in the next section, there have been advances in a range of rights related to gender, race and ethnicity. However, for the implementation of these rights, the establishment of the National System of Cities as well as the National Social Housing System is essential.

6 Federal Legislation

6.1 The Federal Constitution of 1988

Citizenship and human dignity are among the fundamental principles laid down in the Federal Constitution (Art. 1, II and III). Art. 3(III) and (IV) are concerned with the eradication of poverty and substandard living conditions, the reduction of social and regional inequalities and the promotion of the well being for all, independent of origin, race, sex, colour, age and any other forms of discrimination. The infringement of fundamental rights and liberties (Art. 5, XLI) is punishable by law.

Title II on Fundamental Rights and Guarantees lists a number of human rights. Article 5 recognises that all persons are equal before the law. Its first paragraph explicitly states that men and women have equal rights and duties under the terms of this Constitution although the Constitution itself is written in gender-biased language[154].

The right to inheritance is guaranteed (Art. 5, paragraph XXX). In view of the recognition of equal rights for men and women, this implies equal inheritance rights for widowers and widows. Article 7 (XXX) prohibits any difference in

154 Art. 201(7) of the same Constitution, however, contradicts Art. 5 by stipulating different retirement ages for men and for women.

wages, in the performance of duties and hiring criteria, on the basis of sex, age, colour or marital status.

Article 226(1) stipulates that marriage is civil, and that the marriage ceremony is free of charge.[155] The stable union between a man and woman is recognised as a family entity. A civil marriage may be dissolved after legal separation of over a year, or after de facto separation of two years.[156] While the rights and the duties of marital society "shall be exercised equally by the man and the woman", no explicit provision is included for equal marital property rights.

Article 5(X) recognises the inviolable right to privacy and to compensation for property damages. The right to property is recognised as a fundamental right as long as the property fulfils its social function.[157] The law can provide for an expropriation procedure for public necessity or social interest, but fair compensation must be paid in case of expropriation.[158] However, there are no provisions on evictions in the Constitution.

Due to the efforts of the National Movement of Urban Reform to draft the Popular Urban Reform Amendment, a specific Chapter on Urban Policy was included in the Constitution. This chapter emphasises the full development of the social functions of the city, which must be at the core of urban development policy. The municipality is responsible for the implementation of urban development policies, in accordance with the general guidelines of the federal City Statute. Every city of over 20,000 inhabitants must have a master plan, which is the basic tool of the urban development policy. Prior and fair compensation in cash must be provided in case of expropriation of urban property. In certain cases the municipal government may, by means of a specific law and according to the City Statute, demand from an owner of vacant, underused or unused urban land in an area included in the master plan, that s/he provide for adequate use of this land. To this end, the municipality may apply the instruments of subdivision, construction or compulsory use, property taxes increasing progressively over time, and the expropriation of property for purposes of urban reform as a form of guarantee that the urban property will fulfil its social function.

Article 6 recognises the right to housing as a fundamental right. In accordance with this the following are social rights: education, health, employment, housing, leisure, security, social security, maternity and childhood protection and assistance for the helpless.[159] Linked to the protection of housing rights are the inviolable rights of the home, the right to information and the provision of full and free-of-charge legal assistance by the state to all who prove insufficiency of funds.[160]

The state's obligation to protect housing rights implies the implementation of housing construction programmes and the improvement of housing and basic sanitation conditions, as well as the social integration of the disadvantaged.[161] The housing rights of the Afro-Brazilian populations in the cities must be considered as cultural rights and suitably protected. In accordance with Art. 216, the Brazilian cultural heritage consists of assets of material and immaterial nature, taken individually or as a whole, which bear reference to the identity, the action and the memory of the various groups forming society. Among these are the ways of life and the urban collectives and places of historical, aesthetic and artistic value.

Therefore, the public administration must protect those villages, housing collectives and neighbourhoods with a high concentration of Afro-Brazilian populations having characteristics of historical value, for example the historical centre in the city of Salvador (Pelourinho) and the slums in the hills of the southern zones in Rio de Janeiro. Among the methods of providing such protection are the prevention of eviction

155 Art. 226 is laid down in Chapter VII on Family, Children, Adolescents and the Elderly, which is in turn part of Title VIII on the Social Order.

156 Art. 226 (6).

157 Art. 5(XXII) and (XXIII).

158 Art. 5(XXIV).

159 The right to housing was included in the Constitution as a fundamental right by Constitutional Amendment no. 26 of 14-2-2000.

160 Art. 5 (X), (XXXIII) and (LXXIV).

161 Art. 23(IX).

or expulsion of Afro-Brazilian communities, and guarding the housing and cultural rights of these communities.[162]

The rights of traditional Afro-Brazilian populations to their lands is laid down in Art. 68 of the Transitory Constitutional Dispositions as follows: "those descendants of the *quilombo* communities now in occupation of the traditional *quilombo* lands are hereby recognised as the definitive owners of these lands, and the state has an obligation to issue titles to those occupiers".[163]

Article 231 recognises the rights of the indigenous population to maintain their social organisation, customs, languages, beliefs and traditions, as well as their original rights to the lands they traditionally occupy. The union is responsible for the demarcation of these lands, and to protect and ensure respect for all of their property.

6.2 The civil code

In 2002 a new civil code was promulgated that deals with family rights, inheritance rights, possession and property rights.[164] While the previous civil code of 1916 referred to a person as a "man", the new code employs the word "person". The expression "paternal power" was also replaced by "family power".[165] During marriage and/or stable union, both parents exercise the family power. Where one parent is not available or able to exercise this family power, the other will exercise it exclusively (Art. 1631). The Constitution defines the family entity as a community formed by either of the parents and their descendants. This means that a family formed only by women (mother and daughters) or only of men (fathers and sons) is legally recognised as a family unit. The new civil code recognises that marriage is constituted based on the equality of the rights and duties of both spouses (Art. 1511).

With relation to the ownership of property of such a union, equality between men and women is assured in the acquisition, management and administration of goods brought into the union or acquired after the formation of the family (Art. 1642).[166] The form of this equality is established at the moment of initial permanent union of the couple. At that time they may elect, in writing, to hold all or some of their property jointly or separately, but if they do not so elect, the civil code (Art. 1639–1641) presumes that the union is organised in a system of partial community of property.

However, whatever form the union presents, both the man and the woman may freely administer their own properties (that is, those that each brought to the union) and may negate mortgages or commitments which may have been made on their property without their consent even if a legal sentence is involved (Art. 1642). If some joint asset is to be sold or otherwise disposed of, neither party of the union can act without the consent of the other except where the form of the marriage or stable union has been agreed in the beginning as one of total separation of the assets. Only a judge can authorise the disposal of an asset of a marriage or stable union if one of the partners refuses to consent to a legitimate operation desired by the other without a sound reason or if it proves impossible to locate him/her (Art. 1648).

Similarly in regard to rights of inheritance in the case of the death of one of the partners of a marriage or stable relationship, women and men have equal rights in obtaining assets whether by being the legitimate heir or by a will or testament. Art. 1.829 of the civil code, however, sets out the preferential order of transfer of the inheritance:

(1) To the direct descendants (sons and daughters) and the surviving partner in equal portions, except if the latter was married under the regime of universal community

162 Protection of cultural rights also includes the prevention of damage to homes and buildings that represent the memory and identity of these communities. Examples are the spaces destined for manifestations of the popular cultures of Afro-Brazilians, such as the areas set aside for dances and samba groups and the traditional places of Afro-Brazilian religious cults such as *candomblé*. To protect these cultural rights, the public administration, with the collaboration of the community, may utilise the instruments of inventory, registry, vigilance, recording and dispossession. The municipality must include in the master plan provision for safeguarding the housing rights of these communities.

163 The rule on the right of the land to the *quilombolas* is transitory, related to the period in which the government provides the titles of the lands to all *quilombolas* communities.

164 Law no. 10.406/2002.

165 Art. 1630-1638 et seq.

166 Art. 1642. See Zavascki, T. A. (2002:850).

of property, or if the assets are to be separated in accordance with a valid last will and testament;[167]

(2) To the ascendants (fathers and mothers) and the surviving partner in equal portions; and

(3) Nearest next of kin. The sex of the surviving partner of such a union does not influence the outcome.

The civil code assures the surviving spouse (man or woman), regardless of the marital property regime, the real right of habitation of the family home, provided it is the only asset in the residual inventory (Art. 1830). Habitation is the temporary real right to freely occupy a house belonging to third parties and is attributed to the beneficiary of this right and his/her family. The object of the real right of habitation must be a building (house, apartment, etc.) to be used exclusively as a residence for the family and may not be used for any other purpose. This right may not be sold or rented out. Thus, the inheritor can use such a building only as his/her residence with his family (if any).

The main obstacle for legal recognition of the inheritance by a man or woman of real rights over an asset (house, lot, land) in an informal settlement is the irregular or non-existent registration of the property. Land regularisation programmes for such settlements and the provision of free legal assistance services are the two main measures that should be taken to consolidate the inheritance rights of people in informal settlements. Courts must also alter their traditional positions to permit the transfer of ownership or possession to the survivor, notwithstanding the irregular situation of the land, and to authorise the recognition of these inheritance rights by the public registrars.

