LAND TENURE, HOUSING RIGHTS AND GENDER

COLOMBIA

Law, Land Tenure and Gender Review: Latin America

UN-HABITAT

LAND TENURE, HOUSING RIGHTS AND GENDER

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United Nations Human Settlements Programme (UN-HABITAT)
P.O. Box 30030, Nairobi, Kenya
Tel: +254 20 7621 234
Fax: +254 20 7624 266
Web: www.unhabitat.org

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Foreword to Latin America Law And Land Tenure Review

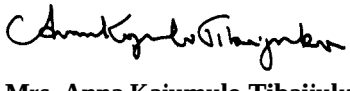
Security of tenure is one of the cornerstones of Millennium Development Goal 7, Target 11 on the improvement of the living conditions of slum dwellers. It also plays a crucial role in the implementation of Target 10 on access to improved water and sanitation and is thus the main focus of UN-HABITAT's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



Mrs. Anna Kajumulo Tibaijuka
Executive Director
United Nations Human Settlements Programme
(UN-HABITAT)

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Global Coordinator and Substantive Editor: Marjolein Benschop, UN-HABITAT
Assisted by Florian Bruyas, UN-HABITAT

Regional Coordinator Law, Land Tenure and Gender Review in Latin America:
Leticia Marques Osorio, Centre on Housing Rights and Evictions (COHRE) – Americas Office

Regional Overview: Leticia Marques Osorio, with assistance from Marina Schneider Comandulli (COHRE)

Women's rights sections in regional overview: Eugenia Zamora (supported by Felicia Ramírez and Carla Morales), Marjolein Benschop and Leticia Osorio

Translation Spanish-English by Isabel Aguirre

Executive Summary, Introduction, restructuring and shortening of final draft: Stephen Berrisford and Michael Kihato

Editing: Greg Rosenberg

Colombia Chapter

Maria Inès Garcia, Architect, Federation of National Popular Housing Organisations (Federacion de Organizaciones de Vivienda Popular – FEDEVIVIENDA) and Nury Bermudez, lawyer.

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List of Abbreviations

AIDS	Acquired immunodeficiency syndrome
ANMUCIC	National Association of Rural and Indigenous Women of Colombia
ANUC	National Association of Farmers
AUC	United Self-Defence Forces of Colombia
CAMACOL	Chamber of Construction
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CENAC	National Centre for Construction Studies
CONPES	National Economic and Social Planning Council
DANE	National Administrative Department on Statistics
ETI	Indigenous Territorial Entity
FARC	Revolutionary Armed Forces of Colombia
HIV	Human immunodeficiency virus
IDP	Internally Displaced Persons
IGAC	Geographic Institute
ILSA	Latin American Institute of Alternative Legal Services
INCODER	Colombian Institute for Rural Development
JAL	Local Administrative Board
LOOT	Organic Bill of Law on Spatial Planning
MAVDT	Ministry of Environment, Housing and Spatial Development
NDP	National Development Plan

NGO	Non-governmental organisation
POT	Land Use Management Plans
RSS	Social Solidarity Network
SCJ	Superior Council of Judicature
SGP	General Participation System
SIH	Social Interest Housing
UAF	Family Agricultural Units
UNHCR	United Nations High Commissioner for Refugees
UPAC	Constant Purchasing Power Units

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EXECUTIVE SUMMARY

This report on Colombia 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, as urban land is costly and beyond the reach of poor households. 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 Colombia study highlights a number of other specific recommendations. The justice system is specifically mentioned as an area requiring extensive reform. Improving access and creating user-friendly systems dealing with land resolution dispute are recommended to improve delivery. The subsidy system is not easily accessible to the poor and is in need of reform. Laws and policies also need to make specific reference to women. Finally, the author identifies the need to promote a national collective conscience that supports the recognition of human rights, principles of justice and a culture of accountability.

Figure 1.1 Map of Latin America

Latin America Regional Overview

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.

1.1 Inequality

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]

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).

2 Legal Systems of the region

2.1 History

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]

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

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).

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 necessarily 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.

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

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 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]

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.

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

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 organisation.[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

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.

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.

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.

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.

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 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

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).

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 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

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

42 Blanco, L et al (2003).

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.

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.

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

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 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]

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.

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.

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 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:

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).

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.

- 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 national 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 estab-

57 Clichevsky, N. (2003:16).

58 UN-HABITAT (2001:28).

59 Erba, D. (2004).

lishing 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.

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 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.

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).

63 FAO. (1992).

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 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

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).

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 property management also violate other international human

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).

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.

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).

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.

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.

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.

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.

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.

9.3 Affirmative action

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).

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.

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]

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.

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

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 predetermined 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.

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

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).

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

89 Clichevsky, N. (2003:31).

90 Durand-Lasserve, A. (1997).

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 completed	Regularisation of land title	Physical regularisation	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
- 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.

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.

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

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
- 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

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).

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 Colombia

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 Colombia

Background

1.1 Introduction

The Constitution of Colombia is one of the world's most comprehensive in the recognition of rights. However, these rights – particularly the fundamental rights of the poor – are repeatedly violated.

Colombia is an overregulated country, but with serious limitations in the effectiveness of its laws. A short-term vision – if not an utter vacuum in some areas – characterisess policy formulation and implementation. Access to land and housing are marked by illegality and violence.[96] In fact, the most significant element absent in Colombia is a culture of respect for people's rights.[97] This lack of respect becomes the source of recurring human rights violations by state authorities and individuals.

Colombia has one of the highest numbers of internally displaced persons (IDPs) in the world.[98] More than two-thirds of the country's inhabitants are poor and one-quarter live in misery.[99] The poorest of the poor are women, and women heads of household in particular suffer the negative effects of displacement, obstacles to accessing justice and discrimination in the application of laws.[100]

1.2 Historical background

Spain colonised Colombia in the 16th century. Colombia proclaimed its independence in 1810 and consolidated it in 1819. The formation of the new republic was characterised by conflicts and crises.[101] Battles between the Liberal Party (supported by merchants, artisans and manufacturers) and the Conservative Party (supported by large landowners and the clergy of the Catholic Church) were ongoing from their establishment around 1850.[102]

Land has changed hands violently in the armed conflicts that have plagued the rural areas of Colombia since 1948.[103] The assassination of a prominent Liberal Party leader in that year resulted in riots in Bogotá, the suppression of which culminated in 2,000 deaths and the destruction of much of the city. The riots and rebellion then spread beyond Bogotá.[104] Armed pro-government gangs roamed the countryside, attacking and terrorising the rural populace, and seizing the property of farmers perceived as opponents of the government. The first and second armed conflicts alone in the period 1948-1958 (known as *La Violencia*) left about 300,000 dead and 2 million displaced. The third and fourth armed conflicts broke out in 1962 and 1964 respectively.

A guerrilla army of peasant origin – the Revolutionary Armed Forces of Colombia (FARC) – was established in 1964, claiming that farmers were forced to take up arms to defend themselves against the attacks of armed gangs created by land-hungry elites backed by the state.[105] Since 1982, FARC has defined itself as a "people's army" whose declared aim is to share power in a government of national reconstruction, after taking part in the formulation of a new constitution.

Landowners, claiming they needed protection from the guerrillas, created paramilitary groups.[106] Today's paramilitary militias were set up in the 1980s by local elites, with army support, and by drug traffickers who owned about 4 million hectares of the best land in Colombia. The majority of

96 In the words of Emilio Yunis, former Peace Commissioner: "Colombia is a country in permanent construction, with many foremen. They want to redo, remodel everything. They all think they are entitled to do it."

97 Galvis Ortiz Ligia, (2002).

98 World Bank, (2003:54-57).

99 Colombian Human Rights, Democracy and Development Platform, September 2003.

100 The percentage of women heads of low-income households grew from 52 percent to 54 percent between 1992 and 2001, while those in the informal sector increased from 56 percent to 60 percent in the same period. This underlines their impoverishment and increased vulnerability. See National University, CID and UNICEF, "Gender Equity? Social Equity? A look at education and employment", December 2002.

101 Sarmiento, L. C. et al (1998:39-42).

102 Thayer Watkins, Political and Economic History of Colombia. Available on: http://www.applet-magic.com/colombia.htm

103 Land Research Action Network. (2004).

104 Thayer Watkins. (undated).

105 Other guerrilla operations were initiated by the National Liberation Army (Ejército de Liberación Nacional – ELN), Popular Liberation Army (EjércitoPopular de Liberación – EPL) and the 19th of April Movement (Movimiento 19 de Abril – M-19).

106 Conor, F. (2005).

paramilitaries are grouped in the United Self-Defence Forces of Colombia (AUC), which is now beyond the control of its original promoters.[107] The paramilitaries are officially abiding by a ceasefire declared in 2002 and are engaged in dialogue with President Alvaro Uribe's government concerning demobilisation.[108] While 4,000 AUC paramilitaries have demobilised, the legal situation for those demobilised is not clear and thus far no adequate legal framework has been put into place to deal with investigations and sanctions for crimes committed.[109]

Since 1985 some 3.1 million people have fled their land, or had it seized from them, with a resulting exodus to towns and cities. According to the World Bank, the land abandoned by IDPs is estimated to be about 4 million hectares, almost three times as much as was redistributed through government land reform efforts since 1961.[110] As a result, 0.4 percent of the population is said to own 61.7 percent of the best land in the country.[111] In rural areas, the concentration of land ownership is in the hands of some 5,000 landowners. Speculation with prospective transnational and state projects have pushed aside any initial objectives envisaged in the Agrarian Reform of equitable redistribution of rural land and agricultural production, aimed at improving the quality of life of poor peasants, smallholders, and the preservation of indigenous reserves and of the communal land of black communities.

In the 1950s, approximately 60 percent of Colombia's population lived in rural areas. By 2000, 76 percent of its population had settled in urban centres. Since the beginning of the 20th century, rapid urban growth in Colombia has been characterised by plot-by-plot development, mostly in a spontaneous way, without taking into consideration the rural surroundings and the environment. Underlying causes were the lack of a referential framework covering the entire territory (urban, peri-urban and rural), the ineffectiveness of the agrarian reform, and the limited applicability of the planning and management tools of urban environment regulations. While the social and environmental functions of property are constitutional principles, they were impossible to implement under these circumstances.

The urban nation has sought ways to structure region-cities by means of new legislation related to urban reform and territorial development. Attempts have been made to allocate resources to subsidise the poorest and to cut back operating expenses.

In parallel, the existence in Colombia of several armed actors – guerrillas, self-defence groups, drug traffickers and common criminals – each exercising their own brand of violence, has limited economic development and both public and private investment, affecting social investment and contributing to high unemployment. The figures on displacement revealed by the government are contradicted by other sources, which instead indicate that the "democratic security policy" has caused increased violence and displacement, generating more poverty and misery among rural inhabitants.[112]

Although rejected by the Colombian population, violence has become widespread throughout the rural territories, partly because there are huge, isolated empty areas (*vaciamientos*) with no state presence.[113] Due to geographical barriers and lack of secondary roads, many regions have developed

107 Ibid.

108 Ibid.

109 Colombia Observatory. (2005).

110 World Bank. (2003).

111 According to the Consultancy on Human Rights and Displacement.

112 The protection of displaced people has not improved since 2002 when President Uribe's government launched a new effort under his so-called "democratic security policy" to end the conflict by military means. The new strategy drew more civilians into the conflict, allowing armed groups to displace over 175,000 people in 2003 and left widespread human rights violations unpunished. Although Colombia has some of the most progressive IDP legislation, the government has undermined the existing legal framework through various amendments. The number of new displacements decreased in 2003, partly because many IDPs avoided official registration for fear of reprisals by armed groups. Without this status they are often denied the limited welfare services the state offers. A United Nations plan launched in 2002, which aimed to provide a more effective response to the crisis, has received very little funding. The government has made the return of IDPs one of its central objectives. However, for returns to be sustainable, the government needs to do more to ensure security in return areas and provide the IDPs with the necessary means to re-build their livelihoods. Norwegian Refugee Council, Global IDP Project, Colombia: Democratic security" policy fails to improve protection of IDPs, updated country profile on internal displacement in Colombia from the Global IDP Project, www.idpproject.org

113 According to a survey done by the Centre for Research and Popular Education (CINEP), a direct correlation exists between these vacant territories, the presence of criminal groups, and the cultivation of illegal crops in several of them.

as separate subcultures, to the point that they do not know about the violence taking place in other territories.

1.3 Legal system and governance structure

Art. 1 of the National Constitution of 1991 states: "Colombia is a Social State of Law, organised as a unitary, decentralised republic, with autonomous territorial entities, democratic, participatory and pluralist, based on the respect for human dignity, on the work and the solidarity of its population, and on the primacy of the general interest."

Structure of the Colombian state

According to Title V of the Constitution, the State of Colombia is structured in three public powers: the legislative, the executive and the judiciary.

The Congress of the Republic represents the legislative branch and consists of the Senate and the Chamber of Deputies. [114]

The structure of the executive branch consists of the central level (represented by the president) and the decentralised level (headed by governors, mayors, supervisory entities, public establishments, and state industrial and commercial companies).

The judiciary exercises the public function of administering justice, that is, of enforcing the law. Only in exceptions can the executive and legislative branches and certain individuals (justices of the peace) also perform this role. The judiciary consists of:

- The Constitutional Court, which ensures the integrity and supremacy of the Constitution;
- The Supreme Court of Justice, the highest court in the ordinary jurisdiction;
- The State Council, the highest court in administrative disputes;
- Judges and courts, who administer justice in the first and second instances, either in the ordinary or the administrative disputes jurisdiction;
- Justices of the peace, with special jurisdiction, created by law 497 of 1999 and appointed by the Supreme Court of Justice;
- The General Prosecutor's Office, the role of which is to direct, execute and coordinate investigations in criminal matters;
- The Superior Council of the Judicature, which administers the judiciary and plays a disciplinary role; and
- The indigenous jurisdiction. There are 82 indigenous communities in the country, each with their unique judicial structure. Constitutionally, each community is recognised as an indigenous territorial entity: ETI. The ETI was created to allow indigenous councils to exercise jurisdiction within their territory, according to their own customs, rules and procedures, respecting ethnic and cultural diversity and the values of pluralism. ETI councils have different administrative and legal structures. The number of members and the legal organisation of each ETI are decided by the community and the state must respect this, provided their decisions do not violate laws or constitutional principles.

Territorial organisation

Colombia is divided into territorial entities that may be governed by their own authorities, autonomously manage their interests, administer their resources and raise taxes required to perform these tasks and to participate in the generation of national revenues. There are a number of territorial entities and these are described below.

Departments

Departments are territorial entities consisting of several municipalities, created by congress. They have autonomy in the administration of several areas, including health, education, roads, creation of specific taxes, etc. Their most important tasks include planning and promoting the economic and so-

114 The Senate is composed of 102 members: 100 are elected by national circumscriptions and two at the special circumscriptions of indigenous communities. The Chamber of Deputies has 162 members elected by territorial circumscriptions (all the departments and the capital district) and by special circumscriptions (up to five established by the law, to ensure the representation of ethnic groups, political minorities and Colombians living abroad).

cial development of their territory, intermediation between the nation and the municipalities and provision of public services as dictated by the law. [115]

Provinces

In theory, provinces can be created by grouping neighbouring municipalities or indigenous land belonging to one department. These provinces must be created via an ordinance issued by the Department Assembly. Currently they have no practical use, because congress has not enacted a special law to regulate them; however, the term "province" is not alien to Colombia's legal organisation, and some provinces are still acknowledged in the popular memory as they were enshrined in the Constitution of 1886. The province is the sum and combination of related municipalities; this territorial unit is seen as more efficient, easier to manage and govern, and fulfilling the needs of its inhabitants. This is what the Organic Bill of Law on Spatial Planning (Ley Orgánica de Ordenamiento Territorial - LOOT) proposes: the establishment of provinces, but not as mere electoral circumscriptions. [116] In the 1970s and 1980s, when congress discussed territoriality or administration issues, it used municipalities as the basic entity, and forgot the concept of the province, which existed only in the memory of the communities. The current departments and borders fail to recognise this cultural and natural state. [117]

Administrative and planning regions

These are defined as the integration of two or more departments with their own legal status, autonomy and assets. The integration of departments may be useful in certain parts of Colombia. Departments in those areas may become political-administrative units that cover all or part of a geographical region (such as the Caribbean region, the Amazon region, the Orinoco region or the Pacific rim). Regions are territories delimited by nature, by their physical features, and therefore the criteria used to define them can be verified in the field because they have natural borders (such as watersheds). Regions are the basic and central part of the integral territorial, environmental and political-administrative organisation, where one can find room for the true political reform of Colombia. [118] However, this new concept has not prospered, because the Constitution affirms that such changes must be made via the LOOT, which to date has not been enacted by Congress.

Municipalities

The basic territorial entity of the political-administrative division of the state, municipalities have political, fiscal and administrative autonomy within the boundaries set by the Constitution and the laws. Opinion, however, suggests that the organisation of Colombia as a unitary republic allows for very strong central authorities, as opposed to local authorities with very little autonomy, so that most public functions are directly executed by the state, while local councils are only allowed to execute a limited number of tasks. Their basic roles are listed in Art. 311 of the Constitution. They handle local development in its physical, economic, environmental, social and cultural dimensions, provide public services and promote community participation. There are 1,098 municipalities in the country; in some cases and due to their size, population and economic resources, they are called districts. [119]

Localities

Due to their size, certain districts and municipalities are further divided in localities. [120]

115 Each department has a collegiate and deliberative administrative body of popular election, called a Department Assembly. The governor heads the department administration and acts as its legal representative. Since 1991, governors are elected by popular vote. The Constitution also provides for the existence of several secretariats (general, works, government, treasury, health and education, transit and transportation, housing), public establishments, industrial and commercial businesses, and semi-private companies, depending on the structure determined by the assembly.

116 As reference, the Organic Spatial Planning Bill of Law (LOOT) No. 016 of July 20, 2003 which contains organic provisions on spatial planning matters can be consulted. The position of indigenous groups in relation to the LOOT can be reviewed in the periodical Unidad Indígena No. 1, October 2001, written by Edith Bastidas from the National Indigenous Organisation of Colombia-ONIC Legal Programme.

117 Revista Colombia Terra Incógnita, (2003:32-36).

118 Ibid.

119 Each municipality has one mayor, who heads the local administration and is the legal representative, elected by popular vote for a 3-year term. The municipality has a collegiate body called municipal council or district council, which is an administrative entity of popular election; its functions are listed in Art. 313 of the Constitution.

120 The collegiate body of localities is called the local administrative board (JAL) and its members, called ediles (aldermen or councillors), are elected by popular vote. Each locality has a local mayor, who unlike the others, is not elected by popular vote but chosen from a list of three people by the mayor of the municipality or district to which the locality belongs. JALs participate in the process to define investment programmes at

Indigenous territories (Resguardos)

These are delimited by the national government with the participation of representatives of indigenous groups. These territories are organised in *cabildos*, governed by councils established and regulated according to the uses and customs of the community and their special laws; they have legal and administrative autonomy.[121] They must abide by the provisions of the LOOT. Constitutional Court Ruling T-634 of 1999 states that although the organic spatial planning law has not yet been enacted, the constitutional principles related to indigenous communities must be acknowledged, as well as administrative, budget, financial, political, and legal autonomy.[122]

Territories of black communities

Constitutionally these are not established as specifically regulated territorial entities, and there is no jurisprudence on the matter. Collective property for black communities that have been occupying vacant land in rural areas along the riverbanks in accordance to their traditional farming practices is recognised by law (Law 70 of 1993); there are cases where the territory of a municipality belongs entirely to communities of African descendants.

Administrative territorial entities specified in the Constitution

While the territorial entities described above enjoy autonomy in terms of governance and development of their areas of interest within the limitations of the Constitution and other legislation, administrative territorial entities are merely entities in which activities for the economic and social development of the territory are brought together.[123]

Metropolitan areas

Article 319 of the Constitution states that when two or more municipalities have economic, social and physical interrelations, and when in their expansion they gradually become a single entity that meets the characteristics of a metropolitan area, they can be organised as one. These areas have the legal status of a public entity, administrative autonomy, their own assets, authorities and a special regime.[124] They can become districts if local residents approve it in a referendum; in this case, the municipalities disappear. Colombia has metropolitan areas in Bucaramanga, Valle de Aburrá, Barranquilla, Centro Oriente and Cúcuta.

Associations of territorial entities

Law 614 of 2000 proposes the establishment of territorial integration committees by joining various municipalities in one department, in view of establishing integration, coordination and harmonisation mechanisms among the various competent entities in matters of territorial organisation and for the management of spatial plans.[125]

Degree of autonomy of local governments

Administrative decentralisation in Colombia is effected under two modalities: by granting competences to an entity to execute specialised activities or services (semi-private companies, state industrial and commercial companies) or by assignment of administrative functions and responsibilities to regional or local authorities.

The Constitution of 1886 established administrative decentralisation under a centralist concept, with the central government defining and deciding the specific functions and responsibilities of departments and municipalities, such as

local level, control the provision of public services, execute tasks delegated by the district or municipal council and manage the resources allocated from the municipal budget.

121 Councils have one leader and in most cases a group of advisors who assist in the administration of the cabildo (Information provided by ONIC). But this is not the only model: there are as many administrative schemes as indigenous communities.

122 The constitutional powers of councils in indigenous territories include enforcing legal rules on land use and population occupation in their territories, designing economic and social development policies, plans and programmes for their territory; promoting public investments in their territories and ensuring adequate implementation; collecting and allocating resources; ensuring the preservation of natural resources; coordinating programmes and projects fostered by various communities in their territory; cooperating in the control of public order within the territory according to national provisions; representing the territory before the national government and other entities established by the law.

123 Art. 287 of the Constitution.

124 Art. 2, Law 128 of 1994.

125 Under an environmental approach, Decree No. 216 of 2002 on Basins, issued by the Ministry of the Environment (now the Environment, Housing and Territorial Development Ministry - MAVDT) offers the potential for intermediate-level planning and management – still unexplored in the country.

the collection of certain taxes. A first step towards autonomy of local governments was reached in 1968 with the transfer of central revenues to departments for the purpose of financing health and education, and the allocation to municipalities of a portion of the sales tax. [126] Law 14 of 1983 emphasised the fiscal autonomy of territorial entities, while modernising and extending their tax base, especially with respect to the land tax, significantly increasing revenues for local governments.

A constitutional amendment in 1986 established popular elections of mayors, held for the first time in 1988. [127] The participation of central government in a series of local tasks and services was reduced, with budgetary consequences, placing a greater responsibility on certain territorial entities for generation of their own revenues.

Finally, congress regulated the General Participation System (SGP) in 2001, which implemented the per capita revenue assessment system to calculate the amount of the transfer to territorial entities. Resources are transferred on the basis of the number of people living in the municipality. [128] This measure, especially under inefficient department administrations, has made many isolated municipalities with scattered populations economically unviable and ineffective in the provision of services: with few inhabitants and therefore fewer transfers, they have poor quality services and excessive coverage costs. The efficient administration of municipal resources now depends on the capacity of mayors' offices to raise additional funds to meet local needs.

In addition to SGP resources, municipalities have oil royalties and the revenues generated by their territories, as provided in Law 6 of 1992: revenues generated by taxes on income, industry and trade, on vehicles, paper and slaughterhouses, in addition to levies such as that on gasoline. Departments also rely on taxes collected on alcoholic beverages, cigarettes and authorised stamps.

The Constitution of 1991 made municipalities responsible for urban development. In the same period, national house-building agencies disappeared, the demand-driven housing subsidy was created (see Section 3.5 below) and laws providing means for municipalities to build houses were enacted. The privatisation of housing, combined with cutbacks on transfers to territorial entities, deficient municipal administration, informality of developments, illegality of tenure, and increased vulnerability of the urban population have led to a progressive deterioration of the population's quality of life. [129]

Gender and the judiciary

There is no gender policy for the judiciary, and the accessibility of the legal system is particularly difficult for low-income women or black Colombians. Housing and gender cases are handled in the ordinary jurisdiction by civil judges. [130]

Statistics from the judicial authorities indicate how many lawsuits are filed, but do not show how many men and women out of the total population resort to the courts or file cases related to land and housing. Statistics are kept according to processes and the same person may have several processes filed with the courts at the same time.

The State Attorney General and the Ombudsman's Office are charged with protecting human rights. They have administrative and budgetary autonomy to execute the supervisory tasks assigned by the Constitution.

Participation of women in decision-making bodies

The participation of women has historically been low both in elected and in appointed positions. The Quota Law (Law 581 of 2000) states that women must hold at least 30 percent of positions in the highest decision-making levels in all three

126 Law 33 of 1968.

127 Legislative Act No. 1 from 1986. This constitutional amendment and its complementary Law 12 of 1986 was the first of several similar subsequent acts by congress.

128 Enactment of Law 715 in 2001 created via Legislative Act 01 of 2001. The law grants autonomy in the sense that the nation directly transfers the resources to municipalities having more than 100,000 inhabitants and to department capitals. Districts receive the same treatment as municipalities. In other municipalities with less than 100,000 inhabitants, the provision of services under Law 715 is controlled and coordinated by department administrations.

129 UNDP. (2003).

130 Interview: Carmen Elena Leon, Development and Statistical Analysis Unit, Higher Council of the Judicature.

branches of government and in other national, departmental, regional, provincial, district, and municipal public offices. This percentage also applies to positions of direction and command for the formulation, coordination, execution and control of state actions and policies in all these levels. However, the Constitutional Court established that this rule only applies to positions that become vacant, which often complicates or delays access by women. [131] It also rules that certain organisations are hardly compatible with the quota system, for instance the boards of directors of some institutions, which consist of the representatives of member entities who do not necessarily nominate women.

The Quota Law has not been sufficiently disseminated, its philosophy in search of equality is not well understood, and it has not been widely enforced. Based on the Constitution, women have gradually increased their participation in popularly elected positions, but their participation is still very low, as illustrated by the table below.

Table 1.3 Percentage of women among elected members of congress and government

Level	Position	Percent of women elected for period 2002-2006
National level (2005)	Senators	8.8 %
	Deputies	12.1 %
Department and local level (2003)	Governors	6.25 %
	Delegates to Department Assemblies	13.84 %
	Mayors	7.3 %
	Local Councillors	12.89 %

Source on Senators and Deputies: Inter-Parliamentary Union, April 30 2005.

Information on department and local level representation obtained from the Civil Registry

Presidential Council for Women's Equality

The National Directorate for the Equality of Women, created in 1995, was transformed into the Presidential Council for Women's Equity in 1999 by Decree 1182. The mandate of this council is to guide and advise the president on public policy issues regarding women and regulating women's public policies. The current administration designated various roles to the council, including: [132]

- Assisting in the formulation of government policies and laws on promotion of gender equality;
- Promoting gender mainstreaming in the formulation, management and follow-up of policies, plans and programmes in national and territorial public entities;
- Creating follow-up tools for the enforcement of domestic legislation, international treaties and conventions related to women's equality and the gender approach;
- Establishing alliances with the private sector, international agencies, NGOs, and the academic sector to foster research on the status and situation of women;
- Supporting solidarity, community and social organisations of women at national level and their active involvement in state actions and programmes; and
- Supporting the formulation and design of specific programmes and projects aimed to improve the quality of life of women, especially of the poorest and most disadvantaged.

The council's main objective is to contribute to the achievement of relations of equity and equal opportunities for men and women, enhancing the quality of life of women, respect of their human rights, participation as citizens and strengthening women's organisations. Likewise, the National Agreement for the Equality of Men and Women was established as a commitment by the current administration, legislative and judiciary to ensure equal development and opportunities.

To ensure gender mainstreaming, the council works to coordinate agendas with several government entities and international agencies. The Inter-institutional Gender Linkages Table was established as a mechanism to follow up on these agreements. [133]

131 Ruling C-371 of March 29, 2002.

132 Decree 519 dated March 5, 2003.

133 Presidential Council for Women's Equality (2003).

The view of several civil society organisations working with community-based organisations is that in Colombia there is no governmental institution that effectively promotes women's rights. They believe that the roles of this council are restricted: it is not autonomous as it is part of the administrative department of the presidency; and it has no independent resources or capacity for contracting or determining spending. [134]

1.4 Socioeconomic Context

According to the latest population and housing census (1993), Colombia had 33,1 million inhabitants (16.3 million and 16.8 million women), grouped in 8,2 million families living in 7,1 million housing units. Projections for 2004 were for a total population of 45,3 million – 22.4 million men and 22.9 million women. [135]

According to the National Centre for Construction Studies, (CENAC), Colombia has 9.8 million housing units sheltering some 11 million households – understood for census purposes as the group that shares a home and at least one meal a day. [136] Of these, 6.4 million units (or 75 percent of families) have been built by their owners and are in high seismic vulnerability conditions.

Of the total population in 1993, 1.1 million belonged to minority ethnic groups, of which roughly half were Afro-Colombians and the rest Indians.

Three-quarters of Colombian households earn less than two times the minimum wage (the legal minimum monthly wage is equivalent to approximately $145). Of the 12 million people living in rural areas, four out of five live under the poverty line, and half in extreme poverty. The average income in rural areas is only 40 percent that of the urban population. In the last decade, rural unemployment has increased almost threefold due to a reduction in investment, with a consequent decline in cultivation and production areas. [137] There were 4.6 million people working in the rural sector at the end of 2002, 58 percent of which earned income mainly from on-farm and 42 percent from off-farm activities. [138] Average schooling among rural children is only four years, approximately half that of urban children.

The estimated number of women-headed households increased rapidly from 25.8 percent in 1997 to 30.9 percent in 2003, and was higher in urban areas, while the estimated number of male-headed households decreased accordingly and was higher in rural areas. [139] The percentage of women heads of low-income households grew from 52 percent to 54 percent between 1992 and 2001.

Figures on displaced persons differ among various sources. The two tables below show figures provided by UNDP in its 2002 Human Development Report and by the civil society organisation CODHES respectively.

Table 1.4 Displacement 2000-2002

Year	Number of Displaced Persons	
	UNDP estimates	COHDES estimates
1999	-	228,000
2000	266,886	317,000
2001	324,998	342,000
2002	373,020	204,000 (Jan-Jun)
2003	-	119,690 (Jan – Jun)
2004	-	130,346[3] (Jan-Jun)
Total	964,904	1,341, 036

These figures suggest that from 1999 to 2004 more than 1 million people have been displaced, in addition to the estimated 2 million Colombians living abroad.

134 CODACOP et al. (2003:13).

135 Dane. (1993).

136 Jorge Torres Executive Director, CENAC Interview with the author , January 21 2004 with,.

137 Information taken from INCODER: www.incoder.gov.co

138 National Administrative Department on Statistics (DANE), Continued Household Survey 2003

139 DANE. (2003).

Displaced persons arriving at urban centres face a great many problems, including lack of inter-institutional coordination to care for them, obstacles to being admitted to assistance programmes and official indifference to their plight. Temporary settlements minimally mitigate the problem placement and maintenance, but not for long. Nor can displaced persons be sure of obtaining permanent jobs, education or health care. After becoming settled in one place, at the end of the project the displaced families enter a process similar to displacement, once again dismantling the social networks they have managed to build. [140]

A World Bank report in 2003 revealed that 38 percent of the total displaced population consisted of girls and women, 32 percent of which were heads of household. [141] The Social Solidarity Network estimates that between January and June 2002, almost 18 percent of the total displaced population of the country was Afro-Colombian.

The Constitutional Court has summarised the situation of displaced people as follows: [142]

- 92 percent have unsatisfied basic needs;
- 80 percent are indigents;
- 63.5 percent live in precarious dwellings;
- 49 percent lack adequate public services;
- 23 percent of children under 6 are malnourished;
- 25 percent of boys and girls aged 6-9 do not go to school; and
- 54 percent of persons aged 10-25 do not attend any education system

In 2003, Afro-Colombian and indigenous groups were the most affected by the armed conflict and displacements. [143] Four out of 10 internally displaced persons belong to one of these ethnic groups, who are subjected to confinement strategies by armed actors in confrontation. One of the most serious situations caused by violence is the emergence of regions with confined populations, where armed groups do not respect or abide by the principles of international humanitarian law that protect civilian populations trapped in the conflict. As a consequence, they are unable to cultivate their crops or gain access to goods and services, and live in hunger and misery. The territorial clearing strategies applied by blocking the free movement of individuals, markets, resources and communication used by the armed forces, FARC and AUC since 1996, initially in the northern area of Chocó and the Urabá area of Antioquia, and later extended to other territories, marked the beginning of the exodus and displacement of entire populations.

The displacement of rural people is influenced by paramilitarism and encouraged by economic and political sectors with the support of the army. Displacement throws farmers into the labour market and their lands into the goods market. The amount of land abandoned by this population is estimated at 4 million ha, about three times more than the amount of land redistributed through state agricultural reform programmes since 1961. [144]

Situation of women living in informal settlements/self-help housing

In 2004, 1.3 million houses or 16 percent of all urban households were in precarious (slum) settlements, with serious qualitative shortages. These settlements are located in high-risk zones or in housing complexes without the possibility for upgrading or housing improvement schemes.

By the year 2020, the urban population will have increased by 30 percent, with an additional 10 million inhabitants in urban centres. Preventing the formation of precarious settlements and improving the existing conditions appear to be fundamental challenges, in addition to developing adequate policies and housing investment schemes, urban development policies and basic service delivery. [145]

140 Interview with Myriam Hernandez, RSS-World Bank project, Swedish Cooperation, etc. February 2004.

141 World Bank (2003:24).

142 Taken from ruling No. T25 - 2004 of the Constitutional Court.

143 According to the Information System on Displacement (SISDES) run by the Human Rights and Displacement Clinic (*Consultoría para los Derechos Humanos y el Desplazamiento* – COHDES).

144 World Bank. (2003).

145 National Planning Department of Colombia (2005).

The poor living conditions of underprivileged women are directly related to the fact that they have no access to formal employment. Informality restricts access to subsidies and credit and to adequate basic services, and limits poor women in the full exercise of their rights. [146]

In spontaneous poor settlements, women and children suffer the consequences of informality (lack of water supply, transportation, access to schools and health care facilities) most. [147] In addition to working two shifts – in their jobs and housework – women in these areas have multiple roles as community members since they are generally in charge of applying to public agencies for provision of public and social services or infrastructure.

While there are some positive experiences with progressive self-constructed housing, most of these experiences are not replicable in bigger projects that require stricter quality control. Progressive development is still a tendency in informal settlements, mostly via self-help construction, but this rarely benefits women or men: it is costly, it takes up the free time of families, and it does not generate good quality housing. Compared with common construction projects, the costs are frequently higher than the savings obtained through the self-help process, mainly due to waste of materials and time because of the lack of qualification of the family members and the extra costs for training them.

Women who head households generally find it difficult to build their own houses without the solidarity of their neighbours, and they must often resort to hiring costly and generally unqualified labour. The popular housing federations in Colombia have concluded that it is better to involve people in developing their own solutions and improving their own capacities, in partnership with local government and institutions.

An alternative to the self-help construction approach is leasing schemes or protected leases, which can be upgraded to ownership once the lessee can afford to buy. However, financial institutions are not interested in providing leasing options to poor families, even less so to women-headed households. The government could compel such institutions to channel a percentage of their financial resources to leases for lowest-income households. An example of this is the subsidised PAPAS programme implemented by the municipality of Bogotá in El Cartucho, a badly deteriorated urban renewal area. The Popular Housing Bank (the municipal social housing office, not a commercial bank) has targeted 127 families who relocated to this area, and provided them with protected leases. Social workers operate a points system to motivate families to participate in activities, such as education, that will broaden their opportunities.

Security of tenure for women and violence against women

In addition to access to land and adequate housing, security of tenure also means a series of measures that provide women with a permanent livelihood and guarantee their physical integrity.

In the urban context a direct correlation exists between poverty, joblessness and lack of access to formal housing. Lack of ownership or other legal means of accessing a place to live due to lack of a formal or permanent income implies a high dedication of family income to pay for rent and, as a consequence, little or no possibility to accumulate savings. For poor Colombian households, especially those headed by women, overall informality implies limitations in nutrition, access to basic services and to housing subsidies. Poor-quality housing is related to bad living conditions (overcrowding in small spaces) and has a direct impact on domestic violence. [148] Urban violence is related to poor conditions in the urban environment.

In her study on the impact of armed conflict on Colombian women and girls, the Special Rapporteur on Women's Rights of the Inter-American Commission of Human Rights, Dr. Susana Villarán, found that violence against women is a

146 UNCHS (2003).

147 Dalmazo, P. No. 5.

148 Grupo de Apoyo Pedagógico, (2002).

structural problem in Colombia, in which women are used as pawns by the armed actors in their fight for the control of communities and territories. Murder, kidnapping, massive detentions, forced recruitment, torture, rape, forced prostitution and enslavement are used to intimidate and terrorise communities that live in the conflict zones, provoking the displacement of hundreds of families, the majority of which are headed by women. Women's organisations working in conflict zones are perceived as an obstacle to social and territorial control by the armed actors and are therefore subject to harassments and threats. Based on statistics provided to her by governmental entities and NGOs, she concluded that displacement affects women and girls disproportionately. [149]

The Special Rapporteur established that the situation of indigenous women is particularly critical. They cannot move freely, armed combatants take away their autonomy and undermine their culture, affecting their everyday relations.

