



# MEXICO

## Law, Land Tenure and Gender Review: Latin America



UN-HABITAT

LAND TENURE, HOUSING RIGHTS AND GENDER

IN  
M E X I C O



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## Law, Land Tenure and Gender Review Series: Latin America

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## Foreword to Latin America Law And Land Tenure Review



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

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

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

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

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

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## List of Abbreviations

### Organisations, institutions and cities

AMG	Metropolitan Area of Guadalajara
BANOBRAS	National Bank of Public Works and Services
BANSEFI	National Savings and Financial Services Bank
CABIN	Assessment Commission of National Assets
CENVI	Centre for Housing and Urban Studies
CFE	Federal Electricity Commission
COCOPA	Commission of Concordance and Peace
CONAFOVI	National Housing Promotion Commission
CONAPO	National Population Council
CONAVI	National Housing Council
COPEVI	Housing Cooperative
COPLADE	Development Planning Committee
CORETT	Commission for Land Tenure Regularisation
DF	Federal District
EZLN	Zapatista National Liberation Army
FIFONAFE	National Funding Trust for Ejidal Development
FONHAPO	Popular Housing National Fund
FOSOVI	Social Housing Promotion Fund
FOVI	Fund for Bank Operations and Housing Funds

FOVISSSTE	Housing Fund of the Social Security and Services Institute for State Workers
IMSS	Mexican Social Security Institute
INEGI	Institute of Statistics, Geography and Informatics
INFONAVIT	National Workers Housing Fund Institute
INI	National Institute of Indigenous Affairs
INMUJERES	National Institute for Women
INVI	Federal District's Housing Institute
ISSSTE	Institute of Social Security and Services for State Workers
NGO	Non-governmental organisation
PA	Agrarian Attorney's Office
PEMEX	Mexican Oil
PRI	Institutional Revolutionary Party
PROFEPA	Environmental Protection Federal Attorney's Office
PRODEUR	Urban Development Attorney's Office (Jalisco)
RAN	National Agrarian Registry
RPP	Public Property Registry Office
SCT	Ministry of Communications and Transport
SEDESOL	Ministry of Social Development
SEDUVER	Urban Development Secretariat of the State of Veracruz
SEMARNAT	Ministry of the Environment, Fisheries and Natural Resources
SHF	Federal Mortgage Society

SRA	Ministry of Agrarian Reform
UCISV-Ver	Union of Settlers and Tenants Requesting Housing in Veracruz

### **Laws**

CCF	Federal Civil Code
LGAH	General Law on Human Settlements
LGBN	General National Assets Law
LGEEPA	General Law of Ecological Balance and Environmental Protection

### **Programmes, Agreements**

NAFTA	North American Free Trade Agreement
NPUD	National Programme on Urban Development and Regional Planning
PISO	Social Land Incorporation Programme
PNPI	National Programme for the Development of Indigenous People
NDP	National Development Programme
PROCEDE	Ejidal Rights Certification Programme
PROMEJORVI	Federal District's Integrated Territorial Social Development Programme
PROSAVI	Special Housing Credit and Subsidy Programme
VIVAH	Progressive Housing Savings and Subsidies Programme

### **Other**

AIDS	Acquired immunodeficiency syndrome
HIV	Human immunodeficiency virus





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## EXECUTIVE SUMMARY

This report on Mexico 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 although in Mexico's case falling 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 deficiencies in service provision in informal settlements. In addition, more efforts in availing land for the urban poor need to be made, and this should include financing and lifting the ever-present threat of evictions.

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

The subject of this chapter, Mexico highlights a number of other specific recommendations. Curbs on the excessive privatisation of public land are needed because of its detrimental effects on access to land by the poor. Coordination of governmental agencies at federal, state and municipal level is recommended as an important ingredient to improving land and housing delivery. Finally, empowerment of municipalities to have a bigger role in implementing housing initiatives such as regularisation also emerges as key recommendation.

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

*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).

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.<sup>1</sup> Barring a small improvement from 1960 to 1970, the inequality levels in the region remained practically unchanged from 1960 to

<sup>1</sup> 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).

1990.<sup>2</sup> The table below shows Gini coefficients by region and decade.

Historically, no single factor has contributed to this inequality as much as the unequal distribution of land.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> Deere, C. et al (2000:119-120).

<sup>6</sup> United Nations Centre for Human Settlements (Habitat). (2001:7).