Some cases have occasionally occurred where, in situations of domestic conflict, women threatened by or subjected to domestic violence have ceded the family property. NGOs, legal assistance centres and public organisations specialising in combating domestic violence have played an important role in the defence of women's property rights in such cases.

The civil code deals with the regime of possession and ownership. Adverse possession is considered a form of acquiring property but Art. 1238 requires that such rights are acquired only after uninterrupted and undisputed occupation for at least 15 years. Special adverse possession conditions for rural lands are defined in Art. 1239 and for urban adverse possession by Art. 1240, which follows Art. 183 of the Constitution.

One of the problems with the present civil code is that it does not provide protection of the right to housing in the same way as it does the protection of rights of possession and property ownership. In this sense, a better approach would be to give precedence to the norms for the protection of the right of housing laid down in the City Statute over those of the civil code.

6.3 Federal land laws

Division of urban land: Law no. 6,766 of 1979 amended by 9,785 of 1999

This law regulates the division of urban land into allotments or building sites, as well as the establishment of urban standards and requirements for adequately creating such divisions. Such standards and requirements include: the minimum acceptable infrastructure, the highway system, urban and community services, uses of public areas; the responsibilities of private parties (land owners, entrepreneurs) and the public authorities; and the definition of urban crimes.

Urban divisions are classified as:

- Regular divisions – those in conformity with the legislation;
- Irregular divisions – those that are irregular because they infringe municipal urban standards, or there is an absence of infrastructure and public areas, or they do not meet the legal requirements for registration in the public register; and

167 The proportion of the division of the assets is equal between direct descendants and the surviving partner. Among related ascendants and the surviving partner the proportion is also equal.

- Clandestine divisions – Those developed without approval from the municipality although the municipality has not taken action against them.

An amendment made in 1999 to Law this law provides legal instruments to protect the right to housing and strengthen tenure security. It permits the regularisation of irregular allotments developed in areas expropriated by the government to house low-income population, by means of the transfer of possession to the residents and subsequent registration in the public register. [168]

Article 2 of the amended law also amends Art. 167 of the Law on Public Registries (Federal Law 6.015/73) and allows the registration of temporary possession conceded by the union, the state, or municipalities in expropriation processes, directly or by the respective institutions responsible for implementing housing reform for the lower-income classes. These amendments allow the government to register such arrangements without having all the ownership titles normally required – only the expropriation document referring to the respective temporary possession is needed. In this case, the law also permits that the actual transfer of possession to the beneficiaries be done by deed. Once the process is completed the beneficiary can use the possession document as collateral to obtain financing to improve or construct his/her residence, and the law requires banks and building societies to accept this document in the same way as the traditional home ownership title has been accepted.

Article 3 of the new law provides for the creation of the aforementioned ZEIS as another instrument for land regularisation. ZEIS are usually in areas with large concentrations of irregular settlements, where the municipality is engaged in, or plans, projects of urban improvement. This makes it possible to establish special rules for division, usage, construction and occupation for land regularisation.

According to Art. 53, collective housing constructed by the government without attending all the legal and upgrading requirements, can be regularised in both urban and legal aspects and registered in the property registry. However, this is seen as a provisional measure to alleviate an unacceptable existing situation and does not release the government from later bringing the provisional urban infrastructure up to standard.

The Land Statute Law no. 4,504 of 1964

The Land Statute regulates "the rights and obligations concerning rural property assets for the purposes of implementing Agrarian Reform and Agricultural Policies" (Art. 1). Agrarian reform is understood as a "collection of measures that aim to promote a better distribution of land by modifying the traditional regime of possession and use in order to better attend the principles of social justice and obtain an increase in land productivity" (paragraph 1). The law also proposes to assure the opportunity of property access to all, under the condition of the fulfilment of land's social function (Art. 2).

According to Art. 24 of the Land Statute, the land expropriated for agrarian reform purposes must be distributed by INCRA in the form of family ownership. Article 189 of the Constitution stipulates that the beneficiaries of distribution of rural land through agrarian reform shall receive title deeds or concessions of use. These titles shall be granted to the man or woman, or to both, irrespective of their marital status.

The Constitution dedicates a complete chapter to the matter of agrarian reform, and states that, all other options having failed, the state shall expropriate rural properties found to be unproductive by impartial experts. Expropriation must be accompanied by payment of prior and fair compensation to the proprietor by the means of agrarian debt bonds, the form of which preserves the real price of the land during the bond term.

One of the problems impeding the full implementation of the agrarian reform process is the precise meaning of the term "productive land" and it has been left to the judiciary to apply the basic principle of the social function of rural property to resolve disputes on whether a particular property is

168 As well as modifying Law no. 6,766/79, the respective federal laws on public registries and on expropriation in the public interest were also amended.

or is not productive. Such decisions are not only complicated by the lack of definition in the constitutional term, but may also involve questions of the preservation of the environment. Furthermore, legal challenges to the differing roles of the union, the state and the municipality as regards the final jurisdiction often delay even the start of an expropriation process.

Furthermore the validity of many processes of agrarian reform are challenged in the courts on the grounds that the criteria used by the government to define the property in question as not fulfilling its "social function" by being "unproductive" is illegal or unconstitutional, or in some case, just plain wrong. The problem is often further complicated by the lack of expertise or specialised units dedicated to agrarian reform at the municipal level. The master plan should regulate rural land use and define rural areas not fulfilling their social function through the instrument of zoning. Such definitions in the master plans could provide more legal support to the union to promote the expropriation of unproductive rural areas for agrarian reform purpose.

The Law on Union Land

The Law on Union Land (Law no. 9,636/9) deals with the regularisation, administration, alienation and leasing of lands belonging to the union. Article 1 refers to planned regularisation and utilisation, and authorises the union to institute action in the Secretariat of Union Assets and by the Ministry of Planning, Finance and Management, for the identification, demarcation, registration, inspection and regularisation of occupation of its land. To fulfil these objectives, the union is authorised to ratify conventions with the states and municipalities in whose territory the lands are located.

The regime controlling public assets is classified according to its destination, which is enshrined in the Constitution and the new civil code in the following form:

- Properties of common use (beaches, roads, highways, rivers, etc.);
- Properties of special use (hospitals, buildings for public organisations, schools, etc., which are used for the implementation of public services in general); and
- Properties of dominium (assets belonging to the public administration and over which it has powers of ownership and therefore can be freely utilised, and even alienated or leased by the public administration).

The Law on Union Land aims especially at the regularisation of union land classified as properties of dominium. In coastal cities this land is often occupied by urban formal and informal or irregular settlements. The legal instruments that can be applied for this purpose are: the Special Concession for Housing Purposes, *aforamento,*[169] *emphyteus* and occupation.[170]

There are two views on how best to deal with the regularisation of union lands. One proposal is for the transfer of these lands and their management to the municipalities. The second, which is now in use by the federal government, establishes a procedure of shared management between the union, states and the municipalities specifically for this purpose so that the necessities of the inhabitants of the cities for housing, leisure areas, tourism and culture may be facilitated.

There are new instruments established by the City Statute that can be used to transfer the use of union land for housing purposes, such as the rights to surface, the concession of use of real right and the special concession of use for housing purposes. The Secretary of the Union Assets identified the use of these new instruments as a priority, particularly to regularise informal settlements.

169 *Aforamento* and *emphyteus* are old civil regimes related to property that have their origin in Roman law. The *aforamento* and *emphyteus* are used by the owner to confer to another person the useful dominium of their property. The person that receives the useful dominium of the property shall pay an annual fee to the owner. Since the early 20th century, the union conferred their land by *aforamento* and *emplyteus* for different purpose such as rural activities and housing. Art. 99 of the Law of the Union Land authorised the use of these instruments.

170 According to Art. 127 of the Law on the Union Land occupation is a specific instrument to regularise the occupied land of the union. The occupants shall pay an occupation fee to the union. The inscription of the occupation in the union land record and the payment of the occupation fee do not generate recognition by the union of any right over the property to the occupants, according the article 131.

6.4 Federal housing laws

There is no national legislation in Brazil concerned with all the aspects of protection and implementation of housing rights. However, there are various relevant national, state and municipal laws with specific provisions related to the protection of housing rights. At the federal level, besides the legislation on land reform already mentioned above and the civil code that deals with property rights, the City Statute, the Law on Urban Property Leasing (Law no. 8,245/91) and the law establishing the housing finance system (Law no. 4,380/64) are also of great importance in the struggle to make the right to housing a reality.

The National Social Housing System

Law no. 4,380/64, which created the housing finance system, contains two instruments: the FGTS and a managing council for this fund.[171] Resources for this fund come from private, compulsory contributions from businesses and employees in the formal market. The law determines that 60% of the resources should be used for popular housing programmes. At the beginning of 2004, the FGTS assets exceeded 13 billion reais (approximately $4 billion).

However, the major portion of the resources of this fund must be invested to meet the workers' long-term welfare and labour guarantees. Thus, the administrators of the fund tend to invest only in formal home finance where the rates of return maintain, or increase, the real value of the fund. In practice, this means that most of the 60 percent destined by law for popular housing goes into homes for the medium and high-income populations. Therefore, the Ministry of Cities is faced with the necessity to identify other resources for the establishment of a national democratic and decentralised housing system as demanded by many segments of society. A fundamental component of such a system is a National Popular Housing Fund, proposed in the popular initiative, which resulted in the Project of Law no. 2,710/92, and was adopted 13 years later in June 2005 as Federal Law 11.124/2005.