Armed groups forcibly recruit young women and girls. The Special Rapporteur met with hundreds of widows and orphans living in extreme poverty and precarious situations who had been forced to abandon their ancestral land and join the poor in the cities. [150]

Box 1.1 Testimony of displaced indigenous women

> "Violence means harming women, abusing her body, her mind and her spirit. Violence is suffering discrimination from our leaders, who do not value our participation in indigenous fights. Violence is inflicting sadness and anguish; is abandoning the home. Not being able to exercise our traditional rites is also violence. Violence is when our men are taken away and when our sons are killed."[4]

The discrimination and stigmatisation of Afro-Colombian women is sharpened by the conflict. They either have to live under the control of armed groups, or are evicted from their territory and forced to live in cities that are alien to their culture.

Box 1.2 Testimony of displaced Afro-Colombian women

> "...The houses where we come from are spacious, in the city we are forced to live in overcrowded conditions"… "We are scattered in marginal neighbourhoods ... and because we rent we are not allowed to carry out our cultural practices" (such as funeral rites)... "In our rural settings we supported each other and we lived happily, we had no money but we had our land and all we needed"… "Coexistence codes are lost and we lose the custom of our community of finding food together. We feel invalid, we lose part of our lives, we lose our freedom, our territory, our life, our autonomy, the scheme of community life is altered". [5]

While acknowledging the efforts of government entities, civil society organisations and women to counter and document violence, the Special Rapporteur observed that both at national and local level, there is a lack of inclusion of specific needs of indigenous and Afro-Colombian women in public policies and programmes. [151]

1.5 Civil society

The Constitution of 1991 brought major changes to the relationship between civil society and the state. It recognises the right of all citizens to establish, organise and develop political movements and parties, and the freedom to affiliate or retire. Articles 107 and 108 guarantee social organisations the right to express themselves and to participate in political activity.

The National Development Plan 2003-2006 seeks to promote direct and autonomous participation of women's organisations in several national and local dialogue processes, and in political negotiations related to social and war conflicts that include and represent the interests of women's social movements.

Participation of Civil Society

In Colombia, local and national civil society participation forums were created by Participation Law No. 134 of 1994 – an innovative method of regulating participatory democracy. A list of the main civil society participation forums in social and territorial planning and management is presented in

149 Comisión Interamericana de Derechos Humanos, (2005:1).

150 Ibid, p. 2.

151 Comisión Interamericana de Derechos Humanos, (2005:3).

Appendix I; their operation and consolidation level depends on whether they are mandatory under the law; the issues they address; and the support given to them by national or local governments.

At local level, Law 134 opened an opportunity for citizens to participate in the formulation of plans and specifically in the implementation of policies for women, youth and vulnerable groups. Nevertheless, plans at local level rarely include a gender dimension or offer the possibility of addressing differentiated needs and interests for women and men. [152]

The intervention of the indigenous population is done through the National Indigenous Lands Commission. [153] This entity is attached to the Ministry of Agriculture and directed by its vice-minister, with participation of community representatives. The commission seeks consensus between indigenous people and the government. It is in charge of prioritising programmes related to their affairs, either acquisition of land, restructuring, extension, or the lifting of indigenous land holding encumbrances.

In Colombia there are many professional women in charge of public institutions. Yet they are still restricted in access to decision-making positions that would permit them to influence public policies, take strategic dispositions or assign resources. In national institutions that deal with human settlements, housing, urban development, roads and infrastructure and social and public services, the great majority of leading positions are still held by men. [154]

There has been an increase in the participation of women in consultative organs like land planning councils, local planning councils and cultural and youth councils, and in unconventional spaces promoted by grassroots women's groups and NGOs. [155]

Role of women´s organisations in rural and urban settings

In the 1980s and early 1990s, rural women entered the scene with their own organisations or in mixed or ethnic unions, thanks to the initiative of the National Association of Farmers (ANUC) and the influence of the second international wave of feminism. Since the mid-1980s, a growing number of working-class women have become part of organised social movements. [156] Organised rural women negotiate their agendas within their own organisations, developing individual and collective gender identities; they have also set up links with organisations in other sectors of civil society and with the state, and they participate in mixed groupings.

The National Association of Rural and Indigenous Women of Colombia (ANMUCIC) was an important advocacy forum for the rights of rural women, with a seat on the INCORA board. In the rural mobilisation of September 16 2002, it asserted the inalienability of indigenous land reserves. [157]

Although women and indigenous groups are more organised than unions and political movements, their participation, seen from a gender equality perspective, still presents severe limitations. [158]

In the urban environment, women have mainly focused their struggles on achieving better living conditions for their

152 As an example, in a review of fifteen POT plans by the "*Dirección de Ordenamiento Territorial*" of MAVDT and FNUAP in December 2002, from analysis of inclusion of population issues and gender perspective, it was demonstrated that these issues were missing in almost 90 percent of the cases analysed.

153 Created under Decree 1397 of 02/1996.

154 According to the study "Participation of Women in Human Settlements at National and Local Level" financed by UNCHS-Women and Shelter in 1998, for Colombia, from the total number of charges for professionals in these institutions, almost 70 percent were occupied by men. Women occupied 41.5 percent of posts in the directive level and 35.70 percent at executive level in these same institutions.

155 In the case of Bogotá, an interesting experience is the creation of Special Policy Councils– CLOPS, where women are represented and which communicate with district public entities in charge of social issues and with social organisations working on these issues. "CLOPS opened a space where women -who have been traditionally in charge of the education and health of boys and girls and the welfare of the elderly in their communities- can speak of their needs and make proposals more directly" according to Olga Goyeneche, a facilitator in CIDER, trained by Grupo de Apoyo Pedagógico-GAP.

156 Rivera S. "Politics and ideology of the Colombian Peasants Movement, the case of ANUC" CINEP and UN Research Institute for Social Development, Bogotá, 1989.

157 Other important advocacy roles were developed through the secretariats, committees or programmes of organisations of farmers, indigenous groups, groups working on unity and reconstruction, groups working on rural development, and labour groups. Source: León and Deere (2000) and Díaz (1999), taken from "Años 80, Inicios de los 90, Una Reñida Revelación" –Tierra y Justicia Notebook No. 9 p. 17.

158 Interview with Rosa Emilia Salamanca, of the NGO Association for Interdisciplinary Work - ATI.

families, communities and neighbourhoods, and towards peace and social justice. Some national organisations such as the National Network of Women and the Popular Women's Organisation have a long history of demanding government support for the protection of women's rights and speaking out against outrages by violent groups in several parts of the country. Others have focused on women's political rights, and discussed difficulties and opportunities in national and local forums. [159]

Probably the most significant gain of these organisations has been to create growing awareness of inequities towards women. This has had effect in legislation, in the formulation of certain policies and some concrete actions, especially those oriented towards heads of households.

At local level, urban women's organisations have obtained important results as far as settlement improvements, and the provision of public and social infrastructure and services. But the results in terms of land and adequate housing rights are limited, as repeatedly expressed by participants in events promoted by civil society organisations.

2 Land Tenure

2.1 Types of land

Land is classified in the following categories, which are described in greater detail in Appendix III: [160]

- Union or state property, owned by the nation, consists of public land, cultural and archaeological heritage, vacant land and fiscal property;
- Private property is owned and used by individuals; and
- Communal land is owned or possessed by indigenous groups, Afro-descendants, cooperatives or a group of urban dwellers.

Tenure can have multiple manifestations according to the historical and sociopolitical context. Land or real property can be public, private or collective. In terms of ownership, land or real property can constitute state, private, associative, communal or collective property; or "without ownership" such as possession, simple tenure, invasion, user loans, rent and usufruct, among others. With respect to how access to land is obtained, classification is presented in two groups: 1) regular / legal / formal; or 2) irregular / illegal / informal.

Table 2.1 Total area of rural land registered in cadastre

Owner	Area (hectares)
State	28,590.815
Private owners	67,859.588
Black communities	3,786.826
Indigenous communities	30,050.215

Source: IGA Institute Geográfico Augstin Codazzi, 2003

Of registered land in urban areas, the state owns more than 64 million ha, while private owners hold over 274 million ha. [161]

2.2 Tenure types

The civil code includes legislation on relations between individuals, real estate buy-sell contracts, successions and separation of marital property, among others. A table setting out the various types of tenure, their legal characteristics and their legal basis can be seen in Appendix IV. Tables indicating the ways in which a person can access land tenure rights are set out in Appendix V.

The Colombian civil code of 1887 divides union assets in property for public use, fiscal property and vacant property

159 *Red Mujer y Participación Política, Movimiento Político Mujeres 2000, Asociación de Concejalas y Exconcejalas de Cundinamarca*. Some groups of academic origin like *Grupo Mujer y Sociedad, Instituto de Estudios Políticos y Relaciones Internacionales de la Universidad Nacional de Colombia - IEPRI, Centro de Investigaciones Sociojurídicas de la Universidad de los Andes – CIJUS* with research experience and experience in political lobbying have supported the initiatives of popular organisations.

160 Rural is land used for farming, livestock, forestry, natural resource exploitation and similar activities. Suburban land is located in areas prepared for urban uses during term of validity of the Land Use Management Plan (Plan de Ordenamiento Territorial – POT). It is unsuitable for urban uses since it has no infrastructure provision yet. Urban land is designated in POT for urban uses, where primary networks of public services and road infrastructure exist to make their development viable. They can include populated centres of *corregimientos* (smaller than municipalities). The urban perimeter may in no case exceed the so-called perimeter of public sanitation services.

161 IGAC Geographic Institute, Augstin Codazzi, 2003.

(Art. 674 to 678). Article 673 alludes to the ways one can obtain ownership as a means to secure land tenure. These include occupation, accession, transfer, succession and adverse possession, defined below.

Occupation

Under Art. 685 et seq., assets that have no owner are acquired, provided such purchase is not prohibited by local regulations or international law.[162] Invaders can become possessors if they occupy a private property and are not evicted within the next 30 days (if on urban land) or 15 days (on rural land). They can become occupants of state property if that property is not of public use, a conservation heritage or fiscal property.

Accession

Under Art. 713 et seq., the owner of a property becomes the owner of what it produces or what becomes attached to it.

Transfer

Article 740 et seq. provides for the assignment of property by the owner to another person, when the power and the intention of transferring ownership and the capacity and intention of purchasing the property are present. Under Art. 756, the transfer of real property also requires the registration of the deed at the Public Instruments Registry Office, required also by the transfer of the right of usufruct, habitation or mortgage.

Possession

Defined as tenure of a given thing as owner or master thereof in Art. 672 of the civil code et seq. This is considered a fundamental right of economic and social nature.[163] It differs from mere tenure, a concept enshrined in Art. 775 as that exercised not in the capacity of owner or master.[164] Subsequently, the civil code contains limitations on ownership, including trust ownership (Art. 794 et seq.), the right of usufruct (Art. 823 et seq.), the rights of use and habitation (Art. 870 et seq.) and servitude (Art. 879 et seq.).

Prescription (adverse possession or usucapion)

This is a means to acquire ownership of assets belonging to third parties, if the following conditions have been met:

- The possessor holds the property as owner or master, paying taxes, installing services in their own name or carrying out other acts that demonstrate the intent of an owner, such as improvements on construction, cultivating land etc.;
- The duration of such possession is 10 years (for urban property) or five years (for rural property).[165] In the case of social housing, ordinary adverse possession (normally five years) becomes effective after three years, and extraordinary adverse possession (normally 10 years) after five years;[166] and
- Adverse possession must be declared by a judge, if the possessor can prove ownership of land after these periods established by law by certifying payment of public services and taxes, improvements over construction, cultivating land, pasturing or grazing.

In practice this mechanism is indeed used. For example, in various *barrios* of Ciudad Bolivar in Bogotá, long-time occupants who had been paying taxes and utility fees have obtained land through adverse possession. If the owner has not utilised and exercised his/her property as owner or master over a course of time s/he may lose the property.

In practice, the poorest of the poor have few options but to live on invaded land, often bordering rivers or ravines, or in otherwise high-risk areas. Many displaced households lack the means to prove ownership or tenure, because they have no titles or because their sudden departure from their homes prevented them from putting these documents in a safe place.

162 The Civil Cassation Chamber of the Supreme Court of Justice, in a ruling dated July 5, 1978, affirms that this is the way ownership of vacant lots is acquired, consummated when the settler sows crops or introduces cattle; and the administrative act of adjudication recognises the legal entitlement of the real right of the occupant. The inscription in the registry is evidence of the entitlement resulting from occupation. This concerned a rural case on farmland. Occupation and acquisition can also occur on land that is not farmland.

163 By a ruling of the Constitutional Court from August 12, 1992.

164 Supreme Court of Justice, Civil Cassation Chamber, ruling of June 24, 1980.

165 Arts. 4 and 5, Law 791 of 2002, which amended Articles 2529 and 2531 of the civil code respectively.

166 Under Art. 51, Law 9 of 1989. Arts. 2515 et seq. of the civil code are also applicable.

Furthermore, a high percentage of people have no identity card. [167]

Municipal or departmental authorities have the discretion to assign subsidies from their own resources as well as to facilitate access to land via user loans to displaced households or communities. This has been the case in the department of Sucre.

3 Land Management Systems

3.1 Main institutions involved

National Planning Department

This department is in charge of formulating, following up and assessing national policies, such as the National Development Plan (NDP). Based on the NDP and on the prioritised policy needs of each ministry, the department prepares a National Economic and Social Planning Council (CONPES) project document, followed by inter-institutional coordination work to provide inputs to consolidate the final document.

Ministry of Agriculture and Rural Development

In charge of rural development and land policy. INCORA, the entity in charge of carrying out land titling and adjudication under the agrarian reform process, was liquidated in 2003. [168] In May 2003, Decree 1300 created the Colombian Rural Development Institute (INCODER), a decentralised entity attached to the Ministry of Agriculture and Rural Development, to take over some of its functions. These include the execution of agricultural policies, rural development, the social organisation of property titling and provision of technical and administrative follow-up to territorial entities and communities. [169]

With the creation of INCODER, half of the agencies working in agricultural reform in the country disappeared, leaving several departments with minimal capacity to manage or execute projects. This is detrimental to rural households who, for lack of knowledge and limited possibilities of accessing central offices, are left out of the process of adjudicating lots or providing technical support to productive processes, increasing their vulnerability in the face of possible displacements due to violence. Unlike INCORA, there is no room in the INCODER board for representatives of ANMUCIC; hence women have lost two seats in decision-making bodies. The "New Vision for Rural Development INCODER 2003" claims this new approach "grants a leading role to the administration of communities and to civil society, in the identification of opportunities and in the achievement of its own development". In practice, the participation of rural organisations in the agricultural reform has been limited as a result of the restructuring.

Ministry of Environment, Housing and Territorial Development

This ministry is responsible for the formulation and implementation of the national housing policy and regulations, including subsidies and subsidy allocation. It also formulates national policies and guidelines related to spatial planning and urban land, and supports municipal land management and planning.

Ministry of Interior

Land of indigenous groups and African descent groups falls within the mandate of this ministry.

Social Solidarity Network (RSS) and the Ombudsman´s Office

These provide assistance to displaced persons.

167 Hernandez Sabogal, M. Interview with the author February 6, 2004. Up till now, the offer to return which is being given to displaced households has consisted mostly of jobs in rural areas, not in the allocation of land.

168 Via decree 1292 of 2003.

169 The new INCODER is divided in sub-administrations and is supported by nine regional liaison offices, 32 territorial technical groups (one in each department), and six integral groups, seeking to rely on the support of Agricultural Secretariats in departments and municipalities in order to execute a process of decentralisation which, over time, will make each territorial entity responsible for rural activities. One of the tasks assigned to INCODER is the survey of indigenous community land for the provision and titling of sufficient or additional land areas, in order to facilitate adequate settlement and development, the recognition of property for the land they traditionally occupy or which constitutes their habitat, the preservation of the ethnic group and the enhancement of the quality of life of its members.

Geographic Institute (IGAC)

Provides guidelines to the decentralised cadastre. The registry is headed by the centralised land registry office.

3.2 Land administration processes

In Colombia, land administration is based on the inventory of existing land, expressed in a system of cadastre and registry of property rights, which regulates access and use, and develops into a land or property registry. This system is supported by legislation that regulates concessions or acquisitions, the exercise and assignment of these rights, and the extinction thereof. [170]

Cadastre

The structure of the Colombian cadastre is a land information system based on the lot as a unit for the administration of land, for urban and rural planning, spatial planning, environmental management and sustainable development.

The country's cadastre system is decentralised in four entities at departmental or municipal level. [171] Each entity manages its own jurisdiction. IGAC issues guidelines to regulate all cadastres but has no role in the administration of systems managed by the other four offices. IGAC operates with 21 local offices throughout its jurisdiction and with 45 delegations, which depend directly on the local offices. There is no centralised information at national level.

The land registration process throughout the country began in 1983 when Law 14 defined a new methodology for the cadastre. The goal for 2006 is to have a uniform methodology under which each entity in the country will have updated information. Concerning IGAC, the process is advanced but in urban areas there are still 25 municipalities under survey and in rural areas approximately 100 municipalities still need to be covered. [172]

Access to statistics of the cadastre is possible since there is a database from which one can establish surfaces by ranges, determine land uses and identify if the owner is the state or private persons. One can determine which municipalities are registered, the number of existing plots and their land uses, but the current cadastre system in Colombia does not allow a breakdown of statistics by sex. This will be possible once the correspondence between Cadastre and Registry is finished.

In IGAC´s work there is no priority by gender: the law does not establish any guidance in this sense and there is no internal programme addressing this issue.

Registry

The registry system in Colombia was created by Decree 1250 in 1970. It works as a centralised system with branches in each department capital. The public property registry is handled by the Head of Notarial Management of the Public Instruments Registry.

There are no statistics at national level on the extent of properties registered since the information is not consolidated in a statistics system in the Public Instruments Registry. The only way to verify this would be to find in INCODER how many vacant lots are still to be adjudicated in order to determine, by exclusion, how many properties are registered.

Registries are not kept in gender-disaggregated form and it is not possible to determine how many lots are owned by women. Using the registry base and the ID card number, one could break them down by gender but there are many errors in the fields and it would probably be imprecise. [173] There is no preference accorded by gender when titles are processed.

Due to the centralisation of the registry system, more flexible schemes that include testimonies or oral evidence in the proc-

170 Molina, C. J. (2000).

171 These four entities are: the Cadastre of Bogotá, which is an administrative department of the Capital District; the administrative planning, direction and information systems department in Antioquia; the municipal cadastre division of the secretariat of treasury in Medellin; the assistant directorate of taxes, revenues and municipal cadastre in Cali. These entities cover the urban and rural areas of their municipalities or, in the case of Antioquia, the department. The rest of the country is administered by IGAC (IGAC).

172 Higuera, J. M. Interview with the author.

173 Huertas, P. Interview with the author.

ess to determine ownership should be implemented, rather than merely relying on simplification of the registration process.[174] This also applies to registration of land. At present, the legal procedures are established and must be followed: a title, such as a deed, a ruling or a resolution of assignment, is necessary to register the property. There are no alternative methods to register land. Alternative approaches are needed, particularly for lots abandoned by displaced persons. Many displaced households lack the means to prove ownership or tenure because they have no titles or because their sudden departure from their homes prevented them from safeguarding these documents. And many people have no ID card.[175]

Cadastral and registry processes in the country

In the early 1990s, with the technical cooperation of the Colombian and Swiss governments, the IGAC launched a modernisation project aimed at shifting from a system of manual and analogue geographic information production to a digital format. Law 44 was issued, combining real estate taxes into one single tax called "unified real estate tax", the management, collection and control of which was given to municipalities. For social equity purposes, 10 percent of total taxes must be put into a fund for the improvement of housing for low-income people.

The cadastre is not yet unified with the public property registry, but there is a project to coordinate and integrate their data. The goal is to identify, lot by lot, all land owners in the country.[176]

Colombia and the Inter-American Development Bank have signed a loan agreement for the Titling and Modernisation of Registry and Cadastre Programme. It aims to consolidate and foster the land market in Colombia. The programme has laid out four components: Titling of Rural Vacant Land, Titling of Urban Property, Modernisation of the Registry and Cadastre, and Environmental Protection in Rural Areas. An amendment to the IADB Loan was signed in March 2001 and the IGAC was appointed as the executing agency, with the intervention of the *Superintendencia* of Notaries and Registry and INCORA. This time, components were reduced from four to just two priorities to be completed by 2006: Titling of Rural Vacant Land and Modernisation of the Registry and Cadastre. Land titling and Environmental Protection of Rural Areas were postponed.

The Colombian land management system does not have an explicit gender approach. There are no regulations giving women priority to purchase or register land.

3.3 Dispute resolution

Alternative conflict settlement mechanisms for the poor

There are few legal assistance centres or training approaches on legal issues for poor people or communities. The Latin American Institute of Alternative Legal Services (ILSA) has two principal programmes:[177]

- Technical assistance on issues such as housing rights, subsidies, economic stability, etc. ILSA works towards a solution through administrative and judicial recourses; and
- Training of members of other organisations as "legal extensionists", in accountability processes (mainly legal, but also in legislative and public policy issues), rights, handling of public actions and issues such as forced migration, land and housing legislation, etc. The goal is to train new leaders and to generate commitments.

ILSA provides legal technical support to organisations and presents good practices in forums and workshops. In relation to land issues, it supports the revision of land titling in the process of legalisation of land dispossessions of displaced

174 As an example, in Landazuri, Santander where land disputes have been swiftly settled through a participatory process and admittance of oral evidence. World Bank, Colombia: Land Policy in Transition, Nov. 19, 2003, p. 31. Available on: fhttp://lnweb18.worldbank.org/LAC/LAC.nsf/ECADocbynid/237812047F6C90A985256FA500724FDF?Opendocument

175 Hernandez Sabogal. M. Interview with the author.

176 www.igac.gov.co: The Public Instruments Registry is updating the databases released by cadastre but not more than 10 percent is unified. Although data are permanently sent for registration, they are understaffed and the updating process is not very conscientious. With this project, it will be able to identify lots in terms of coordinates, eliminating the literal description of the boundaries in public deeds; this will guarantee to the staff of the registry that the graphic information will be seen in the computer display before the documents are produced, to verify the physical aspect of the lots.

177 ILSA is an NGO providing alternative legal services and assistance. It handles conciliation procedures and advises families, social organisations and specifically organisations of displaced persons on how to protect their rights.

populations. Other areas of work include awareness-raising activities on collective rights through national meetings of legal clinics, which also provide information to law school students.[178] In 2003, the web site of the National Network of Law and Displacement was launched to present cases, decrees and jurisprudence on collective rights.[179]

Legal clinics and conciliation centres

There are no other legal assistance centres dedicated specifically to land rights issues at national level. However, university legal clinics may assist in cases such as conciliation on boundary disputes or possession of lots worth less than 15 times the minimum wage (which in 2004 represented $2,150) or the separation of persons or goods of minimal value (below this amount). These clinics also provide guidance in the preparation of petitions, protective actions, class or group actions, performance actions and issues that can be solved by conciliation. Law students participate in these clinics under supervision and guidance of their teachers. The Popular Legal Clinic is the only non-academic clinic. There are also conciliation centres, such as those of Banco Popular or the Chamber of Commerce.

The Colombian Commission of Jurists assists displaced populations. It conducts research and provides legal aid to victims of human rights violations, both before national courts and the Inter-American Human Rights Court. It also reviews and monitors the conformity of domestic legislation with international human rights law.

Justices of peace

Article 247 of the Constitution of 1991 establishes that "the law may create judges in charge of settling in equity both individual and community conflicts. It may also order that these judges be elected by popular vote". Eight years later, Law 497 of 1999 was issued to create justices of peace and to regulate their organisation and functioning, establishing that the municipal council will call elections for such judges.[180]

Justices of peace have the competence to handle disputes between individuals and the community, submitted voluntarily and by mutual agreement. They can hear cases where the value concerned is not in excess of 100 times the minimum wage. In relation to property, they can hear issues related to restitution of leased properties and evictions. Their decisions are passed in equity and not in law, so they are not always considered binding because if the parties do not respect the agreement, they will have to resort to ordinary justice to settle the matter. To a certain extent justices of peace fulfil functions similar to those of conciliation centres.

In 2001 Bogotá joined other cities and municipalities in installing justices of the peace.[181] While the law has been in force since 1999, only five municipalities have so far implemented this system.[182]

Accessibility to the judicial system by the poor

Legal clinics have the obligation to provide free advice to low-income people in criminal and civil law cases, such as separation of persons and property, conciliation, rent, labour dues and transactions in general. They represent clients in criminal trials and in conciliation hearings for the separation of persons and property (patrimony). Under Law 583 of 2000, legal clinics are however not authorised to represent people in agricultural trials, divorces, or succession trials.

The public defender (*Defensoría del Pueblo*) provides advice and legal assistance in criminal and civil issues, if the client

178 In July 2003, the 3rd National Meeting of Legal Consulting Groups was held to address the issue of displacement. Participants agreed to provide special assistance to displaced households. As a result, several universities will soon open their offices and sign agreements with UNHCR and with the State Attorney General to assist displaced persons. There is still the need to set up a baseline for these projects as well as indicators that may later help determine their actual effectiveness in the protection of rights

179 Set up by the National Displaced Persons Council, the National Indigenous Council, Afrodes, Fundech, the National Displaced Persons Board, ANUC, etc.

180 Art. 11 of the Constitution.

181 Quiñones Paula, District Administrative Department of Community Action –DAACD, Bogotá. Internal evaluation document of the process of election, November 2003. The main achievement of this experience in Bogotá was the large numbers of people who applied for a voluntary, unpaid job, which reveals their high commitment to their communities. For most citizens however the electoral circumscription is an unfamiliar concept and the process of selection of candidates also was new; as a result, the persons selected are not always recognised as true representatives. The background of justices of peace and reconsideration judges is very diverse and they did not receive sufficiently broad training in legal and conflict settlement issues; it has become evident that people should receive training for future elections and the steps should be revised. If the initiative works, it will relieve the judiciary system from many judicial processes.

182 Bogotá, Medellín, Cali, Cartagena and Barranquilla.

can prove extreme poverty; otherwise, the mechanisms of access to the judiciary system are very restricted for the poor, because they imply hiring a lawyer. To protect their rights, organisations of displaced persons must protect their own rights, relying for assistance on legal clinics, organisations of jurists or human rights NGOs. The assistance provided to this population is scattered, as there are no formal channels to handle these issues or to solve their concerns. [183]

4 National Development Plan

The NDP and policy formulation

The NDP of each government and its corresponding budget are approved by congress and then become law. [184]

NDP 2002-2006 (Law 812 of 2003)

In Colombia policies are laid down in laws. The current NDP is contained in Law 812 of 2003 and its main theme is "Towards a Community State". As each four-year NDP includes land and housing policies, these parts of the current 2002-2006 NDP are discussed in the next section.

5 National Land and Housing Policies

Land and housing problems in Colombia are only partially understood and their root causes are not acknowledged. Land and housing policies are weakened by the fact that they are associated with the president's term of office, becoming short-term plans and programmes, mostly unrelated to local initiatives. The ineffectiveness of the agricultural reform policy at national level is associated with tenure conflict. [185] The ineffectiveness of housing policies leads to growing social exclusion and deterioration in the quality of life of Colombia's poor urban population.

5.1 Agrarian and land policies

Using a multifunctional and multisectoral approach, the NDP 2002-2006 (Law 812, Articles 24 and 25) tries to go beyond the agricultural production dimension and proposes a land policy as a process of rural development: efficient use of land, multiple forms and new possibilities of land access, and implementation of productive projects via subsidies and loans. These new forms of tenure and ways to implement them are being studied by INCODER. [186]

Law 160 of 1994 created subsidies for the acquisition of land for farmers, preferably rural women heads of household, women who are socially and economically unprotected because of violence, and elderly people who wanted to do farm work but who did not own land. The subsidy covered 70 percent of the cost of the land and was made effective once the complementary loan to negotiate the property was guaranteed. Current government policy has modified this approach with Law 812 of 2003, creating an integrated subsidy for the development of productive projects, without any preference for women, and not only in terms of acquisition of land. This subsidy covers the cost of the land and other investments such as fixed capital, lot upgrading, training, technical assistance and marketing, and is made effective provided the productive project is technically, economically and socially viable. [187] The subsidy can cover 100 percent of the cost of the land. Under Law 160 the land price was partially paid in bonds, partially in cash. This administration requires cash for complementary investments and there was no cash in 2004 because the budget was allocated according to Law 160 and not Law 812. INCODER officers sustain that appropriate adjustments will be made in 2005.

183 Information provided by ILSA.

184 There are cases, as in the administration 1998-2002, where the plan is not approved, so it is applied via the promulgation of Decree-Laws (Presidential) or policy documents approved by the National Economic and Social Planning Council (CONPES). The role of this body, consisting of the president, the ministers and the National Planning Department, is to approve state policies, national plans and programmes.

185 Ossa, E. C. (2002). It is argued that peace processes will not progress without a debate on AR and a reasonable agreement on the future of the farming sector and rural society.

186 Marilú Franco, D. Interview with the author.

187 These conditions are assessed and certified by INCODER and the subsidy is administered under operating contracts signed by the beneficiaries and INCODER, for periods not less than those defined in the productive project and in no case less than five years. Breach of contract will generate the immediate suspension of the subsidy and the loss of the patrimonial rights generated by the project.

The present NDP follows the earlier policy trends established in free trade and imports, scientific and technological development, productive and financial factors, and food security. It also proposes the reorganisation of the National Agricultural Credit System; programmes for infrastructure, basic sanitation and housing; productive alliances; establishment of cooperatives; and administration of land titling programmes.

With respect to rural housing, the NDP proposes to improve living conditions by providing access to drinking water, basic sanitation, electrification, road infrastructure and telephone services. Nevertheless, the goals for the four-year period, upgrading and providing basic sanitation to 29,000 houses and building 10, 000 new housing solutions, appear to be extremely limited when compared with rural poverty statistics provided by the Ministry of Agriculture.

The NDP states that land policies will be guided by criteria related to the efficient use of land and equitable access to production factors, in view of adjudicating 150,000 ha of land and providing financial, technological and marketing support to beneficiaries. [188]

However, a key question is whether Colombian farmers have the means or are sufficiently educated to set up productive businesses that can generate savings as suggested in this policy. How secure is the tenure of poor farmers, and would it be possible to offer tax exemptions as incentives? How simple, swift and convenient is it for landowners to sign user loan agreements with farmers? Will this be a progressive and innovative scheme, or a regressive scheme?

5.2 Housing policies

Historically, the solution to the housing problem has been centred on the provision of houses, rather than on providing better living conditions and alternative financial schemes to compete with the informal market, alternative schemes of urbanised land or innovative designs of dwelling units.

By 1950 the term "deficit" had been introduced as an indicator of the housing problem, considered a consequence of underdevelopment. At this point emphasis was put not on providing new houses, but upgrading existing ones, [189] and building a given number of units (generally for sale) to address a growing deficit relative to urban growth. [190]

The 1958-1962 NDP initially outlined the path of the future state housing policy, proposing "the establishment of a national system to funnel savings, a central body of coordination and technical assistance, incentives to the building industry, adequate housing standards and specifications and a general boost to the national social housing system".

The 1970-1974 NDP emphasised the concentration of state and private resources in the construction of housing and complementary services with the implementation of the UPAC [191] system. This economic development perspective implied the loss of social and cultural dimensions in the perception of the housing problem, which immediately reinforced the speculation on urban land. [192]

The privatisation of housing supply, the elimination of state production of housing, and demand subsidy policies have been the continued trend, with only minor variations, over the past few decades. [193] Under this approach, the house and

188 According to the Ministry of Agriculture, 40,000 ha via acquisition and 110,000 ha via extinction of ownership. Extinction of ownership can be effected when the owner acquired the property illegally, for example when the property was purchased with drug money.

189 Saldarriaga Roa, A. (2003:30-31).

190 Ibid. The rural dimension of the housing issue became evident in 1939 with the establishment of Territorial Credit Banks ("*Bancos de Crédito Territorial*") through Decree 200 of 1939 which created the Territorial Credit Institute (*Instituto de Crédito Territoria*) as an autonomous office to support these banks and coordinate their rural housing loan activities throughout the territory, acknowledging the serious sanitation problems prevalent in rural dwellings, especially in regions inhabited by smallholders. In 1942, the ICT, an institute that lasted 52 years, created its urban housing section. Its initial role was to grant loans to municipalities, workers and employees for the construction of urban dwellings, as well as to build model low-income neighbourhoods in partnership with municipalities. The work of *Banco Central Hipotecario* was aimed at funding urban houses for mid and low-income workers and employees.

191 The programme of savings in Constant Purchasing Power Units through Savings and Housing Corporations was established with the goal of channelling savings towards investments in construction.

192 Saldarriaga Roa, A. (2003:33).

193 In Colombia, the family housing subsidy is a contribution of the national government, in cash or kind, granted once to the beneficiary to complement savings and

the land on which it is built became a market asset, raising serious doubts about the constitutional right of the poorest to adequate housing.

In 1991, a shift towards privatisation of housing supply was registered with the establishment of the National Housing System and demand subsidies through Law 3 of 1991.[194] Under this system the state was responsible for coordinating the management of Social Interest Housing (SIH) through state housing institutes. Under this model, the state would intervene in the management and reform of urban land, while the market would regulate the cost of houses, as the Constitution prohibits public bodies from intervening in the housing market. The result was a recession in the private SIH market, and this, combined with a limited involvement of the state in urban management, increased the housing deficit. With Law 3 the "state was removed from where it had never been", forcing specialised private banks to use part of their funds to finance SIH, contributing to the development of the sector but increasing the cost of SIH.[195] Some 100,000 housing units of all levels were returned to corporations due to their owners' inability to pay.

After 1999, with the economic recession, the cost of land fell for the first time in Colombia. Land management instruments, such as land banks, influenced this reduction.

The situation of the poorest with respect to provision of land and housing is dramatic. Of the population targeted by SIH, i.e. households earning less than four times the minimum wage, those earning less than three times the minimum wage would hardly be able to access loans. Formal-sector groups earning between two and four times the minimum are covered by subsidies from the Family Compensation Fund; of these, only households earning more than three times the minimum are eligible for loans, as they have some financial backing. The informal sector (those earning less than twice the minimum) must be covered by the government. However, available subsidies only cover half of the demand.[196]

Simultaneously, minimum urbanisation and community service standards were implemented with the idea of enabling lower-income groups to purchase legal, developed land at lower costs, with the aim of fighting informality and increasing coverage with available resources. This policy lost credibility: besides legitimising deficient quality development and houses, and allowing a reduction in the size of lots, it had a direct effect on the economy of poor households. In Bogotá, for example, minimum regulations admit two-family dwellings in lots measuring 5 m x 11 m, with units measuring 2.5 m across. Obviously such small units do not even come close to an adequate and dignified standard of living.

Many housing regulations have been enacted under the strong influence of the Chamber of Construction (CAMACOL), which as a professional association of builders and manufacturers, has vested interests in the defence and support of its affiliates.[197]

Housing subsidy policy for lower-income households

Since 1999, the SIH policy has used a formula for direct application by households, to benefit the most vulnerable ones: those headed by women, those ranked among the poorest, and those with the greatest number of members, as well as persons who make the greatest efforts through programmed savings.

The current SIH policy, contained in Law 812 of 2003, is framed in terms of social equality. The government seeks to provide the poorest Colombians access to housing subsidies in order to turn Colombia into a country of immovable property owners.[198]

loans so as to facilitate the acquisition, building or upgrading of a house. People living in high-risk areas unsuitable for development, displaced populations, victims of terrorism or natural disasters and households with incomes of up to two minimum wages who have secured a guarantee for the financing of the house need not have prior savings (taken from www.presidencia.gov.co/sne/2004)

194 Chiappe de Villa, M. L. (1999).

195 In 1997 the costliest SIH in Latin America could be found in Colombia, valued at $48 million per unit (in the municipality of Soacha, south of Bogotá, on undeveloped land).

196 Jorge Torres. Interview with the author.

197 Alvaro Duque Ramirez, (2002).

198 As proposed by Law 812 of 2003, it is a government contribution in cash or kind granted only once to the beneficiary, to complement savings and credit, in order to

The 2002-2006 policy says:

> Adjustments to family housing subsidy programmes and supply and demand incentives for housing loans in Real Value Units, established by CONPES in September 2002 – and ratified in the NDP – also offer additional points for women heads of household and for disabled and elderly people.

The policy has however been the target of sharp criticism arguing that it fails to support the poor. Says one critic:

> Today, the aspiration of Colombians to have a decent house has been turned into an application form to receive a subsidy. It has been denaturalised and dematerialised, and the state thinks that it is only the lack of money that prevents the poor from accessing the market to buy a product.[199]

Another observer remarks:

> The truly poor have no access to housing subsidies and this is even more serious if we consider that the aim of the social policy of this administration is to reach the most underprivileged families.... Large sums (of subsidies for new housing) have been lost because families looking for houses in the projects offered by developers must secure a loan... on top of programmed savings and the subsidy, and they cannot obtain such loans from financial entities because they don't have a permanent job or because their income cannot guarantee the loan. In other words, because they are poor and no micro-credit policy has been implemented.[200]

Box 5.1 Testimony of a subsidy beneficiary

> Problems with the subsidy: "I was affiliated to the CAFAM compensation fund. I requested advice from a technical advisory entity called Prociudad, listed by the Housing Subsidies Department of CAFAM. They visited me, took photographs and made plans and handled the procedures to obtain the upgrading subsidy. I had to pay 50,000 (US$ 21.60) for this technical survey, and I incurred a lot of expenses in paperwork, transportation and time off work. They told me that I could get the subsidy even without the deed, but at the end this wasn't true. CAFAM asked for the deed and they told me that without it I could not get the subsidy. When I went to Prociudad to ask for my money back because I felt cheated, they told me that they couldn't give it to me because they had already made the visit. CAFAM told me that Prociudad was no longer included in their list of technical advisors.
>
> Now I am registered at another compensation fund. They have called me several times to offer me the subsidy but I always answer that I still haven't got the deed. For this reason my house is still precarious: it has no floor, no ceiling, it has many leaks, the bathroom has no permanent connections, and the fence is made with tin planks."[6]

facilitate the purchase of a new house, or the construction or upgrading of a house. See http://www.presidencia.gov.co/sne for more details.

199 Florián Borbón, Alejandro (2003).

200 Alvaro Duque Ramirez, (2002).

Adjustments to the SIH subsidy policy - 2004 [201]

Initially subsidies had targeted families earning one to two times the minimum salary for a house worth up to 25 million pesos ($9,435). In February 2004, to increase the number of beneficiary families to 15,830, the government cut the amount of individual subsidies for the purchase of SIH to a range between 700,000 pesos (U$265) and 3.2 million pesos (about $1,200). Those interested in obtaining a loan may qualify for subsidies ranging from 358,000-7,518,000 pesos ($135-$2,825). [202]

Applicants must have at least 10 percent of the house price deposited in a programmed savings account. Exceptions are households earning no more than two times the minimum salary, provided they have secured the full financing of their house, and displaced households that are part of resettlement programmes. Households that meet all these requirements are pre-selected. Once the application is approved and the families have received the loan, the subsidy is granted. According to the Ministry of Environment, Housing and Spatial Development (MAVDT), this measure prevents the subsidy from freezing while the beneficiary finds credit, or loss of the subsidy if the applicant is not able to get the loan.

The question is whether this measure really favours poor people and whether informal workers are able to obtain loans. Compensation funds, employee funds, cooperatives and NGOs that are expected to receive funds from the state, with the endorsement of the National Guarantee Fund, are generally those that extend loans to formal workers.

Reality has proven that repeated decrees and the reduction of the amount of individual subsidies have only increased the crisis in the provision of social housing.

Table 5.1 Subsidies according to type of housing

Type of Housing	Price in Minimum Legal Monthly Wages (MLMW)	Former subsidy in numbers of MLMW	Modified subsidy	
			In numbers of MLMW	In thousand COL pesos
1	Up to 50	23	21	8,022 ($3,015)
2	Up to 70	16	14	5,348 ($2,010)
3	Up to 100	16	7	2,674 ($1,005)
4	Up to 135	10	1	381.5 ($143)

Source: MAVDT

5.3 Policies on women's rights to land and housing

Previous governments have ignored international agreements to improve the conditions of women. A compromise agreed upon to move towards ratification of CEDAW has also been ignored. [203]

The current administration has developed a new policy – "Women Builders of Peace and Development". It is expressed in the 2002-2006 NDP and coordinated by the Presidential Advisory Office for Women's Equity. Policies specific to women are listed in Art. 8, paragraph 10c of Law 812 of 2003. [204] These include the following:

- Preference will be given to low-income women and in particular to women heads of household in the provision of health, education, housing, recreation, and employment;
- Promotion of direct and autonomous participation of women's organisations in different national and local

201 *El Tiempo*, February 19 2004.

202 In April 2004 the exchange rate was US$1 = Colombian 2,660 pesos. However, the exchange rate is subject to frequent changes.

203 Op cit, CODACOP, GAP, AVANZAR, REPEM-Colombia, page 12.

204 Presidential Council for Women's Equality, "*Women Builders of Peace and Development, A National Policy towards Peace, Equity and Equality of Opportunities*," November 2003, pp. 73 and 74.

dialogues and political negotiation processes related to social and armed conflicts;

- Creation of a national information system to collect experiences of organisations working on women's issues at local and regional level;
- Promotion of gender equity and equal opportunity, proposing policies for women, reaching agreements with ministries and other public entities to "mainstream" gender programmes, projects and budgets;
- Promotion of measures to prevent and eradicate human rights violations against women by the state as well as by the insurgent movements; and
- Assistance to needy women, particularly to heads of household, giving priority to housing and jobs; development of job creation strategies for unemployed men and women over 50 years old, fit to take up jobs in rural and urban areas.

The section on rural women recognises that they have less access to property, to loans and to technical assistance, and are more affected by the consequences of the armed conflict, by household violence, displacement and increased poverty. The majority (39 percent) of rural women work alone. This reveals that women look after their smallholdings, while men have paid jobs in the agricultural sector. [205]

It should be noted that the consequences of the legislation concerning rural women are becoming evident, although at a slower pace than expected. Accordingly, INCODER is providing training to its staff so that the gender approach contemplated in the current legislation is applied in all its projects. [206]

5.4 Urban and land planning policies

The "Cities and Citizenship" urban policy (corresponding to the 1994-1998 NDP) was the first to visualise urban centres from an integrated perspective (social, environmental, economic, political and cultural) and included land, housing, transportation, public space, infrastructure and public services.

Although the municipal decentralisation process in Colombia is almost 30 years old, and municipalities have been collecting land taxes for over 50 years, it took some time for certain land management instruments contained in the Urban Reform Law (Law 9/89) to become operational. Law 9 of 1989 sets norms for municipal development plans (required for municipalities with more than 100,000 inhabitants); the purchase, sale and expropriation of immovable property; legalisation of social interest housing titles; building standards; and the creation of land banks and financial instruments for urban reform. Broadened by the Land Development Law (Law 388/97) and its regulations, which bring these instruments up to date and in line with the 1991 Constitution, the legislation that covers urban and rural land, and facilitates land planning and management, is extensive.

Land use planning in Colombia has been the result of a step-by-step process of legislation, addressed from three perspectives: political-administrative organisation of the territory (1991 Constitution, Law 128 of 1994); distribution of competences and resources (Law 715 of 2001 and other sectoral laws); and land use planning (Law 388 of 1997). The latter required municipalities to develop Land Use Management Plans (POT), which included the establishment of SIH areas. [207]

Responsibility over the control of legal and informal developments was transferred to the municipalities only in 1991. Today mayors are in charge of supervision and administrative control of the urban and rural land in their municipalities or localities. [208] The instruments to control informal

205 Campillo, Fabiola, cited by Diaz , Dora Isabel "Gender and Rural Development: an unequal relation". *Desarrollo Rural en América*, Bogotá, 1995

206 Vidal, P. Interview with the author.

207 Land Use Management Plans (POT) are required for municipalities with a population of more than 100,000 inhabitants; Basic Spatial Management Plans (PBOT) for municipalities with 30,000 to 100,000 inhabitants and Spatial Management Schemes (EOT) for municipalities with a maximum population of 30,000. The allocation of SIH subsidies at national level and the presentation of projects to the National Royalties Fund are conditioned to the municipality having an approved Spatial Management Plan.

208 0rtega Juan Carlos. Interview with the author, January 22, 2004. The Undersecretary's Office, created in 1997, only carries out monitoring and administrative control on sales. It does not handle administrative justice. Bogotá created the Network of Prevention of Informal Developments via Decree 328 of 2003, an inter-institutional group working with this end in mind.

developments are specified in Law 388 (Art. 20) and in the corresponding police codes of each municipality, but the problem faced by mayors is that the offences are impossible to categorise under the existing legal categories.

5.5 Policies on displaced people

Policy addressing displaced people is laid down in Law 387 and its regulatory Decree 2007 of 2001. However, there is a high degree of dissatisfaction with the institutional inability to protect the displaced population. There is a gap between public policy goals and the means used to make them effective due to a lack of updated designs and regulations, and a corresponding lack of implementation and project assessment.

The budget covering displaced people is insufficient, although under Law 387, the National Council for the Integral Assistance of Population Displaced by Violence is responsible for guaranteeing the necessary funds for education, health, food and shelter. Regulatory Decree 2569 only refers to the appropriation of resources in proportion to their availability. The Constitutional Court recommends rigorous application of the law and positive discrimination on behalf of displaced people within budget policies, bridging the gap between public policy goals and means.[209] The court says that the state is required to implement non-discriminatory public policies.

Municipal or departmental authorities have the discretion to assign subsidies from their own resources as well as to facilitate access to land via user loans to displaced households or communities, as was done in the department of Sucre.

6 National Legislation

Laws, whether originating in congress, the courts, the government or the people, must first be submitted to constitutional scrutiny. Once enacted, the executive must do everything within its power to enforce them. When laws are not enforced and the rights of private citizens are violated, citizens usually resort to the courts to seek the protection of their fundamental rights (see Section 3.6.1 below on Mechanisms of Intervention of Individuals). If the violation continues and influences public policy issues that affect the rights of individuals, the Constitutional Court may intervene.[210] Customs as a source of law are applicable, provided they are of general scope, are consistent with collective or social morals and there is no written legislation. The Constitutional Court has ruled that customs, created *by* the people, receive their binding force *from* the people.[211]

6.1 The Constitution of 1991

Non-discrimination and equal rights

Article 5 recognises the rights of each person without discrimination and protects the family as the basis of society.

Article 13 recognises all persons as free and equal before the law, without discrimination on basis of their race, sex or origin. The state must protect the most vulnerable persons.

Right to property: primacy of collective over particular interests

One of the fundamental principles of the Constitution is respect for private property, with the public interest prevailing over particular interests. According to Art. 58

> Private property and other rights granted under civil laws are guaranteed, and they may not be ignored or violated by subsequent laws. When, due to the application of a law enacted for reasons of public use or social interest, the rights of individuals are in conflict with the need acknowledged by the law, the private interest must yield to the public or social interest.

Collective interests benefit a non-determined number of persons, sometimes negatively affecting personal interests. Individuals may have the right to be indemnified.[212] Article

209 In Ruling T-25 of 22 January 2004, the court argues that if 1,150 families are claiming the same rights at the same time it is because there is a public policy problem.

210 This is the case of displaced persons. Due to continued violations of the law and injunction orders, the Constitutional Court intervened (Ruling T-25 of 2004) to instruct the executive to implement measures required to protect constitutional rights covered in the legislation on displaced persons.

211 Ruling C-224, May 5, 1994.

212 Ownership is a social function that implies obligations. As such, it has an inherent ecological role. The state will protect and promote associative and joint ownership forms. Social interests and equity reasons are not defined by the Constitution. For reasons of public utility or social interest, as defined by other legislation, there may be expropriations via a court sentence with prior compensation, which will be fixed taking into account the

5 recognises the primacy of inalienable rights of individuals, without any discrimination, and protects households as the basic institution of society.

Territories, land, environment

Article 1 enshrines the autonomy of territorial entities and Art. 2 states that one of the essential goals of the state is to preserve territorial integrity.

According to Art. 286 territorial entities include departments, districts, municipalities and indigenous territories, while regions and provinces can become a territorial entity if so decided by a law. Article 288 stipulates that the LOOT will establish the distribution of competences between the nation and territorial entities, and Art. 289 allows departments and municipalities located in border areas to execute cooperation and integration programmes with similar territorial agencies of neighbouring countries aimed at fostering community development, providing public services and preserving the environment.

Article 79 enshrines the right to a healthy environment. Article 80 charges the state with the planning, management and use of natural resources, and of cooperating with other nations in the protection of ecosystems located in border areas. Article 82 charges the state with ensuring the protection of the integrity of public spaces, sharing with public entities the capital gain generated from urban management activities.

Housing, land and property rights

Right to housing

Chapter 2, Title II Art. 51 stipulates that

> All Colombians have the right to decent housing. The State will establish the conditions required to realise this right and will promote social housing plans, adequate long-term financing systems and associative ways to execute these housing programmes.

There is also Art. 58, as mentioned above, which recognises the right to private property, but has a social function too. In case of war, Art. 59 allows temporary expropriation without compensation. Article 60 obliges the state to promote access to property, and Art. 64 requires the state to promote progressive access to land ownership by farm workers, either individually or in associations. The right of ownership generated by inheritance and marriage is not enshrined in the Constitution; one must refer to the civil code.

Territories of indigenous and Afro-Colombian groups

Although protective regulations for indigenous groups and communities existed before 1991, one of the main goals of the constituent process of that year was to mould into the constitutional text a series of initiatives resulting in a new body of laws for the indigenous population. As a result, Art. 70 establishes state recognition of the equality and dignity of all cultures in the country. Article 63 stipulates that public assets, natural parks, community land of ethnic groups, land reserves, the archaeological heritage of the nation and other property determined by the law are inalienable, cannot be acquired through occupation, cannot be used to guarantee debts and cannot be put up for sale.

Territorial organisation

Article 286 explains that indigenous territories are territorial entities but fails to mention that the territories of Afro-descendants can become territorial entities as well. The Constitution stipulates that indigenous territorial entities must be established following the provisions set forth in the Organic Land Management Law, and that the government will be in charge of its delimitation, with the participation of representatives from indigenous communities, and "with the prior opinion of the Land Management Commission". This law has never been approved.

Participation and forms of democratic participation

The Constitution broadly regulates this issue and establishes the means for democratic participation (see Appendix I).

interests of the community and the affected party. In cases determined by the legislator, such expropriations may be executed by administrative means, subject to subsequent administrative disputes actions, even concerning the price. All in all, legislators, for equity reasons, may determine cases where no compensation is payable, via the affirmative vote of the absolute majority of the members of both Chambers. Equity reasons, as well as public utility and social interest motives, invoked by the legislator, may not be judicially challenged.

The preamble states that participation is part of the legal framework that governs the nation.

Women's participation

The Constitutional Reform of 1936 granted women the right to fill public positions and the Constitutional Reform of 1945 granted them the rights of citizens. Efforts to achieve equal participation by women in the public and private sectors, at the decision-making level within public entities, and in terms of rural policy-making, have been regulated by successive laws. [213]

Indigenous communities and participation

The consultation right of indigenous communities is not absolute. Although the Constitution provides that their participation in affairs related to the exploitation of natural resources within indigenous territories must be facilitated, by no means it is to be understood that one must necessarily reach an agreement as a *sine qua non* to submit a bill of law. As a general principle, the government must facilitate effective and reasonable participation in affairs affecting indigenous communities. Nevertheless, if an agreement is not reached through this means, there is no reason to halt the legislation process in matters that are also of general interest, as in the case of mining issues. [214]

Mechanisms for individuals to exercise their rights

The Constitution lays down several mechanisms to ensure the exercise and respect of the rights of citizens, including the right of petition before public authorities to have a particular problem solved. Additional mechanisms include:

- Protection actions for injunctive relief for the protection of a fundamental constitutional right when this right has been injured or threatened by the action or omission of a public authority or private person(s). The claim can be made at any time through summary court proceedings. The judge has a maximum of 10 days to decide on the claim. The decision is binding; lack of its enforcement by the responsible public official constitutes a criminal offence. [215]
- Popular actions for the protection of collective rights and interests; [216]
- Class actions in case of damages to several persons; [217] and
- Enforcement actions to have the law or administrative acts enforced. [218]

These are strong and effective means of protection of citizens' rights. These mechanisms are used (see below under Jurisprudence), but they are also abused.

In the Colombian political context of immediateness, of permanent "initiatives" and changes in legislation, the recognition, promotion and protection of fundamental rights is complex. For example, a bill to amend the Constitution concerning the administration of justice is under study. [219] The Constitutional Court has stated that

> the proposed amendment, far from strengthening the administration of justice to make it more efficient and accessible to citizens, contains several mechanisms to weaken it, to prevent it from effectively protecting constitutional rights, and is detrimental to the system of separation of powers, typical of a Social and Democratic State of Law.

The bill includes mechanisms for the executive branch to influence the operation of the judiciary, and it amends the mechanism of protection actions, making it ineffective as a mechanism to protect fundamental rights, and diminishing legal security.

213 Laws 581 of 2000, 731 of 2002 and 823 of 2003 respectively.

214 The right to consultation of the indigenous community was developed by Judgement C-891 of 2002 of the Constitutional Court. Its scope is that indigenous participation must be real and effective in relation to the affairs affecting communities, particularly concerning the exploitation of natural resources within their territories; that mechanisms of participation cannot be limited to accomplishing a merely informative function and that such mechanisms, particularly the right to prior consultation, must be used in good faith, in a way appropriate to the circumstances and in an attempt to reach an agreement or obtaining consent from indigenous communities on the proposed legislative measures.

215 Art. 23 of the Constitution and Articles 5 to 32 of the Administrative Disputes Code.

216 Art. 86 of the Constitution.

217 Art. 8 of the Constitution and Law 9 of 1989.

218 Articles 87 and 88(2) of the Constitution.

Respectively, Art. 23 of the Constitution and Articles 5-32 of the Administrative Disputes Code; Art. 86 of the Constitution; Art. 88 of the Constitution; Art. 8 and Law 9 of 1989; Articles 88(2) and 87 of the Constitution

219 Press release, February 26, 2004

6.2 Rural land laws

Law 160 of 1994

Law 160 of 1994 created the National Land Reform System, which includes the land redistribution programme. [220] Under this law, entities in charge of agricultural reform must provide support to rural women heads of household in the execution of all existing subsystems, such as **acquisition and allocation of land; organisation and training of rural and indigenous populations; basic social services; physical infrastructure; rural housing; land improvement; social security; research; technical assistance; financing; and delivery of subsidies.**

Aimed at the redistribution of land to balance structural inequalities and to address the widespread underutilisation of land, the law provided subsidies amounting to 70 percent of the price of a piece of land, assuming that the remaining 30 percent would be financed with loans or family savings. As mentioned above, this latter aspect was subsequently modified. The scope of this initiative has been minimal, and the method of allocation led to low or zero community participation and centralised implementation. [221]

Law 160 describes the procedure for valuation, as required for land reform purposes, and regulates agricultural reform through the following sub-programmes and others mentioned above, such as rural subsidies and the national land reform system.

Land acquisition and allocation

This is negotiated directly with the intermediation of INCODER. If an agreement is not reached, INCODER will analyse the need to expropriate the property on the basis of Law 160. In some cases, land purchased directly by the institute will be used for the establishment of Family Agricultural Units (UAF), [222] community-based businesses or other associative production units – or for the establishment or upgrading of indigenous reserves. This programme is still in effect.

Clarification of property and recovery and titling of vacant land

An investigation is undertaken to establish if the property is privately owned or if it is a vacant lot owned by the state. If it is private and possession has not been exercised for more than three consecutive years, or when rules of conservation of renewable natural resources are violated, or if the parcel is used to grow illegal crops, the property will be expropriated. The expropriated land, if suitable for economic exploitation, will then be listed as vacant state property. It will be titled to farmers in UAF provided they can prove that they have been productively exploiting the land for more than five years. This process can be reverted if it is proven that the property is used for illegal or unauthorised purposes. The allocation is made jointly to the spouses or stable partners, and cannot be made to persons having another property in the country or to persons having a capital exceeding 1,000 times the minimum wage. [223] The names of either spouses or stable partners must be inscribed in the public instruments register. INCODER is responsible for control over the titling process.

In case of illegal occupation of vacant land or land that cannot be allocated, the institute will order its restitution. If the occupant is a possessor in good faith, the improvements made to the land by the occupant will be subject to negotiation or expropriation.

Settlements, farm reserve and business development areas

Suitable land for farming that is located in settlement areas and in areas with a high prevalence of empty parcels will be titled as farm reserve areas. In vacant areas defined as busi-

220 The majority of the provisions of Law 60 are still in effect, except for Articles 5, 14 and 15.

221 World Bank. (2003).

222 Family Agricultural Units: basic agricultural, cattle raising, aquaculture or forestry production units, whose extension, according to the agro-ecological conditions of the area and adequate technology, allows a family to earn income from their labour and to have a surplus value to help in the development of their assets.

223 Art. 70 of Law 160.

ness development areas, occupation and access to ownership is obtained through capital investments. [224]

Rural Investment Co-financing Fund

This fund was created to support all rural investment and co-financing processes in view of co-financing the execution of investment programmes and projects in rural areas, especially of rural economies, smallholdings, settlements and indigenous communities. [225] This project, managed by INCODER, has been cut back for lack of funds.

Cooperatives of agricultural reform beneficiaries

The law encourages the establishment of these cooperatives, consisting of persons who have been allocated land. Their main goal is the marketing of farm produce. [226] However, very few well-established cooperatives are operating nowadays. They face major obstacles, such as difficulty transporting produce to market and poor training, which has rendered most highly fragile or not economically viable.

Law on Rural Women, Law 731 of 2002

- Law 731 of 2002 aims to improve the quality of life of rural **women and accelerate equality between rural men and women.** It instructs entities that provide rural housing subsidies to give priority to rural women heads of household. It also contains provisions on **social security, and education and training. The law stipulates the participation of rural women, including indigenous women and Afro-Colombian women, in a wide range of national, municipal and local councils and other decision-making bodies.** [227]

In terms of land redistribution the law regu**lates:**

- **Titling of agricultural reform parcels in the name of a woman abandoned by her spouse or partner, or recognition of rights on a parcel already titled;**
- **Titling of agricultural reform parcels to community enterprises or associations of rural women, and preferential access to land for women heads of household or women in an unprotected situation; and**
- **Participation of rural women in procedures on allocation of parcels in order to ensure transparent and equitable procedures.** [228]
- **Finally, Law 731 provides for family housing subsidies that give priority to rural women heads of household; equal pay for equal work in the rural sector; and evaluation of plans and dissemination of laws that favour rural women, including development of statistics on their condition.**

Land laws for ethnic groups

Indigenous Reserves

Decree 2164 of 1995 was promulgated to establish and regulate indigenous reserves. It defines what constitutes their adequate settlement and development. It also creates, extends or restructures land reserves and clears those occupied by persons not belonging to the ethnic group. Persons of another ethnic group are given parcels in a different location, or they are given title to a vacant lot, while the parcel they previously occupied is returned to the indigenous group.

Collective territories of Afro-Colombian communities

As mentioned earlier, these collective territories are governed by Law 70 of 1993 and by regulatory decrees 1745 of 1995 and 1320 of 1998. The purpose of Law 70 is to establish mechanisms for the protection of the cultural identity and the rights of Afro-Colombian communities [229] and the enhance-

224 The Ministry of Agriculture and the Ministry of Environment must adopt policies to preserve the balance between the environment and the increase in agricultural production, under rationality and effectiveness criteria.

225 Projects must be submitted by the relevant territorial entities related to issues such as technical assistance, marketing, including post-harvest, projects of irrigation, rehabilitation and conservation of basins and micro-basins, flood control, aquaculture, fishing, electrification, canals, rural housing subsidies, environmental sanitation, and rural roads, included in an integrated rural development project.

226 It includes obtaining production credits, provision of technical assistance and farm machinery services, provision of seeds and inputs and other services required to increase production and improve productivity in the rural sector.

227 While Law 581 on Quotas of 2000 applies to public posts and the high courts, it does not apply to all citizens' bodies. Some of such bodies have specific regulations on women's participation, while others do not. Even if quotas exist, they are not always enforced.

228 Regulatory Decree 2998 of 2003 enables the spouse or partner of a person who abandons a Family Agricultural Unit to continue working on it and to transfer rights in his/her favour. It empowers women to participate in all vacant lot adjudication processes.

229 Law 70 defines black communities as "a set of families of Afro-Colombian descent, having their own culture, sharing a history and with their own traditions and customs within the rural-urban relationship, that reveal and preserve identity awareness, distinguishing them from other ethnic groups".

ment of their social and economic development.[230] The objective is to recognise Afro-Colombian communities that have been occupying vacant rural land along the riverbanks of the Pacific Basin rivers, in accordance with their traditional farming practices and collective property rights. These areas are declared to be inalienable and are not subject to seizure or prescription. In order to be granted collective property, each community must establish a community council to oversee the land, conservation issues, protection of collective rights and culture, and so on. These councils also act as friendly arbitrators in internal conflicts subject to conciliation.[231]

As far as non-renewable natural resources are concerned, the Ministry of Mines and Energy and the community inhabiting the area are in charge of identifying those areas requiring special protection from exploitation. The resident community sets priorities in granting of exploitation permits.

Law 70 establishes a review commission for the formulation of a development plan for black communities. Participation of black communities is guaranteed in land planning councils, having jurisdiction wherever collective property exists. Additionally, the National Development Plan establishes the designation of funds, in consensus with Afro-Colombian communities, for the drafting of a broad long-term development plan.[232]

6.3 Urban land and housing laws

The first regulation to control housing development and construction is contained in Law 66 of 1968. As mentioned earlier, Law 9 of 1989 (Urban Reform Law) regulates municipal development plans, purchase and sales contracts and expropriation of property by the state. To this end it establishes the SIH system and the land management instruments.

SIH system

Law 3 of 1991 created the national SIH system and the family housing subsidy, while Decree 2620 further regulated it. This law was formulated through a participatory process between civil society and several housing organisations. It established the procedures for the enforcement of the instruments of Law 9 and created INURBE, an institute which, until its liquidation last year, was in charge of allocating subsidies at national level, and which included two housing representatives in its board of directors.

Law 3 also determines the establishment of housing funds by municipalities, special districts, metropolitan areas and the Archipelago of San Andrés and Providencia, with the goal of developing social housing policies in urban and rural areas. The duties of a housing fund include:

- Coordinating housing policies with other entities;
- Developing programmes for the construction, acquisition, improvement, relocation, rehabilitation or regularisation of social interest housing, directly or in partnership with authorised entities;
- Purchasing land for development of social housing, legalising titles in de facto or informal settlements, and relocating human settlements;
- Promoting the development of grassroots housing organisations; and
- Extending loans to finance social housing programmes.

After successive regulatory decrees and adjustments, Law 3 has gradually lost effectiveness. Instruments defined under Urban Reform Law of 1989 have just recently become effective with the enforcement of Law 388 of 1997 on Spatial Development, which will be described below in the Good Practices section.

Women and housing

Under Law 82 of 1993, the government must create special incentives for the private sector to promote and develop housing and loan programmes, including those specifically targeting women heads of household. Law 160 contained an

230 Art. 1, Law 70 of 1993. According to paragraph 1 of transitory Art. 55 of the Constitution, this law will also apply in vacant areas and riverbanks that have been occupied by Afro-Colombian communities having traditional production practices in other regions within the country, that comply with the requirements established in Law 70.

231 The titling procedure is described in regulatory Decree 1745 of 1995.

232 Art. 8(c) paragraph 2 of the National Development Plan.

obligation to prioritise rural women heads of household in the allocation of subsidies and projects. Law 812 establishes that all programmes must include a gender perspective. Law 861 of 2003 describes a single piece of property owned by a woman head of household as a family asset that cannot be attached, and issues provisions aimed at protecting female-headed households. [233]

Land use management planning [234]

Law 388 on Territorial Development of 1997 is a national planning law. It broadens the constitutional principle of property to include social and ecological functions, and puts forward a new vision of the public function of urban planning at a municipal level, prioritising collective over private interests and allowing for direct state intervention.

Its basic objectives are:

- Harmonisation of existing legislation;
- Efficient organisation of municipal territory;
- Rationalisation of land use, preservation of ecological and cultural heritage, disaster prevention, and efficiency in urban interventions;
- Optimisation of public investment in infrastructure;
- Unification of land use management actions developed by national, regional and local institutions; and
- Promotion of integral urban interventions and projects by facilitating investments by public institutions of national and local levels.

Law 388 includes environmental, land use and development components. Various urban development, legal and financial instruments enable the securing of resources to execute plans. [235] The planning tools that allow for land use decision-making are listed below:

- POT guides and administers the physical planning of the territory during a minimum period of three administrations (nine years). It explicitly defines development standards related to the type of land, and type and degree of use. It establishes protected areas due to risks, environmental preservation and public services;
- The Partial Plan is a mid-scale planning tool that complements and develops the provisions of POT. It seeks to ensure organised development and balanced distribution of space, charges (such as land taxes) and benefits (such as regulations and public investment in infrastructure); and
- The Urbanistic Unit is an area included in the POT and Partial Plan, consisting of one or several plots that will be developed or built through a project of public, private or combined intervention, on urban or expansion land. Properties included in these units will have legal restrictions to the right of ownership. Investment is recovered through valuation, capital gain, land tax, etc.

In their efforts to ensure that the social function of land is upheld, municipalities may also expropriate property and use it in the public interest. Funding obtained from urban development must be channelled to subsidise the provision of water and sanitation to the poorest, and to the upgrading of *barrios* and social housing construction. Areas for the construction of social housing must be delimited. Regularisation processes for *barrios* must be strengthened. Environmental dimensions must be incorporated in the POT. The law further requires the different entities within each municipality to coordinate their activities and to ensure the participation of citizens in the decision-making process.

The law does not include specific provisions on gender equality or women's participation in the land use planning process.

6.4 Relevant jurisprudence

While the first generation of human rights (civil and political rights) are directly applicable, the second-generation rights

233 Law 861 defines woman head of household as the "single or married woman who is socially or economically and permanently in charge of her own or other minor children or of persons who are disabled or unable to work, either due to permanent absence or to physical, sensorial or moral incapacity of the spouse or stable partner or to substantial lack of help from other members of the family nucleus". The Constitutional Court however stated that rather than just women-headed households, in the interest of the children, the provision of this law should apply to single-headed households in general.

234 Several aspects described in this section were taken from the document ESAP, et al (2004).

235 IGAC (2003).

(economic, social and cultural) are achieved progressively.[236] In general, second-generation rights cannot be enforced by way of an injunction. A different situation arises when legal and material conditions come together, allowing individuals to begin enjoying a right within this category. "In this case, the materialised constitutional right gains direct regulatory force, and the necessary constitutional protection must be extended to its essential content".[237] Regarding collective rights, the court states that these are not subject to protection by injunctive relief, but instead must be claimed under popular actions.[238]

No specific jurisprudence exists relevant to women's access to land or housing. The following Constitutional Court rulings include cases affecting the vulnerable population – the poor, women, indigenous groups and displaced persons.

Rulings concerning the right to decent housing

The constitutional right to decent housing imposes on the state the responsibility of providing the necessary conditions to guarantee decent housing to all Colombians and to promote social housing projects, adequate long-term financing systems and associative forms of development of these projects. This does not mean that the state is obliged to provide a dwelling to each and every individual in the country who needs a house, but its obligation is to set the conditions – like the development of legal instruments – and to promote housing projects within the capacities of its welfare structure, taking into account the socioeconomic circumstances of the country and the budget appropriations earmarked for this purpose. According to the Constitutional Court:

This social right does not grant individuals a subjective right to demand its immediate and direct fulfilment by the State, for it requires the fulfilment of legal and material conditions to make it feasible. This way, once the conditions are given, the right becomes binding and will enjoy constitutional protection through the actions established for such purpose (Judgement T-495 of 1995).

Judgement T-308 of 1993 points out that

> the right to decent housing does not grant individuals the subjective right to demand a certain service directly from the State. Anyway, in the cases where the right to decent housing is found to have a direct connection with fundamental rights, like human dignity or equality, it will acquire the status of fundamental and may be subject to constitutional protection.

The following cases related to resettlement on the basis of the right to life, the right to decent housing and the right to a healthy environment, were also adjudged by the Constitutional Court.

Judgement T-617 of 1995

The case was submitted by families of the COMUNEROS group, who had occupied land along the railroad track in the Puente Aranda sector in Bogotá, and who lived off collecting and recovering paper, junk, plastic and other recyclable materials. The municipal administration ordered their eviction. The group filed a protection action, demanding the suspension of the eviction order and the adoption of an integral programme of assistance to the petitioners and their families so that they may leave an invaded area as soon as possible.

In its decision, the court defended their rights, "as there is a coexistence of the right to decent housing, good faith, equality and the right of children to protection and family unity". It ordered the suspension of the eviction order and set a deadline for the district to take all necessary actions for the resettlement of those who claimed protection action.

The court also ruled that "whenever a local authority wishes to recover public spaces occupied by citizens, it will have to design and execute an adequate and reasonable resettlement plan for the occupants, so as to reconcile general and particular interests".

Judgement T-269 of 1996

This case concerns families who lived in houses adjudicated by government housing entity INSCREDIAL, built on top

236 See Art. 2(1) of the International Covenant on Economic, Social and Cultural Rights of 1966.

237 Judgement C-560 of 2002 of the Constitutional Court.

238 Judgement T-269 of 1996 of the Constitutional Court.

of the tunnel that channels the waters of the Don Juan stream towards the Magdalena river in the District of Barranquilla. The tunnel had a certain capacity of water per second, but over time the water flow increased considerably due to the development of the basin, generating floods and the risk of collapse. The claimant (a group of families) demanded protection action "against the serious and imminent hazard this situation represents to their right to life, to decent housing, to property, and to a healthy environment." The court established that in this case the rights to life and housing were under threat, taking into account that both rights cannot be separated because claimants "are afraid of dying under the rubble of what today is still their patrimony". Regarding collective rights, the court stated that, although these are not subject to protection by injunctive relief but instead should be filed as popular action, in this case they are subject to individual protection because "as they are part of the community, they are affected or threatened directly by environmental pollution, because their health and even their lives are at a stake." Consequently, the court legally protects property rights, decent housing and the enjoyment of a healthy environment for claimants considering that between actions or omissions of the municipal administration and the violation of rights, there is the same causal relation as in the violation of the right to life. The court commanded the mayor's office to purchase the houses and to resettle the families within six months of the date of the ruling.

Judgement T-190 of 1999

Mrs. Fulvia Rentería de Hurtado lived in a house built next to the La Chanflanita gorge in Buenaventura.. The canalising of the river in the gorge resulted in a serious risk of her house collapsing at any moment. She claimed protection since her dwelling had been affected by deliberate changes in her immediate environment, jeopardising her right to life and housing. The court instructed the tutelage judge to act promptly, because the canalising of the river affected the house occupied by the claimant and her family and it might have collapsed at any moment, with serious risks to lives and the house. In this ruling the court protected the claimant and her family's right to life and to adequate housing, commanding the rebuilding of the house and the resettlement of the family during the time required for such rebuilding.

Rulings concerning displaced populations

Judgement T-25 of 2004

Some 1,150 households challenged the repeated inefficiency of state programmes concerning the housing and other needs of displaced people. The court's response started from the fact that the state and its authorities are created to ensure the life and protect the assets of its citizens; accordingly, if the state was not capable of guaranteeing these rights, then it had the constitutional duty to protect, repair and remedy damages caused to citizens by its actions, omissions, or tardiness. The court noted that displaced people are extremely vulnerable, and that this implied a serious risk of violation of their rights. It used the term "unconstitutional state of affairs", because it is widely recognised that lawmakers have great difficulty in defining displaced people and that old problems persist. Rights violations affect displaced people in many regions of the country, and many state agencies allow this to happen. Rights violations are based on structural factors, like inconsistencies between regulations, resources and means. The court issued two types of decisions:

(1) Rulings on the cases of each of the 1,150 households, calling for measures to ensure the solution of the problem within 30 days or, if life is at risk, within 48 hours.

(2) The National Council for the Integral Assistance of Population Displaced by Violence had to comply with Law 387 by 30 March 2004. This meant securing the necessary budget allocations.

The court granted a period of three months to review all government actions. If the expected results were not reached, policy goals for the displaced would have to be modified.

Rulings concerning indigenous population

Judgement T-380 of 1993

In this case the court confirmed that the right to collective property of indigenous territories is essential to the cultures and spiritual values of indigenous people. This circumstance

is recognised in the international agreements approved by the congress. Additionally, the Constituent Assembly has underlined the fundamental importance of the right of indigenous communities to a territory based on the acceptance of the different forms of social subsistence, whose expressions and permanent cultural reproductions are imputable to these communities, as autonomous collective subjects and not as a simple aggregation of members.

This judgement is reinforced by Judgement T-188 of 1993 regarding protection of collective indigenous property. [239]

Judgement C-104 of 1995

The court stated:

> Recognition of ethnic and cultural diversity concerning livelihoods and concepts about the world which do not coincide with the customs of most inhabitants, regarding race, religion, language, economy and political organisation issues, implies accepting alternation, linked to diverse forms of livelihood and social and cultural concepts that comprise different languages, traditions and beliefs.

7 Inheritance and Marital Property Rights

7.1 Relevant constitutional provisions

Article 5 recognises the rights of each person without discrimination and protects the family as the basis of society. Article 13 recognises all persons as free and equal before the law, without discrimination on basis of their race, sex or origin. The state must protect the most vulnerable persons.

7.2 Legislation related to inheritance rights

Individuals can freely determine the destination of one-fourth of their belongings through testament. When no testament is written, a succession process is necessary. With respect to succession rights, the civil code provides the surviving spouse or companion the possibility of resorting to the liquidation of the communal property and hence to receive 50 percent of the assets and goods held until the time of death. The other 50 percent is divided into equal parts among legitimate and illegitimate children, who have the same rights. When both parents die, heirs have the right to equal parts of the remaining 50 percent of property. If there are any assets to inherit, the surviving spouse or companion may claim part of these if s/he has no assets of her/his own to ensure minimal subsistence (Art. 1008 et seq.)