171 The managing council consists of representatives of government, business and labour.

The new federal law on the National Social Interest Housing System

The new federal Law no. 11.124/2005 establishes the National Social Interest Housing System and the National Social Interest Housing Fund. This system entails the conception of a democratic and decentralised system, as it establishes the obligation on states and municipalities to constitute their own housing funds and housing councils before they can receive resources from the National Social Interest Housing Fund. To utilise those resources the states and municipalities must develop housing polices to be implemented by housing secretariats or public companies, community organisations, resident associations or cooperatives.

The adoption of urban and rural land access policies aiming at the full implementation of the social function of property is also included as an important rule in the law.

In the regulation of this law, an essential component that needs to be included is related to the special needs of housing of the rural populations, indigenous populations, and the Afro-Brazilian populations of the *quilombolas* communities. Another important measure is that the Ministry of the City and the National Council of Cities would have the competence to define the utilisation of the resources of the FGTS that will be allocated to the National Social Interest Housing Fund.

Law on Lease

Federal Law no. 8,245 of October 18 1991 concerns the lease of urban housing and the forms of protection for vulnerable social groups that live in tenement houses. The general regulations for lease are set out in the civil code (Art. 565-578) but were designed for property owners in the formal real estate market. Now, for the first time, Brazilian leasing law recognises the legality of leasing collective housing buildings such as tenements. The law accepts specifically that tenement residents have rights of rental even if their contracts are informal or verbal. In São Paulo over one million people fall into this category. r

The Law on Lease ensures the legal defence of rights for people with low incomes that live in tenement houses. Even without a written contract between the owner and the tenants, the characterisation of the property as multifamily collective housing gives the residents of this dwelling the status of legal tenants or sub-tenants.[172] The law has given considerable scope to initiatives by human rights organisations and those lawyers who work for the defence of the poorer population. For this law to have its full social impact in preserving the rights of tenement residents, it is essential that the Brazilian state build the capacity of the judiciary (judges, prosecutors, attorneys, lawyers) to properly understand and apply its terms. Unfortunately, the government has not made much progress in this direction so far.

Article 21 of the law also regulates the value of the rent, which may be charged in collective housing. The rent of the sublease cannot exceed that of the primary lease and, in multifamily houses, the sum of the rents cannot be more than double the value of that lease. Article 24 establishes special procedures to ensure that collective housing present decent living conditions. Obviously, for these two provisions to be observed in practice it is essential that the municipal government carries out regular inspections of the buildings and punishes offenders. According to Art. 24 paragraph 3, if the municipal authorities issue a certificate that the living conditions are inadequate, the residents can then proceed against the owner of the building (not the agent) to force him/her to take the necessary steps towards habitability of the building. A municipal law of São Paulo (the Moura Law) spells out the manner in which the government should act in such cases and this law is discussed below.

6.5 The City Statute

In order to implement the principles and instruments laid down in Art. 182 of the Constitution (Chapter on Urban Policy), specific federal legislation was required. Twelve years after the promulgation of the 1988 Constitution, the urban reform movement finally succeeded in obtaining congressional approval for Law no. 10,257, known as the City Statute. Article 1 of this statute establishes norms for public order and social interest by the regulation of the use of urban property for the common good and for the safety and well being of all citizens. Article 2 provides 16 general guidelines for the formulation of urban policy, with the main objective the promotion of the full development of the social functions of the city and of urban property. The most relevant guidelines for the purpose of this study are listed in the box below.

Box 6.1 City Statute: General guidelines for urban policy

(1) Guarantee the right to sustainable cities: this is the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, work and leisure for current and future generations (par. I);

(2) Democratic, participatory management of the city, including popular participation in the formulation, implementation and monitoring of urban development projects, plans and programmes (par. II);

(3) Cooperation between governments, private and other sectors of society in the urbanisation process (par. III);

(4) Planning and control of land use, in order to avoid: (a) improper, incompatible or inconvenient use of urban property; (b) subdivision of land, construction or excessive/improper use of urban infrastructure; (c) speculative retention of urban property; (d) deterioration, pollution or environmental degradation of urban areas (par. VI);

(5) Regularisation of land ownership and urbanisation of areas occupied by low-income populations through the adoption of norms and standards related to special urbanisation, land use, occupation and buildings (par. XIV);

(6) Simplification of the legislation concerning sub-divisions, land use, occupation and building standards (par. XVI);

(7) Integration between urban and rural activities, considering socioeconomic developments of the municipality and the territory under its sphere of influence (par. VII);

(8) Adoption of sustainable production and consumption standards (par. VII);

(9) Fair distribution of the benefits and burdens resulting from the urbanisation process (par. IX);

(10) Supply of adequate and locally suitable urban and community equipment, transportation and public services (par. V).

172 Art. 2 of the Law on Leasing.

These guidelines express a new concept in the processes of use, development and occupation of urban territory: that the development of cities must take place based on principals of justice, democracy and sustainability. In Brazilian law the right to the city is now understood as a new fundamental human right integrated into the category of collective rights.

The protection of urban order, by means of public civil action (Art. 54), must establish a procedural protection of the right to the city that is a diffuse and collective right of all its inhabitants. Harm against the urban order may be a violation of housing rights for a high number of people that live in collective housing or slums.

The City Statute presents four fundamental innovations:

(1) Without breaking with the long-standing tradition of civil law, it establishes a basis for a new legal-political paradigm for urban land use and development control.

(2) It creates and regulates legal instruments for municipal action towards a sustainable, socially just and inclusive urban order.

(3) It guarantees democratic management of cities by those who construct, utilise and inhabit them.

(4) It introduces three sets of land regularisation instruments for informal urban settlements:
(a) Instruments that promote socially responsible urban development of the city and property, such as:
   - A master plan (Art. 39-42);
   - A process for planning and compulsory construction (Art. 5-6);
   - Progressive taxes imposed on socially irresponsible urban property
   - ownership (Art. 7);
   - Permits expropriation in public interest (Art. 87);
   - The right to pre-emption (Art. 25-27); and
   - Right to recover costs on created land when conceding the right to build (Art. 28-31).

(b) Instruments of democratic city management, such as: councils, city conferences, participatory budgets, public hearings, popular initiatives of projects of law, studies on the impact of neighbourhoods, popular referendums and plebiscites (Art. 43).

(c) Instruments for land regularisation, such as:
   - Urban adverse possession (Art. 9-14);
   - Special Concessions for Housing Purposes (Art. 4, III, h);
   - Concession of Real Right to Use (Art. 4(2) and 48); and
   - Special zones of social interest (Art. 4 - see Section 2.2). 173

Article 9 of the City Statute confirms the constitutional right to urban adverse possession and, in addition, recognises that the holder of such a right may bequeath it to his/her legitimate heir.[174]

The master plan is the basic instrument for establishing the public order of the city, and for ensuring the rights and needs of citizens. Urban property fulfils its social function when it meets the basic requirements laid down in such a master plan.[175] The master plan is an integral part of the municipal planning process, and the multiyear plan, the budget guidelines and the annual budget must incorporate the rights and priorities laid down in the plan. In the formulation process of the master plan, the participation of the population and associations representing various segments of the community is obligatory. This participation includes public hearings and debates, publication of and access to relevant documentation and information.[176]

The Ministry of the City has estimated that 2,000 municipalities have the legal obligation to produce master plans for the promotion of urban policy. The City Statute established a

173 Where the regulation of an irregular human settlement in urban areas of environmental preservation is necessary, the environmental norms shall be maintained as far as possible but shall not prevent the regularisation, so as not to infringe the constitutional provision of protection of housing rights. However, the councils should ensure that the respective environmental protection authorities and other interested parties are given ample opportunity to introduce alternatives in the planning stage of the land regulation project tending to minimise any damaging effects on the environment.

174 Art. 9 paragraph 3.

175 Art. 39 and 40.

176 Art. 40.

period of five years (deadline: October 2006) for the municipalities to complete drafting their master plans. Public agents judged in default in these activities shall be suitably specifically punished in addition to being subject to existing legal sanctions. Furthermore, the mayor of the city will be held responsible for administrative impropriety, in the terms of Law no. 8.429, of June 2 1992 (Art. 52).[177]

With the objective of assisting the municipalities in the implementation of the City Statute, the Secretary of Urban Programmes, (under the Ministry of the Cities) is developing five municipal support programmes: (a) The Implementation of Master Plans; (b) Programme and Projects for the Regularisation of Land Tenure; (c) Prevention and Eradication of Risk Areas; (d) Rehabilitation of Central City Areas; and (e) City and Territorial Management. In 2004, 646 cities requested such assistance from these programmes. However, the ministry's budget allows them to effectively attend to only 58 of these applicants.[178]

The budget of the Ministry of the City for the year 2005 has resources to assist 355 municipalities. This is expected to satisfy the major requirements because some states, such as Pernambuco and Ceara, are developing plans for execution by their own municipalities, and also because ministerial assistance is mainly required for the smaller municipalities (of 20,000-50,000 inhabitants) and for those located in the north and northeast regions of the country.