7.3 Legislation related to marital property

Marriage is regulated by Articles 153 et seq. of the civil code while Law 54 of 1990 recognises common law marriages or stable unions. Such unions must have existed for more than two years and have been concluded between persons without impediment to marry. Previous community properties must have been dissolved.

The marriage regime is community of property, regulated by Articles 1781 et seq. of the civil code. Property inherited or acquired by donation by either spouse before the marriage, or assets that may have been excluded by a marriage contract are not considered community of property. In the case of separation of community of property, legal separation and divorce, each spouse or companion is entitled to half of the assets purchased and of the proceeds generated by the communal property. With respect to liquidation, Articles 1771 et seq. of the civil code apply, i.e. those related to the separation of communal property, which are also applied to civil unions.

One major difference for common law marriages is that liquidation of the common law marriage lapses one year after the physical and definitive separation of the partners. This presents a notable disadvantage: if requests for liquidation of the common law marriage are not filed in the following year, the partner who has not registered the property in his/her

239 There has been concern among international organisations that some regulations that aim to protect indigenous groups and communities in fact fail to respect international human rights conventions. Among these are the American Human Rights Convention of San Jose in Costa Rica, 1969, the International Convention on the Elimination of all Forms of Racial Discrimination (UN General Assembly, 1966) and Convention No. 169 on Indigenous and Tribal groups in Independent Countries, adopted by the 76th Meeting of the ILO conference, Geneva 1989.

name in the public instruments registry loses all rights over it. Additionally, Law 54 requires that a procedure before a court is executed in order to prove the existence of the common law marriage, which causes huge delays and complications in the liquidation thereof (it is the only partnership that, in order to be liquidated, must first be declared as existing by a judge). However, there is an important advantage for stable partners with respect to property: if the common law marriage has existed for at least two years, under Law 258 of 1996, the notary must designate the property purchased by any of the partners as the family home. This means that the partner who takes care of the children has the right to stay in the family home and that as long as the children are minor, the family home may not be mortgaged or sold without consent from both partners.

8 Implementation of Land, Housing and Property Rights

This report has documented some of Colombia's extensive range of laws, rulings and regulations. It has also shown the quantity of related policies succeeding one another with narrow or short-term applicability. Their implementation, especially in addressing the needs of the poorest and most vulnerable groups, is limited. [240]

8.1 Rural subsidies

The objective of the Ministry of Agriculture and Rural Development for the period 2002-2006 is to provide households with 29,094 subsidies for basic upgrading and sanitation, and 9,973 subsidies for building of new dwellings in rural areas. [241] On average, each family receives a subsidy equal to 13.4 times the minimum wage for sanitation and 16.7 times the minimum wage for new housing. Likewise, through Decree 1042 of 2003, in coordination with the Ministry of Agriculture, subsidies were allocated to 124 SIH projects for the poorest households in several departments of the country. [242]

8.2 Titling of vacant land

Since 1995, titles of lots have been given to households as follows: [243]

Table 8.1 Titling of vacant land since 1995

Institution	Year	No. of titles	Area (hectares)
INCORA	1995	7,488	463,651
,,	1996	9.192	582 564
,,	1997	12.864	1.385.462
,,	1998	12,246	970,418
,,	1999	10,086	459,408
,,	2000	12.612	1.320.329
,,	2001	12.373	1.736.964
,,	2002	9,171	814,378
,,	2003	4,524	339,029
INCODER	2003	266	3.194.988
TOTAL		90,556	8,072,203

Source: Official Statistics, INCODER

Official land titling statistics between August 2002 and June 2003 total 483,000 ha, distributed as follows:

- 121,000 ha to 3,887 families of settlers;
- 172,000 ha to black communities (1,421 families); and
- 190,000 ha to 33 new indigenous reserves.

8.3 Land titling for women

The situation has improved with regard to joint titling and other provisions that benefit women heads of household. Traditionally, agrarian reform favoured men heads of household (only 11 percent of beneficiaries were women). The improvements are largely due to regulatory advances on joint titling and priority access to women heads of household to cooperatives and companies as a result of the agrarian reform. Since 1994, women displaced by social violence have been

240 As expressed in the 2003 UNDP Report on Human Development "*El Conflicto, Callejón con Salida*" www.pnud.org.co/indu2003, indicators show that the situation of the Colombian population has severely deteriorated in the last decade.

241 Ministry of Agriculture and Rural Development (2003).

242 Decree 1042 of April 28, 2003 in coordination with the Ministry of Agriculture.

243 Information provided by Liliana Vega, Coordination of Allocation of Vacant Parcels, taken from INCODER databank, in February 2004

included by INCORA (now INCODER) as beneficiaries of these regulations. [244]

8.4 Indigenous reserves

Since the creation of INCORA, 647 reserves have been legalised either by constitution, extension, restructuring or territorial improvement, covering an area of 31,066,430 ha and benefiting 85,818 families and 441,550 persons. [245] In addition there are ongoing processes to legalise reserves created prior to the enactment of Law 135 that have no title.

In determined fashion, indigenous peoples have opted for the collective ownership of reserves and succeeded in securing their inalienability, while Afro-Colombian communities advance in collective titling, which is "a race against the clock in the face of displacement". Farmers have begun to demand protected titling, and have succeeded in having rural reserves established under the law. There are six reserves already constituted and two more in process. [246]

Table 8.2 Land tenure indicators concerning ethnic groups and cultures

Regime	Number	Population	Area	%
Reserves prior to 1961 or of colonial origin	70	244,010	514,509	35
Reserves established under agrarian reform process	400	328,282	27,295,482	46
Occupants of vacant lots without legally delimited territory	No figures available	40,058	No figures available	6
Communities, owners, possessors	No figures available	85,947	34,387	12
Indigenous reserves	9	3,563	104,293	1
TOTAL	479	701,860	27,948,671	100

Source: National Planning Department
Afro-Colombian views of the land titling issue

244 Presidential Council for Women's Equality. (2003:9).

245 Vidal, P. Interview with the author. March 2004.

246 Op.cit, Mondragón Hector, 2003

The following testimonies of displaced Afro-Colombian women speak to a common view among these communities:

- "The government negotiates projects with multinational companies in the collective territories of Afro-Colombian communities, which result in forced displacement. They make commitments with multinationals and it is we the poor who pay.... It is we who suffer, those of us who have been protecting this territory we inherited from our ancestors;" [247]
- "Law 70 is the enemy of large businessmen and authorities. They don't negotiate with us, the black people, issues related to land and water, they forget that we own the territory, they kill our leaders in order to gain control over our territory;"
- "We don't have to get killed so that others can benefit from what we have always protected. Businessmen come to plant their African palm and others their illegal crops. They ruin the land;" and
- "Because of the conflict there is a collective loss of titles over the territory." [248]

8.5 Access to justice

Access to the legal system is particularly difficult for low-income women or black people.

8.6 Land use planning

At the end of 2003, 70 percent of Colombian municipalities had applied Law 388. The phase of formulation and adoption POT was concluded. Most have been approved. In some cases approval has been difficult, either because they did not follow the required process (i.e., submitting the application to the Regional Autonomous Corporations and then to the municipal council) or because of problems of illegality. Especially in large and mid-sized cities, planning and management instruments are being implemented.

- Law 388 has many virtues. In particular, it mandates all territorial entities and environmental authorities to look beyond the time frame of the current administration. The concept of protection areas articulates, for the first time, the urban and environmental dimensions. The plans have become the best inter-institutional coordination instrument, and promote the participation of civil society. [249]

On the other hand, there are numerous limitations in the application of these plans, including:

- Limited cartographic, cadastral and technical resources, resulting in severe deficiencies in the formulation of many POTs;
- Overlapping of municipal boundaries, resulting in local controversies;
- Risk or hazardous areas and environmental preservation areas not being accurately delimited or treated;
- Limited technical assistance from the national and departmental authorities, which affected small municipalities in particular;
- Civil society's participation was, in most municipalities, a mere formality;
- Difficulties in correlating the nine-year investment plans provided by the POTs and municipal or departmental development plans, which include socio-economic aspects tied with the three-year government term.

This last item should, however, be seen more as a challenge and an opportunity.

9 Best Practices

9.1 Local institutional practices

Land banks – the case of Metrovivienda in Bogotá D.C.

Law 9 of 1989 allows municipalities to create public establishments called Land Banks as a mechanism to purchase property. A decade passed before the Capital District estab-

247 Mendoza, U. (2002).

248 Minutes of national workshop with Afro-Colombian women.

249 The proposal by the Central Coffee Region of working together as an Eco Region with common seismic problems and national strategic projects affecting its municipalities, the development of planning and financial instruments of the municipalities of Chía, Bogotá, Pereira, and Medellín convened upon Municipal Planning Offices and owners of land are experiences worth mentioning.

lished Colombia's first (and only) land bank.[250] The Council of Bogotá created Metrovivienda as a local state enterprise, defining its goal as provision of "priority interest housing" for the poorest households as an alternative to informal developments.[251]

The project implies purchasing peripheral plots from various owners, expropriating land from those who refuse to negotiate, revising titles, combining plots on one piece of land and designing the urban layout. It also includes the entire procedure of obtaining licenses and permits, building infrastructure, roads and public spaces. The state delivers land blocks, which are offered to individual builders or building companies, who are then in charge of building the houses. The advantages of lowering the time spent in the process, reducing lost profits and eliminating risks associated with regulatory changes, translate into higher speed and productivity, which reduces house prices. The income earned by Metrovivienda from the sales of plots allows it to launch new projects in other areas in the city, generating new urban land at controlled prices.

Evaluation of the scheme[252]

Initially, the model proposed seemed reasonable. However, due to a misinterpretation, urbanised land generated by Metrovivienda was offered at market value. As a result the targeted low-income group was not reached.[253] The new goal for Metrovivienda is to offer houses that cost the equivalent of 50 times the minimum salary (17 million pesos[254]). The houses are to be built quickly, en masse, with the involvement of beneficiaries in development through popular housing organisations. The project aims to help generate community savings, as well as to provide credit and subsidies to help reach the poor.

It is projected that 20,000 housing units will be built under this scheme in 2005, and in 2006 new land plots will be purchased. This model is viable for smaller cities because it does not imply large state investments for land purchase.

9.2 Civil society practices at national level

Peace communities, 'legal rupture' and resistance[255]

As an alternative to the total vulnerability of people displaced from their land, and given the inability of the state and its institutions to provide protection and to meet their needs, the concept and practice of "legal rupture" emerged. This practice is being consolidated in 10 "communities in resistance". It is a response to the armed conflict and violent expropriation, when the legal framework has proven inadequate.

Box 9.1 The rationale behind legal rupture

> "In an unprecedented event, on December 10 (2003), on International Human Rights Day, four Colombian rural communities disavowed the legitimacy of the Colombian judiciary system and declared themselves in open rupture with the administration of justice, qualified as 'corrupt, degraded, and vilified'. According to these communities, no justice can be recognised as valid when it is so clearly separated from elementary ethical principles…. It is valid, in the current situation of the country, that we have reached a point of extreme degradation and vilification of justice, calling for conscientious objection, following the Constitution (Art. 18), which says that no one can be forced to act against his conscience".[7]

Such communities have a number of common characteristics:[256]

- They consist of women, indigenous and Afro-Colombian people, adolescents and farmers;
- They are composed of people who seek to defend their lives and their projects, sustained in relationships other than the violent inclusion offered by society;
- They propose intercultural understanding; and
- They exercise autonomy in the face of those who have turned their lands into battlefields.

250 Ciudadela El Recreo, Minutes of the Management Model of Metrovivienda, publication of the Municipality of Bogotá and Metrovivienda, July 2002, pages 59-60.

251 Samper Gnecco, Germán, prologue to "*Memoria del Modelo de Gestión de Metrovivienda*", June 2002. Via Agreement 15 of 1998 and with the resources obtained from the sales of the public energy enterprise.

252 Avila, G. Interview with the author, January 22, 2004.

253 The initial expectation was 20,000 housing units/year and only 4,200 were built in 2 years.

254 This is a unit of 36 m^2 built on a 38 m^2 lot.

255 Gómez, H. Interview with the author.

256 Rosero, C. (2003:50-55).

Resistance to war is associated with many other "invisible struggles", such as strengthening community forms of organisation; local administration of justice and conflict resolution; the affirmation of collective assets; the protection of traditional knowledge; sustainability and so on. Resisting communities have explained their decision to keep their territories, their resources and the communities themselves out of armed conflict. These strategies have resulted in greater awareness of how the population is affected by the present conditions of violence in Colombia, and have led to more support from international organisations.

9.3 Civil society practices at local level

Civil resistance of ethnic communities in their territories

In late 2001, in Caldonó, Cauca and Paeces Indians peacefully resisted the aggression of armed groups using torches and chants. Also in 2001, other groups did the same: Bolivar and Puracé (Cauca), Berruecos (Nariño), Belén de los Andaquíes (Caqueta), and Concordia (Antioquia).

Civil resistance or disobedience has been applied by district administrations in Bogotá as an initiative to offset the alleged need to strengthen security forces in the city against guerrillas. [257]

10 Conclusions

Perhaps the main difficulty in preparing this report was attaining access to alternative sources given the fear that exists among representatives of threatened organisations or communities. Another difficulty has been the restructuring and merging of state institutions, because the institutional memory is only partial and the new policies are not clear to the functionaries in charge. Statistics come from several sources and are not comparable: they do not provide information to rigorously sustain interventions, nor do they guide state actions. Although general statistics offer breakdowns by gender, such precision is not afforded in all areas (IDPs or the cadastre, for example).

10.1 Legislation

(1) There is extensive legislation but there are many problems with implementation. This is largely due to the lack of effective policies.

(2) Colombian laws have a number of flaws that adversely affect citizens

- Vacuums: Issues not covered by the laws or themes, some awaiting ratification and which never become regulated. For example, many issues included in the legislation affecting indigenous communities are "waiting" for the LOOT, which has not been approved by congress;
- Inconsistencies/lack of clarity in the formulation of the law; and
- Contradictions, such as the requirement of credit as a condition to access housing subsidies.

(3) Lack of dissemination of laws and decrees: it is assumed that laws are known by all citizens, but the large majority of Colombians do not know them, nor the mechanisms by which they can exercise their rights. Dissemination means are limited and inadequate.

(4) The Constitution does not specifically refer to women's access to land. Planning laws and regulations do not include a gender dimension.

10.2 Administration of justice

(1) The justice administration system is affected by problems in the legislation, combined with a lack of precision on how to coordinate the management of institutions, huge social conflicts (late pensions, insufficient social security, problems in access to health, housing and assistance to displaced people and lack of solution of the social obligations of the state), and the impunity with which justice is violated.

(2) The operating structure of the judiciary is not clear. Confrontations between high courts generate breaches

257 Herrera Jaramillo, C. J. (2004).

in the administration of justice. This affects the legal security of citizens.

(3) The public does not know which law projects are being debated. [258]

(4) Mainly as a result of the armed conflict, mechanisms for the protection of rights, originally proposed as occasional mechanisms, have become widely and inappropriately used. This has swamped the courts.

10.3 Institutional structures

The fallacy of achieving "savings" in the institutional structure through mergers, restructuring and staff reductions is becoming evident. There is an extensive body of legislation, with restricted application and successive regulations. Functionaries are overwhelmed and cannot provide effective technical assistance at national or local level.

These mergers and cutbacks have resulted in a loss of institutional memory; emphasis on new issues at the expense of the "old" (leaving aside processes that had slowly become consolidated as significant for the country); [259] imprecise policies and permanent adjustments of procedures (the vulnerable and socially excluded population is also the most misinformed and the most affected); [260] and the lack of technical assistance at local level in particular.

10.4 Culture

(1) There is no national collective consciousness of the need to adopt principles of justice, to respect rights, to fight against corruption or to support the Constitution.

(2) The state repeatedly resists application of international human rights agreements and the general comments of the UN Committee for Economic, Social and Cultural Rights, specifically related to housing.

10.5 Access to tenure for the poor and women

(1) There are no articles in the Constitution specifically related to women and access to land.

(2) Paradoxically, it would seem better for many poor women *not* to own land, due to the implications in costs of notarial formalities, registration and taxes related to property, as well as the divergent approaches to the application of subsidies and loans. The application of subsidies is supposed to favour women heads of household, but the loans required to cover the entire cost of the housing unit are not designed to meet the needs of the poorest families, many of which are headed by women who work in the informal sector, or as maids, without labour security or stability. [261]

(3) In spite of some legal advances, many women remain poor, ignorant of their rights, jobless, subject to violence and unable to access housing subsidies. [262]

10.6 Rural land

(1) The effect of the agricultural reform on production and the structure of land ownership, in terms of improving equality in the distribution of land and in the economic situation of the rural population, is debatable. Large holdings have grown, with land often obtained through violent action.

(2) Violence, poverty and displacement in rural Colombia are associated with the inequity in the structure of land ownership and agricultural production.

(3) Most farmers cannot go beyond subsistence; they cannot become producers and therefore cannot have access to more land. For this reason, they will hardly be eligible for loans. This makes it impossible to provide subsidies to the poorest farmers, among them women.

(4) The modernisation of agriculture has had serious effects on tenure. Concentration of ownership and production have had the effect of expelling smaller

258 El Espectador (2004).

259 Such as the merger of the Ministry of the Environment and the Ministry of Development and dissolution of INURBE, the former National Housing and Urban Reform Institute. The emphasis of the new ministry (MAVDT) has been placed on housing, especially in subsidies.

260 For example in the access to subsidies by women heads of household, to food bonuses for the elderly.

261 CODACOP, Video "Una casa en el Aire": testimonies of women heads of household. Although all respondents recognised the advantage for themselves and their children of having secure tenure, the case of a woman who twice refused to accept housing subsidies for the economic implications to repay the loan was cited as an example.

262 Latin American consultation on "Women and Adequate Housing" organised by the International Habitat Coalition HIC-AL for the Special UN Rapporteur on Adequate Housing, December 4 – 5, 2003.

agricultural producers, leading to impoverishment, migration and social exclusion.

10.7 Housing

(1) The housing problems among the poorest remain unsolved. Qualitative and quantitative deficits continue to grow.

(2) During the last three decades no alternatives have been considered for housing ownership and subsidies to enable the poorest, especially women, to have access to decent housing

(3) Due to neoliberal adjustments, housing policies are aimed at the formal sector, leaving aside more than 60 percent of people in the informal sector, 61 percent of which are women. Financial entities do not think it is convenient to grant loans to households with incomes less than three times the minimum wage. [263]

(4) Subsidy management is inoperative, making access to these resources by the poorest more difficult, especially for women head of households.

(5) Although the right to adequate housing is recognised under the Constitution and confirmed by the Constitutional Court, the poorest persons can still not access this constitutional right. The parameters of quality are undefined.

11 Recommendations

11.1 Legislation:

(1) Procedures for the preparation of new laws should be regulated, forcing legislators to establish the compatibility and validity of existing rules on the matter prior to enacting a new law.

(2) In the same vein, the regulatory requirements issued after a law or its regulations are enacted should be limited.

11.2 Administration of justice and the exercise of rights

(1) A constitutional rule that puts order back into the higher courts is required, establishing competences and definitions.

(2) It is urgent to separate the constitutional jurisdiction from ordinary justice, for example by appointing constitutional judges to handle proceedings generated by mechanisms for the protection of rights.

(3) To ensure fairness concerning the degree of vulnerability of the population in each area, it is necessary to establish an order of priority in the handling of court cases. [264]

(4) We need to strengthen Colombian citizens as holders of *rights*. This means supporting training processes in human and development rights, in legislation and in its instruments of justice. Follow-up indicators on the effect of these processes should include a range of equity indicators (including gender and other categories), a way to measure development of social capital and so on.

(5) There must be supporting initiatives to improve local administration of justice and user-friendly justice mechanisms.

(6) Judges and other judicial officials should be trained in alternative conflict resolution methods and in the treatment of crimes related to human rights violations.

(7) International cooperation should be channelled towards policy actions for the democratic development of peace, beyond paternalistic humanitarian actions, and should seek to have war crimes effectively prosecuted by the International Criminal Court. [265]

263 Op.cit, page 2.

264 For example with the application of SISBEN in Bogotá. Given the limited resources available to provide education and health prevention and care services, a positive discrimination policy and greater coverage for indigents and persons from lowest income groups were established.

265 Rojas, Jorge. (1993:33-34).

11.3 Information

(1) The participatory spaces provided for in the Constitution concerning recognition of rights should be actively supported.

(2) Statistics (judicial, cadastral, public registry) should be disaggregated by gender.

(3) As the vulnerable and socially excluded population is also the most misinformed and the most affected by changes in government procedures, permanent information centres need to be established. This implies de-concentrating public entities, allocating staff to this task, or establishing information centres that assemble the representatives of institutions that provide services to the poorest communities.

(4) A study on urban women's movements should be undertaken at national level. The results of these movements, though not well documented, are reflected in the work of NGOs, academic institutions and other networks.

(5) More flexible and less legalistic approaches (e.g., testimonies or oral evidence) should be developed for the cadastre and property register).

11.4 Participation, valuation, empowerment of women

(1) Support the training of women for greater participation in, and representation on, decision-making bodies to influence local policies.

(2) Train women as trainers in social and cultural rights, rights to land, decent housing and a clean environment.

(3) Policies and actions aimed at protecting and re-establishing the living conditions of displaced populations must offer differentiated care to displaced households headed by women.

11.5 Land, habitat and housing:

(1) The growing impoverishment of the Colombian population, and especially of women, requires a review of its causes from an objective perspective. This suggests the need to assess the policies of the state concerning public investment in the distribution of land and in housing supply for the poor – policies that are built upon private ownership and sustained on unequal policies of distribution of rural and urban land. Such a review should also address the state's unfeasible tenure schemes, mostly aimed at strengthening the financial and construction sectors, and increasing the wealth of owners of large estates and multinationals.

(2) It is time to rethink the current model of private ownership for the poor. It would be appropriate to consider collective state investment in infrastructure, equipment and public services which, besides generating jobs, improve the quality of life of the residents of large areas, with the possibility of recovering and reinvesting contributions. There should be an assessment of collective forms of access to housing, of alternative ownership schemes and of new financing methods – starting with the informal market. A new vision should incorporate these forms into state and private programmes. [266]

(3) Tenure has to be associated with certain rights: the right to peaceful exploitation of land, the right to protection from eviction, to make improvements, to benefit from them and to have them recognised. Only then, and in schemes that link small producers to markets, can exploitation of the land can become productive for them.

(4) Application of management tools similar to those established in Law 388 in rural areas to ensure more equitable land distribution should be considered.

(5) Land planning and management tools proposed in Laws 9 and 388 have had some good results. An analysis should be made with a view of applying them to other contexts.

(6) The effects of public policies to counter land market informality have been nil. Informality grows at a much faster pace than formal production of urbanised land and housing. A study of the informal market is needed to guide resources.

11.6 Affirmative action for women on land and housing issues

(1) Colombia needs a consistent policy in the provision of land and housing that discriminates positively in favour of all vulnerable women, that includes contributions to income-generation and subsidies (without credit),

266 Stefano A. F. (2003).

and offers alternative schemes that guarantee secure tenure.

(2) For women heads of household, it is critical to review the issue of ownership: other forms of tenure such as renting or leasing seem more viable.[267] There should also be an analysis of subsidies for the purchasing of used, subdivided and improved housing, or the collective purchase of properties by groups of women. This implies channelling public and private-sector investment towards housing improvement programmes

(3) The application of subsidies for the improvement of housing and micro credits is necessary to offset the housing deficit and improve living conditions. To reach women heads of household and the poorest population the subsidy policy should be changed to guarantee flexible loans through a special fund.

(4) Housing solutions must be accompanied by productive projects to enable these households to generate income to meet their basic needs.[268]

(5) Donor and cooperation agencies need to support civil society organisations working with low-income groups, women, displaced and other vulnerable sections of the population.

(6) The domestication of international human rights agreements, specifically those related to social rights and the right to adequate housing, should also be a funding priority for international organisations.[269]

267 González, P. Interview with the author, February 4, 2004.

268 Jorge Eliecer Rivera (undated).

269 Such as the Covenant on Economic, Social and Cultural Rights of 1966, and the National Committees post-Beijing and post-Istanbul.

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APPENDIX

Appendix I

Table I.I Participation forums established by law

Forum	Regulated by	Compulsory	Composition	Scope	Level of organisation	Level of intervention
Local admin. boards	Law 136 of 1994 Law 11 of 1986	No. Creation by local authorities is optional	5 to 9 members elected by universal vote	Territorial	Commu-nities and corregimientos	Consultation, initiatives, audits. In Bogota, it adopts the plans of localities. In Cali, it approves development plans of communities or corregimientos
Planning Councils	Law 152 of 1994	Yes. No penalties exist for authorities who fail to summon them	Number of members varies according to municipal agreement that creates it. Appointed by mayor from list of 3 people submitted by each sector (education, health, women, young, JAC, unions, entrepreneurs, cooperatives, cultural)	Social global, exclusive representation	National, dept., municipal and local (where local planning systems exist)	Consultation (on proposed development plans), initiative (recommendations to relevant authorities on content of plans), audit (municipal development plan)
Municipal Rural Development Council	Law 101 of 1993; Law 160 of 1994	Yes	Number of members varies according to municipal agreement that creates it	Social global meeting	Municipal	Consultation, initiative, concertation of rural development plans, audit
Citizen Inspectors	Law 134 of 1994; Law 136 of 1994. [8]	No	Number varies according to decision of members	Social global or sector. Exclusive representation	Municipal, per service or work	Initiatives, audit
Community Council of Black Communities	Law 70 of 1993	No	All members of black communities who register with INCORA to process land deeds can participate.	Social global exclusive representation	Black communities	Initiatives, management
Consultative Planning Council of Indigenous Territories	Law 152 of 1994	No	Traditional indigenous authorities and representatives of community sectors, appointed by territorial Indigenous Council from lists of 3 persons submitted by stakeholders	Social global territorial exclusive representation	Indigenous communities	Initiatives and audit (of local plans)
Consultative Organization Council	Law 388 of 1997	Yes, in municipalities with more than 30,000 inhabitants	Officers of municipal administration and representatives of unions, professional, ecological, civic and community organizations linked to urban development. Urban curators in cities where this institution exist are also members	Social global meeting	Municipal	Consultation and audit
Local Committee for the Prevention of Disasters	Decree 93 of 1998	Yes	The Mayor, head of municipal planning, a delegate of the hospital and community representatives	Social global meeting	Municipal	Information, management (assistance and disaster prevention)

Source: *¿Qué ha pasado con la Participación Ciudadana en Colombia?* pages 98-102, Fabio Velásquez, Esperanza González, June 2003

Appendix II

Legislation on Women's Rights

- **Law 8 of 1932** grants married women the power to manage their personal assets.
- **Law 28 of 1932** eliminates the husband's authority over the management of his wife's assets and gives this power to women.
- **The Constitutional Reform of 1936** grants women the right to fill public positions.
- **The Constitutional Reform of 1945** grants women the rights of citizenship.
- **The Constitutional Reform of 1954** introduced the plebiscite granting women the right to vote; this right was first exercised on this occasion.
- **Law 360 of 1967** amends the criminal code concerning sexual violence against women.
- **Decree 2829 of 1974** grants equal rights and obligations to women and men as heads of household.
- **Decree Law 999 of 1988** authorises change of name before a notary to suppress husband's last name preceded by the preposition "*de*".
- **Law 1 of 1978** establishes grounds for divorce in civil marriage, which are equal for men and women.
- **Law 51 of 1981** ratifies CEDAW and regulates it under Decree 11398/90.
- **Law 54 of 1990** defines the patrimony regime among permanent couples.
- **The 1991 Political Constitution of Colombia** enshrines the principle of the legal equality of women. Art. 13 enshrines the right to education within the context of non-discrimination by reason of gender, race, national or family origin, language, religion, political or philosophical opinion. Article 43 says that men and women have the same rights and opportunities, and that women shall not be subject to discrimination of any type.
- **Law 25 of 1992** suspends the civil effects of religious marriage, whenever celebrated.
- **Law 82 of 1993** issues regulations to provide assistance especially to women heads of household. The assistance relates to education, health, formation of popular housing organisations, priority access to credit, among others.
- **Law 136 of 1994** of municipal regime, which lists among the duties of a municipality the obligation of meeting unsatisfied needs in health, education, environmental sanitation, drinking water, public services to homes, housing, recreation and sports, with special emphasis on women.
- **Law 284 of 1995,** which incorporates the Inter-American Convention to Prevent, Eradicate and Punish Violence Against Women.
- **Law 294 of 1996,** whereby Art. 42 of the Constitution is enforced and regulations are issued to prevent, remedy and punish domestic violence.
- **Law 311 of 1996,** whereby the National Family Protection Registry is created and other regulations are issued.
- **Law 387 of 1997,** which requires the *Consejería de la Mujer* to foster assistance programmes for displaced women.

Appendix III

Table III.I Types of union or state land

Subtype	Definition [9]	Features	Legal basis
Public use property	Property used by all the inhabitants of a territory: streets, squares, bridges, roads, beaches, land under the sea and maritime waters.	Cannot be attached or alienated. Is not subject to seizure and cannot be obtained through prescription/adverse possession (usucapion).	Articles 63 and 674 civil code Art. 166 decree 2324 of 1984
Cultural and archaeological heritage[10]	All cultural assets and sites that are the expression of the Colombian nationality; real or personal property originating in extinct cultures or corresponding to colonial times; human and organic remains related to those cultures.	Cannot be attached or alienated. Is not subject to seizure and cannot be obtained through prescription/adverse possession.	Art. 72 civil code Law 397 of 1997
Fiscal property	Union assets, which individuals can possess if authorities determine to sell, such as land owned by public universities; buildings owned by municipalities or by the departments (market places, slaughterhouses).	Cannot be attached or alienated. Is not subject to seizure and cannot be obtained through prescription/adverse possession.	Art. 674 civil code Ruling vii 29/99 expedient 5074 Superior Council of Judicature (SCJ)
Vacant property 'baldíos'	Land that has no owner	Can be acquired through prescription/adverse possession. Occupation for 5 years on rural land and for 10 years on urban land; title to be issued later on by the state.	Art. 675 civil code Law 160 of 1994 ruling SCJ vii 5/78

Table III.II Types of private land

Subtype	Definition	Features	Legal basis
Private land and real property	Titled land or housing owned by an individual ("persona natural", which may include joint ownership between spouses or stable partners) or a group of individuals ("persona juridica").	Can expire, is negotiable and may be seized in the interest of social function of property.	Art. 58 Constitution Laws 160 of 1994 and 388 of 1997 Civil code

Table III.III Types of communal land

Subtype	Definition	Features	Legal basis
Territories of indigenous groups	Territories of groups or families of Amerindian ascent, whether titled or not, or who cannot legally accredit their territories, or whose reserves ("resguardos") were dissolved, divided or declared.	The reserves are legal and sociopolitical entities with collective property title, which enjoy the guarantees of private property. Cannot be attached or alienated. Cannot be acquired through prescription/adverse possession and cannot be seized. May not be transferred or mortgaged.	Articles 7, 8, 10, 63, 68, 70, 72, 96, 171, 176, 246, 286, 287, 288, 290, 321, 329, 330, 339, 357, 360, and 361 of civil code Law 160 of 1994 Decree 2164/1995[11]
Territories of Afro-descendants[12]	Territories of Afro-Colombian groups who have their own traditions and customs in their relationship as a village.	Cannot be attached, alienated, or be acquired through prescription / adverse possession (usucapion). Is not subject to seizure. Individual and collective property as well as reservation areas can be defined through regulations, adjusting the distribution of property to uses and customs.	Law 70 of 1993[13] Articles 7, 8, 63, 68, 70, 72, 96, 176 of civil code (among others)

Subtype	Definition	Features	Legal basis
Associative and/or joint property	Held by rural workers, e.g. as cooperatives.	Constitution stipulates that state must promote this property form, but to date there are no clear regulations.	Art. 64 Constitution
Urban community Property	Property owned and used by an urban group of dwellers or residents (called "cesiones Tipo B").	Cannot be attached, alienated, or seized. Cannot be acquired through prescription/adverse possession.	Art. 8 Law 388 of 1997 Regulations/ bylaws of municipal councils

Appendix iv

Table IV.I Types of Tenure

Type	Definition	Characteristics	Legal basis
Ownership	Freehold, unconditional, indefinite. May however be expropriated in the public interest, with compensation. Joint ownership of land under land reform programme: land is registered in name of both spouses or both stable partners.	Property ownership is legalised by deed. It can be registered or not. It is negotiable and may be expropriated in the public interest (social function of property) against compensation.	Articles 58, 60 and 64 Constitution Articles 166 et seq civil code Laws 160 of 1994 and 388 of 1997
Possession	Possession of immovable property as owner or master, without being the legally registered owner. Adverse possession (usucapion): after good faith occupation of 10 years in urban, and 5 years in rural areas has to be declared by a judge.	Possessors may purchase the property by expiration if it is private or by occupation if it is located on vacant land owned by the state. It can be regular or informal depending on the good faith and fair title with which it is exercised.[14]	Art. 672 et seq. Civil code Law 160 of 1994 Art. 27 Law 387 of 1997
Invasion	Occupation of public or private property through irregular ways. It can be done individually or in groups.	Invaders can become possessors if they invade a private property and are not evicted within the next 30 days if urban, or within 15 days if rural; or they can become occupants of state property if it is not of public use, a conservation heritage or fiscal property.	National Police Code
Simple tenure	Tenure is exercised on behalf of the owner on a property or thing. The tenant does not pretend ownership. It is free usufruct (e.g. the administrator of a farm or a caretaker).	Simple tenure does not become possession over time. Simple tenants cannot acquire ownership of property through prescription/ adverse possession.	Art. 775 civil code
User loans	Delivery of a real or personal property by one party to another, free of charge, to be used by the latter, who must return it to the former after such use. The period of its use is agreed upon among the parties (e.g. a state plot or building can be loaned to a private organisation for construction of or use of a school).	User loans can be agreed between private individuals or between individuals and the state. Beneficiaries are not possessors, and cannot acquire the property through prescription/ adverse possession.	Articles 2200 et seq civil code. Concept 1510 by State Council[15] (Susana Montes de Echeverri VII.24/03) For rural land: Law 812 of 2003

Type	Definition	Characteristics	Legal basis
Rent	A consensual contract for a certain sum, whereby one person transfers to another the use of a certain good in exchange for payment.[16]	Lessee does not acquire the status of possessor, only tenant of property, and therefore cannot acquire it through adverse possession.	Articles 1973 et seq civil code Law 812 of 2003 (not yet implemented)
Usufruct	Real right consisting of the right to use a good in exchange for preserving and returning it to owner in the agreed terms.	It can be for a fee or gratuitous, and must always be effected via a public deed. Usufruct holders may become owners if thus stated in the deed.	Articles 823 et seq civil code
House leasing	A contract whereby a bank, authorised by the Superintendencia[17] of Banks, transfers a house to a user, in exchange for the payment of a periodical sum (equal to rent), for an agreed term of at least 10 years, during which time user will decide whether to purchase the property or to return it.	The percentage of the house paid with the monthly rent and the time of duration of the contract are agreed between the entity and the beneficiary. Extraordinary payments can be scheduled and agreed with the entity at any time to lower the final value of the purchase option.	Decree 777 of March 28, 2003
Transit lots and temporary settlements	Lots adjudicated by INCODER to assist displaced populations registered in food security programmes and short and medium term productive projects.	Lots where displaced households can only remain for a short time, after which they must look elsewhere for a place to live. No specific priority for women-headed households.	Decree 2007 of 2001
Assignment contract or provisional tenure	Temporary rental contract for a 5-year period on purchased or expropriated land and in areas defined in the agricultural reform planning process.	Entered into upon definition of a project to develop, at the end of which INCODER will transfer ownership, provided it is proven that competitive and sustainable agricultural businesses have been established on the project land.	Law 812 of 2003 (yet to be implemented)
Joint ventures	Partnerships where both risks and profits are assumed by the state and the project beneficiary.	Based on clear contracts, under a profit-sharing scheme.	Law 812 of 2003 (yet to be implemented)

Appendix V

Table V.I Legal means of accessing tenure

State property	Private property
Using it as first owner of a state property that has no other owner Voluntary direct negotiation Expropriation[18]	Sales-purchase of legalised property Establishing reserves or purchasing collective territories Constitution of usufruct Leasing Partition of inheritance Division of community property House leasing contract Adjudication as transit settlement Regular possession Occupation Legal process of declaration of acquisition by adverse possession Developing productive projects (NDP 2002-2006)

Table V.II Informal/irregular/illegal means of accessing tenure

State property	Private property
Occupation or invasion of public use property, state-owned land or state-owned buildings (fiscal property) Illegal subdivision of state land for sales or purchase	Sales-purchase of property in private illegal subdivisions (barrios piratas) or private developments/buildings Invasion of private property Irregular possession

Appendix VI: International Law

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

Universal Declaration on Human Rights (UDHR) [270]

- 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) [271]

- Article 11(1) recognises the right to adequate housing; [272]
- Article 2(2) prohibits discrimination; and
- Article 3 recognises equal rights between men and women.

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

271 *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.

272 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

International Covenant on Civil and Political Rights (ICCPR) [273]

- 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) [274]

- 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. [275]

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) [276]

- Article 13 requires the elimination of discrimination against women in areas of economic and social life to ensure 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) [277]

- 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) [278]

- 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

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

273 *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.

274 *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.

275 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

276 *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.

277 *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.

278 *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

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) [279]

- 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.

279 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

In Table 1.1 below, an overview is provided of which countries in Latin America are party to these human rights instruments. [280]

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 [j]	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

280 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.

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
Convention 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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UN-HABITAT

UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME
P.O. Box 30030, GPO Nairobi 00100, KENYA
Telephone: 254-20-7623120; Fax: 254-20-7624266/7 (Central Office)
E-mail: infohabitat@unhabitat.org; Website:http//www.unhabitat.org

LAND TENURE, HOUSING RIGHTS AND GENDER

IN

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Tel: +254 20 7621 234
Fax: +254 20 7624 266
Web: www.unhabitat.org

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Foreword to Latin America Law And Land Tenure Review

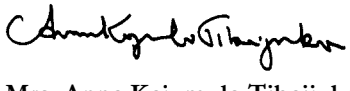
Security of tenure is one of the cornerstones of Millennium Development Goal 7, Target 11 on the improvement of the living conditions of slum dwellers. It also plays a crucial role in the implementation of Target 10 on access to improved water and sanitation and is thus the main focus of UN-HABITAT's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

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Hilda Maria Henao – Planeacion Distrital DAPD
Juan Carlos Ortega – Subsecretaria de Control de Vivienda
Luz Dary Leon – Titulacion CVP
Carmen Elena Leon – Consejo Superior de la Judicatura
Rosa Emilia Salamanca and Genoveva Mendez, ATI- Asociacion de Trabajo Interdisciplinario

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List of Abbreviations

AIDS	Acquired immunodeficiency syndrome
ANMUCIC	National Association of Rural and Indigenous Women of Colombia
ANUC	National Association of Farmers
AUC	United Self-Defence Forces of Colombia
CAMACOL	Chamber of Construction
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CENAC	National Centre for Construction Studies
CONPES	National Economic and Social Planning Council
DANE	National Administrative Department on Statistics
ETI	Indigenous Territorial Entity
FARC	Revolutionary Armed Forces of Colombia
HIV	Human immunodeficiency virus
IDP	Internally Displaced Persons
IGAC	Geographic Institute
ILSA	Latin American Institute of Alternative Legal Services
INCODER	Colombian Institute for Rural Development
JAL	Local Administrative Board
LOOT	Organic Bill of Law on Spatial Planning
MAVDT	Ministry of Environment, Housing and Spatial Development
NDP	National Development Plan

NGO	Non-governmental organisation
POT	Land Use Management Plans
RSS	Social Solidarity Network
SCJ	Superior Council of Judicature
SGP	General Participation System
SIH	Social Interest Housing
UAF	Family Agricultural Units
UNHCR	United Nations High Commissioner for Refugees
UPAC	Constant Purchasing Power Units

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EXECUTIVE SUMMARY

This report on Colombia 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, as urban land is costly and beyond the reach of poor households. 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 Colombia study highlights a number of other specific recommendations. The justice system is specifically mentioned as an area requiring extensive reform. Improving access and creating user-friendly systems dealing with land resolution dispute are recommended to improve delivery. The subsidy system is not easily accessible to the poor and is in need of reform. Laws and policies also need to make specific reference to women. Finally, the author identifies the need to promote a national collective conscience that supports the recognition of human rights, principles of justice and a culture of accountability.

Figure 1.1 Map of Latin America

Latin America Regional Overview

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.

1.1 Inequality

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]

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).

2 Legal Systems of the region

2.1 History

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]

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

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).

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 necessarily 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.

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

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 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]

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.

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

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 organisation.[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

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.

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.

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.

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.

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 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

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).

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 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

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

42 Blanco, L et al (2003).

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.

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.

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

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 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]

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.

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.

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 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:

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).

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.

- 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 national 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 estab-

57 Clichevsky, N. (2003:16).

58 UN-HABITAT (2001:28).

59 Erba, D. (2004).

lishing 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.

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 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.

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).

63 FAO. (1992).

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 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

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).

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 property management also violate other international human

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).

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.

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).

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.

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.

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.

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.

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.

9.3 Affirmative action

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).

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.

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]

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.

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

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 predetermined 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.

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

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).

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

89 Clichevsky, N. (2003:31).

90 Durand-Lasserve, A. (1997).

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 completed	Regularisation of land title	Physical regularisation	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
- 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.

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.

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

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
- 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

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).

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 Colombia

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 Colombia

Background

1.1 Introduction

The Constitution of Colombia is one of the world's most comprehensive in the recognition of rights. However, these rights – particularly the fundamental rights of the poor – are repeatedly violated.

Colombia is an overregulated country, but with serious limitations in the effectiveness of its laws. A short-term vision – if not an utter vacuum in some areas – characterisess policy formulation and implementation. Access to land and housing are marked by illegality and violence.[96] In fact, the most significant element absent in Colombia is a culture of respect for people's rights.[97] This lack of respect becomes the source of recurring human rights violations by state authorities and individuals.

Colombia has one of the highest numbers of internally displaced persons (IDPs) in the world.[98] More than two-thirds of the country's inhabitants are poor and one-quarter live in misery.[99] The poorest of the poor are women, and women heads of household in particular suffer the negative effects of displacement, obstacles to accessing justice and discrimination in the application of laws.[100]

1.2 Historical background

Spain colonised Colombia in the 16th century. Colombia proclaimed its independence in 1810 and consolidated it in 1819. The formation of the new republic was characterised by conflicts and crises.[101] Battles between the Liberal Party (supported by merchants, artisans and manufacturers) and the Conservative Party (supported by large landowners and the clergy of the Catholic Church) were ongoing from their establishment around 1850.[102]

Land has changed hands violently in the armed conflicts that have plagued the rural areas of Colombia since 1948.[103] The assassination of a prominent Liberal Party leader in that year resulted in riots in Bogotá, the suppression of which culminated in 2,000 deaths and the destruction of much of the city. The riots and rebellion then spread beyond Bogotá.[104] Armed pro-government gangs roamed the countryside, attacking and terrorising the rural populace, and seizing the property of farmers perceived as opponents of the government. The first and second armed conflicts alone in the period 1948-1958 (known as *La Violencia*) left about 300,000 dead and 2 million displaced. The third and fourth armed conflicts broke out in 1962 and 1964 respectively.

A guerrilla army of peasant origin – the Revolutionary Armed Forces of Colombia (FARC) – was established in 1964, claiming that farmers were forced to take up arms to defend themselves against the attacks of armed gangs created by land-hungry elites backed by the state.[105] Since 1982, FARC has defined itself as a "people's army" whose declared aim is to share power in a government of national reconstruction, after taking part in the formulation of a new constitution.

Landowners, claiming they needed protection from the guerrillas, created paramilitary groups.[106] Today's paramilitary militias were set up in the 1980s by local elites, with army support, and by drug traffickers who owned about 4 million hectares of the best land in Colombia. The majority of

96 In the words of Emilio Yunis, former Peace Commissioner: "Colombia is a country in permanent construction, with many foremen. They want to redo, remodel everything. They all think they are entitled to do it."

97 Galvis Ortiz Ligia, (2002).

98 World Bank, (2003:54-57).

99 Colombian Human Rights, Democracy and Development Platform, September 2003.

100 The percentage of women heads of low-income households grew from 52 percent to 54 percent between 1992 and 2001, while those in the informal sector increased from 56 percent to 60 percent in the same period. This underlines their impoverishment and increased vulnerability. See National University, CID and UNICEF, "Gender Equity? Social Equity? A look at education and employment", December 2002.

101 Sarmiento, L. C. et al (1998:39-42).

102 Thayer Watkins, Political and Economic History of Colombia. Available on: http://www.applet-magic.com/colombia.htm

103 Land Research Action Network. (2004).

104 Thayer Watkins. (undated).

105 Other guerrilla operations were initiated by the National Liberation Army (Ejército de Liberación Nacional – ELN), Popular Liberation Army (EjércitoPopular de Liberación – EPL) and the 19th of April Movement (Movimiento 19 de Abril – M-19).

106 Conor, F. (2005).

paramilitaries are grouped in the United Self-Defence Forces of Colombia (AUC), which is now beyond the control of its original promoters.[107] The paramilitaries are officially abiding by a ceasefire declared in 2002 and are engaged in dialogue with President Alvaro Uribe's government concerning demobilisation.[108] While 4,000 AUC paramilitaries have demobilised, the legal situation for those demobilised is not clear and thus far no adequate legal framework has been put into place to deal with investigations and sanctions for crimes committed.[109]

Since 1985 some 3.1 million people have fled their land, or had it seized from them, with a resulting exodus to towns and cities. According to the World Bank, the land abandoned by IDPs is estimated to be about 4 million hectares, almost three times as much as was redistributed through government land reform efforts since 1961.[110] As a result, 0.4 percent of the population is said to own 61.7 percent of the best land in the country.[111] In rural areas, the concentration of land ownership is in the hands of some 5,000 landowners. Speculation with prospective transnational and state projects have pushed aside any initial objectives envisaged in the Agrarian Reform of equitable redistribution of rural land and agricultural production, aimed at improving the quality of life of poor peasants, smallholders, and the preservation of indigenous reserves and of the communal land of black communities.

In the 1950s, approximately 60 percent of Colombia's population lived in rural areas. By 2000, 76 percent of its population had settled in urban centres. Since the beginning of the 20th century, rapid urban growth in Colombia has been characterised by plot-by-plot development, mostly in a spontaneous way, without taking into consideration the rural surroundings and the environment. Underlying causes were the lack of a referential framework covering the entire territory (urban, peri-urban and rural), the ineffectiveness of the agrarian reform, and the limited applicability of the planning and management tools of urban environment regulations. While the social and environmental functions of property are constitutional principles, they were impossible to implement under these circumstances.

The urban nation has sought ways to structure region-cities by means of new legislation related to urban reform and territorial development. Attempts have been made to allocate resources to subsidise the poorest and to cut back operating expenses.

In parallel, the existence in Colombia of several armed actors – guerrillas, self-defence groups, drug traffickers and common criminals – each exercising their own brand of violence, has limited economic development and both public and private investment, affecting social investment and contributing to high unemployment. The figures on displacement revealed by the government are contradicted by other sources, which instead indicate that the "democratic security policy" has caused increased violence and displacement, generating more poverty and misery among rural inhabitants.[112]

Although rejected by the Colombian population, violence has become widespread throughout the rural territories, partly because there are huge, isolated empty areas (*vaciamientos*) with no state presence.[113] Due to geographical barriers and lack of secondary roads, many regions have developed

107 Ibid.

108 Ibid.

109 Colombia Observatory. (2005).

110 World Bank. (2003).

111 According to the Consultancy on Human Rights and Displacement.

112 The protection of displaced people has not improved since 2002 when President Uribe's government launched a new effort under his so-called "democratic security policy" to end the conflict by military means. The new strategy drew more civilians into the conflict, allowing armed groups to displace over 175,000 people in 2003 and left widespread human rights violations unpunished. Although Colombia has some of the most progressive IDP legislation, the government has undermined the existing legal framework through various amendments. The number of new displacements decreased in 2003, partly because many IDPs avoided official registration for fear of reprisals by armed groups. Without this status they are often denied the limited welfare services the state offers. A United Nations plan launched in 2002, which aimed to provide a more effective response to the crisis, has received very little funding. The government has made the return of IDPs one of its central objectives. However, for returns to be sustainable, the government needs to do more to ensure security in return areas and provide the IDPs with the necessary means to re-build their livelihoods. Norwegian Refugee Council, Global IDP Project, Colombia: Democratic security" policy fails to improve protection of IDPs, updated country profile on internal displacement in Colombia from the Global IDP Project, www.idpproject.org

113 According to a survey done by the Centre for Research and Popular Education (CINEP), a direct correlation exists between these vacant territories, the presence of criminal groups, and the cultivation of illegal crops in several of them.

as separate subcultures, to the point that they do not know about the violence taking place in other territories.

1.3 Legal system and governance structure

Art. 1 of the National Constitution of 1991 states: "Colombia is a Social State of Law, organised as a unitary, decentralised republic, with autonomous territorial entities, democratic, participatory and pluralist, based on the respect for human dignity, on the work and the solidarity of its population, and on the primacy of the general interest."

Structure of the Colombian state

According to Title V of the Constitution, the State of Colombia is structured in three public powers: the legislative, the executive and the judiciary.

The Congress of the Republic represents the legislative branch and consists of the Senate and the Chamber of Deputies. [114]

The structure of the executive branch consists of the central level (represented by the president) and the decentralised level (headed by governors, mayors, supervisory entities, public establishments, and state industrial and commercial companies).

The judiciary exercises the public function of administering justice, that is, of enforcing the law. Only in exceptions can the executive and legislative branches and certain individuals (justices of the peace) also perform this role. The judiciary consists of:

- The Constitutional Court, which ensures the integrity and supremacy of the Constitution;
- The Supreme Court of Justice, the highest court in the ordinary jurisdiction;
- The State Council, the highest court in administrative disputes;
- Judges and courts, who administer justice in the first and second instances, either in the ordinary or the administrative disputes jurisdiction;
- Justices of the peace, with special jurisdiction, created by law 497 of 1999 and appointed by the Supreme Court of Justice;
- The General Prosecutor's Office, the role of which is to direct, execute and coordinate investigations in criminal matters;
- The Superior Council of the Judicature, which administers the judiciary and plays a disciplinary role; and
- The indigenous jurisdiction. There are 82 indigenous communities in the country, each with their unique judicial structure. Constitutionally, each community is recognised as an indigenous territorial entity: ETI. The ETI was created to allow indigenous councils to exercise jurisdiction within their territory, according to their own customs, rules and procedures, respecting ethnic and cultural diversity and the values of pluralism. ETI councils have different administrative and legal structures. The number of members and the legal organisation of each ETI are decided by the community and the state must respect this, provided their decisions do not violate laws or constitutional principles.

Territorial organisation

Colombia is divided into territorial entities that may be governed by their own authorities, autonomously manage their interests, administer their resources and raise taxes required to perform these tasks and to participate in the generation of national revenues. There are a number of territorial entities and these are described below.

Departments

Departments are territorial entities consisting of several municipalities, created by congress. They have autonomy in the administration of several areas, including health, education, roads, creation of specific taxes, etc. Their most important tasks include planning and promoting the economic and so-

114 The Senate is composed of 102 members: 100 are elected by national circumscriptions and two at the special circumscriptions of indigenous communities. The Chamber of Deputies has 162 members elected by territorial circumscriptions (all the departments and the capital district) and by special circumscriptions (up to five established by the law, to ensure the representation of ethnic groups, political minorities and Colombians living abroad).

cial development of their territory, intermediation between the nation and the municipalities and provision of public services as dictated by the law. [115]

Provinces

In theory, provinces can be created by grouping neighbouring municipalities or indigenous land belonging to one department. These provinces must be created via an ordinance issued by the Department Assembly. Currently they have no practical use, because congress has not enacted a special law to regulate them; however, the term "province" is not alien to Colombia's legal organisation, and some provinces are still acknowledged in the popular memory as they were enshrined in the Constitution of 1886. The province is the sum and combination of related municipalities; this territorial unit is seen as more efficient, easier to manage and govern, and fulfilling the needs of its inhabitants. This is what the Organic Bill of Law on Spatial Planning (Ley Orgánica de Ordenamiento Territorial - LOOT) proposes: the establishment of provinces, but not as mere electoral circumscriptions. [116] In the 1970s and 1980s, when congress discussed territoriality or administration issues, it used municipalities as the basic entity, and forgot the concept of the province, which existed only in the memory of the communities. The current departments and borders fail to recognise this cultural and natural state. [117]

Administrative and planning regions

These are defined as the integration of two or more departments with their own legal status, autonomy and assets. The integration of departments may be useful in certain parts of Colombia. Departments in those areas may become political-administrative units that cover all or part of a geographical region (such as the Caribbean region, the Amazon region, the Orinoco region or the Pacific rim). Regions are territories delimited by nature, by their physical features, and therefore the criteria used to define them can be verified in the field because they have natural borders (such as watersheds). Regions are the basic and central part of the integral territorial, environmental and political-administrative organisation, where one can find room for the true political reform of Colombia. [118] However, this new concept has not prospered, because the Constitution affirms that such changes must be made via the LOOT, which to date has not been enacted by Congress.

Municipalities

The basic territorial entity of the political-administrative division of the state, municipalities have political, fiscal and administrative autonomy within the boundaries set by the Constitution and the laws. Opinion, however, suggests that the organisation of Colombia as a unitary republic allows for very strong central authorities, as opposed to local authorities with very little autonomy, so that most public functions are directly executed by the state, while local councils are only allowed to execute a limited number of tasks. Their basic roles are listed in Art. 311 of the Constitution. They handle local development in its physical, economic, environmental, social and cultural dimensions, provide public services and promote community participation. There are 1,098 municipalities in the country; in some cases and due to their size, population and economic resources, they are called districts. [119]

Localities

Due to their size, certain districts and municipalities are further divided in localities. [120]

115 Each department has a collegiate and deliberative administrative body of popular election, called a Department Assembly. The governor heads the department administration and acts as its legal representative. Since 1991, governors are elected by popular vote. The Constitution also provides for the existence of several secretariats (general, works, government, treasury, health and education, transit and transportation, housing), public establishments, industrial and commercial businesses, and semi-private companies, depending on the structure determined by the assembly.

116 As reference, the Organic Spatial Planning Bill of Law (LOOT) No. 016 of July 20, 2003 which contains organic provisions on spatial planning matters can be consulted. The position of indigenous groups in relation to the LOOT can be reviewed in the periodical Unidad Indígena No. 1, October 2001, written by Edith Bastidas from the National Indigenous Organisation of Colombia-ONIC Legal Programme.

117 Revista Colombia Terra Incógnita, (2003:32-36).

118 Ibid.

119 Each municipality has one mayor, who heads the local administration and is the legal representative, elected by popular vote for a 3-year term. The municipality has a collegiate body called municipal council or district council, which is an administrative entity of popular election; its functions are listed in Art. 313 of the Constitution.

120 The collegiate body of localities is called the local administrative board (JAL) and its members, called ediles (aldermen or councillors), are elected by popular vote. Each locality has a local mayor, who unlike the others, is not elected by popular vote but chosen from a list of three people by the mayor of the municipality or district to which the locality belongs. JALs participate in the process to define investment programmes at

Indigenous territories (Resguardos)

These are delimited by the national government with the participation of representatives of indigenous groups. These territories are organised in *cabildos*, governed by councils established and regulated according to the uses and customs of the community and their special laws; they have legal and administrative autonomy.[121] They must abide by the provisions of the LOOT. Constitutional Court Ruling T-634 of 1999 states that although the organic spatial planning law has not yet been enacted, the constitutional principles related to indigenous communities must be acknowledged, as well as administrative, budget, financial, political, and legal autonomy.[122]

Territories of black communities

Constitutionally these are not established as specifically regulated territorial entities, and there is no jurisprudence on the matter. Collective property for black communities that have been occupying vacant land in rural areas along the riverbanks in accordance to their traditional farming practices is recognised by law (Law 70 of 1993); there are cases where the territory of a municipality belongs entirely to communities of African descendants.

Administrative territorial entities specified in the Constitution

While the territorial entities described above enjoy autonomy in terms of governance and development of their areas of interest within the limitations of the Constitution and other legislation, administrative territorial entities are merely entities in which activities for the economic and social development of the territory are brought together.[123]

Metropolitan areas

Article 319 of the Constitution states that when two or more municipalities have economic, social and physical interrelations, and when in their expansion they gradually become a single entity that meets the characteristics of a metropolitan area, they can be organised as one. These areas have the legal status of a public entity, administrative autonomy, their own assets, authorities and a special regime.[124] They can become districts if local residents approve it in a referendum; in this case, the municipalities disappear. Colombia has metropolitan areas in Bucaramanga, Valle de Aburrá, Barranquilla, Centro Oriente and Cúcuta.

Associations of territorial entities

Law 614 of 2000 proposes the establishment of territorial integration committees by joining various municipalities in one department, in view of establishing integration, coordination and harmonisation mechanisms among the various competent entities in matters of territorial organisation and for the management of spatial plans.[125]

Degree of autonomy of local governments

Administrative decentralisation in Colombia is effected under two modalities: by granting competences to an entity to execute specialised activities or services (semi-private companies, state industrial and commercial companies) or by assignment of administrative functions and responsibilities to regional or local authorities.

The Constitution of 1886 established administrative decentralisation under a centralist concept, with the central government defining and deciding the specific functions and responsibilities of departments and municipalities, such as

local level, control the provision of public services, execute tasks delegated by the district or municipal council and manage the resources allocated from the municipal budget.

121 Councils have one leader and in most cases a group of advisors who assist in the administration of the cabildo (Information provided by ONIC). But this is not the only model: there are as many administrative schemes as indigenous communities.

122 The constitutional powers of councils in indigenous territories include enforcing legal rules on land use and population occupation in their territories, designing economic and social development policies, plans and programmes for their territory; promoting public investments in their territories and ensuring adequate implementation; collecting and allocating resources; ensuring the preservation of natural resources; coordinating programmes and projects fostered by various communities in their territory; cooperating in the control of public order within the territory according to national provisions; representing the territory before the national government and other entities established by the law.

123 Art. 287 of the Constitution.

124 Art. 2, Law 128 of 1994.

125 Under an environmental approach, Decree No. 216 of 2002 on Basins, issued by the Ministry of the Environment (now the Environment, Housing and Territorial Development Ministry - MAVDT) offers the potential for intermediate-level planning and management – still unexplored in the country.

the collection of certain taxes. A first step towards autonomy of local governments was reached in 1968 with the transfer of central revenues to departments for the purpose of financing health and education, and the allocation to municipalities of a portion of the sales tax. [126] Law 14 of 1983 emphasised the fiscal autonomy of territorial entities, while modernising and extending their tax base, especially with respect to the land tax, significantly increasing revenues for local governments.

A constitutional amendment in 1986 established popular elections of mayors, held for the first time in 1988. [127] The participation of central government in a series of local tasks and services was reduced, with budgetary consequences, placing a greater responsibility on certain territorial entities for generation of their own revenues.

Finally, congress regulated the General Participation System (SGP) in 2001, which implemented the per capita revenue assessment system to calculate the amount of the transfer to territorial entities. Resources are transferred on the basis of the number of people living in the municipality. [128] This measure, especially under inefficient department administrations, has made many isolated municipalities with scattered populations economically unviable and ineffective in the provision of services: with few inhabitants and therefore fewer transfers, they have poor quality services and excessive coverage costs. The efficient administration of municipal resources now depends on the capacity of mayors' offices to raise additional funds to meet local needs.

In addition to SGP resources, municipalities have oil royalties and the revenues generated by their territories, as provided in Law 6 of 1992: revenues generated by taxes on income, industry and trade, on vehicles, paper and slaughterhouses, in addition to levies such as that on gasoline. Departments also rely on taxes collected on alcoholic beverages, cigarettes and authorised stamps.

The Constitution of 1991 made municipalities responsible for urban development. In the same period, national house-building agencies disappeared, the demand-driven housing subsidy was created (see Section 3.5 below) and laws providing means for municipalities to build houses were enacted. The privatisation of housing, combined with cutbacks on transfers to territorial entities, deficient municipal administration, informality of developments, illegality of tenure, and increased vulnerability of the urban population have led to a progressive deterioration of the population's quality of life. [129]

Gender and the judiciary

There is no gender policy for the judiciary, and the accessibility of the legal system is particularly difficult for low-income women or black Colombians. Housing and gender cases are handled in the ordinary jurisdiction by civil judges. [130]

Statistics from the judicial authorities indicate how many lawsuits are filed, but do not show how many men and women out of the total population resort to the courts or file cases related to land and housing. Statistics are kept according to processes and the same person may have several processes filed with the courts at the same time.

The State Attorney General and the Ombudsman's Office are charged with protecting human rights. They have administrative and budgetary autonomy to execute the supervisory tasks assigned by the Constitution.

Participation of women in decision-making bodies

The participation of women has historically been low both in elected and in appointed positions. The Quota Law (Law 581 of 2000) states that women must hold at least 30 percent of positions in the highest decision-making levels in all three

126 Law 33 of 1968.

127 Legislative Act No. 1 from 1986. This constitutional amendment and its complementary Law 12 of 1986 was the first of several similar subsequent acts by congress.

128 Enactment of Law 715 in 2001 created via Legislative Act 01 of 2001. The law grants autonomy in the sense that the nation directly transfers the resources to municipalities having more than 100,000 inhabitants and to department capitals. Districts receive the same treatment as municipalities. In other municipalities with less than 100,000 inhabitants, the provision of services under Law 715 is controlled and coordinated by department administrations.

129 UNDP. (2003).

130 Interview: Carmen Elena Leon, Development and Statistical Analysis Unit, Higher Council of the Judicature.

branches of government and in other national, departmental, regional, provincial, district, and municipal public offices. This percentage also applies to positions of direction and command for the formulation, coordination, execution and control of state actions and policies in all these levels. However, the Constitutional Court established that this rule only applies to positions that become vacant, which often complicates or delays access by women. [131] It also rules that certain organisations are hardly compatible with the quota system, for instance the boards of directors of some institutions, which consist of the representatives of member entities who do not necessarily nominate women.

The Quota Law has not been sufficiently disseminated, its philosophy in search of equality is not well understood, and it has not been widely enforced. Based on the Constitution, women have gradually increased their participation in popularly elected positions, but their participation is still very low, as illustrated by the table below.

Table 1.3 Percentage of women among elected members of congress and government

Level	Position	Percent of women elected for period 2002-2006
National level (2005)	Senators	8.8 %
	Deputies	12.1 %
Department and local level (2003)	Governors	6.25 %
	Delegates to Department Assemblies	13.84 %
	Mayors	7.3 %
	Local Councillors	12.89 %

Source on Senators and Deputies: Inter-Parliamentary Union, April 30 2005.

Information on department and local level representation obtained from the Civil Registry

Presidential Council for Women's Equality

The National Directorate for the Equality of Women, created in 1995, was transformed into the Presidential Council for Women's Equity in 1999 by Decree 1182. The mandate of this council is to guide and advise the president on public policy issues regarding women and regulating women's public policies. The current administration designated various roles to the council, including: [132]

- Assisting in the formulation of government policies and laws on promotion of gender equality;
- Promoting gender mainstreaming in the formulation, management and follow-up of policies, plans and programmes in national and territorial public entities;
- Creating follow-up tools for the enforcement of domestic legislation, international treaties and conventions related to women's equality and the gender approach;
- Establishing alliances with the private sector, international agencies, NGOs, and the academic sector to foster research on the status and situation of women;
- Supporting solidarity, community and social organisations of women at national level and their active involvement in state actions and programmes; and
- Supporting the formulation and design of specific programmes and projects aimed to improve the quality of life of women, especially of the poorest and most disadvantaged.

The council's main objective is to contribute to the achievement of relations of equity and equal opportunities for men and women, enhancing the quality of life of women, respect of their human rights, participation as citizens and strengthening women's organisations. Likewise, the National Agreement for the Equality of Men and Women was established as a commitment by the current administration, legislative and judiciary to ensure equal development and opportunities.

To ensure gender mainstreaming, the council works to coordinate agendas with several government entities and international agencies. The Inter-institutional Gender Linkages Table was established as a mechanism to follow up on these agreements. [133]

131 Ruling C-371 of March 29, 2002.

132 Decree 519 dated March 5, 2003.

133 Presidential Council for Women's Equality (2003).

The view of several civil society organisations working with community-based organisations is that in Colombia there is no governmental institution that effectively promotes women's rights. They believe that the roles of this council are restricted: it is not autonomous as it is part of the administrative department of the presidency; and it has no independent resources or capacity for contracting or determining spending. [134]

1.4 Socioeconomic Context

According to the latest population and housing census (1993), Colombia had 33,1 million inhabitants (16.3 million and 16.8 million women), grouped in 8,2 million families living in 7,1 million housing units. Projections for 2004 were for a total population of 45,3 million – 22.4 million men and 22.9 million women. [135]

According to the National Centre for Construction Studies, (CENAC), Colombia has 9.8 million housing units sheltering some 11 million households – understood for census purposes as the group that shares a home and at least one meal a day. [136] Of these, 6.4 million units (or 75 percent of families) have been built by their owners and are in high seismic vulnerability conditions.

Of the total population in 1993, 1.1 million belonged to minority ethnic groups, of which roughly half were Afro-Colombians and the rest Indians.

Three-quarters of Colombian households earn less than two times the minimum wage (the legal minimum monthly wage is equivalent to approximately $145). Of the 12 million people living in rural areas, four out of five live under the poverty line, and half in extreme poverty. The average income in rural areas is only 40 percent that of the urban population. In the last decade, rural unemployment has increased almost threefold due to a reduction in investment, with a consequent decline in cultivation and production areas. [137] There were 4.6 million people working in the rural sector at the end of 2002, 58 percent of which earned income mainly from on-farm and 42 percent from off-farm activities. [138] Average schooling among rural children is only four years, approximately half that of urban children.

The estimated number of women-headed households increased rapidly from 25.8 percent in 1997 to 30.9 percent in 2003, and was higher in urban areas, while the estimated number of male-headed households decreased accordingly and was higher in rural areas. [139] The percentage of women heads of low-income households grew from 52 percent to 54 percent between 1992 and 2001.

Figures on displaced persons differ among various sources. The two tables below show figures provided by UNDP in its 2002 Human Development Report and by the civil society organisation CODHES respectively.

Table 1.4 Displacement 2000-2002

Year	Number of Displaced Persons	
	UNDP estimates	COHDES estimates
1999	-	228,000
2000	266,886	317,000
2001	324,998	342,000
2002	373,020	204,000 (Jan-Jun)
2003	-	119,690 (Jan – Jun)
2004	-	130,346[3] (Jan-Jun)
Total	964,904	1,341, 036

These figures suggest that from 1999 to 2004 more than 1 million people have been displaced, in addition to the estimated 2 million Colombians living abroad.

134 CODACOP et al. (2003:13).

135 Dane. (1993).

136 Jorge Torres Executive Director, CENAC Interview with the author , January 21 2004 with,.

137 Information taken from INCODER: www.incoder.gov.co

138 National Administrative Department on Statistics (DANE), Continued Household Survey 2003

139 DANE. (2003).

Displaced persons arriving at urban centres face a great many problems, including lack of inter-institutional coordination to care for them, obstacles to being admitted to assistance programmes and official indifference to their plight. Temporary settlements minimally mitigate the problem placement and maintenance, but not for long. Nor can displaced persons be sure of obtaining permanent jobs, education or health care. After becoming settled in one place, at the end of the project the displaced families enter a process similar to displacement, once again dismantling the social networks they have managed to build. [140]

A World Bank report in 2003 revealed that 38 percent of the total displaced population consisted of girls and women, 32 percent of which were heads of household. [141] The Social Solidarity Network estimates that between January and June 2002, almost 18 percent of the total displaced population of the country was Afro-Colombian.

The Constitutional Court has summarised the situation of displaced people as follows: [142]

- 92 percent have unsatisfied basic needs;
- 80 percent are indigents;
- 63.5 percent live in precarious dwellings;
- 49 percent lack adequate public services;
- 23 percent of children under 6 are malnourished;
- 25 percent of boys and girls aged 6-9 do not go to school; and
- 54 percent of persons aged 10-25 do not attend any education system

In 2003, Afro-Colombian and indigenous groups were the most affected by the armed conflict and displacements. [143] Four out of 10 internally displaced persons belong to one of these ethnic groups, who are subjected to confinement strategies by armed actors in confrontation. One of the most serious situations caused by violence is the emergence of regions with confined populations, where armed groups do not respect or abide by the principles of international humanitarian law that protect civilian populations trapped in the conflict. As a consequence, they are unable to cultivate their crops or gain access to goods and services, and live in hunger and misery. The territorial clearing strategies applied by blocking the free movement of individuals, markets, resources and communication used by the armed forces, FARC and AUC since 1996, initially in the northern area of Chocó and the Urabá area of Antioquia, and later extended to other territories, marked the beginning of the exodus and displacement of entire populations.

The displacement of rural people is influenced by paramilitarism and encouraged by economic and political sectors with the support of the army. Displacement throws farmers into the labour market and their lands into the goods market. The amount of land abandoned by this population is estimated at 4 million ha, about three times more than the amount of land redistributed through state agricultural reform programmes since 1961. [144]

Situation of women living in informal settlements/self-help housing

In 2004, 1.3 million houses or 16 percent of all urban households were in precarious (slum) settlements, with serious qualitative shortages. These settlements are located in high-risk zones or in housing complexes without the possibility for upgrading or housing improvement schemes.

By the year 2020, the urban population will have increased by 30 percent, with an additional 10 million inhabitants in urban centres. Preventing the formation of precarious settlements and improving the existing conditions appear to be fundamental challenges, in addition to developing adequate policies and housing investment schemes, urban development policies and basic service delivery. [145]

140 Interview with Myriam Hernandez, RSS-World Bank project, Swedish Cooperation, etc. February 2004.

141 World Bank (2003:24).

142 Taken from ruling No. T25 - 2004 of the Constitutional Court.

143 According to the Information System on Displacement (SISDES) run by the Human Rights and Displacement Clinic (*Consultoría para los Derechos Humanos y el Desplazamiento* – COHDES).

144 World Bank. (2003).

145 National Planning Department of Colombia (2005).

The poor living conditions of underprivileged women are directly related to the fact that they have no access to formal employment. Informality restricts access to subsidies and credit and to adequate basic services, and limits poor women in the full exercise of their rights. [146]

In spontaneous poor settlements, women and children suffer the consequences of informality (lack of water supply, transportation, access to schools and health care facilities) most. [147] In addition to working two shifts – in their jobs and housework – women in these areas have multiple roles as community members since they are generally in charge of applying to public agencies for provision of public and social services or infrastructure.

While there are some positive experiences with progressive self-constructed housing, most of these experiences are not replicable in bigger projects that require stricter quality control. Progressive development is still a tendency in informal settlements, mostly via self-help construction, but this rarely benefits women or men: it is costly, it takes up the free time of families, and it does not generate good quality housing. Compared with common construction projects, the costs are frequently higher than the savings obtained through the self-help process, mainly due to waste of materials and time because of the lack of qualification of the family members and the extra costs for training them.

Women who head households generally find it difficult to build their own houses without the solidarity of their neighbours, and they must often resort to hiring costly and generally unqualified labour. The popular housing federations in Colombia have concluded that it is better to involve people in developing their own solutions and improving their own capacities, in partnership with local government and institutions.

An alternative to the self-help construction approach is leasing schemes or protected leases, which can be upgraded to ownership once the lessee can afford to buy. However, financial institutions are not interested in providing leasing options to poor families, even less so to women-headed households. The government could compel such institutions to channel a percentage of their financial resources to leases for lowest-income households. An example of this is the subsidised PAPAS programme implemented by the municipality of Bogotá in El Cartucho, a badly deteriorated urban renewal area. The Popular Housing Bank (the municipal social housing office, not a commercial bank) has targeted 127 families who relocated to this area, and provided them with protected leases. Social workers operate a points system to motivate families to participate in activities, such as education, that will broaden their opportunities.

Security of tenure for women and violence against women

In addition to access to land and adequate housing, security of tenure also means a series of measures that provide women with a permanent livelihood and guarantee their physical integrity.

In the urban context a direct correlation exists between poverty, joblessness and lack of access to formal housing. Lack of ownership or other legal means of accessing a place to live due to lack of a formal or permanent income implies a high dedication of family income to pay for rent and, as a consequence, little or no possibility to accumulate savings. For poor Colombian households, especially those headed by women, overall informality implies limitations in nutrition, access to basic services and to housing subsidies. Poor-quality housing is related to bad living conditions (overcrowding in small spaces) and has a direct impact on domestic violence. [148] Urban violence is related to poor conditions in the urban environment.

In her study on the impact of armed conflict on Colombian women and girls, the Special Rapporteur on Women's Rights of the Inter-American Commission of Human Rights, Dr. Susana Villarán, found that violence against women is a

146 UNCHS (2003).

147 Dalmazo, P. No. 5.

148 Grupo de Apoyo Pedagógico, (2002).

structural problem in Colombia, in which women are used as pawns by the armed actors in their fight for the control of communities and territories. Murder, kidnapping, massive detentions, forced recruitment, torture, rape, forced prostitution and enslavement are used to intimidate and terrorise communities that live in the conflict zones, provoking the displacement of hundreds of families, the majority of which are headed by women. Women's organisations working in conflict zones are perceived as an obstacle to social and territorial control by the armed actors and are therefore subject to harassments and threats. Based on statistics provided to her by governmental entities and NGOs, she concluded that displacement affects women and girls disproportionately. [149]

The Special Rapporteur established that the situation of indigenous women is particularly critical. They cannot move freely, armed combatants take away their autonomy and undermine their culture, affecting their everyday relations.

Armed groups forcibly recruit young women and girls. The Special Rapporteur met with hundreds of widows and orphans living in extreme poverty and precarious situations who had been forced to abandon their ancestral land and join the poor in the cities. [150]

Box 1.1 Testimony of displaced indigenous women

> "Violence means harming women, abusing her body, her mind and her spirit. Violence is suffering discrimination from our leaders, who do not value our participation in indigenous fights. Violence is inflicting sadness and anguish; is abandoning the home. Not being able to exercise our traditional rites is also violence. Violence is when our men are taken away and when our sons are killed."[4]

The discrimination and stigmatisation of Afro-Colombian women is sharpened by the conflict. They either have to live under the control of armed groups, or are evicted from their territory and forced to live in cities that are alien to their culture.