A further indication of the growing acceptance of the City Statute in practice is that it is being used by sectors of civil society and the Public Prosecutor as an instrument to ensure that the elaboration and implementation of master plans is both participatory and democratic. In those cities where the local government has not yet democratised the process of formulation of a master plan, such as São Luis, Fortaleza, Salvador, Florianópolis , Rio de Janeiro and Boa Vista, popular movements and forums are using the City Statute as a basis for their campaigns pressing for a change in governmental thinking on this matter.

177 The federal Law no 8.429, of June 2 1992 establish criteria and discusses the administrative responsibility of the public authorities

178 In order to support the 646 municipalities, the Ministry of the City estimates that about 70 million reais (about $23 million) is required.

6.6 Customary law

Brazilian law does admit the recognition of use and custom when there is no adequate legislation that disciplines the form of protection of a right. With relation to housing and land policies, demand is growing that upgrading and land regularisation programmes should include as objectives the protection and recognition of the cultural standards of use and custom, and the recognition of differences in the form of land occupation and the types of housing adopted by social groups living in informal settleeents. These considerations shoumd also be applicable independenuly of whether such social groupw occupy slums or collective houwes in the cities or indigenous willages, traditional or *quilombo* communities in the rural areas/ The legal instrument of ZEIS wguld be the most adequate for thms purpose.

6.7 Federal implementation of land and housing rights

Some actions and initiatives on the part of civil society organisations and the federal government and municipalities deserve recognition. In the Ministry of Cities, all credit should be given to the progress achieved in the implementation of the Upgrading, Regularisation and Integration of Precarious Settlements Programme. This was initially planned to support 100 municipalities in the realisation of municipal land regularisation programmes, such as the forging of technical cooperation agreements between the Ministry of Cities and Planning (Secretary of Federal Assets), the Notary Public and Registry Association and the municipalities to accelerate the process of land regularisation in public federal properties occupied by low-income populations.

Some allocations from the ministry's budget to municipalities and NGOs also help support land regularisation.

The other action is the regularisation of federal land occupied by social groups, in partnership with the municipalities, and training programmes to build the capacity of public managers, technical professionals and social leaders. By December 2004 these initiatives had begun a regularisation process that will benefit more than 314,000 families. Another 15,904 families received their tenure titles. The Secretary of Union Assets is a partner in this programme and has allocated federal lands to the programme in some municipalities, such as Recife, Rio de Janeiro, Vitoria and São Vicente.

As mentioned above, the Ministry of Cities also runs a Land Tenure Regularisation Programme. In 2004, 262 municipalities requested assistance from the ministry; of these 52 were selected and are receiving support. For the fiscal year 2005 it is expected that this support will be considerably amplified as the Commission for Urban Development of the Chamber of Deputies has decided to make provision for at least 60 million reais (about $20 million) for this programme. This amount would permit the Ministry of the City to transfer resources to approximately 600 municipalities to implement land regularisation measures in the informal settlements.

With relation to the *quilombolas* communities, the approval of Decree no. 4,887/2003 has considerably accelerated the rate of issuing titles to the lands presently occupied by the descendants of the original *quilombos,* especially the new decision to identify these descendants by their own self-definition (Art. 2, paragraph 2). This norm completely fulfils the proposal of Convention 169 from the International Labour Organisation on indigenous people and tribes in 1989, recently ratified by Brazil.

In the municipality of São Paulo there was an increase in legal assistance services for land regularisation programmes through agreements made with the local Chapter of the Order of Lawyers and Solicitors in January, 2003, and other institutions that offer this service. During 2003, 3,500 lawyers received enabling courses to prepare themselves to offer this service.

Furthermore, in 2003, the National Forum on Urban Reform held several well-attended City Statute professional training programmes for leaders of popular community organisations covering the various related subjects. This programme is expected to expand to four regional offices in 2004 and to run up to 30 courses, which should graduate over 2,000 leaders.

Until 2004, additional advancement of the City Statute paradigm was provided by the National Rapporteurs Project of Brazilian (DHESC) platform, of which the National Urban Land and Adequate Housing Rights Report is part.

The implementation of the National Social Interest Housing System and the National Social Interest Housing Fund pursuant to new federal law 11.124/2005 presents a challenge for the Brazilian government in relation to the present economic model. This law can provide the transfer of funds now used to repay the foreign debt to programmes to subsidise housing programmes for vulnerable segments of the population (see Recommendations).

In order for the rights to housing to be fully respected a question of strategy requires attention: the need to obtain recognition from public managers that the consideration of human rights is a key objective in the application of urban and housing policies. If human rights are seen as a paradigm and reference in the management of public policies, it will be much easier to correct inequality and discrimination.

In addition, special measures must be taken to protect women's right to housing, as well as giving them priority in obtaining title to housing constructed under public housing programmes. The cultural rights of the indigenous and Afro-Brazilian population must be considered in the housing policy. And some quotas should be reserved for senior citizens.

Furthermore, the courts can protect human rights more effectively if they consider and apply the growing body of national and international thinking when deciding cases involving rights of possession, inheritance and housing for

the vulnerable or socially marginalised. Lawyers' networks specialising in human rights and urban legislation should increase their efforts to involve members of the justice departments, and the public registers, in human rights questions by promoting courses, seminars and congresses with the wider legal community.

7 State Laws and Policies Related to Land and Housing

The individual states formulate their urban and housing policies on the basis of their own constitutions and housing legislation, taking into account the Constitution and the City Statute. Particularly good results of this symbiosis can be seen in housing legislation in São Paulo and in the state constitution of Rio Grande do Sul.[179]

In the state of São Paulo, the following relevant state legislation can be mentioned: (a) Law 6,756, of March 14 1990, regulates the Financing and Investment Fund for Urban and Housing Development; (b) Law 9,142 of March 9 1995 regulates the financing and development of social housing programmes for low-income households; (c) Law 10,365/99 regulates the Social Leasing Programme; and (d) Law 10,535/2000 regulates the Credit Programme for Land Purchases.

Article 173 of the state Constitution of Rio Grande do Sul establishes a state housing policy with participation from organised communities. This includes budgetary allocations to assist low-income families and a range of other initiatives, including housing construction.[180]

The Housing Cooperatives Programme established by the government of Rio Grande do Sul is ruled by Decree no. 40.525/2000, which recognises the housing cooperatives as constructor agents of social housing. The state housing secretariat is responsible for assuring financial and technical support for the cooperatives comprised of low-income family-members earning up to five minimum wages, and for the municipalities, which are intending to implement such a programme. The programme benefits rural and urban housing cooperatives and provides financial resources to build new houses, to construct individual sanitary facilities and/or to improve already existent housing. The resources are allocated directly to the cooperatives: half of the total amount is allocated to the co-operative to provide the construction materials, to contract technical assistance and to build the houses. The state government grants the other 50 percent as a subsidy to the beneficiaries to buy the houses. In 2000, the state housing secretariat signed a technical cooperation agreement with the Uruguayan Federation of Mutual-Aid Housing Co-operatives to exchange expertise and knowledge on housing construction and assistance. From 2000 to 2002 a total of 279 cooperatives benefited from this programme.

8 Review of Selected Municipal Laws and Policies Related to Land and Housing

Since the new urban legal order was laid down in the 1988 Constitution, various municipalities have taken the initiative to implement the new objectives and instruments of urban policy. Two factors made this result possible: the existence of coalitions of social organisations and popular movements pressing for urban reform, and the collaboration of authorities and local managers committed to implementing this platform.

The municipalities of São Paulo and Porto Alegre are examples of the adoption of a legal urban order, including an urban reform policy.

8.1 São Paulo

The formulation of the municipal constitution in São Paulo: 1990

The process of adoption of a municipal constitution of São Paulo in 1990 allowed the presentation of a popular

179 The state of Rio Grande do Sul is located in the southern region of Brazil and its capital city is Porto Alegre, while the state of São Paulo is in the southeast; its capital is the city of São Paulo.

180 Art. 175.

amendment proposal on urban reform by various NGOs, professional organisations and popular movements. The popular urban reform amendment contained proposals on the residents' right to the city, instruments of urban policy related to housing and land, and a section on the democratic management of the city. At that time, the Workers Party (PT) governed the municipality of São Paulo.

For the first time, this popular urban reform amendment permitted that the demands of tenement house and slum residents for their rights could be heard publicly and considered formally in the process of city law development. The municipal constitution (Art. 2) establishes the following guidelines and principles: democratic practice; sovereignty and popular participation; transparency and popular control of government actions; respect of autonomy; and the independence of social movements and associations. Urban policies must assure the promotion and the fulfilment of the right to adequate housing.

In terms of Art. 168:

> Municipal housing policies must provide for the articulation and integration of activities of the Municipal government and the representatives of the concerned communities, and for making available the necessary institutional and financial instruments.

The master plan in São Paulo: Law no. 14.430/2002

After intense and democratic negotiations, the current master plan of São Paulo (adopted by municipal law 14.430/2002) incorporates the guidelines and instruments of urban policies established in the City Statute. In its sections on housing the master plan lists as some of its objectives the improvement of existing housing for low-income families and the production of social housing.[181] Land regularisation is considered a component of urban housing and urbanisation policies and is divided into two action elements: slum upgrading and legal security of tenure. Other strategic actions are:

- The demarcation of central areas within the city with adequate infrastructure for the construction of social housing projects, and the creation of ZEIS in the irregularly occupied slum areas;
- Equitable application of adverse possession in private, consolidated areas and of the Special Concession for Housing Purposes in public areas (Art. 81, III);
- The upgrading of areas occupied by low-income populations (improvement of basic infrastructure, social facilities and public services) and integration with social housing production; and
- Free technical and legal assistance for disadvantaged and vulnerable communities and social groups.

181 Art. 79, V.

The strategic role of ZEIS

ZEIS is a specific category of city zoning that allows the application of somewhat lower (or at least different) standards for the use and occupation of land in land regularisation programmes in low-income areas, or during the execution of social housing projects. By offsetting special norms with urban restrictions for high-income real-estate projects, an attempt is made to balance the use of space by all the occupants to make it possible for the low-income population to live in central, privileged locations in the city. In fact, it is the instrument by which the slums are to be transformed and included in the legal urban order.

The master plan mapped out 710 ZEIS areas in São Paulo using the following categories:

- ZEIS 1: where the slums and popular irregular land settlements are situated;
- ZEIS 2: empty or underused areas for the promotion of social housing;
- ZEIS 3: areas with slums or tenement housing in central neighbourhoods; and
- ZEIS 4: empty land adequate for housing but located in environmentally protected areas that may be used wholly or partly for social housing projects.

Municipal law protecting the residents of tenement houses in São Paulo

This municipal law of São Paulo (no. 10,928/91) deals with housing conditions in tenement houses. In Art. 2, the municipality considers that the responsibility for housing conditions

in tenement houses, is attributed jointly (a) to the owner, (b) to the tenant or subtenant (agent) and/or (c) to whoever is responsible for the commercialisation of the tenement house. Tenement housing must be registered under this specific category, and this registry provides legal recognition of the right to housing for the residents.

The collective rights of residents in tenement houses (Art. 18 of Municipal Decree 32,924/92) are the following:

- Obtain information from the Commission for the Intervention and Recuperation of Tenement Houses (CIRTH) on the physical and legal aspects of the property where they live;
- Request an inspection of habitability of the tenement houses in which they live;
- Request the designation of specific housing programmes for those living in tenement houses;
- Seek free legal assistance; and
- Report to the CIRTH any omissions in the application of this law and/or violations of the general right to housing.

The members of CIRTH are representatives of the municipal secretaries for housing and urban development, justice, health and social well being.[182]

The regularisation of slums situated in public areas of São Paulo

Municipal Law no. 13,514/03 made the execution of a wide-ranging land regularisation programme for municipal public areas possible by permitting the regularisation of housing for the residents of 160 municipal slums located in public areas. The approval of the law in the municipal legislature was facilitated by the intense participation of popular slum and housing movements in the city. Most of these slums developed in publicly owned but unused areas. With this new law, a legal basis for the reclassification of these areas as municipal "domain property" was provided, thus making allocation for low-income settlements possible in the terms of Art. 158 of the municipal constitution.

This law also authorises the granting of Special Concessions for Housing Purposes to occupants fulfilling the requirements of Provisional Measure 2,220/2001. The law, in Art. 3, paragraph 3, authorises the municipality of São Paulo to order the State Courts to extinguish and archive the whole legal eviction process related to the 160 public areas belonging to the land regularisation programme.

For those properties not used principally for housing purposes, the municipal law guarantees the granting of authorisation for commercial, institutional and service uses, as long as the social interests of the community are respected. This regulation is very important, as many slum residents offer simple local services, and this contributes to the generation of employment and income for the community.

Progress in all these activities has been very satisfactory and 40,000 special concessions for residency have been issued to the families who live in these inadequate conditions. Practically all the occupiers of the 160 public areas now denominated ZEIS have received legal concession title documents to their small and much-disputed properties.

Legislation prioritising titles to women

The municipality of São Paulo recently sanctioned a law (13.770 of January 24 2004) requiring the inclusion in public housing programmes clauses giving women priority as beneficiaries of contracts, conventions and other forms of partnerships financed from municipal funds, and access to social and professional education programmes.

This law gives priority of issuance in the woman's name of various documents, such as property titles, financing contracts, joint acquisitions, possession, undertakings for purchase and/or sale, social rental, letters of credit, and the transfer of property involved in the formularisation of the beneficial relationship in social housing. The law gives this

182 This commission was created by the first PT government in 1992. It was disbanded by the subsequent government of the Brazilian Popular Party, and reactivated by the local PT government in 2004.

priority to single women, married women and to women heads of household.

The law stresses that the municipal authorities are obliged to promote the training and specialisation of female labour so that women may more easily participate in the productive processes, self-management and community organisations of social housing programmes.

The new law is progressive and represents a legal guarantee for the continuation of the struggle to implement women's rights. This law resulted from joint proposals drawn up by women's and housing movements.

8.2 Porto Alegre

Over the past 15 years the city of Porto Alegre has accumulated a lot of experience, with the continuity of the PT municipal government and popular participation in the management and planning of the city, the most important experience being the participatory budget.

Some 1.2 million people live in Porto Alegre. The city has a municipal constitution resulting from a democratic participatory process that contemplates an urban housing policy based on the urban reform platform, in which the participation of the Municipal Forum on Urban Reform in Porto Alegre was decisive for mobilising NGOs, popular movements and professional associations.

Porto Alegre's constitution, drawn up in the early 1990s, included instruments that pre-dated the City Statute by 12 years, such as the master plan, compulsory parcelling or construction, progressive taxes on urban property, expropriation for urban reform purposes, special areas of social interest, and so on.

Land regularisation programmes addressing low-income populations and the new legal urban order of the city have been strengthened in popular participatory processes like the Porto Alegre Plus-Constituent City project, carried out by the municipality in 1993. For the first time, representatives from diverse social segments debated the interests of the city on equal terms with technicians, academics and the private sector, with an eye toward urban and economic development projects.

Porto Alegre also implemented participatory budgeting, in which part of the city budget is defined by the population, and in 1992 allocated resources for housing, which was the principal demand of popular movements. Municipal investment in housing over 16 years has totalled $107 million, with 52,797 families benefiting.

9 Best Practices

9.1 Housing councils and conferences

A significant innovation in urban and housing policies is the decentralisation of city management through the formation of citizens' councils linked to the public authority. These management councils are part of a wider dimension of government actions and are intended to transform the urban management process by involving civil society in the process. Hitherto the exclusive sphere of the professional public servant, this new concept of power sharing introduces a combination of civil and public co-management, further promoting the fundamental idea of popular participation and responsibility.

In Porto Alegre, the Municipal Council on Land and Housing Access (COMATHAB, created in 1995) is composed of 27 councillors: one-third are representatives of residents associations; one-third are representatives of workers, employers and NGOs; and one-third are the government representatives responsible for the project in question.[183] By December 2004, seven of the 27 councillors were women. In this way, some major elements of society are involved in the entire process, ensuring transparency in the execution of public projects and the use of public money, as well as spreading

183 COMATHAB had seven women councillors until the end of the tenure of the last government in Porto Alegre (December 2004).

a sense of achievement and pride in the work done and the services performed.

The COMATHAB debates and assigns not only the budgeted resources of the municipal development fund, but also participates in the allocation of finances and housing policies. Although the final word on all budget matters rests with the municipal council on participatory budgeting, the proposals are always previously discussed and approved by COMATHAB.

Besides the monthly meetings of the council (which by definition are concerned with the day-to-day management of public projects), meetings of thematic chambers (land regularisation, inspection, planning and development) are held at regular intervals. At all these meetings, the presence of the written and televised press is encouraged, and many national and international NGOs participate.

Somewhat differently than in São Paulo, but with virtually the same outcome, the creation of the municipal housing council is the result of a proposal approved in the First Municipal Housing Conference. The council is composed of 48 members. Of the total, 16 are representatives of popular housing entities, another 16 represent other sectors of civil society (universities, NGOs, the private sector) and 16 represent the public authority (municipality, state, union). The council has both deliberative and monitoring powers.

9.2 Housing programmes in the city of São Paulo

Land regularisation

Based on the master plan and Law no. 13,514/2002 São Paulo is developing a land regularisation programme of considerable impact in slums situated in public areas. Some 160 slums are being regularised and 30,000 families (about 150,000 people) will benefit. Up to June 2004, 40,000 titles for Special Use Concessions for Housing Purposes had been delivered by the Department of Housing and Urban Development to the low-income population.

The Mutirão (cooperative self-help) programme and the self-management system

This programme was drawn up and implemented during 1989-1992 by the São Paulo mayoralty in partnership with 108 community associations and 24 technical assessment entities, and involved 10,000 houses. In the self-management system, the municipality gives support, materials and funds to the associations so they can build the houses and the associated urban infrastructure. The Metropolitan Housing Public Company (COHAB), under the municipal housing secretary, is responsible for the implementation of the infrastructure.