Box 1.2 Testimony of displaced Afro-Colombian women

> "...The houses where we come from are spacious, in the city we are forced to live in overcrowded conditions"… "We are scattered in marginal neighbourhoods ... and because we rent we are not allowed to carry out our cultural practices" (such as funeral rites)... "In our rural settings we supported each other and we lived happily, we had no money but we had our land and all we needed"… "Coexistence codes are lost and we lose the custom of our community of finding food together. We feel invalid, we lose part of our lives, we lose our freedom, our territory, our life, our autonomy, the scheme of community life is altered". [5]

While acknowledging the efforts of government entities, civil society organisations and women to counter and document violence, the Special Rapporteur observed that both at national and local level, there is a lack of inclusion of specific needs of indigenous and Afro-Colombian women in public policies and programmes. [151]

1.5 Civil society

The Constitution of 1991 brought major changes to the relationship between civil society and the state. It recognises the right of all citizens to establish, organise and develop political movements and parties, and the freedom to affiliate or retire. Articles 107 and 108 guarantee social organisations the right to express themselves and to participate in political activity.

The National Development Plan 2003-2006 seeks to promote direct and autonomous participation of women's organisations in several national and local dialogue processes, and in political negotiations related to social and war conflicts that include and represent the interests of women's social movements.

Participation of Civil Society

In Colombia, local and national civil society participation forums were created by Participation Law No. 134 of 1994 – an innovative method of regulating participatory democracy. A list of the main civil society participation forums in social and territorial planning and management is presented in

149 Comisión Interamericana de Derechos Humanos, (2005:1).

150 Ibid, p. 2.

151 Comisión Interamericana de Derechos Humanos, (2005:3).

Appendix I; their operation and consolidation level depends on whether they are mandatory under the law; the issues they address; and the support given to them by national or local governments.

At local level, Law 134 opened an opportunity for citizens to participate in the formulation of plans and specifically in the implementation of policies for women, youth and vulnerable groups. Nevertheless, plans at local level rarely include a gender dimension or offer the possibility of addressing differentiated needs and interests for women and men. [152]

The intervention of the indigenous population is done through the National Indigenous Lands Commission. [153] This entity is attached to the Ministry of Agriculture and directed by its vice-minister, with participation of community representatives. The commission seeks consensus between indigenous people and the government. It is in charge of prioritising programmes related to their affairs, either acquisition of land, restructuring, extension, or the lifting of indigenous land holding encumbrances.

In Colombia there are many professional women in charge of public institutions. Yet they are still restricted in access to decision-making positions that would permit them to influence public policies, take strategic dispositions or assign resources. In national institutions that deal with human settlements, housing, urban development, roads and infrastructure and social and public services, the great majority of leading positions are still held by men. [154]

There has been an increase in the participation of women in consultative organs like land planning councils, local planning councils and cultural and youth councils, and in unconventional spaces promoted by grassroots women's groups and NGOs. [155]

Role of women´s organisations in rural and urban settings

In the 1980s and early 1990s, rural women entered the scene with their own organisations or in mixed or ethnic unions, thanks to the initiative of the National Association of Farmers (ANUC) and the influence of the second international wave of feminism. Since the mid-1980s, a growing number of working-class women have become part of organised social movements. [156] Organised rural women negotiate their agendas within their own organisations, developing individual and collective gender identities; they have also set up links with organisations in other sectors of civil society and with the state, and they participate in mixed groupings.

The National Association of Rural and Indigenous Women of Colombia (ANMUCIC) was an important advocacy forum for the rights of rural women, with a seat on the INCORA board. In the rural mobilisation of September 16 2002, it asserted the inalienability of indigenous land reserves. [157]

Although women and indigenous groups are more organised than unions and political movements, their participation, seen from a gender equality perspective, still presents severe limitations. [158]

In the urban environment, women have mainly focused their struggles on achieving better living conditions for their

152 As an example, in a review of fifteen POT plans by the "*Dirección de Ordenamiento Territorial*" of MAVDT and FNUAP in December 2002, from analysis of inclusion of population issues and gender perspective, it was demonstrated that these issues were missing in almost 90 percent of the cases analysed.

153 Created under Decree 1397 of 02/1996.

154 According to the study "Participation of Women in Human Settlements at National and Local Level" financed by UNCHS-Women and Shelter in 1998, for Colombia, from the total number of charges for professionals in these institutions, almost 70 percent were occupied by men. Women occupied 41.5 percent of posts in the directive level and 35.70 percent at executive level in these same institutions.

155 In the case of Bogotá, an interesting experience is the creation of Special Policy Councils– CLOPS, where women are represented and which communicate with district public entities in charge of social issues and with social organisations working on these issues. "CLOPS opened a space where women -who have been traditionally in charge of the education and health of boys and girls and the welfare of the elderly in their communities- can speak of their needs and make proposals more directly" according to Olga Goyeneche, a facilitator in CIDER, trained by Grupo de Apoyo Pedagógico-GAP.

156 Rivera S. "Politics and ideology of the Colombian Peasants Movement, the case of ANUC" CINEP and UN Research Institute for Social Development, Bogotá, 1989.

157 Other important advocacy roles were developed through the secretariats, committees or programmes of organisations of farmers, indigenous groups, groups working on unity and reconstruction, groups working on rural development, and labour groups. Source: León and Deere (2000) and Díaz (1999), taken from "Años 80, Inicios de los 90, Una Reñida Revelación" –Tierra y Justicia Notebook No. 9 p. 17.

158 Interview with Rosa Emilia Salamanca, of the NGO Association for Interdisciplinary Work - ATI.

families, communities and neighbourhoods, and towards peace and social justice. Some national organisations such as the National Network of Women and the Popular Women's Organisation have a long history of demanding government support for the protection of women's rights and speaking out against outrages by violent groups in several parts of the country. Others have focused on women's political rights, and discussed difficulties and opportunities in national and local forums. [159]

Probably the most significant gain of these organisations has been to create growing awareness of inequities towards women. This has had effect in legislation, in the formulation of certain policies and some concrete actions, especially those oriented towards heads of households.

At local level, urban women's organisations have obtained important results as far as settlement improvements, and the provision of public and social infrastructure and services. But the results in terms of land and adequate housing rights are limited, as repeatedly expressed by participants in events promoted by civil society organisations.

2 Land Tenure

2.1 Types of land

Land is classified in the following categories, which are described in greater detail in Appendix III: [160]

- Union or state property, owned by the nation, consists of public land, cultural and archaeological heritage, vacant land and fiscal property;
- Private property is owned and used by individuals; and
- Communal land is owned or possessed by indigenous groups, Afro-descendants, cooperatives or a group of urban dwellers.

Tenure can have multiple manifestations according to the historical and sociopolitical context. Land or real property can be public, private or collective. In terms of ownership, land or real property can constitute state, private, associative, communal or collective property; or "without ownership" such as possession, simple tenure, invasion, user loans, rent and usufruct, among others. With respect to how access to land is obtained, classification is presented in two groups: 1) regular / legal / formal; or 2) irregular / illegal / informal.

Table 2.1 Total area of rural land registered in cadastre

Owner	Area (hectares)
State	28,590.815
Private owners	67,859.588
Black communities	3,786.826
Indigenous communities	30,050.215

Source: IGA Institute Geográfico Augstin Codazzi, 2003

Of registered land in urban areas, the state owns more than 64 million ha, while private owners hold over 274 million ha. [161]

2.2 Tenure types

The civil code includes legislation on relations between individuals, real estate buy-sell contracts, successions and separation of marital property, among others. A table setting out the various types of tenure, their legal characteristics and their legal basis can be seen in Appendix IV. Tables indicating the ways in which a person can access land tenure rights are set out in Appendix V.

The Colombian civil code of 1887 divides union assets in property for public use, fiscal property and vacant property

159 *Red Mujer y Participación Política, Movimiento Político Mujeres 2000, Asociación de Concejalas y Exconcejalas de Cundinamarca*. Some groups of academic origin like *Grupo Mujer y Sociedad, Instituto de Estudios Políticos y Relaciones Internacionales de la Universidad Nacional de Colombia - IEPRI, Centro de Investigaciones Sociojurídicas de la Universidad de los Andes – CIJUS* with research experience and experience in political lobbying have supported the initiatives of popular organisations.

160 Rural is land used for farming, livestock, forestry, natural resource exploitation and similar activities. Suburban land is located in areas prepared for urban uses during term of validity of the Land Use Management Plan (Plan de Ordenamiento Territorial – POT). It is unsuitable for urban uses since it has no infrastructure provision yet. Urban land is designated in POT for urban uses, where primary networks of public services and road infrastructure exist to make their development viable. They can include populated centres of *corregimientos* (smaller than municipalities). The urban perimeter may in no case exceed the so-called perimeter of public sanitation services.

161 IGAC Geographic Institute, Augstin Codazzi, 2003.

(Art. 674 to 678). Article 673 alludes to the ways one can obtain ownership as a means to secure land tenure. These include occupation, accession, transfer, succession and adverse possession, defined below.

Occupation

Under Art. 685 et seq., assets that have no owner are acquired, provided such purchase is not prohibited by local regulations or international law.[162] Invaders can become possessors if they occupy a private property and are not evicted within the next 30 days (if on urban land) or 15 days (on rural land). They can become occupants of state property if that property is not of public use, a conservation heritage or fiscal property.

Accession

Under Art. 713 et seq., the owner of a property becomes the owner of what it produces or what becomes attached to it.

Transfer

Article 740 et seq. provides for the assignment of property by the owner to another person, when the power and the intention of transferring ownership and the capacity and intention of purchasing the property are present. Under Art. 756, the transfer of real property also requires the registration of the deed at the Public Instruments Registry Office, required also by the transfer of the right of usufruct, habitation or mortgage.

Possession

Defined as tenure of a given thing as owner or master thereof in Art. 672 of the civil code et seq. This is considered a fundamental right of economic and social nature.[163] It differs from mere tenure, a concept enshrined in Art. 775 as that exercised not in the capacity of owner or master.[164] Subsequently, the civil code contains limitations on ownership, including trust ownership (Art. 794 et seq.), the right of usufruct (Art. 823 et seq.), the rights of use and habitation (Art. 870 et seq.) and servitude (Art. 879 et seq.).

Prescription (adverse possession or usucapion)

This is a means to acquire ownership of assets belonging to third parties, if the following conditions have been met:

- The possessor holds the property as owner or master, paying taxes, installing services in their own name or carrying out other acts that demonstrate the intent of an owner, such as improvements on construction, cultivating land etc.;
- The duration of such possession is 10 years (for urban property) or five years (for rural property).[165] In the case of social housing, ordinary adverse possession (normally five years) becomes effective after three years, and extraordinary adverse possession (normally 10 years) after five years;[166] and
- Adverse possession must be declared by a judge, if the possessor can prove ownership of land after these periods established by law by certifying payment of public services and taxes, improvements over construction, cultivating land, pasturing or grazing.

In practice this mechanism is indeed used. For example, in various *barrios* of Ciudad Bolivar in Bogotá, long-time occupants who had been paying taxes and utility fees have obtained land through adverse possession. If the owner has not utilised and exercised his/her property as owner or master over a course of time s/he may lose the property.

In practice, the poorest of the poor have few options but to live on invaded land, often bordering rivers or ravines, or in otherwise high-risk areas. Many displaced households lack the means to prove ownership or tenure, because they have no titles or because their sudden departure from their homes prevented them from putting these documents in a safe place.

162 The Civil Cassation Chamber of the Supreme Court of Justice, in a ruling dated July 5, 1978, affirms that this is the way ownership of vacant lots is acquired, consummated when the settler sows crops or introduces cattle; and the administrative act of adjudication recognises the legal entitlement of the real right of the occupant. The inscription in the registry is evidence of the entitlement resulting from occupation. This concerned a rural case on farmland. Occupation and acquisition can also occur on land that is not farmland.

163 By a ruling of the Constitutional Court from August 12, 1992.

164 Supreme Court of Justice, Civil Cassation Chamber, ruling of June 24, 1980.

165 Arts. 4 and 5, Law 791 of 2002, which amended Articles 2529 and 2531 of the civil code respectively.

166 Under Art. 51, Law 9 of 1989. Arts. 2515 et seq. of the civil code are also applicable.

Furthermore, a high percentage of people have no identity card. [167]

Municipal or departmental authorities have the discretion to assign subsidies from their own resources as well as to facilitate access to land via user loans to displaced households or communities. This has been the case in the department of Sucre.

3 Land Management Systems

3.1 Main institutions involved

National Planning Department

This department is in charge of formulating, following up and assessing national policies, such as the National Development Plan (NDP). Based on the NDP and on the prioritised policy needs of each ministry, the department prepares a National Economic and Social Planning Council (CONPES) project document, followed by inter-institutional coordination work to provide inputs to consolidate the final document.

Ministry of Agriculture and Rural Development

In charge of rural development and land policy. INCORA, the entity in charge of carrying out land titling and adjudication under the agrarian reform process, was liquidated in 2003. [168] In May 2003, Decree 1300 created the Colombian Rural Development Institute (INCODER), a decentralised entity attached to the Ministry of Agriculture and Rural Development, to take over some of its functions. These include the execution of agricultural policies, rural development, the social organisation of property titling and provision of technical and administrative follow-up to territorial entities and communities. [169]

With the creation of INCODER, half of the agencies working in agricultural reform in the country disappeared, leaving several departments with minimal capacity to manage or execute projects. This is detrimental to rural households who, for lack of knowledge and limited possibilities of accessing central offices, are left out of the process of adjudicating lots or providing technical support to productive processes, increasing their vulnerability in the face of possible displacements due to violence. Unlike INCORA, there is no room in the INCODER board for representatives of ANMUCIC; hence women have lost two seats in decision-making bodies. The "New Vision for Rural Development INCODER 2003" claims this new approach "grants a leading role to the administration of communities and to civil society, in the identification of opportunities and in the achievement of its own development". In practice, the participation of rural organisations in the agricultural reform has been limited as a result of the restructuring.

Ministry of Environment, Housing and Territorial Development

This ministry is responsible for the formulation and implementation of the national housing policy and regulations, including subsidies and subsidy allocation. It also formulates national policies and guidelines related to spatial planning and urban land, and supports municipal land management and planning.

Ministry of Interior

Land of indigenous groups and African descent groups falls within the mandate of this ministry.

Social Solidarity Network (RSS) and the Ombudsman´s Office

These provide assistance to displaced persons.

167 Hernandez Sabogal, M. Interview with the author February 6, 2004. Up till now, the offer to return which is being given to displaced households has consisted mostly of jobs in rural areas, not in the allocation of land.

168 Via decree 1292 of 2003.

169 The new INCODER is divided in sub-administrations and is supported by nine regional liaison offices, 32 territorial technical groups (one in each department), and six integral groups, seeking to rely on the support of Agricultural Secretariats in departments and municipalities in order to execute a process of decentralisation which, over time, will make each territorial entity responsible for rural activities. One of the tasks assigned to INCODER is the survey of indigenous community land for the provision and titling of sufficient or additional land areas, in order to facilitate adequate settlement and development, the recognition of property for the land they traditionally occupy or which constitutes their habitat, the preservation of the ethnic group and the enhancement of the quality of life of its members.

Geographic Institute (IGAC)

Provides guidelines to the decentralised cadastre. The registry is headed by the centralised land registry office.

3.2 Land administration processes

In Colombia, land administration is based on the inventory of existing land, expressed in a system of cadastre and registry of property rights, which regulates access and use, and develops into a land or property registry. This system is supported by legislation that regulates concessions or acquisitions, the exercise and assignment of these rights, and the extinction thereof. [170]

Cadastre

The structure of the Colombian cadastre is a land information system based on the lot as a unit for the administration of land, for urban and rural planning, spatial planning, environmental management and sustainable development.

The country's cadastre system is decentralised in four entities at departmental or municipal level. [171] Each entity manages its own jurisdiction. IGAC issues guidelines to regulate all cadastres but has no role in the administration of systems managed by the other four offices. IGAC operates with 21 local offices throughout its jurisdiction and with 45 delegations, which depend directly on the local offices. There is no centralised information at national level.

The land registration process throughout the country began in 1983 when Law 14 defined a new methodology for the cadastre. The goal for 2006 is to have a uniform methodology under which each entity in the country will have updated information. Concerning IGAC, the process is advanced but in urban areas there are still 25 municipalities under survey and in rural areas approximately 100 municipalities still need to be covered. [172]

Access to statistics of the cadastre is possible since there is a database from which one can establish surfaces by ranges, determine land uses and identify if the owner is the state or private persons. One can determine which municipalities are registered, the number of existing plots and their land uses, but the current cadastre system in Colombia does not allow a breakdown of statistics by sex. This will be possible once the correspondence between Cadastre and Registry is finished.

In IGAC´s work there is no priority by gender: the law does not establish any guidance in this sense and there is no internal programme addressing this issue.

Registry

The registry system in Colombia was created by Decree 1250 in 1970. It works as a centralised system with branches in each department capital. The public property registry is handled by the Head of Notarial Management of the Public Instruments Registry.

There are no statistics at national level on the extent of properties registered since the information is not consolidated in a statistics system in the Public Instruments Registry. The only way to verify this would be to find in INCODER how many vacant lots are still to be adjudicated in order to determine, by exclusion, how many properties are registered.

Registries are not kept in gender-disaggregated form and it is not possible to determine how many lots are owned by women. Using the registry base and the ID card number, one could break them down by gender but there are many errors in the fields and it would probably be imprecise. [173] There is no preference accorded by gender when titles are processed.

Due to the centralisation of the registry system, more flexible schemes that include testimonies or oral evidence in the proc-

170 Molina, C. J. (2000).

171 These four entities are: the Cadastre of Bogotá, which is an administrative department of the Capital District; the administrative planning, direction and information systems department in Antioquia; the municipal cadastre division of the secretariat of treasury in Medellin; the assistant directorate of taxes, revenues and municipal cadastre in Cali. These entities cover the urban and rural areas of their municipalities or, in the case of Antioquia, the department. The rest of the country is administered by IGAC (IGAC).

172 Higuera, J. M. Interview with the author.

173 Huertas, P. Interview with the author.

ess to determine ownership should be implemented, rather than merely relying on simplification of the registration process.[174] This also applies to registration of land. At present, the legal procedures are established and must be followed: a title, such as a deed, a ruling or a resolution of assignment, is necessary to register the property. There are no alternative methods to register land. Alternative approaches are needed, particularly for lots abandoned by displaced persons. Many displaced households lack the means to prove ownership or tenure because they have no titles or because their sudden departure from their homes prevented them from safeguarding these documents. And many people have no ID card.[175]

Cadastral and registry processes in the country

In the early 1990s, with the technical cooperation of the Colombian and Swiss governments, the IGAC launched a modernisation project aimed at shifting from a system of manual and analogue geographic information production to a digital format. Law 44 was issued, combining real estate taxes into one single tax called "unified real estate tax", the management, collection and control of which was given to municipalities. For social equity purposes, 10 percent of total taxes must be put into a fund for the improvement of housing for low-income people.

The cadastre is not yet unified with the public property registry, but there is a project to coordinate and integrate their data. The goal is to identify, lot by lot, all land owners in the country.[176]

Colombia and the Inter-American Development Bank have signed a loan agreement for the Titling and Modernisation of Registry and Cadastre Programme. It aims to consolidate and foster the land market in Colombia. The programme has laid out four components: Titling of Rural Vacant Land, Titling of Urban Property, Modernisation of the Registry and Cadastre, and Environmental Protection in Rural Areas. An amendment to the IADB Loan was signed in March 2001 and the IGAC was appointed as the executing agency, with the intervention of the *Superintendencia* of Notaries and Registry and INCORA. This time, components were reduced from four to just two priorities to be completed by 2006: Titling of Rural Vacant Land and Modernisation of the Registry and Cadastre. Land titling and Environmental Protection of Rural Areas were postponed.

The Colombian land management system does not have an explicit gender approach. There are no regulations giving women priority to purchase or register land.

3.3 Dispute resolution

Alternative conflict settlement mechanisms for the poor

There are few legal assistance centres or training approaches on legal issues for poor people or communities. The Latin American Institute of Alternative Legal Services (ILSA) has two principal programmes:[177]

- Technical assistance on issues such as housing rights, subsidies, economic stability, etc. ILSA works towards a solution through administrative and judicial recourses; and
- Training of members of other organisations as "legal extensionists", in accountability processes (mainly legal, but also in legislative and public policy issues), rights, handling of public actions and issues such as forced migration, land and housing legislation, etc. The goal is to train new leaders and to generate commitments.

ILSA provides legal technical support to organisations and presents good practices in forums and workshops. In relation to land issues, it supports the revision of land titling in the process of legalisation of land dispossessions of displaced

174 As an example, in Landazuri, Santander where land disputes have been swiftly settled through a participatory process and admittance of oral evidence. World Bank, Colombia: Land Policy in Transition, Nov. 19, 2003, p. 31. Available on: fhttp://lnweb18.worldbank.org/LAC/LAC.nsf/ECADocbynid/237812047F6C90A985256FA500724FDF?Opendocument

175 Hernandez Sabogal. M. Interview with the author.

176 www.igac.gov.co: The Public Instruments Registry is updating the databases released by cadastre but not more than 10 percent is unified. Although data are permanently sent for registration, they are understaffed and the updating process is not very conscientious. With this project, it will be able to identify lots in terms of coordinates, eliminating the literal description of the boundaries in public deeds; this will guarantee to the staff of the registry that the graphic information will be seen in the computer display before the documents are produced, to verify the physical aspect of the lots.

177 ILSA is an NGO providing alternative legal services and assistance. It handles conciliation procedures and advises families, social organisations and specifically organisations of displaced persons on how to protect their rights.

populations. Other areas of work include awareness-raising activities on collective rights through national meetings of legal clinics, which also provide information to law school students.[178] In 2003, the web site of the National Network of Law and Displacement was launched to present cases, decrees and jurisprudence on collective rights.[179]

Legal clinics and conciliation centres

There are no other legal assistance centres dedicated specifically to land rights issues at national level. However, university legal clinics may assist in cases such as conciliation on boundary disputes or possession of lots worth less than 15 times the minimum wage (which in 2004 represented $2,150) or the separation of persons or goods of minimal value (below this amount). These clinics also provide guidance in the preparation of petitions, protective actions, class or group actions, performance actions and issues that can be solved by conciliation. Law students participate in these clinics under supervision and guidance of their teachers. The Popular Legal Clinic is the only non-academic clinic. There are also conciliation centres, such as those of Banco Popular or the Chamber of Commerce.

The Colombian Commission of Jurists assists displaced populations. It conducts research and provides legal aid to victims of human rights violations, both before national courts and the Inter-American Human Rights Court. It also reviews and monitors the conformity of domestic legislation with international human rights law.

Justices of peace

Article 247 of the Constitution of 1991 establishes that "the law may create judges in charge of settling in equity both individual and community conflicts. It may also order that these judges be elected by popular vote". Eight years later, Law 497 of 1999 was issued to create justices of peace and to regulate their organisation and functioning, establishing that the municipal council will call elections for such judges.[180]

Justices of peace have the competence to handle disputes between individuals and the community, submitted voluntarily and by mutual agreement. They can hear cases where the value concerned is not in excess of 100 times the minimum wage. In relation to property, they can hear issues related to restitution of leased properties and evictions. Their decisions are passed in equity and not in law, so they are not always considered binding because if the parties do not respect the agreement, they will have to resort to ordinary justice to settle the matter. To a certain extent justices of peace fulfil functions similar to those of conciliation centres.

In 2001 Bogotá joined other cities and municipalities in installing justices of the peace.[181] While the law has been in force since 1999, only five municipalities have so far implemented this system.[182]

Accessibility to the judicial system by the poor

Legal clinics have the obligation to provide free advice to low-income people in criminal and civil law cases, such as separation of persons and property, conciliation, rent, labour dues and transactions in general. They represent clients in criminal trials and in conciliation hearings for the separation of persons and property (patrimony). Under Law 583 of 2000, legal clinics are however not authorised to represent people in agricultural trials, divorces, or succession trials.

The public defender (*Defensoría del Pueblo*) provides advice and legal assistance in criminal and civil issues, if the client

178 In July 2003, the 3rd National Meeting of Legal Consulting Groups was held to address the issue of displacement. Participants agreed to provide special assistance to displaced households. As a result, several universities will soon open their offices and sign agreements with UNHCR and with the State Attorney General to assist displaced persons. There is still the need to set up a baseline for these projects as well as indicators that may later help determine their actual effectiveness in the protection of rights

179 Set up by the National Displaced Persons Council, the National Indigenous Council, Afrodes, Fundech, the National Displaced Persons Board, ANUC, etc.

180 Art. 11 of the Constitution.

181 Quiñones Paula, District Administrative Department of Community Action –DAACD, Bogotá. Internal evaluation document of the process of election, November 2003. The main achievement of this experience in Bogotá was the large numbers of people who applied for a voluntary, unpaid job, which reveals their high commitment to their communities. For most citizens however the electoral circumscription is an unfamiliar concept and the process of selection of candidates also was new; as a result, the persons selected are not always recognised as true representatives. The background of justices of peace and reconsideration judges is very diverse and they did not receive sufficiently broad training in legal and conflict settlement issues; it has become evident that people should receive training for future elections and the steps should be revised. If the initiative works, it will relieve the judiciary system from many judicial processes.

182 Bogotá, Medellín, Cali, Cartagena and Barranquilla.

can prove extreme poverty; otherwise, the mechanisms of access to the judiciary system are very restricted for the poor, because they imply hiring a lawyer. To protect their rights, organisations of displaced persons must protect their own rights, relying for assistance on legal clinics, organisations of jurists or human rights NGOs. The assistance provided to this population is scattered, as there are no formal channels to handle these issues or to solve their concerns. [183]

4 National Development Plan

The NDP and policy formulation

The NDP of each government and its corresponding budget are approved by congress and then become law. [184]

NDP 2002-2006 (Law 812 of 2003)

In Colombia policies are laid down in laws. The current NDP is contained in Law 812 of 2003 and its main theme is "Towards a Community State". As each four-year NDP includes land and housing policies, these parts of the current 2002-2006 NDP are discussed in the next section.

5 National Land and Housing Policies

Land and housing problems in Colombia are only partially understood and their root causes are not acknowledged. Land and housing policies are weakened by the fact that they are associated with the president's term of office, becoming short-term plans and programmes, mostly unrelated to local initiatives. The ineffectiveness of the agricultural reform policy at national level is associated with tenure conflict. [185] The ineffectiveness of housing policies leads to growing social exclusion and deterioration in the quality of life of Colombia's poor urban population.

5.1 Agrarian and land policies

Using a multifunctional and multisectoral approach, the NDP 2002-2006 (Law 812, Articles 24 and 25) tries to go beyond the agricultural production dimension and proposes a land policy as a process of rural development: efficient use of land, multiple forms and new possibilities of land access, and implementation of productive projects via subsidies and loans. These new forms of tenure and ways to implement them are being studied by INCODER. [186]

Law 160 of 1994 created subsidies for the acquisition of land for farmers, preferably rural women heads of household, women who are socially and economically unprotected because of violence, and elderly people who wanted to do farm work but who did not own land. The subsidy covered 70 percent of the cost of the land and was made effective once the complementary loan to negotiate the property was guaranteed. Current government policy has modified this approach with Law 812 of 2003, creating an integrated subsidy for the development of productive projects, without any preference for women, and not only in terms of acquisition of land. This subsidy covers the cost of the land and other investments such as fixed capital, lot upgrading, training, technical assistance and marketing, and is made effective provided the productive project is technically, economically and socially viable. [187] The subsidy can cover 100 percent of the cost of the land. Under Law 160 the land price was partially paid in bonds, partially in cash. This administration requires cash for complementary investments and there was no cash in 2004 because the budget was allocated according to Law 160 and not Law 812. INCODER officers sustain that appropriate adjustments will be made in 2005.

183 Information provided by ILSA.

184 There are cases, as in the administration 1998-2002, where the plan is not approved, so it is applied via the promulgation of Decree-Laws (Presidential) or policy documents approved by the National Economic and Social Planning Council (CONPES). The role of this body, consisting of the president, the ministers and the National Planning Department, is to approve state policies, national plans and programmes.

185 Ossa, E. C. (2002). It is argued that peace processes will not progress without a debate on AR and a reasonable agreement on the future of the farming sector and rural society.

186 Marilú Franco, D. Interview with the author.

187 These conditions are assessed and certified by INCODER and the subsidy is administered under operating contracts signed by the beneficiaries and INCODER, for periods not less than those defined in the productive project and in no case less than five years. Breach of contract will generate the immediate suspension of the subsidy and the loss of the patrimonial rights generated by the project.

The present NDP follows the earlier policy trends established in free trade and imports, scientific and technological development, productive and financial factors, and food security. It also proposes the reorganisation of the National Agricultural Credit System; programmes for infrastructure, basic sanitation and housing; productive alliances; establishment of cooperatives; and administration of land titling programmes.

With respect to rural housing, the NDP proposes to improve living conditions by providing access to drinking water, basic sanitation, electrification, road infrastructure and telephone services. Nevertheless, the goals for the four-year period, upgrading and providing basic sanitation to 29,000 houses and building 10, 000 new housing solutions, appear to be extremely limited when compared with rural poverty statistics provided by the Ministry of Agriculture.

The NDP states that land policies will be guided by criteria related to the efficient use of land and equitable access to production factors, in view of adjudicating 150,000 ha of land and providing financial, technological and marketing support to beneficiaries. [188]

However, a key question is whether Colombian farmers have the means or are sufficiently educated to set up productive businesses that can generate savings as suggested in this policy. How secure is the tenure of poor farmers, and would it be possible to offer tax exemptions as incentives? How simple, swift and convenient is it for landowners to sign user loan agreements with farmers? Will this be a progressive and innovative scheme, or a regressive scheme?

5.2 Housing policies

Historically, the solution to the housing problem has been centred on the provision of houses, rather than on providing better living conditions and alternative financial schemes to compete with the informal market, alternative schemes of urbanised land or innovative designs of dwelling units.

By 1950 the term "deficit" had been introduced as an indicator of the housing problem, considered a consequence of underdevelopment. At this point emphasis was put not on providing new houses, but upgrading existing ones, [189] and building a given number of units (generally for sale) to address a growing deficit relative to urban growth. [190]

The 1958-1962 NDP initially outlined the path of the future state housing policy, proposing "the establishment of a national system to funnel savings, a central body of coordination and technical assistance, incentives to the building industry, adequate housing standards and specifications and a general boost to the national social housing system".

The 1970-1974 NDP emphasised the concentration of state and private resources in the construction of housing and complementary services with the implementation of the UPAC [191] system. This economic development perspective implied the loss of social and cultural dimensions in the perception of the housing problem, which immediately reinforced the speculation on urban land. [192]

The privatisation of housing supply, the elimination of state production of housing, and demand subsidy policies have been the continued trend, with only minor variations, over the past few decades. [193] Under this approach, the house and

188 According to the Ministry of Agriculture, 40,000 ha via acquisition and 110,000 ha via extinction of ownership. Extinction of ownership can be effected when the owner acquired the property illegally, for example when the property was purchased with drug money.

189 Saldarriaga Roa, A. (2003:30-31).

190 Ibid. The rural dimension of the housing issue became evident in 1939 with the establishment of Territorial Credit Banks ("*Bancos de Crédito Territorial*") through Decree 200 of 1939 which created the Territorial Credit Institute (*Instituto de Crédito Territoria*) as an autonomous office to support these banks and coordinate their rural housing loan activities throughout the territory, acknowledging the serious sanitation problems prevalent in rural dwellings, especially in regions inhabited by smallholders. In 1942, the ICT, an institute that lasted 52 years, created its urban housing section. Its initial role was to grant loans to municipalities, workers and employees for the construction of urban dwellings, as well as to build model low-income neighbourhoods in partnership with municipalities. The work of *Banco Central Hipotecario* was aimed at funding urban houses for mid and low-income workers and employees.

191 The programme of savings in Constant Purchasing Power Units through Savings and Housing Corporations was established with the goal of channelling savings towards investments in construction.

192 Saldarriaga Roa, A. (2003:33).

193 In Colombia, the family housing subsidy is a contribution of the national government, in cash or kind, granted once to the beneficiary to complement savings and

the land on which it is built became a market asset, raising serious doubts about the constitutional right of the poorest to adequate housing.

In 1991, a shift towards privatisation of housing supply was registered with the establishment of the National Housing System and demand subsidies through Law 3 of 1991.[194] Under this system the state was responsible for coordinating the management of Social Interest Housing (SIH) through state housing institutes. Under this model, the state would intervene in the management and reform of urban land, while the market would regulate the cost of houses, as the Constitution prohibits public bodies from intervening in the housing market. The result was a recession in the private SIH market, and this, combined with a limited involvement of the state in urban management, increased the housing deficit. With Law 3 the "state was removed from where it had never been", forcing specialised private banks to use part of their funds to finance SIH, contributing to the development of the sector but increasing the cost of SIH.[195] Some 100,000 housing units of all levels were returned to corporations due to their owners' inability to pay.

After 1999, with the economic recession, the cost of land fell for the first time in Colombia. Land management instruments, such as land banks, influenced this reduction.

The situation of the poorest with respect to provision of land and housing is dramatic. Of the population targeted by SIH, i.e. households earning less than four times the minimum wage, those earning less than three times the minimum wage would hardly be able to access loans. Formal-sector groups earning between two and four times the minimum are covered by subsidies from the Family Compensation Fund; of these, only households earning more than three times the minimum are eligible for loans, as they have some financial backing. The informal sector (those earning less than twice the minimum) must be covered by the government. However, available subsidies only cover half of the demand.[196]

Simultaneously, minimum urbanisation and community service standards were implemented with the idea of enabling lower-income groups to purchase legal, developed land at lower costs, with the aim of fighting informality and increasing coverage with available resources. This policy lost credibility: besides legitimising deficient quality development and houses, and allowing a reduction in the size of lots, it had a direct effect on the economy of poor households. In Bogotá, for example, minimum regulations admit two-family dwellings in lots measuring 5 m x 11 m, with units measuring 2.5 m across. Obviously such small units do not even come close to an adequate and dignified standard of living.

Many housing regulations have been enacted under the strong influence of the Chamber of Construction (CAMACOL), which as a professional association of builders and manufacturers, has vested interests in the defence and support of its affiliates.[197]

Housing subsidy policy for lower-income households

Since 1999, the SIH policy has used a formula for direct application by households, to benefit the most vulnerable ones: those headed by women, those ranked among the poorest, and those with the greatest number of members, as well as persons who make the greatest efforts through programmed savings.

The current SIH policy, contained in Law 812 of 2003, is framed in terms of social equality. The government seeks to provide the poorest Colombians access to housing subsidies in order to turn Colombia into a country of immovable property owners.[198]

loans so as to facilitate the acquisition, building or upgrading of a house. People living in high-risk areas unsuitable for development, displaced populations, victims of terrorism or natural disasters and households with incomes of up to two minimum wages who have secured a guarantee for the financing of the house need not have prior savings (taken from www.presidencia.gov.co/sne/2004)

194 Chiappe de Villa, M. L. (1999).

195 In 1997 the costliest SIH in Latin America could be found in Colombia, valued at $48 million per unit (in the municipality of Soacha, south of Bogotá, on undeveloped land).

196 Jorge Torres. Interview with the author.

197 Alvaro Duque Ramirez, (2002).

198 As proposed by Law 812 of 2003, it is a government contribution in cash or kind granted only once to the beneficiary, to complement savings and credit, in order to

The 2002-2006 policy says:

> Adjustments to family housing subsidy programmes and supply and demand incentives for housing loans in Real Value Units, established by CONPES in September 2002 – and ratified in the NDP – also offer additional points for women heads of household and for disabled and elderly people.

The policy has however been the target of sharp criticism arguing that it fails to support the poor. Says one critic:

> Today, the aspiration of Colombians to have a decent house has been turned into an application form to receive a subsidy. It has been denaturalised and dematerialised, and the state thinks that it is only the lack of money that prevents the poor from accessing the market to buy a product.[199]

Another observer remarks:

> The truly poor have no access to housing subsidies and this is even more serious if we consider that the aim of the social policy of this administration is to reach the most underprivileged families.... Large sums (of subsidies for new housing) have been lost because families looking for houses in the projects offered by developers must secure a loan... on top of programmed savings and the subsidy, and they cannot obtain such loans from financial entities because they don't have a permanent job or because their income cannot guarantee the loan. In other words, because they are poor and no micro-credit policy has been implemented.[200]

Box 5.1 Testimony of a subsidy beneficiary

> Problems with the subsidy: "I was affiliated to the CAFAM compensation fund. I requested advice from a technical advisory entity called Prociudad, listed by the Housing Subsidies Department of CAFAM. They visited me, took photographs and made plans and handled the procedures to obtain the upgrading subsidy. I had to pay 50,000 (US$ 21.60) for this technical survey, and I incurred a lot of expenses in paperwork, transportation and time off work. They told me that I could get the subsidy even without the deed, but at the end this wasn't true. CAFAM asked for the deed and they told me that without it I could not get the subsidy. When I went to Prociudad to ask for my money back because I felt cheated, they told me that they couldn't give it to me because they had already made the visit. CAFAM told me that Prociudad was no longer included in their list of technical advisors.
>
> Now I am registered at another compensation fund. They have called me several times to offer me the subsidy but I always answer that I still haven't got the deed. For this reason my house is still precarious: it has no floor, no ceiling, it has many leaks, the bathroom has no permanent connections, and the fence is made with tin planks."[6]

facilitate the purchase of a new house, or the construction or upgrading of a house. See http://www.presidencia.gov.co/sne for more details.