Housing construction under these programmes had benefited about 68,000 people when works that had lain dormant for more than eight years were restarted. According to the current government, 4,551 homes started between 1989 and 1991, were completed. The municipal housing fund finances the building project, and COHAB constructs and manages the infrastructure. The houses are constructed by the *mutirão* members (represented by their associations) who are generally the future residents. They are required by the terms of the *mutirão* contract to hire technical assistants as and when required and to be responsible for the execution of the housing project. Besides the actual homes, the *mutirão* programme provides funds for the construction of infrastructure, such as paved roads, waterworks, sewage and public illumination.

The secretary of housing gave permission to the associations to use the land and build the houses. The majority of the land allocated to the programme resulted from expropriation of private land. A municipal project of law seeks to authorise the concession of use of the real rights or the sales to the beneficiary of the programme.

Actions in defence of women´s housing rights

In 2002 the São Paulo municipality created an entity to concentrate on women's housing and other rights. Called the Special Coordinator for Women's Affairs, it is directly connected with the mayor's cabinet. To involve women more closely in housing policies, the coordinator, in partnership with COHAB, has elaborated a proposal for the creation

of coordination centres in which women will play an even more central role in collective housing construction. This process should lead to permanent exchanges of information and experience capable of ensuring that the development of housing and land policies proceeds with a focus on gender issues.

The organisation of the National Union for Popular Housing

The National Union for Popular Housing is a popular housing movement organised in 17 states. In the state of São Paulo, the movement unites various housing associations and cooperatives that build housing by the self-help system (*mutirão*) with state funds. The union includes organisations that have carried out a range of negotiations and actions in support of advancing social housing projects in the city. Also worthy of mention are the many marches and demonstrations organised by this movement in the last 10 years in the Federal capital of Brasilia to pressure the congress to defend and approve the popular initiative for a law creating the National Fund for Popular Housing. Women are represented in the national coordination of the movement and three of them (including two Afro-Brazilians) are councillors in the National City Council.

10 Conclusion

In the wake of democratisation, represented by the approval of the Constitution of 1988, Brazil registered significant advances in terms of land and housing polices. The new legislation is generally progressive and participatory, and has produced such advances as the City Statute, which incorporates popular social demands and practical experience garnered over two decades. However, in spite of this progress, and mainly because of the economic and development model imposed on Brazil by the international monetary authorities, the number of urban informal settlements has actually increased.

The new legal urban order includes the platform of urban reform; the existence of a variety of social actors urging society to make urban matters a priority on the political, economic and social agenda; the initiatives of the federal government through the Ministry of Cities; and the establishment of a national, decentralised and democratised housing policy system. All these are positive indicators that can lead to the removal of barriers obstructing the struggle to end social exclusion. In this way, state and society face the challenge of combating social inequality, of promoting better living conditions, of promoting access to land and housing for low-income people who have been deprived for many years of the enjoyment of even minimal access to economic, social and cultural human rights.

Despite efforts to improve the living standards in slum settlements, the investments made in this area are hindered by limited financial aid and other obstacles that must be eliminated. However, in a globalised economy, it is not possible to achieve these targets in one country alone. The effort to create a new model that addresses the limitations and obstacles to achieving these targets depends on the full accord of all nations within a global economic order. It is therefore necessary to reach an international understanding so that investments in sanitation and housing for the poorest populations, closely related to the fulfilment of the Millennium Development Goals, are not included in the debt for the estimation of the primary surplus, debtor and developing countries.

11 Recommendations

11.1 Debt relief

Considerably greater resources are required to make a real impact, and the Brazilian economy produces more than enough money for this purpose. However, these resources are tied up in repayment of Brazil's external debt to the International Monetary Fund, the Inter–American Development Bank, the World Bank and others. The first step for improvement of the living conditions described in this report is the modification of the excessively severe repayment policies imposed on Brazil (and many other Third World countries) by these international entities. Many of these debts have been repaid

several times over by the interest charges paid, and the international agencies can well afford to prolong Brazil's debt for a little longer in order to free up funds for the greater good of millions of people.

The Brazilian government, together with those of other developing countries, must internationally defend a shift in the utilisation of national funds now earmarked for the repayment of the debt. Instead, these funds should be invested in social policies such as housing and sanitation. The government, in international forums, should advance the argument that national investments in sanitation and housing for the poorest citizens, which are closely related to the fulfilment of the Millennium Development Goals, should not be included in debt repayments.

These measures are necessary to eliminate the obstacles to releasing resources for social programmes in Brazil.

11.2 National Social Interest Housing System and Fund

The implementation of the National Social Interest Housing System and the National Social Interest Housing Fund presents a challenge for the Brazilian government in the present economic model. This law can enable the transfer of funds now used to repay the foreign debt to programmes to subsidise housing programmes for vulnerable segments of the population.

In the regulation of Law no. 11.124/2005 an essential component that needs to be included is related to the special housing needs of rural, indigenous and Afro-Brazilian populations of the *quilombolas* communities. Another important measure is that the Ministry of the City and the National City Council would have the competence to define the utilisation of the resources of the FGTS that will be allocated to the National Social Interest Housing Fund.

11.3 Strengthen and consolidate National Council of the Cities

We recommend the strengthening and consolidation of the role of the National Council of the Cities and conferences as strategic instruments for the implementation of a decentralised and democratic National City System, consisting of municipal and state city councils.

11.4 Land management

(1) Brazil should institute national and regional land use plans.

(2) The rules controlling the requirements for public registry of land ownership need urgent revision to
   - (i) standardise the procedure,
   - (ii) remove the present distributed management of public lands,
   - (iii) remove or reduce the obstacles to registry raised by the registries and (iv) harmonise and digitalise the municipal, state and federal cartographic and registry bases.

(3) The main obstacle for legal recognition of inheritance by a man or woman of real rights over an asset (house, lot, land) in an informal settlement is the irregular or non-existent registration of the property. Land regularisation programmes for such settlements and the provision of free legal assistance services are the two main measures that should be taken to consolidate the inheritance rights of the dwellers in informal settlements. Courts must also alter their traditional positions to permit the transfer of ownership or possession to the survivor, notwithstanding the irregular situation of the land.

11.5 Law and policy reform

Legislation dealing with the different forms of occupation and titling of union lands should be revised, in a way that will harmonise and simplify the entitlement of possession in informal urban and rural settlements, indigenous lands and *quilombola* communities by taking into consideration the new legal urban order.

Legislation on land division and on the public registry of real estate should be revised, with the aim of simplifying and reducing the costs of land regularisation procedures in traditional and low-income areas. This legislation must eliminate situations where state approval is required and arrange things so that the municipalities alone may define the requirements for the division of land in the consolidated settlements such as *favelas*. It is essential that the municipalities have the authority to define the criteria for land regularisation in questions such as the minimum size of each lot, the basic infrastructure acceptable and the minimum percentage of green areas admissible.

11.6 Implementation of City Statute

Municipalities should implement an urban land reform policy based on the City Statute, by democratically preparing master plans for execution with the participation of the popular elements of society, as well as: (i) municipal land use planning for the entire territory of the city; and (ii) for land regularisation, normalising the use of the new legal instruments enshrined in the City Statute such as ZEIS/AEIS, adverse possession, special concession for housing purposes and so on.

11.7 Social function of property

(1) The judiciary must apply the basic principle of social function of rural property to resolve disputes on whether a particular property is productive in agrarian reform conflicts.

(2) The judiciary should validate the government's criterion to define the property in question as not fulfilling its "social function" by being "unproductive" in the federal decrees to expropriate the rural lands for purposes of agrarian reform.

(3) Municipalities should plan and manage their rural territory through the master plan, defining rural areas not fulfilling their social function through the instrument of Special Zone for Agrarian Reform Purpose.

11.8 Land and housing dispute settlement

Special courts should be established (or those existing adapted) to handle conflicts related to land, collective adverse possession, land demarcation and regularisation. The tribunals should maintain records of judicial conflicts over lands in urban and rural areas, cases of land regularisation, and cases of forced evictions and relocations and so on in order to form a corpus of reference for these special cases.

Conflicts related to housing rights, possession and ownership of urban or rural land should go through alternative institutional methods of negotiation, mediation and resolution, such as committees or councils of justice; and the creation of neighbourhood and district courts. We also support the recommendation to create periodical Circuit Courts where such cases can be tried in the area where the problems have arisen and where more effective and simpler solutions can be found.

11.9 Housing rights for all

(1) The states and the municipalities must execute housing programmes to provide access to affordable and adequate housing and land. In addition to the urban areas, these programmes should progressively satisfy the housing demands of rural inhabitants and workers, and of the indigenous and Afro-Brazilian populations, in general with priority for women and for vulnerable social groups. Furthermore, some quotas of such programmes should be reserved for senior citizens. The cultural rights of the indigenous and Afro-Brazilian population must be considered in the housing policy as well.

(2) The government, through the Ministry of Cities, must generate resources for programmes of slum upgrading, land regularisation and the adequate integration of informal settlements, to be able to assist the municipalities in the execution of social housing programmes.

(3) All state entities should adopt a comprehensive human rights approach in the application of urban and housing policies.

11.10 Awareness raising and capacity building

(1) The union, states and municipalities must educate, qualify and promote agents of the public authority, of social groups and of civil society organisations, in the application of the new legislation on city and housing rights. They should also establish or improve the services of legal and technical assistance in land regularisation programmes for traditional and/or low-income areas such as the indigenous lands and the *quilombola* communities.

(2) The networks providing legal assistance and active in the development of human rights and urban legislation should increase their efforts to involve members of the justice departments and the public registers, in human rights questions by promoting courses, seminars and congresses.

(3) The Federal Law on Lease of Urban Property contains important rules to deal with the common violation of the housing rights of the people living in multifamily collective housing rental (*cortiços*). However, the public authorities, public prosecutors and defenders, and judges actually need to apply this law. It is also necessary for the public authority to launch an education campaign to provide information about how the population of the *cortiços* can apply this legislation to protect their housing rights.

11.11 Women's rights to land and housing

All levels of the government must take special measures to protect women's right to land and housing, as well as giving them priority in obtaining title to housing constructed under public housing programmes. The National Council of the Cities should introduce a Housing Plan with a gender perspective. Furthermore, the Ministry of the City should gender mainstream its legislation. In addition, the municipalities should introduce gender perspectives in their master plans.

11.12 Data disaggregated by gender, race and ethnicity

The IBGE and other public statistical institutes must provide information and records, including comparative and disaggregated statistical data, on gender, race and ethnicity, to identify the beneficiaries of housing and entitling programmes adopted in urban and rural areas.

11.13 Legal assistance

The lower-income population still has difficulties in obtaining access to legal remedies – a result of the lack of free or subsidised legal advice and assistance. The public defender system needs more financial support from the federal and state governments, and state-level offices need to be strengthened so that they can attend to the demands of vulnerable communities for protection. All states should establish a public defender's office.

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APPENDIX

Appendix I

Table I. I Levels of jurisdiction within the Federal Republic of Brazil

Level	Jurisdiction	Constitutional basis
Union	The federal union has the exclusive authority to: Prepare and implement national and regional spatial plans for economic and social development; Adopt guidelines for urban development, including housing, basic sanitation and urban transportation; Legislate on matters of civil law, procedural law, agrarian law; expropriation, water & energy, indigenous populations, judicial organisation of public legal defence of Federal District and of the territories; and public registers; Recognise the land rights of the indigenous population, legislate the forms of protection and recognition of the original rights over the lands traditionally occupied by this population, and the demarcation, protection and respect of all of their lands and assets; Expropriate rural land not performing its social function.	Art. 21 (IX); Art. 21 (XX); Art. 22, Paragraphs I, II, IV, XIV, XVII and XX V. Art. 231 Art. 184
State	Adopt state constitutions and laws that regulate their organisation, in accordance with principles of federal Constitution; Establish metropolitan regions, urban agglomerations and micro-regions, formed by grouping of adjacent municipalities.	Art. 25 Art. 25 (3)
Federal District	Same legislative powers as are attributed to the states and municipalities.	Art. 32 (1)
Union, states and Federal District	Authority to legislate concurrently on: - Tax, financial, economic and urban law; - Judicial procedures; - Legal assistance and public defender. (On these issues, the union must adopt general rules)	Art. 24 Par. I Par. XI Par. XIII Par. 1

Level	Jurisdiction	Constitutional basis
Municipality	When more than 20,000 inhabitants: adopt master plan as basic tool for urban development policy; Implement urban development policy, aimed at full development of the city's social functions and at ensuring the well-being of its inhabitants; To impose allotment or division of unproductive land and/or apply a progressively increasing tax to buildings or urban property not fulfilling the required social function. Expropriate urban property not performing its social function; Legislate on matters of local interest; Supplement federal and state legislation where pertinent; Levy and collect taxes within their jurisdiction and apply their revenues; Create, organise and dissolve districts, with due regard to state legislation; Provide, directly or by concession or permission, public services of local interest; Promote, wherever pertinent, adequate area planning, by means of planning and control of use, allocation and occupation of urban land.	Art. 182 Art . 182 Art. 182, Par. 4 Art. 30, Par. I Art. 30, Par. II Art. 30, Par. III Art. 30, Par. IV Art. 30, Par V; Art. 30, Par. VI;
Union, states, Federal District and municipalities	Joint authority to: Promote housing construction programmes and the improvement of housing and basic sanitation conditions; Fight the causes of poverty and the factors leading to substandard living conditions, promoting the social integration of unprivileged persons; Provide for health and public assistance and for the protection and safeguard of disabled persons; Protect the environment and fight pollution.	Art. 23 Par. IX Par. X Par. II Par. VI

Appendix II

Table II.I Tenure types in urban areas

Type of Tenure	Sub-categories and description	Legal basis
Ownership (legal possession)	Purchase and sales of real estate: Also used in cases of collective irregular occupation on private or public lands: in this case, a popular movement organises a civil Association and buys the land from the owner. Donation: Has been used by municipalities and states to provide popular housing to families in situations of risk, e.g. during floods and landslides. Urban adverse possession (Usucapião Urbano) Under certain circumstances, the irregular individual or collective occupant(s) acquires legal possession of an urban plot. The collective option is often used to regularise entire informal settlements. Joint titling is not mandatory, but the ownership title and concession of use shall be granted to the man or woman, or both, regardless of their marital status.	(a) Art. 481-528 of the Civil Code (b) Art. 538 -564 of the Civil Code (c) Criteria in Art. 183(3) and 189 of the Constitution, Art. 1240 Civil Code and Art. 9-15 of City Statute (see main text below) (d) Art. 183(1) of the Constitution and Art. 1240, par. 1 of the Civil Code (urban adverse possession and Special Concession for Housing Purposes)
Formal lease and rent	Lease of land: used in formal real estate market. Lease of housing: Individual or of collective 'tenement houses' (multifamily collective housing rental (cortiços)). Rent/sub-lease/sub-letting of housing.	Art. 565-578 Civil Code Federal Law 8,245 of 1991
Informal lease or rent	Lease and sublease of land, housing Lease of housing Widely used both in formal and informal leasing/renting. Informal rental in tenement houses is very common, with low security of tenure, high rental rates and bad living conditions.	
User rights	(a) Special Concession for Housing Purposes (concessão de Uso Especial para Fins de Moradia - CEFM). Collective form of this right is used in slums/informal settlements. (b) Concession of Real Right to Use (Concessao do Direito Real de Uso – CDRU) Collectively used in social housing programmes. If government agrees, no need to go to court – administrative procedure only. (c) Use; or a loan for use. (d) Right of surface. Ensures access to land.	(a) If the criteria in Art. 1 of Provisional Measure 2220 of 2001 are met (see below), occupant acquires user right to public property of max. 250 m^2. (b) Decree 271 of 1967 and City Statute, Art. 4º, V, g and Art 48. Public and private land. (c) Art. 1412 –1413 Civil Code; Art. 26 Federal Law 6766/79 (d) Art. 21 City Statute; Art. 1369 – 1377 Civil Code

Appendix III: International Law

Equal land, housing and property rights are recognised in various international human rights instruments, including:

Universal Declaration on Human Rights (UDHR) [184]

- Article 17 recognises every person's right to own property and prohibits arbitrary deprivation of it;
- Article 25 confirms the right to an adequate standard of living, including housing;
- Article 2 entitles everyone to the rights and freedoms laid down in this declaration, without discrimination; and
- Article 16 entitles men and women to equal rights as to, during and upon dissolution of marriage.

International Covenant on Economic, Social and Cultural Rights (ICESCR) 185

- Article 11(1) recognises the right to adequate housing; [186]
- Article 2(2) prohibits discrimination; and
- Article 3 recognises equal rights between men and women.

International Covenant on Civil and Political Rights (ICCPR) 187

- Article 3 recognises equal rights between men and women;
- Article 17 lays down the right to protection from arbitrary or unlawful interference in a person's home;
- Article 23(4) requires appropriate steps to ensure equal rights as to, during and upon dissolution of marriage (including marital property rights); and
- Article 26 confirms that everyone is entitled to the equal protection of the law, without discrimination on any ground, including sex, race and ethnicity.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 188

- Article 5 (d) paragraph (v) recognises the right to property, while paragraph (vi) confirms the right to inherit; and
- Article 5(e) paragraph (iii) recognises the right to housing.

These housing and property rights include the right to return. [189]

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 190

- Article 13 requires the elimination of discrimination against women in areas of economic and social life to ensure

184 *Universal Declaration of Human Rights*, adopted on 10/12/1948 by General Assembly Resolution 217 A (III), UN GAOR, 3rd Session.

185 *International Covenant on Economic, Social and Cultural Rights*, adopted on 16/12/1966. General Assembly Resolution 2200 (XXI), 21st Session, Supp. No. 16, U.N. Doc. A/6316 (1966), 993, U.N.T.S. 3, entered into force on 3/1/1976. As of June 2005, 151 states had become party, while 66 states had signed but not (yet) ratified.

186 The right to adequate housing consists of the following elements: (1) legal security of tenure irrespective of the type of tenure; (2) availability of services, materials, facilities and infrastructure; (3) affordability; (4) habitability; (5) accessibility (including access to land); (6) location; and (7) cultural adequacy. See UN Committee on Economic, Social and Cultural Rights, General Comment No. 4 on the Right to Adequate Housing. UN Doc. EC/12/1991/41 (1991). For full text see: http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/469f4d91a9378221c12563ed0053547e?Opendocument

187 *International Covenant on Civil and Political Rights*, adopted on 16/12/1966 by General Assembly Resolution 2200 (XXI), Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171. The ICCPR entered into force on 23/3/1976. As of June 2005, 154 states had ratified the ICCPR, while 67 had signed it.