199 Florián Borbón, Alejandro (2003).

200 Alvaro Duque Ramirez, (2002).

Adjustments to the SIH subsidy policy - 2004 [201]

Initially subsidies had targeted families earning one to two times the minimum salary for a house worth up to 25 million pesos ($9,435). In February 2004, to increase the number of beneficiary families to 15,830, the government cut the amount of individual subsidies for the purchase of SIH to a range between 700,000 pesos (U$265) and 3.2 million pesos (about $1,200). Those interested in obtaining a loan may qualify for subsidies ranging from 358,000-7,518,000 pesos ($135-$2,825). [202]

Applicants must have at least 10 percent of the house price deposited in a programmed savings account. Exceptions are households earning no more than two times the minimum salary, provided they have secured the full financing of their house, and displaced households that are part of resettlement programmes. Households that meet all these requirements are pre-selected. Once the application is approved and the families have received the loan, the subsidy is granted. According to the Ministry of Environment, Housing and Spatial Development (MAVDT), this measure prevents the subsidy from freezing while the beneficiary finds credit, or loss of the subsidy if the applicant is not able to get the loan.

The question is whether this measure really favours poor people and whether informal workers are able to obtain loans. Compensation funds, employee funds, cooperatives and NGOs that are expected to receive funds from the state, with the endorsement of the National Guarantee Fund, are generally those that extend loans to formal workers.

Reality has proven that repeated decrees and the reduction of the amount of individual subsidies have only increased the crisis in the provision of social housing.

Table 5.1 Subsidies according to type of housing

Type of Housing	Price in Minimum Legal Monthly Wages (MLMW)	Former subsidy in numbers of MLMW	Modified subsidy	
			In numbers of MLMW	In thousand COL pesos
1	Up to 50	23	21	8,022 ($3,015)
2	Up to 70	16	14	5,348 ($2,010)
3	Up to 100	16	7	2,674 ($1,005)
4	Up to 135	10	1	381.5 ($143)

Source: MAVDT

5.3 Policies on women's rights to land and housing

Previous governments have ignored international agreements to improve the conditions of women. A compromise agreed upon to move towards ratification of CEDAW has also been ignored. [203]

The current administration has developed a new policy – "Women Builders of Peace and Development". It is expressed in the 2002-2006 NDP and coordinated by the Presidential Advisory Office for Women's Equity. Policies specific to women are listed in Art. 8, paragraph 10c of Law 812 of 2003. [204] These include the following:

- Preference will be given to low-income women and in particular to women heads of household in the provision of health, education, housing, recreation, and employment;
- Promotion of direct and autonomous participation of women's organisations in different national and local

201 *El Tiempo*, February 19 2004.

202 In April 2004 the exchange rate was US$1 = Colombian 2,660 pesos. However, the exchange rate is subject to frequent changes.

203 Op cit, CODACOP, GAP, AVANZAR, REPEM-Colombia, page 12.

204 Presidential Council for Women's Equality, "*Women Builders of Peace and Development, A National Policy towards Peace, Equity and Equality of Opportunities*," November 2003, pp. 73 and 74.

dialogues and political negotiation processes related to social and armed conflicts;

- Creation of a national information system to collect experiences of organisations working on women's issues at local and regional level;
- Promotion of gender equity and equal opportunity, proposing policies for women, reaching agreements with ministries and other public entities to "mainstream" gender programmes, projects and budgets;
- Promotion of measures to prevent and eradicate human rights violations against women by the state as well as by the insurgent movements; and
- Assistance to needy women, particularly to heads of household, giving priority to housing and jobs; development of job creation strategies for unemployed men and women over 50 years old, fit to take up jobs in rural and urban areas.

The section on rural women recognises that they have less access to property, to loans and to technical assistance, and are more affected by the consequences of the armed conflict, by household violence, displacement and increased poverty. The majority (39 percent) of rural women work alone. This reveals that women look after their smallholdings, while men have paid jobs in the agricultural sector. [205]

It should be noted that the consequences of the legislation concerning rural women are becoming evident, although at a slower pace than expected. Accordingly, INCODER is providing training to its staff so that the gender approach contemplated in the current legislation is applied in all its projects. [206]

5.4 Urban and land planning policies

The "Cities and Citizenship" urban policy (corresponding to the 1994-1998 NDP) was the first to visualise urban centres from an integrated perspective (social, environmental, economic, political and cultural) and included land, housing, transportation, public space, infrastructure and public services.

Although the municipal decentralisation process in Colombia is almost 30 years old, and municipalities have been collecting land taxes for over 50 years, it took some time for certain land management instruments contained in the Urban Reform Law (Law 9/89) to become operational. Law 9 of 1989 sets norms for municipal development plans (required for municipalities with more than 100,000 inhabitants); the purchase, sale and expropriation of immovable property; legalisation of social interest housing titles; building standards; and the creation of land banks and financial instruments for urban reform. Broadened by the Land Development Law (Law 388/97) and its regulations, which bring these instruments up to date and in line with the 1991 Constitution, the legislation that covers urban and rural land, and facilitates land planning and management, is extensive.

Land use planning in Colombia has been the result of a step-by-step process of legislation, addressed from three perspectives: political-administrative organisation of the territory (1991 Constitution, Law 128 of 1994); distribution of competences and resources (Law 715 of 2001 and other sectoral laws); and land use planning (Law 388 of 1997). The latter required municipalities to develop Land Use Management Plans (POT), which included the establishment of SIH areas. [207]

Responsibility over the control of legal and informal developments was transferred to the municipalities only in 1991. Today mayors are in charge of supervision and administrative control of the urban and rural land in their municipalities or localities. [208] The instruments to control informal

205 Campillo, Fabiola, cited by Diaz , Dora Isabel "Gender and Rural Development: an unequal relation". *Desarrollo Rural en América*, Bogotá, 1995

206 Vidal, P. Interview with the author.

207 Land Use Management Plans (POT) are required for municipalities with a population of more than 100,000 inhabitants; Basic Spatial Management Plans (PBOT) for municipalities with 30,000 to 100,000 inhabitants and Spatial Management Schemes (EOT) for municipalities with a maximum population of 30,000. The allocation of SIH subsidies at national level and the presentation of projects to the National Royalties Fund are conditioned to the municipality having an approved Spatial Management Plan.

208 0rtega Juan Carlos. Interview with the author, January 22, 2004. The Undersecretary's Office, created in 1997, only carries out monitoring and administrative control on sales. It does not handle administrative justice. Bogotá created the Network of Prevention of Informal Developments via Decree 328 of 2003, an inter-institutional group working with this end in mind.

developments are specified in Law 388 (Art. 20) and in the corresponding police codes of each municipality, but the problem faced by mayors is that the offences are impossible to categorise under the existing legal categories.

5.5 Policies on displaced people

Policy addressing displaced people is laid down in Law 387 and its regulatory Decree 2007 of 2001. However, there is a high degree of dissatisfaction with the institutional inability to protect the displaced population. There is a gap between public policy goals and the means used to make them effective due to a lack of updated designs and regulations, and a corresponding lack of implementation and project assessment.

The budget covering displaced people is insufficient, although under Law 387, the National Council for the Integral Assistance of Population Displaced by Violence is responsible for guaranteeing the necessary funds for education, health, food and shelter. Regulatory Decree 2569 only refers to the appropriation of resources in proportion to their availability. The Constitutional Court recommends rigorous application of the law and positive discrimination on behalf of displaced people within budget policies, bridging the gap between public policy goals and means.[209] The court says that the state is required to implement non-discriminatory public policies.

Municipal or departmental authorities have the discretion to assign subsidies from their own resources as well as to facilitate access to land via user loans to displaced households or communities, as was done in the department of Sucre.

6 National Legislation

Laws, whether originating in congress, the courts, the government or the people, must first be submitted to constitutional scrutiny. Once enacted, the executive must do everything within its power to enforce them. When laws are not enforced and the rights of private citizens are violated, citizens usually resort to the courts to seek the protection of their fundamental rights (see Section 3.6.1 below on Mechanisms of Intervention of Individuals). If the violation continues and influences public policy issues that affect the rights of individuals, the Constitutional Court may intervene.[210] Customs as a source of law are applicable, provided they are of general scope, are consistent with collective or social morals and there is no written legislation. The Constitutional Court has ruled that customs, created *by* the people, receive their binding force *from* the people.[211]

6.1 The Constitution of 1991

Non-discrimination and equal rights

Article 5 recognises the rights of each person without discrimination and protects the family as the basis of society.

Article 13 recognises all persons as free and equal before the law, without discrimination on basis of their race, sex or origin. The state must protect the most vulnerable persons.

Right to property: primacy of collective over particular interests

One of the fundamental principles of the Constitution is respect for private property, with the public interest prevailing over particular interests. According to Art. 58

> Private property and other rights granted under civil laws are guaranteed, and they may not be ignored or violated by subsequent laws. When, due to the application of a law enacted for reasons of public use or social interest, the rights of individuals are in conflict with the need acknowledged by the law, the private interest must yield to the public or social interest.

Collective interests benefit a non-determined number of persons, sometimes negatively affecting personal interests. Individuals may have the right to be indemnified.[212] Article

209 In Ruling T-25 of 22 January 2004, the court argues that if 1,150 families are claiming the same rights at the same time it is because there is a public policy problem.

210 This is the case of displaced persons. Due to continued violations of the law and injunction orders, the Constitutional Court intervened (Ruling T-25 of 2004) to instruct the executive to implement measures required to protect constitutional rights covered in the legislation on displaced persons.

211 Ruling C-224, May 5, 1994.

212 Ownership is a social function that implies obligations. As such, it has an inherent ecological role. The state will protect and promote associative and joint ownership forms. Social interests and equity reasons are not defined by the Constitution. For reasons of public utility or social interest, as defined by other legislation, there may be expropriations via a court sentence with prior compensation, which will be fixed taking into account the

5 recognises the primacy of inalienable rights of individuals, without any discrimination, and protects households as the basic institution of society.

Territories, land, environment

Article 1 enshrines the autonomy of territorial entities and Art. 2 states that one of the essential goals of the state is to preserve territorial integrity.

According to Art. 286 territorial entities include departments, districts, municipalities and indigenous territories, while regions and provinces can become a territorial entity if so decided by a law. Article 288 stipulates that the LOOT will establish the distribution of competences between the nation and territorial entities, and Art. 289 allows departments and municipalities located in border areas to execute cooperation and integration programmes with similar territorial agencies of neighbouring countries aimed at fostering community development, providing public services and preserving the environment.

Article 79 enshrines the right to a healthy environment. Article 80 charges the state with the planning, management and use of natural resources, and of cooperating with other nations in the protection of ecosystems located in border areas. Article 82 charges the state with ensuring the protection of the integrity of public spaces, sharing with public entities the capital gain generated from urban management activities.

Housing, land and property rights

Right to housing

Chapter 2, Title II Art. 51 stipulates that

> All Colombians have the right to decent housing. The State will establish the conditions required to realise this right and will promote social housing plans, adequate long-term financing systems and associative ways to execute these housing programmes.

There is also Art. 58, as mentioned above, which recognises the right to private property, but has a social function too. In case of war, Art. 59 allows temporary expropriation without compensation. Article 60 obliges the state to promote access to property, and Art. 64 requires the state to promote progressive access to land ownership by farm workers, either individually or in associations. The right of ownership generated by inheritance and marriage is not enshrined in the Constitution; one must refer to the civil code.

Territories of indigenous and Afro-Colombian groups

Although protective regulations for indigenous groups and communities existed before 1991, one of the main goals of the constituent process of that year was to mould into the constitutional text a series of initiatives resulting in a new body of laws for the indigenous population. As a result, Art. 70 establishes state recognition of the equality and dignity of all cultures in the country. Article 63 stipulates that public assets, natural parks, community land of ethnic groups, land reserves, the archaeological heritage of the nation and other property determined by the law are inalienable, cannot be acquired through occupation, cannot be used to guarantee debts and cannot be put up for sale.

Territorial organisation

Article 286 explains that indigenous territories are territorial entities but fails to mention that the territories of Afro-descendants can become territorial entities as well. The Constitution stipulates that indigenous territorial entities must be established following the provisions set forth in the Organic Land Management Law, and that the government will be in charge of its delimitation, with the participation of representatives from indigenous communities, and "with the prior opinion of the Land Management Commission". This law has never been approved.

Participation and forms of democratic participation

The Constitution broadly regulates this issue and establishes the means for democratic participation (see Appendix I).

interests of the community and the affected party. In cases determined by the legislator, such expropriations may be executed by administrative means, subject to subsequent administrative disputes actions, even concerning the price. All in all, legislators, for equity reasons, may determine cases where no compensation is payable, via the affirmative vote of the absolute majority of the members of both Chambers. Equity reasons, as well as public utility and social interest motives, invoked by the legislator, may not be judicially challenged.

The preamble states that participation is part of the legal framework that governs the nation.

Women's participation

The Constitutional Reform of 1936 granted women the right to fill public positions and the Constitutional Reform of 1945 granted them the rights of citizens. Efforts to achieve equal participation by women in the public and private sectors, at the decision-making level within public entities, and in terms of rural policy-making, have been regulated by successive laws. [213]

Indigenous communities and participation

The consultation right of indigenous communities is not absolute. Although the Constitution provides that their participation in affairs related to the exploitation of natural resources within indigenous territories must be facilitated, by no means it is to be understood that one must necessarily reach an agreement as a *sine qua non* to submit a bill of law. As a general principle, the government must facilitate effective and reasonable participation in affairs affecting indigenous communities. Nevertheless, if an agreement is not reached through this means, there is no reason to halt the legislation process in matters that are also of general interest, as in the case of mining issues. [214]

Mechanisms for individuals to exercise their rights

The Constitution lays down several mechanisms to ensure the exercise and respect of the rights of citizens, including the right of petition before public authorities to have a particular problem solved. Additional mechanisms include:

- Protection actions for injunctive relief for the protection of a fundamental constitutional right when this right has been injured or threatened by the action or omission of a public authority or private person(s). The claim can be made at any time through summary court proceedings. The judge has a maximum of 10 days to decide on the claim. The decision is binding; lack of its enforcement by the responsible public official constitutes a criminal offence. [215]
- Popular actions for the protection of collective rights and interests; [216]
- Class actions in case of damages to several persons; [217] and
- Enforcement actions to have the law or administrative acts enforced. [218]

These are strong and effective means of protection of citizens' rights. These mechanisms are used (see below under Jurisprudence), but they are also abused.

In the Colombian political context of immediateness, of permanent "initiatives" and changes in legislation, the recognition, promotion and protection of fundamental rights is complex. For example, a bill to amend the Constitution concerning the administration of justice is under study. [219] The Constitutional Court has stated that

> the proposed amendment, far from strengthening the administration of justice to make it more efficient and accessible to citizens, contains several mechanisms to weaken it, to prevent it from effectively protecting constitutional rights, and is detrimental to the system of separation of powers, typical of a Social and Democratic State of Law.

The bill includes mechanisms for the executive branch to influence the operation of the judiciary, and it amends the mechanism of protection actions, making it ineffective as a mechanism to protect fundamental rights, and diminishing legal security.

213 Laws 581 of 2000, 731 of 2002 and 823 of 2003 respectively.

214 The right to consultation of the indigenous community was developed by Judgement C-891 of 2002 of the Constitutional Court. Its scope is that indigenous participation must be real and effective in relation to the affairs affecting communities, particularly concerning the exploitation of natural resources within their territories; that mechanisms of participation cannot be limited to accomplishing a merely informative function and that such mechanisms, particularly the right to prior consultation, must be used in good faith, in a way appropriate to the circumstances and in an attempt to reach an agreement or obtaining consent from indigenous communities on the proposed legislative measures.

215 Art. 23 of the Constitution and Articles 5 to 32 of the Administrative Disputes Code.

216 Art. 86 of the Constitution.

217 Art. 8 of the Constitution and Law 9 of 1989.

218 Articles 87 and 88(2) of the Constitution.

Respectively, Art. 23 of the Constitution and Articles 5-32 of the Administrative Disputes Code; Art. 86 of the Constitution; Art. 88 of the Constitution; Art. 8 and Law 9 of 1989; Articles 88(2) and 87 of the Constitution

219 Press release, February 26, 2004

6.2 Rural land laws

Law 160 of 1994

Law 160 of 1994 created the National Land Reform System, which includes the land redistribution programme. [220] Under this law, entities in charge of agricultural reform must provide support to rural women heads of household in the execution of all existing subsystems, such as **acquisition and allocation of land; organisation and training of rural and indigenous populations; basic social services; physical infrastructure; rural housing; land improvement; social security; research; technical assistance; financing; and delivery of subsidies.**

Aimed at the redistribution of land to balance structural inequalities and to address the widespread underutilisation of land, the law provided subsidies amounting to 70 percent of the price of a piece of land, assuming that the remaining 30 percent would be financed with loans or family savings. As mentioned above, this latter aspect was subsequently modified. The scope of this initiative has been minimal, and the method of allocation led to low or zero community participation and centralised implementation. [221]

Law 160 describes the procedure for valuation, as required for land reform purposes, and regulates agricultural reform through the following sub-programmes and others mentioned above, such as rural subsidies and the national land reform system.

Land acquisition and allocation

This is negotiated directly with the intermediation of INCODER. If an agreement is not reached, INCODER will analyse the need to expropriate the property on the basis of Law 160. In some cases, land purchased directly by the institute will be used for the establishment of Family Agricultural Units (UAF), [222] community-based businesses or other associative production units – or for the establishment or upgrading of indigenous reserves. This programme is still in effect.

Clarification of property and recovery and titling of vacant land

An investigation is undertaken to establish if the property is privately owned or if it is a vacant lot owned by the state. If it is private and possession has not been exercised for more than three consecutive years, or when rules of conservation of renewable natural resources are violated, or if the parcel is used to grow illegal crops, the property will be expropriated. The expropriated land, if suitable for economic exploitation, will then be listed as vacant state property. It will be titled to farmers in UAF provided they can prove that they have been productively exploiting the land for more than five years. This process can be reverted if it is proven that the property is used for illegal or unauthorised purposes. The allocation is made jointly to the spouses or stable partners, and cannot be made to persons having another property in the country or to persons having a capital exceeding 1,000 times the minimum wage. [223] The names of either spouses or stable partners must be inscribed in the public instruments register. INCODER is responsible for control over the titling process.

In case of illegal occupation of vacant land or land that cannot be allocated, the institute will order its restitution. If the occupant is a possessor in good faith, the improvements made to the land by the occupant will be subject to negotiation or expropriation.

Settlements, farm reserve and business development areas

Suitable land for farming that is located in settlement areas and in areas with a high prevalence of empty parcels will be titled as farm reserve areas. In vacant areas defined as busi-

220 The majority of the provisions of Law 60 are still in effect, except for Articles 5, 14 and 15.

221 World Bank. (2003).

222 Family Agricultural Units: basic agricultural, cattle raising, aquaculture or forestry production units, whose extension, according to the agro-ecological conditions of the area and adequate technology, allows a family to earn income from their labour and to have a surplus value to help in the development of their assets.

223 Art. 70 of Law 160.

ness development areas, occupation and access to ownership is obtained through capital investments. [224]

Rural Investment Co-financing Fund

This fund was created to support all rural investment and co-financing processes in view of co-financing the execution of investment programmes and projects in rural areas, especially of rural economies, smallholdings, settlements and indigenous communities. [225] This project, managed by INCODER, has been cut back for lack of funds.

Cooperatives of agricultural reform beneficiaries

The law encourages the establishment of these cooperatives, consisting of persons who have been allocated land. Their main goal is the marketing of farm produce. [226] However, very few well-established cooperatives are operating nowadays. They face major obstacles, such as difficulty transporting produce to market and poor training, which has rendered most highly fragile or not economically viable.

Law on Rural Women, Law 731 of 2002

- Law 731 of 2002 aims to improve the quality of life of rural **women and accelerate equality between rural men and women.** It instructs entities that provide rural housing subsidies to give priority to rural women heads of household. It also contains provisions on **social security, and education and training. The law stipulates the participation of rural women, including indigenous women and Afro-Colombian women, in a wide range of national, municipal and local councils and other decision-making bodies.** [227]

In terms of land redistribution the law regu**lates:**

- **Titling of agricultural reform parcels in the name of a woman abandoned by her spouse or partner, or recognition of rights on a parcel already titled;**
- **Titling of agricultural reform parcels to community enterprises or associations of rural women, and preferential access to land for women heads of household or women in an unprotected situation; and**
- **Participation of rural women in procedures on allocation of parcels in order to ensure transparent and equitable procedures.** [228]
- **Finally, Law 731 provides for family housing subsidies that give priority to rural women heads of household; equal pay for equal work in the rural sector; and evaluation of plans and dissemination of laws that favour rural women, including development of statistics on their condition.**

Land laws for ethnic groups

Indigenous Reserves

Decree 2164 of 1995 was promulgated to establish and regulate indigenous reserves. It defines what constitutes their adequate settlement and development. It also creates, extends or restructures land reserves and clears those occupied by persons not belonging to the ethnic group. Persons of another ethnic group are given parcels in a different location, or they are given title to a vacant lot, while the parcel they previously occupied is returned to the indigenous group.

Collective territories of Afro-Colombian communities

As mentioned earlier, these collective territories are governed by Law 70 of 1993 and by regulatory decrees 1745 of 1995 and 1320 of 1998. The purpose of Law 70 is to establish mechanisms for the protection of the cultural identity and the rights of Afro-Colombian communities [229] and the enhance-

224 The Ministry of Agriculture and the Ministry of Environment must adopt policies to preserve the balance between the environment and the increase in agricultural production, under rationality and effectiveness criteria.

225 Projects must be submitted by the relevant territorial entities related to issues such as technical assistance, marketing, including post-harvest, projects of irrigation, rehabilitation and conservation of basins and micro-basins, flood control, aquaculture, fishing, electrification, canals, rural housing subsidies, environmental sanitation, and rural roads, included in an integrated rural development project.

226 It includes obtaining production credits, provision of technical assistance and farm machinery services, provision of seeds and inputs and other services required to increase production and improve productivity in the rural sector.

227 While Law 581 on Quotas of 2000 applies to public posts and the high courts, it does not apply to all citizens' bodies. Some of such bodies have specific regulations on women's participation, while others do not. Even if quotas exist, they are not always enforced.

228 Regulatory Decree 2998 of 2003 enables the spouse or partner of a person who abandons a Family Agricultural Unit to continue working on it and to transfer rights in his/her favour. It empowers women to participate in all vacant lot adjudication processes.

229 Law 70 defines black communities as "a set of families of Afro-Colombian descent, having their own culture, sharing a history and with their own traditions and customs within the rural-urban relationship, that reveal and preserve identity awareness, distinguishing them from other ethnic groups".

ment of their social and economic development.[230] The objective is to recognise Afro-Colombian communities that have been occupying vacant rural land along the riverbanks of the Pacific Basin rivers, in accordance with their traditional farming practices and collective property rights. These areas are declared to be inalienable and are not subject to seizure or prescription. In order to be granted collective property, each community must establish a community council to oversee the land, conservation issues, protection of collective rights and culture, and so on. These councils also act as friendly arbitrators in internal conflicts subject to conciliation.[231]

As far as non-renewable natural resources are concerned, the Ministry of Mines and Energy and the community inhabiting the area are in charge of identifying those areas requiring special protection from exploitation. The resident community sets priorities in granting of exploitation permits.

Law 70 establishes a review commission for the formulation of a development plan for black communities. Participation of black communities is guaranteed in land planning councils, having jurisdiction wherever collective property exists. Additionally, the National Development Plan establishes the designation of funds, in consensus with Afro-Colombian communities, for the drafting of a broad long-term development plan.[232]

6.3 Urban land and housing laws

The first regulation to control housing development and construction is contained in Law 66 of 1968. As mentioned earlier, Law 9 of 1989 (Urban Reform Law) regulates municipal development plans, purchase and sales contracts and expropriation of property by the state. To this end it establishes the SIH system and the land management instruments.

SIH system

Law 3 of 1991 created the national SIH system and the family housing subsidy, while Decree 2620 further regulated it. This law was formulated through a participatory process between civil society and several housing organisations. It established the procedures for the enforcement of the instruments of Law 9 and created INURBE, an institute which, until its liquidation last year, was in charge of allocating subsidies at national level, and which included two housing representatives in its board of directors.

Law 3 also determines the establishment of housing funds by municipalities, special districts, metropolitan areas and the Archipelago of San Andrés and Providencia, with the goal of developing social housing policies in urban and rural areas. The duties of a housing fund include:

- Coordinating housing policies with other entities;
- Developing programmes for the construction, acquisition, improvement, relocation, rehabilitation or regularisation of social interest housing, directly or in partnership with authorised entities;
- Purchasing land for development of social housing, legalising titles in de facto or informal settlements, and relocating human settlements;
- Promoting the development of grassroots housing organisations; and
- Extending loans to finance social housing programmes.

After successive regulatory decrees and adjustments, Law 3 has gradually lost effectiveness. Instruments defined under Urban Reform Law of 1989 have just recently become effective with the enforcement of Law 388 of 1997 on Spatial Development, which will be described below in the Good Practices section.

Women and housing

Under Law 82 of 1993, the government must create special incentives for the private sector to promote and develop housing and loan programmes, including those specifically targeting women heads of household. Law 160 contained an

230 Art. 1, Law 70 of 1993. According to paragraph 1 of transitory Art. 55 of the Constitution, this law will also apply in vacant areas and riverbanks that have been occupied by Afro-Colombian communities having traditional production practices in other regions within the country, that comply with the requirements established in Law 70.

231 The titling procedure is described in regulatory Decree 1745 of 1995.

232 Art. 8(c) paragraph 2 of the National Development Plan.

obligation to prioritise rural women heads of household in the allocation of subsidies and projects. Law 812 establishes that all programmes must include a gender perspective. Law 861 of 2003 describes a single piece of property owned by a woman head of household as a family asset that cannot be attached, and issues provisions aimed at protecting female-headed households. [233]

Land use management planning [234]

Law 388 on Territorial Development of 1997 is a national planning law. It broadens the constitutional principle of property to include social and ecological functions, and puts forward a new vision of the public function of urban planning at a municipal level, prioritising collective over private interests and allowing for direct state intervention.

Its basic objectives are:

- Harmonisation of existing legislation;
- Efficient organisation of municipal territory;
- Rationalisation of land use, preservation of ecological and cultural heritage, disaster prevention, and efficiency in urban interventions;
- Optimisation of public investment in infrastructure;
- Unification of land use management actions developed by national, regional and local institutions; and
- Promotion of integral urban interventions and projects by facilitating investments by public institutions of national and local levels.

Law 388 includes environmental, land use and development components. Various urban development, legal and financial instruments enable the securing of resources to execute plans. [235] The planning tools that allow for land use decision-making are listed below:

- POT guides and administers the physical planning of the territory during a minimum period of three administrations (nine years). It explicitly defines development standards related to the type of land, and type and degree of use. It establishes protected areas due to risks, environmental preservation and public services;
- The Partial Plan is a mid-scale planning tool that complements and develops the provisions of POT. It seeks to ensure organised development and balanced distribution of space, charges (such as land taxes) and benefits (such as regulations and public investment in infrastructure); and
- The Urbanistic Unit is an area included in the POT and Partial Plan, consisting of one or several plots that will be developed or built through a project of public, private or combined intervention, on urban or expansion land. Properties included in these units will have legal restrictions to the right of ownership. Investment is recovered through valuation, capital gain, land tax, etc.

In their efforts to ensure that the social function of land is upheld, municipalities may also expropriate property and use it in the public interest. Funding obtained from urban development must be channelled to subsidise the provision of water and sanitation to the poorest, and to the upgrading of *barrios* and social housing construction. Areas for the construction of social housing must be delimited. Regularisation processes for *barrios* must be strengthened. Environmental dimensions must be incorporated in the POT. The law further requires the different entities within each municipality to coordinate their activities and to ensure the participation of citizens in the decision-making process.

The law does not include specific provisions on gender equality or women's participation in the land use planning process.

6.4 Relevant jurisprudence

While the first generation of human rights (civil and political rights) are directly applicable, the second-generation rights

233 Law 861 defines woman head of household as the "single or married woman who is socially or economically and permanently in charge of her own or other minor children or of persons who are disabled or unable to work, either due to permanent absence or to physical, sensorial or moral incapacity of the spouse or stable partner or to substantial lack of help from other members of the family nucleus". The Constitutional Court however stated that rather than just women-headed households, in the interest of the children, the provision of this law should apply to single-headed households in general.

234 Several aspects described in this section were taken from the document ESAP, et al (2004).

235 IGAC (2003).

(economic, social and cultural) are achieved progressively.[236] In general, second-generation rights cannot be enforced by way of an injunction. A different situation arises when legal and material conditions come together, allowing individuals to begin enjoying a right within this category. "In this case, the materialised constitutional right gains direct regulatory force, and the necessary constitutional protection must be extended to its essential content".[237] Regarding collective rights, the court states that these are not subject to protection by injunctive relief, but instead must be claimed under popular actions.[238]

No specific jurisprudence exists relevant to women's access to land or housing. The following Constitutional Court rulings include cases affecting the vulnerable population – the poor, women, indigenous groups and displaced persons.

Rulings concerning the right to decent housing

The constitutional right to decent housing imposes on the state the responsibility of providing the necessary conditions to guarantee decent housing to all Colombians and to promote social housing projects, adequate long-term financing systems and associative forms of development of these projects. This does not mean that the state is obliged to provide a dwelling to each and every individual in the country who needs a house, but its obligation is to set the conditions – like the development of legal instruments – and to promote housing projects within the capacities of its welfare structure, taking into account the socioeconomic circumstances of the country and the budget appropriations earmarked for this purpose. According to the Constitutional Court:

This social right does not grant individuals a subjective right to demand its immediate and direct fulfilment by the State, for it requires the fulfilment of legal and material conditions to make it feasible. This way, once the conditions are given, the right becomes binding and will enjoy constitutional protection through the actions established for such purpose (Judgement T-495 of 1995).

Judgement T-308 of 1993 points out that

> the right to decent housing does not grant individuals the subjective right to demand a certain service directly from the State. Anyway, in the cases where the right to decent housing is found to have a direct connection with fundamental rights, like human dignity or equality, it will acquire the status of fundamental and may be subject to constitutional protection.

The following cases related to resettlement on the basis of the right to life, the right to decent housing and the right to a healthy environment, were also adjudged by the Constitutional Court.

Judgement T-617 of 1995

The case was submitted by families of the COMUNEROS group, who had occupied land along the railroad track in the Puente Aranda sector in Bogotá, and who lived off collecting and recovering paper, junk, plastic and other recyclable materials. The municipal administration ordered their eviction. The group filed a protection action, demanding the suspension of the eviction order and the adoption of an integral programme of assistance to the petitioners and their families so that they may leave an invaded area as soon as possible.

In its decision, the court defended their rights, "as there is a coexistence of the right to decent housing, good faith, equality and the right of children to protection and family unity". It ordered the suspension of the eviction order and set a deadline for the district to take all necessary actions for the resettlement of those who claimed protection action.

The court also ruled that "whenever a local authority wishes to recover public spaces occupied by citizens, it will have to design and execute an adequate and reasonable resettlement plan for the occupants, so as to reconcile general and particular interests".

Judgement T-269 of 1996

This case concerns families who lived in houses adjudicated by government housing entity INSCREDIAL, built on top

236 See Art. 2(1) of the International Covenant on Economic, Social and Cultural Rights of 1966.

237 Judgement C-560 of 2002 of the Constitutional Court.

238 Judgement T-269 of 1996 of the Constitutional Court.

of the tunnel that channels the waters of the Don Juan stream towards the Magdalena river in the District of Barranquilla. The tunnel had a certain capacity of water per second, but over time the water flow increased considerably due to the development of the basin, generating floods and the risk of collapse. The claimant (a group of families) demanded protection action "against the serious and imminent hazard this situation represents to their right to life, to decent housing, to property, and to a healthy environment." The court established that in this case the rights to life and housing were under threat, taking into account that both rights cannot be separated because claimants "are afraid of dying under the rubble of what today is still their patrimony". Regarding collective rights, the court stated that, although these are not subject to protection by injunctive relief but instead should be filed as popular action, in this case they are subject to individual protection because "as they are part of the community, they are affected or threatened directly by environmental pollution, because their health and even their lives are at a stake." Consequently, the court legally protects property rights, decent housing and the enjoyment of a healthy environment for claimants considering that between actions or omissions of the municipal administration and the violation of rights, there is the same causal relation as in the violation of the right to life. The court commanded the mayor's office to purchase the houses and to resettle the families within six months of the date of the ruling.

Judgement T-190 of 1999

Mrs. Fulvia Rentería de Hurtado lived in a house built next to the La Chanflanita gorge in Buenaventura.. The canalising of the river in the gorge resulted in a serious risk of her house collapsing at any moment. She claimed protection since her dwelling had been affected by deliberate changes in her immediate environment, jeopardising her right to life and housing. The court instructed the tutelage judge to act promptly, because the canalising of the river affected the house occupied by the claimant and her family and it might have collapsed at any moment, with serious risks to lives and the house. In this ruling the court protected the claimant and her family's right to life and to adequate housing, commanding the rebuilding of the house and the resettlement of the family during the time required for such rebuilding.

Rulings concerning displaced populations

Judgement T-25 of 2004

Some 1,150 households challenged the repeated inefficiency of state programmes concerning the housing and other needs of displaced people. The court's response started from the fact that the state and its authorities are created to ensure the life and protect the assets of its citizens; accordingly, if the state was not capable of guaranteeing these rights, then it had the constitutional duty to protect, repair and remedy damages caused to citizens by its actions, omissions, or tardiness. The court noted that displaced people are extremely vulnerable, and that this implied a serious risk of violation of their rights. It used the term "unconstitutional state of affairs", because it is widely recognised that lawmakers have great difficulty in defining displaced people and that old problems persist. Rights violations affect displaced people in many regions of the country, and many state agencies allow this to happen. Rights violations are based on structural factors, like inconsistencies between regulations, resources and means. The court issued two types of decisions:

(1) Rulings on the cases of each of the 1,150 households, calling for measures to ensure the solution of the problem within 30 days or, if life is at risk, within 48 hours.

(2) The National Council for the Integral Assistance of Population Displaced by Violence had to comply with Law 387 by 30 March 2004. This meant securing the necessary budget allocations.

The court granted a period of three months to review all government actions. If the expected results were not reached, policy goals for the displaced would have to be modified.

Rulings concerning indigenous population

Judgement T-380 of 1993

In this case the court confirmed that the right to collective property of indigenous territories is essential to the cultures and spiritual values of indigenous people. This circumstance

is recognised in the international agreements approved by the congress. Additionally, the Constituent Assembly has underlined the fundamental importance of the right of indigenous communities to a territory based on the acceptance of the different forms of social subsistence, whose expressions and permanent cultural reproductions are imputable to these communities, as autonomous collective subjects and not as a simple aggregation of members.

This judgement is reinforced by Judgement T-188 of 1993 regarding protection of collective indigenous property. [239]

Judgement C-104 of 1995

The court stated:

> Recognition of ethnic and cultural diversity concerning livelihoods and concepts about the world which do not coincide with the customs of most inhabitants, regarding race, religion, language, economy and political organisation issues, implies accepting alternation, linked to diverse forms of livelihood and social and cultural concepts that comprise different languages, traditions and beliefs.

7 Inheritance and Marital Property Rights

7.1 Relevant constitutional provisions

Article 5 recognises the rights of each person without discrimination and protects the family as the basis of society. Article 13 recognises all persons as free and equal before the law, without discrimination on basis of their race, sex or origin. The state must protect the most vulnerable persons.

7.2 Legislation related to inheritance rights

Individuals can freely determine the destination of one-fourth of their belongings through testament. When no testament is written, a succession process is necessary. With respect to succession rights, the civil code provides the surviving spouse or companion the possibility of resorting to the liquidation of the communal property and hence to receive 50 percent of the assets and goods held until the time of death. The other 50 percent is divided into equal parts among legitimate and illegitimate children, who have the same rights. When both parents die, heirs have the right to equal parts of the remaining 50 percent of property. If there are any assets to inherit, the surviving spouse or companion may claim part of these if s/he has no assets of her/his own to ensure minimal subsistence (Art. 1008 et seq.)

7.3 Legislation related to marital property

Marriage is regulated by Articles 153 et seq. of the civil code while Law 54 of 1990 recognises common law marriages or stable unions. Such unions must have existed for more than two years and have been concluded between persons without impediment to marry. Previous community properties must have been dissolved.

The marriage regime is community of property, regulated by Articles 1781 et seq. of the civil code. Property inherited or acquired by donation by either spouse before the marriage, or assets that may have been excluded by a marriage contract are not considered community of property. In the case of separation of community of property, legal separation and divorce, each spouse or companion is entitled to half of the assets purchased and of the proceeds generated by the communal property. With respect to liquidation, Articles 1771 et seq. of the civil code apply, i.e. those related to the separation of communal property, which are also applied to civil unions.