188 *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted on December 21 1965 by General Assembly resolution 2106 (XX), entry into force on January 4 1969. As of June 2005, 170 states were parties to this Convention, while 84 had signed but not (yet) ratified.

189 See UN Committee on Elimination of Racial Discrimination, *General Recommendation nr. XXII on Article 5: Refugees and Displaced Persons,* 1996. Available on: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/fed5109c180658d58025651e004e3744?Opendocument

190 *Convention on the Elimination of All Forms of Discrimination Against Women*, adopted on 18/12/1979, General Assembly Resolution 34/180, U.N. G.A.O.R., 34th Session, Supp. No. 46, U.N. Doc. A/34/36 (1980), entered into force 3/9/1981. As of March 2005, 180 states had become party.

women's equal right to bank loans, mortgages and other forms of financial credit;

- Article 14(2)(h) confirms women's right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications; and
- Article 15 accords women equality with men before the law, and recognises their equal right to conclude contracts and administer property.

Convention on the Rights of the Child (CRC) [191]

- Article 27 recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries (Convention 169) [192]

- Article 7 recognises the right of indigenous and tribal peoples to their own decisions regarding the land they occupy or otherwise use;
- Article 8(2) confirms the right to retain own customs and institutions, where these are not incompatible with international human rights; and
- Article 14 requires the recognition and protection of the right to ownership and possession over the lands that indigenous and tribal peoples traditionally occupy, and the right of use for subsistence and traditional activities; and
- Article 16 stipulates that relocation from land has to be done with free and informed consent, the right to return or equal land and compensation.

American Convention on Human Rights (ACHR) [193]

- Article 1 establishes that the rights and freedoms recognised in this convention must be respected and ensured to all persons without discrimination;
- Article 17(4) commits state parties to ensure equal rights and adequate balancing of responsibilities of the spouses as to, during and upon dissolution of marriage;
- Article 21 confirms the right to property and states that property may only be expropriated against just compensation for reasons of public utility or social interest, and in the cases and according to the forms established by law; and
- Article 24 recognises equal protection of the law.

In Table 1.1 below, an overview is provided of which countries in Latin America are party to these human rights instruments. [194]

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191 *Convention on the Rights of the Child*, adopted on 20/11/1989 by General Assembly Resolution 44/25, U.N. Doc. A/44/25, entered into force on 2/9/1990. All states except U.S.A. and Somalia have become parties.

192 *Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries*, Adopted on June 27 1989 by the General Conference of the International Labour Organisation at its seventy-sixth session. Entered into force on September 5 1991. Convention 169 was ratified by 17 countries. See http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C169

193 American Convention on Human Rights, "Pact of San Jose, Costa Rica," adopted on November 22 1969; entry into force on July 18 1978. Organisation of American States, Treaty Series, No. 36. The United States and 24 Latin American states are party to this regional convention. See http://www.oas.org/juridico/english/Sigs/b-32.html

194 After country representatives have signed an international or regional agreement, their head of state has to approve it. Upon such approval the signed agreement is ratified. Whether ratification is necessary or not is stated in the agreement. If a state has not signed and ratified such agreement, it can still accede to the treaty at a later date. By ratifying or acceding to an international or regional agreement, the state becomes party to it is bound to the obligations laid down in that agreement. If the state only signs but does not ratify, it is nevertheless bound to do nothing in contravention of what is stated in that agreement.

Table 1. 5 Status of ratification of main human rights instruments in Latin America[a]

Treaty	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Cuba	Dominican Republic	Ecuador	El Salvador	Guatemala	Honduras	Mexico	Nicaragua	Panama	Paraguay	Peru	Uruguay	Venezuela
ICESCR	NO	YES A: 1982	YES A: 1992	YES S: 1969 R: 1972	YES S: 1966 R: 1969	YES S: 1966 R: 1968	NO	YES A: 1978	YES S: 1967 R: 1969	YES S: 1967 R: 1979	YES A: 1988	YES S: 1966 R: 1981	YES A: 1981	YES A: 1980	YES S: 1976 R: 1977	YES A: 1992	YES S: 1977 R: 1978	YES S: 1967 R: 1970	YES S: 1969 R: 1978
ICCPR	YES S: 1968 R: 1986	YES A: 1982	YES A: 1992	YES S: 1969 R: 1972	YES S: 1966 R: 1969	YES S: 1966 R: 1969	NO	YES A: 1978	YES S: 1968 R: 1999	YES S: 1967 R: 1979	YES A: 1992	YES S: 1966 R: 1997	YES A: 1981	YES A: 1980	YES A: 1980	YES S: 1976 R: 1977	YES S: 1977 R: 1978	YES S: 1967 R: 1970	YES S: 1968 R: 1978
Optional Protocol to ICCPR of 1966 [b]	YES A: 1986	YES A: 1982	NO	YES A: 1992	YES S: 1966 R: 1969	YES S: 1966 R: 1968	NO	YES A: 1978	YES S: 1968 R: 1969	YES S: 1976 R: 1995	YES A: 2000	YES S: 1966 R: 2005	YES A: 2002	YES A: 1980	YES A: 1980	YES S: 1976 R: 1977	YES S: 1977 R: 1980	YES S: 1967 R: 1970	YES S: 1976 R: 1978
ICERD	YES S: 1967 R: 1968	YES S: 1966 R: 1970	YES S: 1966 R: 1968	YES S: 1966 R: 1971	YES S: 1967 R: 1981	YES S: 1966 R: 1967	YES S: 1966 R: 1972	YES A: 1983	YES A: 1966	YES A: 1979	YES S: 1967 R: 1983	YES A: 2002	YES S: 1966 R: 1975	YES A: 1978	YES A: 1978	YES S: 1966 R: 1967	YES S: 1966 R: 1971	YES S: 1967 R: 1968	YES S&R: 1967
CEDAW	YES c S: 1980 R: 1985	YES S: 1980 R: 1990	YES d S: 1981 R: 1984	YES e S: 1980 R: 1989	YES S: 1980 R: 1982	YES S: 1980 R: 1986	YES f S&R: 1980	YES S: 1980 R: 1982	YES S: 1980 R: 1981	YES g S: 1980 R: 1981	YES S: 1981 R: 1982	YES S: 1980 R: 1983	YES h S: 1980 R: 1981	YES S: 1980 R: 1981	YES S: 1980 R: 1981	YES S: 1993 R: 1995	YES A: 2004	YES S: 1980 R: 1985	YES i A: 1991
Optional Protocol to CEDAW of 1999 [i]	NO S: 2000, but not R	YES S: 1999 R: 2000	YES S: 2001 R: 2002	NO S: 1999, but not R	NO S: 1999, but not R	YES S: 1999 R: 2001	NO S: 2000 but not R	YES S: 2000 R: 2001	YES S: 1999 R: 2002	NO S: 2001, but not R	YES S: 2000 R: 2002	NO	YES S: 1999 R: 2002	NO	YES S: 2000 R: 2001	YES S: 1999 R: 2001	YES S: 2000 R: 2001	YES S: 2000 R: 2001	YES S: 2000 R: 2002

Treaty	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Cuba	Dominican Republic	Ecuador	El Salvador	Guatemala	Honduras	Mexico	Nicaragua	Panama	Paraguay	Peru	Uruguay	Venezuela
CRC	YES S&R: 1990	YES S&R: 1990	YES S&R: 1990	YES S&R: 1990	YES S: 1990 R: 1991	YES S&R: 1990	YES S: 1990 R: 1991	YES S: 1990 R: 1991	YES S&R: 1990	YES S&R: 1990	YES S&R: 1990	YES S&R: 1990	YES S&R: 1990	YES S&R: 1990	YES S&R: 1990	YES S&R: 1990	YES S&R: 1990	YES S&R: 1990	YES S&R: 1990
Conve-ntion 169	YES R: 2000	YES R: 1991	YES R: 2002	NO	YES R: 1991	YES R: 1993	NO	YES R: 2002	YES R: 1998	NO	YES R: 1996	YES R: 1995	YES R: 1990	NO	NO	YES R: 1993	YES R: 1994	NO	YES R: 2002
ACHR	YES k S&R: 1984	YES A: 1979	YES A: 1992	YES S: 1969 R: 1990	YES S: 1969 R: 1973	YES S: 1969 R: 1970	NO	YES A: 1993	YES S: 1969 R: 1977	YES S: 1969 R: 1978	YES S: 1969 R: 1978	YES S: 1969 R: 1977	YES A: 1981	YES S: 1969 R: 1979	YES S: 1969 R: 1978	YES S: 1969 R: 1989	YES S: 1977 R: 1978	YES S: 1969 R: 1985	YES S: 1969 R: 1977

Source: Office of the High Commissioner for Human Rights: http://www.ohchr.org/english/law/index.htm ; ILO database: http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C169 ; OAS database: http://www.oas.org/juridico/english/Sigs/b-32.htm

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