One major difference for common law marriages is that liquidation of the common law marriage lapses one year after the physical and definitive separation of the partners. This presents a notable disadvantage: if requests for liquidation of the common law marriage are not filed in the following year, the partner who has not registered the property in his/her

239 There has been concern among international organisations that some regulations that aim to protect indigenous groups and communities in fact fail to respect international human rights conventions. Among these are the American Human Rights Convention of San Jose in Costa Rica, 1969, the International Convention on the Elimination of all Forms of Racial Discrimination (UN General Assembly, 1966) and Convention No. 169 on Indigenous and Tribal groups in Independent Countries, adopted by the 76th Meeting of the ILO conference, Geneva 1989.

name in the public instruments registry loses all rights over it. Additionally, Law 54 requires that a procedure before a court is executed in order to prove the existence of the common law marriage, which causes huge delays and complications in the liquidation thereof (it is the only partnership that, in order to be liquidated, must first be declared as existing by a judge). However, there is an important advantage for stable partners with respect to property: if the common law marriage has existed for at least two years, under Law 258 of 1996, the notary must designate the property purchased by any of the partners as the family home. This means that the partner who takes care of the children has the right to stay in the family home and that as long as the children are minor, the family home may not be mortgaged or sold without consent from both partners.

8 Implementation of Land, Housing and Property Rights

This report has documented some of Colombia's extensive range of laws, rulings and regulations. It has also shown the quantity of related policies succeeding one another with narrow or short-term applicability. Their implementation, especially in addressing the needs of the poorest and most vulnerable groups, is limited. [240]

8.1 Rural subsidies

The objective of the Ministry of Agriculture and Rural Development for the period 2002-2006 is to provide households with 29,094 subsidies for basic upgrading and sanitation, and 9,973 subsidies for building of new dwellings in rural areas. [241] On average, each family receives a subsidy equal to 13.4 times the minimum wage for sanitation and 16.7 times the minimum wage for new housing. Likewise, through Decree 1042 of 2003, in coordination with the Ministry of Agriculture, subsidies were allocated to 124 SIH projects for the poorest households in several departments of the country. [242]

8.2 Titling of vacant land

Since 1995, titles of lots have been given to households as follows: [243]

Table 8.1 Titling of vacant land since 1995

Institution	Year	No. of titles	Area (hectares)
INCORA	1995	7,488	463,651
,,	1996	9.192	582 564
,,	1997	12.864	1.385.462
,,	1998	12,246	970,418
,,	1999	10,086	459,408
,,	2000	12.612	1.320.329
,,	2001	12.373	1.736.964
,,	2002	9,171	814,378
,,	2003	4,524	339,029
INCODER	2003	266	3.194.988
TOTAL		90,556	8,072,203

Source: Official Statistics, INCODER

Official land titling statistics between August 2002 and June 2003 total 483,000 ha, distributed as follows:

- 121,000 ha to 3,887 families of settlers;
- 172,000 ha to black communities (1,421 families); and
- 190,000 ha to 33 new indigenous reserves.

8.3 Land titling for women

The situation has improved with regard to joint titling and other provisions that benefit women heads of household. Traditionally, agrarian reform favoured men heads of household (only 11 percent of beneficiaries were women). The improvements are largely due to regulatory advances on joint titling and priority access to women heads of household to cooperatives and companies as a result of the agrarian reform. Since 1994, women displaced by social violence have been

240 As expressed in the 2003 UNDP Report on Human Development "*El Conflicto, Callejón con Salida*" www.pnud.org.co/indu2003, indicators show that the situation of the Colombian population has severely deteriorated in the last decade.

241 Ministry of Agriculture and Rural Development (2003).

242 Decree 1042 of April 28, 2003 in coordination with the Ministry of Agriculture.

243 Information provided by Liliana Vega, Coordination of Allocation of Vacant Parcels, taken from INCODER databank, in February 2004

included by INCORA (now INCODER) as beneficiaries of these regulations. [244]

8.4 Indigenous reserves

Since the creation of INCORA, 647 reserves have been legalised either by constitution, extension, restructuring or territorial improvement, covering an area of 31,066,430 ha and benefiting 85,818 families and 441,550 persons. [245] In addition there are ongoing processes to legalise reserves created prior to the enactment of Law 135 that have no title.

In determined fashion, indigenous peoples have opted for the collective ownership of reserves and succeeded in securing their inalienability, while Afro-Colombian communities advance in collective titling, which is "a race against the clock in the face of displacement". Farmers have begun to demand protected titling, and have succeeded in having rural reserves established under the law. There are six reserves already constituted and two more in process. [246]

Table 8.2 Land tenure indicators concerning ethnic groups and cultures

Regime	Number	Population	Area	%
Reserves prior to 1961 or of colonial origin	70	244,010	514,509	35
Reserves established under agrarian reform process	400	328,282	27,295,482	46
Occupants of vacant lots without legally delimited territory	No figures available	40,058	No figures available	6
Communities, owners, possessors	No figures available	85,947	34,387	12
Indigenous reserves	9	3,563	104,293	1
TOTAL	479	701,860	27,948,671	100

Source: National Planning Department
Afro-Colombian views of the land titling issue

244 Presidential Council for Women's Equality. (2003:9).

245 Vidal, P. Interview with the author. March 2004.

246 Op.cit, Mondragón Hector, 2003

The following testimonies of displaced Afro-Colombian women speak to a common view among these communities:

- "The government negotiates projects with multinational companies in the collective territories of Afro-Colombian communities, which result in forced displacement. They make commitments with multinationals and it is we the poor who pay.... It is we who suffer, those of us who have been protecting this territory we inherited from our ancestors;" [247]
- "Law 70 is the enemy of large businessmen and authorities. They don't negotiate with us, the black people, issues related to land and water, they forget that we own the territory, they kill our leaders in order to gain control over our territory;"
- "We don't have to get killed so that others can benefit from what we have always protected. Businessmen come to plant their African palm and others their illegal crops. They ruin the land;" and
- "Because of the conflict there is a collective loss of titles over the territory." [248]

8.5 Access to justice

Access to the legal system is particularly difficult for low-income women or black people.

8.6 Land use planning

At the end of 2003, 70 percent of Colombian municipalities had applied Law 388. The phase of formulation and adoption POT was concluded. Most have been approved. In some cases approval has been difficult, either because they did not follow the required process (i.e., submitting the application to the Regional Autonomous Corporations and then to the municipal council) or because of problems of illegality. Especially in large and mid-sized cities, planning and management instruments are being implemented.

- Law 388 has many virtues. In particular, it mandates all territorial entities and environmental authorities to look beyond the time frame of the current administration. The concept of protection areas articulates, for the first time, the urban and environmental dimensions. The plans have become the best inter-institutional coordination instrument, and promote the participation of civil society. [249]

On the other hand, there are numerous limitations in the application of these plans, including:

- Limited cartographic, cadastral and technical resources, resulting in severe deficiencies in the formulation of many POTs;
- Overlapping of municipal boundaries, resulting in local controversies;
- Risk or hazardous areas and environmental preservation areas not being accurately delimited or treated;
- Limited technical assistance from the national and departmental authorities, which affected small municipalities in particular;
- Civil society's participation was, in most municipalities, a mere formality;
- Difficulties in correlating the nine-year investment plans provided by the POTs and municipal or departmental development plans, which include socio-economic aspects tied with the three-year government term.

This last item should, however, be seen more as a challenge and an opportunity.

9 Best Practices

9.1 Local institutional practices

Land banks – the case of Metrovivienda in Bogotá D.C.

Law 9 of 1989 allows municipalities to create public establishments called Land Banks as a mechanism to purchase property. A decade passed before the Capital District estab-

247 Mendoza, U. (2002).

248 Minutes of national workshop with Afro-Colombian women.

249 The proposal by the Central Coffee Region of working together as an Eco Region with common seismic problems and national strategic projects affecting its municipalities, the development of planning and financial instruments of the municipalities of Chía, Bogotá, Pereira, and Medellín convened upon Municipal Planning Offices and owners of land are experiences worth mentioning.

lished Colombia's first (and only) land bank.[250] The Council of Bogotá created Metrovivienda as a local state enterprise, defining its goal as provision of "priority interest housing" for the poorest households as an alternative to informal developments.[251]

The project implies purchasing peripheral plots from various owners, expropriating land from those who refuse to negotiate, revising titles, combining plots on one piece of land and designing the urban layout. It also includes the entire procedure of obtaining licenses and permits, building infrastructure, roads and public spaces. The state delivers land blocks, which are offered to individual builders or building companies, who are then in charge of building the houses. The advantages of lowering the time spent in the process, reducing lost profits and eliminating risks associated with regulatory changes, translate into higher speed and productivity, which reduces house prices. The income earned by Metrovivienda from the sales of plots allows it to launch new projects in other areas in the city, generating new urban land at controlled prices.

Evaluation of the scheme[252]

Initially, the model proposed seemed reasonable. However, due to a misinterpretation, urbanised land generated by Metrovivienda was offered at market value. As a result the targeted low-income group was not reached.[253] The new goal for Metrovivienda is to offer houses that cost the equivalent of 50 times the minimum salary (17 million pesos[254]). The houses are to be built quickly, en masse, with the involvement of beneficiaries in development through popular housing organisations. The project aims to help generate community savings, as well as to provide credit and subsidies to help reach the poor.

It is projected that 20,000 housing units will be built under this scheme in 2005, and in 2006 new land plots will be purchased. This model is viable for smaller cities because it does not imply large state investments for land purchase.

9.2 Civil society practices at national level

Peace communities, 'legal rupture' and resistance[255]

As an alternative to the total vulnerability of people displaced from their land, and given the inability of the state and its institutions to provide protection and to meet their needs, the concept and practice of "legal rupture" emerged. This practice is being consolidated in 10 "communities in resistance". It is a response to the armed conflict and violent expropriation, when the legal framework has proven inadequate.

Box 9.1 The rationale behind legal rupture

> "In an unprecedented event, on December 10 (2003), on International Human Rights Day, four Colombian rural communities disavowed the legitimacy of the Colombian judiciary system and declared themselves in open rupture with the administration of justice, qualified as 'corrupt, degraded, and vilified'. According to these communities, no justice can be recognised as valid when it is so clearly separated from elementary ethical principles…. It is valid, in the current situation of the country, that we have reached a point of extreme degradation and vilification of justice, calling for conscientious objection, following the Constitution (Art. 18), which says that no one can be forced to act against his conscience".[7]

Such communities have a number of common characteristics:[256]

- They consist of women, indigenous and Afro-Colombian people, adolescents and farmers;
- They are composed of people who seek to defend their lives and their projects, sustained in relationships other than the violent inclusion offered by society;
- They propose intercultural understanding; and
- They exercise autonomy in the face of those who have turned their lands into battlefields.

250 Ciudadela El Recreo, Minutes of the Management Model of Metrovivienda, publication of the Municipality of Bogotá and Metrovivienda, July 2002, pages 59-60.

251 Samper Gnecco, Germán, prologue to "*Memoria del Modelo de Gestión de Metrovivienda*", June 2002. Via Agreement 15 of 1998 and with the resources obtained from the sales of the public energy enterprise.

252 Avila, G. Interview with the author, January 22, 2004.

253 The initial expectation was 20,000 housing units/year and only 4,200 were built in 2 years.

254 This is a unit of 36 m^2 built on a 38 m^2 lot.

255 Gómez, H. Interview with the author.

256 Rosero, C. (2003:50-55).

Resistance to war is associated with many other "invisible struggles", such as strengthening community forms of organisation; local administration of justice and conflict resolution; the affirmation of collective assets; the protection of traditional knowledge; sustainability and so on. Resisting communities have explained their decision to keep their territories, their resources and the communities themselves out of armed conflict. These strategies have resulted in greater awareness of how the population is affected by the present conditions of violence in Colombia, and have led to more support from international organisations.

9.3 Civil society practices at local level

Civil resistance of ethnic communities in their territories

In late 2001, in Caldonó, Cauca and Paeces Indians peacefully resisted the aggression of armed groups using torches and chants. Also in 2001, other groups did the same: Bolivar and Puracé (Cauca), Berruecos (Nariño), Belén de los Andaquíes (Caqueta), and Concordia (Antioquia).

Civil resistance or disobedience has been applied by district administrations in Bogotá as an initiative to offset the alleged need to strengthen security forces in the city against guerrillas. [257]

10 Conclusions

Perhaps the main difficulty in preparing this report was attaining access to alternative sources given the fear that exists among representatives of threatened organisations or communities. Another difficulty has been the restructuring and merging of state institutions, because the institutional memory is only partial and the new policies are not clear to the functionaries in charge. Statistics come from several sources and are not comparable: they do not provide information to rigorously sustain interventions, nor do they guide state actions. Although general statistics offer breakdowns by gender, such precision is not afforded in all areas (IDPs or the cadastre, for example).

10.1 Legislation

(1) There is extensive legislation but there are many problems with implementation. This is largely due to the lack of effective policies.

(2) Colombian laws have a number of flaws that adversely affect citizens

- Vacuums: Issues not covered by the laws or themes, some awaiting ratification and which never become regulated. For example, many issues included in the legislation affecting indigenous communities are "waiting" for the LOOT, which has not been approved by congress;
- Inconsistencies/lack of clarity in the formulation of the law; and
- Contradictions, such as the requirement of credit as a condition to access housing subsidies.

(3) Lack of dissemination of laws and decrees: it is assumed that laws are known by all citizens, but the large majority of Colombians do not know them, nor the mechanisms by which they can exercise their rights. Dissemination means are limited and inadequate.

(4) The Constitution does not specifically refer to women's access to land. Planning laws and regulations do not include a gender dimension.

10.2 Administration of justice

(1) The justice administration system is affected by problems in the legislation, combined with a lack of precision on how to coordinate the management of institutions, huge social conflicts (late pensions, insufficient social security, problems in access to health, housing and assistance to displaced people and lack of solution of the social obligations of the state), and the impunity with which justice is violated.

(2) The operating structure of the judiciary is not clear. Confrontations between high courts generate breaches

257 Herrera Jaramillo, C. J. (2004).

in the administration of justice. This affects the legal security of citizens.

(3) The public does not know which law projects are being debated. [258]

(4) Mainly as a result of the armed conflict, mechanisms for the protection of rights, originally proposed as occasional mechanisms, have become widely and inappropriately used. This has swamped the courts.

10.3 Institutional structures

The fallacy of achieving "savings" in the institutional structure through mergers, restructuring and staff reductions is becoming evident. There is an extensive body of legislation, with restricted application and successive regulations. Functionaries are overwhelmed and cannot provide effective technical assistance at national or local level.

These mergers and cutbacks have resulted in a loss of institutional memory; emphasis on new issues at the expense of the "old" (leaving aside processes that had slowly become consolidated as significant for the country); [259] imprecise policies and permanent adjustments of procedures (the vulnerable and socially excluded population is also the most misinformed and the most affected); [260] and the lack of technical assistance at local level in particular.

10.4 Culture

(1) There is no national collective consciousness of the need to adopt principles of justice, to respect rights, to fight against corruption or to support the Constitution.

(2) The state repeatedly resists application of international human rights agreements and the general comments of the UN Committee for Economic, Social and Cultural Rights, specifically related to housing.

10.5 Access to tenure for the poor and women

(1) There are no articles in the Constitution specifically related to women and access to land.

(2) Paradoxically, it would seem better for many poor women *not* to own land, due to the implications in costs of notarial formalities, registration and taxes related to property, as well as the divergent approaches to the application of subsidies and loans. The application of subsidies is supposed to favour women heads of household, but the loans required to cover the entire cost of the housing unit are not designed to meet the needs of the poorest families, many of which are headed by women who work in the informal sector, or as maids, without labour security or stability. [261]

(3) In spite of some legal advances, many women remain poor, ignorant of their rights, jobless, subject to violence and unable to access housing subsidies. [262]

10.6 Rural land

(1) The effect of the agricultural reform on production and the structure of land ownership, in terms of improving equality in the distribution of land and in the economic situation of the rural population, is debatable. Large holdings have grown, with land often obtained through violent action.

(2) Violence, poverty and displacement in rural Colombia are associated with the inequity in the structure of land ownership and agricultural production.

(3) Most farmers cannot go beyond subsistence; they cannot become producers and therefore cannot have access to more land. For this reason, they will hardly be eligible for loans. This makes it impossible to provide subsidies to the poorest farmers, among them women.

(4) The modernisation of agriculture has had serious effects on tenure. Concentration of ownership and production have had the effect of expelling smaller

258 El Espectador (2004).

259 Such as the merger of the Ministry of the Environment and the Ministry of Development and dissolution of INURBE, the former National Housing and Urban Reform Institute. The emphasis of the new ministry (MAVDT) has been placed on housing, especially in subsidies.

260 For example in the access to subsidies by women heads of household, to food bonuses for the elderly.

261 CODACOP, Video "Una casa en el Aire": testimonies of women heads of household. Although all respondents recognised the advantage for themselves and their children of having secure tenure, the case of a woman who twice refused to accept housing subsidies for the economic implications to repay the loan was cited as an example.

262 Latin American consultation on "Women and Adequate Housing" organised by the International Habitat Coalition HIC-AL for the Special UN Rapporteur on Adequate Housing, December 4 – 5, 2003.

agricultural producers, leading to impoverishment, migration and social exclusion.

10.7 Housing

(1) The housing problems among the poorest remain unsolved. Qualitative and quantitative deficits continue to grow.

(2) During the last three decades no alternatives have been considered for housing ownership and subsidies to enable the poorest, especially women, to have access to decent housing

(3) Due to neoliberal adjustments, housing policies are aimed at the formal sector, leaving aside more than 60 percent of people in the informal sector, 61 percent of which are women. Financial entities do not think it is convenient to grant loans to households with incomes less than three times the minimum wage. [263]

(4) Subsidy management is inoperative, making access to these resources by the poorest more difficult, especially for women head of households.

(5) Although the right to adequate housing is recognised under the Constitution and confirmed by the Constitutional Court, the poorest persons can still not access this constitutional right. The parameters of quality are undefined.

11 Recommendations

11.1 Legislation:

(1) Procedures for the preparation of new laws should be regulated, forcing legislators to establish the compatibility and validity of existing rules on the matter prior to enacting a new law.

(2) In the same vein, the regulatory requirements issued after a law or its regulations are enacted should be limited.

11.2 Administration of justice and the exercise of rights

(1) A constitutional rule that puts order back into the higher courts is required, establishing competences and definitions.

(2) It is urgent to separate the constitutional jurisdiction from ordinary justice, for example by appointing constitutional judges to handle proceedings generated by mechanisms for the protection of rights.

(3) To ensure fairness concerning the degree of vulnerability of the population in each area, it is necessary to establish an order of priority in the handling of court cases. [264]

(4) We need to strengthen Colombian citizens as holders of *rights*. This means supporting training processes in human and development rights, in legislation and in its instruments of justice. Follow-up indicators on the effect of these processes should include a range of equity indicators (including gender and other categories), a way to measure development of social capital and so on.

(5) There must be supporting initiatives to improve local administration of justice and user-friendly justice mechanisms.

(6) Judges and other judicial officials should be trained in alternative conflict resolution methods and in the treatment of crimes related to human rights violations.

(7) International cooperation should be channelled towards policy actions for the democratic development of peace, beyond paternalistic humanitarian actions, and should seek to have war crimes effectively prosecuted by the International Criminal Court. [265]

263 Op.cit, page 2.

264 For example with the application of SISBEN in Bogotá. Given the limited resources available to provide education and health prevention and care services, a positive discrimination policy and greater coverage for indigents and persons from lowest income groups were established.

265 Rojas, Jorge. (1993:33-34).

11.3 Information

(1) The participatory spaces provided for in the Constitution concerning recognition of rights should be actively supported.

(2) Statistics (judicial, cadastral, public registry) should be disaggregated by gender.

(3) As the vulnerable and socially excluded population is also the most misinformed and the most affected by changes in government procedures, permanent information centres need to be established. This implies de-concentrating public entities, allocating staff to this task, or establishing information centres that assemble the representatives of institutions that provide services to the poorest communities.

(4) A study on urban women's movements should be undertaken at national level. The results of these movements, though not well documented, are reflected in the work of NGOs, academic institutions and other networks.

(5) More flexible and less legalistic approaches (e.g., testimonies or oral evidence) should be developed for the cadastre and property register).

11.4 Participation, valuation, empowerment of women

(1) Support the training of women for greater participation in, and representation on, decision-making bodies to influence local policies.

(2) Train women as trainers in social and cultural rights, rights to land, decent housing and a clean environment.

(3) Policies and actions aimed at protecting and re-establishing the living conditions of displaced populations must offer differentiated care to displaced households headed by women.

11.5 Land, habitat and housing:

(1) The growing impoverishment of the Colombian population, and especially of women, requires a review of its causes from an objective perspective. This suggests the need to assess the policies of the state concerning public investment in the distribution of land and in housing supply for the poor – policies that are built upon private ownership and sustained on unequal policies of distribution of rural and urban land. Such a review should also address the state's unfeasible tenure schemes, mostly aimed at strengthening the financial and construction sectors, and increasing the wealth of owners of large estates and multinationals.

(2) It is time to rethink the current model of private ownership for the poor. It would be appropriate to consider collective state investment in infrastructure, equipment and public services which, besides generating jobs, improve the quality of life of the residents of large areas, with the possibility of recovering and reinvesting contributions. There should be an assessment of collective forms of access to housing, of alternative ownership schemes and of new financing methods – starting with the informal market. A new vision should incorporate these forms into state and private programmes. [266]

(3) Tenure has to be associated with certain rights: the right to peaceful exploitation of land, the right to protection from eviction, to make improvements, to benefit from them and to have them recognised. Only then, and in schemes that link small producers to markets, can exploitation of the land can become productive for them.

(4) Application of management tools similar to those established in Law 388 in rural areas to ensure more equitable land distribution should be considered.

(5) Land planning and management tools proposed in Laws 9 and 388 have had some good results. An analysis should be made with a view of applying them to other contexts.

(6) The effects of public policies to counter land market informality have been nil. Informality grows at a much faster pace than formal production of urbanised land and housing. A study of the informal market is needed to guide resources.

11.6 Affirmative action for women on land and housing issues

(1) Colombia needs a consistent policy in the provision of land and housing that discriminates positively in favour of all vulnerable women, that includes contributions to income-generation and subsidies (without credit),

266 Stefano A. F. (2003).

and offers alternative schemes that guarantee secure tenure.

(2) For women heads of household, it is critical to review the issue of ownership: other forms of tenure such as renting or leasing seem more viable.[267] There should also be an analysis of subsidies for the purchasing of used, subdivided and improved housing, or the collective purchase of properties by groups of women. This implies channelling public and private-sector investment towards housing improvement programmes

(3) The application of subsidies for the improvement of housing and micro credits is necessary to offset the housing deficit and improve living conditions. To reach women heads of household and the poorest population the subsidy policy should be changed to guarantee flexible loans through a special fund.

(4) Housing solutions must be accompanied by productive projects to enable these households to generate income to meet their basic needs.[268]

(5) Donor and cooperation agencies need to support civil society organisations working with low-income groups, women, displaced and other vulnerable sections of the population.

(6) The domestication of international human rights agreements, specifically those related to social rights and the right to adequate housing, should also be a funding priority for international organisations.[269]

267 González, P. Interview with the author, February 4, 2004.

268 Jorge Eliecer Rivera (undated).

269 Such as the Covenant on Economic, Social and Cultural Rights of 1966, and the National Committees post-Beijing and post-Istanbul.

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APPENDIX

Appendix I

Table I.I Participation forums established by law

Forum	Regulated by	Compulsory	Composition	Scope	Level of organisation	Level of intervention
Local admin. boards	Law 136 of 1994 Law 11 of 1986	No. Creation by local authorities is optional	5 to 9 members elected by universal vote	Territorial	Commu-nities and corregimientos	Consultation, initiatives, audits. In Bogota, it adopts the plans of localities. In Cali, it approves development plans of communities or corregimientos
Planning Councils	Law 152 of 1994	Yes. No penalties exist for authorities who fail to summon them	Number of members varies according to municipal agreement that creates it. Appointed by mayor from list of 3 people submitted by each sector (education, health, women, young, JAC, unions, entrepreneurs, cooperatives, cultural)	Social global, exclusive representation	National, dept., municipal and local (where local planning systems exist)	Consultation (on proposed development plans), initiative (recommendations to relevant authorities on content of plans), audit (municipal development plan)
Municipal Rural Development Council	Law 101 of 1993; Law 160 of 1994	Yes	Number of members varies according to municipal agreement that creates it	Social global meeting	Municipal	Consultation, initiative, concertation of rural development plans, audit
Citizen Inspectors	Law 134 of 1994; Law 136 of 1994. [8]	No	Number varies according to decision of members	Social global or sector. Exclusive representation	Municipal, per service or work	Initiatives, audit
Community Council of Black Communities	Law 70 of 1993	No	All members of black communities who register with INCORA to process land deeds can participate.	Social global exclusive representation	Black communities	Initiatives, management
Consultative Planning Council of Indigenous Territories	Law 152 of 1994	No	Traditional indigenous authorities and representatives of community sectors, appointed by territorial Indigenous Council from lists of 3 persons submitted by stakeholders	Social global territorial exclusive representation	Indigenous communities	Initiatives and audit (of local plans)
Consultative Organization Council	Law 388 of 1997	Yes, in municipalities with more than 30,000 inhabitants	Officers of municipal administration and representatives of unions, professional, ecological, civic and community organizations linked to urban development. Urban curators in cities where this institution exist are also members	Social global meeting	Municipal	Consultation and audit
Local Committee for the Prevention of Disasters	Decree 93 of 1998	Yes	The Mayor, head of municipal planning, a delegate of the hospital and community representatives	Social global meeting	Municipal	Information, management (assistance and disaster prevention)

Source: *¿Qué ha pasado con la Participación Ciudadana en Colombia?* pages 98-102, Fabio Velásquez, Esperanza González, June 2003

Appendix II

Legislation on Women's Rights

- **Law 8 of 1932** grants married women the power to manage their personal assets.
- **Law 28 of 1932** eliminates the husband's authority over the management of his wife's assets and gives this power to women.
- **The Constitutional Reform of 1936** grants women the right to fill public positions.
- **The Constitutional Reform of 1945** grants women the rights of citizenship.
- **The Constitutional Reform of 1954** introduced the plebiscite granting women the right to vote; this right was first exercised on this occasion.
- **Law 360 of 1967** amends the criminal code concerning sexual violence against women.
- **Decree 2829 of 1974** grants equal rights and obligations to women and men as heads of household.
- **Decree Law 999 of 1988** authorises change of name before a notary to suppress husband's last name preceded by the preposition "*de*".
- **Law 1 of 1978** establishes grounds for divorce in civil marriage, which are equal for men and women.
- **Law 51 of 1981** ratifies CEDAW and regulates it under Decree 11398/90.
- **Law 54 of 1990** defines the patrimony regime among permanent couples.
- **The 1991 Political Constitution of Colombia** enshrines the principle of the legal equality of women. Art. 13 enshrines the right to education within the context of non-discrimination by reason of gender, race, national or family origin, language, religion, political or philosophical opinion. Article 43 says that men and women have the same rights and opportunities, and that women shall not be subject to discrimination of any type.
- **Law 25 of 1992** suspends the civil effects of religious marriage, whenever celebrated.
- **Law 82 of 1993** issues regulations to provide assistance especially to women heads of household. The assistance relates to education, health, formation of popular housing organisations, priority access to credit, among others.
- **Law 136 of 1994** of municipal regime, which lists among the duties of a municipality the obligation of meeting unsatisfied needs in health, education, environmental sanitation, drinking water, public services to homes, housing, recreation and sports, with special emphasis on women.
- **Law 284 of 1995,** which incorporates the Inter-American Convention to Prevent, Eradicate and Punish Violence Against Women.
- **Law 294 of 1996,** whereby Art. 42 of the Constitution is enforced and regulations are issued to prevent, remedy and punish domestic violence.
- **Law 311 of 1996,** whereby the National Family Protection Registry is created and other regulations are issued.
- **Law 387 of 1997,** which requires the *Consejería de la Mujer* to foster assistance programmes for displaced women.

Appendix III

Table III.I Types of union or state land

Subtype	Definition [9]	Features	Legal basis
Public use property	Property used by all the inhabitants of a territory: streets, squares, bridges, roads, beaches, land under the sea and maritime waters.	Cannot be attached or alienated. Is not subject to seizure and cannot be obtained through prescription/adverse possession (usucapion).	Articles 63 and 674 civil code Art. 166 decree 2324 of 1984
Cultural and archaeological heritage[10]	All cultural assets and sites that are the expression of the Colombian nationality; real or personal property originating in extinct cultures or corresponding to colonial times; human and organic remains related to those cultures.	Cannot be attached or alienated. Is not subject to seizure and cannot be obtained through prescription/adverse possession.	Art. 72 civil code Law 397 of 1997
Fiscal property	Union assets, which individuals can possess if authorities determine to sell, such as land owned by public universities; buildings owned by municipalities or by the departments (market places, slaughterhouses).	Cannot be attached or alienated. Is not subject to seizure and cannot be obtained through prescription/adverse possession.	Art. 674 civil code Ruling vii 29/99 expedient 5074 Superior Council of Judicature (SCJ)
Vacant property 'baldíos'	Land that has no owner	Can be acquired through prescription/adverse possession. Occupation for 5 years on rural land and for 10 years on urban land; title to be issued later on by the state.	Art. 675 civil code Law 160 of 1994 ruling SCJ vii 5/78

Table III.II Types of private land

Subtype	Definition	Features	Legal basis
Private land and real property	Titled land or housing owned by an individual ("persona natural", which may include joint ownership between spouses or stable partners) or a group of individuals ("persona juridica").	Can expire, is negotiable and may be seized in the interest of social function of property.	Art. 58 Constitution Laws 160 of 1994 and 388 of 1997 Civil code

Table III.III Types of communal land

Subtype	Definition	Features	Legal basis
Territories of indigenous groups	Territories of groups or families of Amerindian ascent, whether titled or not, or who cannot legally accredit their territories, or whose reserves ("resguardos") were dissolved, divided or declared.	The reserves are legal and sociopolitical entities with collective property title, which enjoy the guarantees of private property. Cannot be attached or alienated. Cannot be acquired through prescription/adverse possession and cannot be seized. May not be transferred or mortgaged.	Articles 7, 8, 10, 63, 68, 70, 72, 96, 171, 176, 246, 286, 287, 288, 290, 321, 329, 330, 339, 357, 360, and 361 of civil code Law 160 of 1994 Decree 2164/1995[11]
Territories of Afro-descendants[12]	Territories of Afro-Colombian groups who have their own traditions and customs in their relationship as a village.	Cannot be attached, alienated, or be acquired through prescription / adverse possession (usucapion). Is not subject to seizure. Individual and collective property as well as reservation areas can be defined through regulations, adjusting the distribution of property to uses and customs.	Law 70 of 1993[13] Articles 7, 8, 63, 68, 70, 72, 96, 176 of civil code (among others)

Subtype	Definition	Features	Legal basis
Associative and/or joint property	Held by rural workers, e.g. as cooperatives.	Constitution stipulates that state must promote this property form, but to date there are no clear regulations.	Art. 64 Constitution
Urban community Property	Property owned and used by an urban group of dwellers or residents (called "cesiones Tipo B").	Cannot be attached, alienated, or seized. Cannot be acquired through prescription/adverse possession.	Art. 8 Law 388 of 1997 Regulations/ bylaws of municipal councils

Appendix iv

Table IV.I Types of Tenure

Type	Definition	Characteristics	Legal basis
Ownership	Freehold, unconditional, indefinite. May however be expropriated in the public interest, with compensation. Joint ownership of land under land reform programme: land is registered in name of both spouses or both stable partners.	Property ownership is legalised by deed. It can be registered or not. It is negotiable and may be expropriated in the public interest (social function of property) against compensation.	Articles 58, 60 and 64 Constitution Articles 166 et seq civil code Laws 160 of 1994 and 388 of 1997
Possession	Possession of immovable property as owner or master, without being the legally registered owner. Adverse possession (usucapion): after good faith occupation of 10 years in urban, and 5 years in rural areas has to be declared by a judge.	Possessors may purchase the property by expiration if it is private or by occupation if it is located on vacant land owned by the state. It can be regular or informal depending on the good faith and fair title with which it is exercised.[14]	Art. 672 et seq. Civil code Law 160 of 1994 Art. 27 Law 387 of 1997
Invasion	Occupation of public or private property through irregular ways. It can be done individually or in groups.	Invaders can become possessors if they invade a private property and are not evicted within the next 30 days if urban, or within 15 days if rural; or they can become occupants of state property if it is not of public use, a conservation heritage or fiscal property.	National Police Code
Simple tenure	Tenure is exercised on behalf of the owner on a property or thing. The tenant does not pretend ownership. It is free usufruct (e.g. the administrator of a farm or a caretaker).	Simple tenure does not become possession over time. Simple tenants cannot acquire ownership of property through prescription/ adverse possession.	Art. 775 civil code
User loans	Delivery of a real or personal property by one party to another, free of charge, to be used by the latter, who must return it to the former after such use. The period of its use is agreed upon among the parties (e.g. a state plot or building can be loaned to a private organisation for construction of or use of a school).	User loans can be agreed between private individuals or between individuals and the state. Beneficiaries are not possessors, and cannot acquire the property through prescription/ adverse possession.	Articles 2200 et seq civil code. Concept 1510 by State Council[15] (Susana Montes de Echeverri VII.24/03) For rural land: Law 812 of 2003

Type	Definition	Characteristics	Legal basis
Rent	A consensual contract for a certain sum, whereby one person transfers to another the use of a certain good in exchange for payment.[16]	Lessee does not acquire the status of possessor, only tenant of property, and therefore cannot acquire it through adverse possession.	Articles 1973 et seq civil code Law 812 of 2003 (not yet implemented)
Usufruct	Real right consisting of the right to use a good in exchange for preserving and returning it to owner in the agreed terms.	It can be for a fee or gratuitous, and must always be effected via a public deed. Usufruct holders may become owners if thus stated in the deed.	Articles 823 et seq civil code
House leasing	A contract whereby a bank, authorised by the Superintendencia[17] of Banks, transfers a house to a user, in exchange for the payment of a periodical sum (equal to rent), for an agreed term of at least 10 years, during which time user will decide whether to purchase the property or to return it.	The percentage of the house paid with the monthly rent and the time of duration of the contract are agreed between the entity and the beneficiary. Extraordinary payments can be scheduled and agreed with the entity at any time to lower the final value of the purchase option.	Decree 777 of March 28, 2003
Transit lots and temporary settlements	Lots adjudicated by INCODER to assist displaced populations registered in food security programmes and short and medium term productive projects.	Lots where displaced households can only remain for a short time, after which they must look elsewhere for a place to live. No specific priority for women-headed households.	Decree 2007 of 2001
Assignment contract or provisional tenure	Temporary rental contract for a 5-year period on purchased or expropriated land and in areas defined in the agricultural reform planning process.	Entered into upon definition of a project to develop, at the end of which INCODER will transfer ownership, provided it is proven that competitive and sustainable agricultural businesses have been established on the project land.	Law 812 of 2003 (yet to be implemented)
Joint ventures	Partnerships where both risks and profits are assumed by the state and the project beneficiary.	Based on clear contracts, under a profit-sharing scheme.	Law 812 of 2003 (yet to be implemented)

Appendix V

Table V.I Legal means of accessing tenure

State property	Private property
Using it as first owner of a state property that has no other owner Voluntary direct negotiation Expropriation[18]	Sales-purchase of legalised property Establishing reserves or purchasing collective territories Constitution of usufruct Leasing Partition of inheritance Division of community property House leasing contract Adjudication as transit settlement Regular possession Occupation Legal process of declaration of acquisition by adverse possession Developing productive projects (NDP 2002-2006)

Table V.II Informal/irregular/illegal means of accessing tenure

State property	Private property
Occupation or invasion of public use property, state-owned land or state-owned buildings (fiscal property) Illegal subdivision of state land for sales or purchase	Sales-purchase of property in private illegal subdivisions (barrios piratas) or private developments/buildings Invasion of private property Irregular possession

Appendix VI: International Law

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

Universal Declaration on Human Rights (UDHR) [270]

- 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) [271]

- Article 11(1) recognises the right to adequate housing; [272]
- Article 2(2) prohibits discrimination; and
- Article 3 recognises equal rights between men and women.

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

271 *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.

272 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

International Covenant on Civil and Political Rights (ICCPR) [273]

- 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) [274]

- 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. [275]

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) [276]

- Article 13 requires the elimination of discrimination against women in areas of economic and social life to ensure 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) [277]

- 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) [278]

- 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

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

273 *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.

274 *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.

275 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

276 *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.

277 *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.

278 *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

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) [279]

- 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.

279 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

In Table 1.1 below, an overview is provided of which countries in Latin America are party to these human rights instruments. [280]

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 [j]	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

280 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.

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
Convention 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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UN-HABITAT

UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME
P.O. Box 30030, GPO Nairobi 00100, KENYA
Telephone: 254-20-7623120; Fax: 254-20-7624266/7 (Central Office)
E-mail: infohabitat@unhabitat.org; Website:http//www.unhabitat.org