Latin America provides the clearest example of the worldwide process known as the “urbanisation of poverty”.<sup>7</sup>

The World Bank/International Monetary Fund approach to poverty reduction is based on a new framework embodied in the Poverty Reduction Strategy Papers (PRSPs).<sup>8</sup> 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<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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 ef-

<sup>7</sup> Eclad. (2000:21).

<sup>8</sup> 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.

<sup>9</sup> 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).

<sup>10</sup> Ibid.

<sup>11</sup> Benasaya, G. et al. (1992:276).

<sup>12</sup> Clichevsky, N. (2000 :12).

fect 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

<sup>13</sup> UN-HABITAT (2001:197).

<sup>14</sup> Pazzinato, A. L. (1995:385).

<sup>15</sup> 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.

<sup>16</sup> 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).

<sup>17</sup> Torres, I. (2001).



Regional statistics provide a revealing picture in this regard, as captured below.

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](http://www.ipu.org)<sup>18</sup>

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 equal-

ity of opportunities and treatment between men and women, except for Uruguay and Venezuela.<sup>19</sup>

## 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.<sup>20</sup>

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.<sup>21</sup>

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

<sup>19</sup> Cepal. L. D. (2001).

<sup>20</sup> 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.

<sup>21</sup> López M. Eduardo (1996).

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

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

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

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

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

## 2.2 Constitutional provisions

The right to adequate housing is recognised by the constitutions of many countries, including Argentina, Brazil, Colombia, Cuba, the Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Venezuela, Chile and Bolivia.<sup>22</sup> 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

<sup>22</sup> The complete texts of the constitutional articles on housing rights may be consulted on the website [www.unhabitat.org/unhrp/pub](http://www.unhabitat.org/unhrp/pub).

right to property. However, they generally provide specific regulations to the right to land of special groups, such as indigenous people, black communities, and those living in informal urban and rural settlements.

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

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.<sup>24</sup> Security

<sup>23</sup> UNDP (2003).

<sup>24</sup> 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

of tenure, because it is a key element in the human right to housing, should be guaranteed to all, equally and without discrimination."<sup>25</sup>

### 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.<sup>26</sup> 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<sup>27</sup> and of unproductive or sub-used *latifundios*, comprising four-fifths of the land in the country.<sup>28</sup>

In these reforms most women were discriminated against in terms of access to and management of land. The regular

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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 means 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).

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

<sup>26</sup> Agrarian Reform Law, 1959.

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

<sup>28</sup> Deere, C. et al (2002).

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.<sup>29</sup>

In the 1960s, 17 Latin American countries initiated agrarian reform processes with assistance from the U.S. government's Alliance for Progress programme.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> The revolutionary military government in Peru also assisted the agrarian reform by distributing land

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

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

31 Deere, C. (2002:101).

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

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.<sup>33</sup> 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.<sup>34</sup>

## 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.<sup>35</sup> The most common experiences involve cooperative

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

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

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.<sup>37</sup> Models of co-responsibility between social organisations and other players in civil society and the state are also rare.<sup>38</sup>

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

of self-management processes. Unfortunately, there is no web site where people can review these results.

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

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

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

movement, marked by the creation and consolidation of national networks and organisations of rural women. This is important for a number of reasons, not least that rural women are a new political actor both at the national and regional levels.

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

### Argentina: the Occupiers and Tenants Movement<sup>39</sup>

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<sup>40</sup>

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 ap-

39 Instituto Movilizador de Fondos Cooperativos. (2002).

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

proximately 300,000 inhabitants, and has completed a series of works in housing, health, education, industry and commerce. The organisation of the population, therefore, has resulted in a vast internal system of community regulation, including self-managed housing construction. Villa Salvador was recognised as a municipal district in 1983 and in 1995 a plan for integral development was implemented aiming at its economic and social development, which resulted in the establishment of more than 100 small entrepreneurs.

### Uruguay: FUCVAM <sup>41</sup>

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. <sup>42</sup>

## 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. <sup>43</sup>

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

<sup>41</sup> Guerra, P. (2002:116-119).

<sup>42</sup> Blanco, L et al (2003).

<sup>43</sup> Clichevsky, N. (2002).

land speculation.<sup>44</sup> This is one of the reasons why so many large empty spaces are commonly seen in the metropolitan areas. Furthermore, as the public authorities build roads and provide public transport and infrastructure to attend to the poorer suburbs on the peripheries, such public investment, passing close to these large unoccupied spaces, increases the value of those speculators' lands.

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

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

<sup>44</sup> 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.

<sup>45</sup> UN Committee on Economic, Social and Cultural Rights. (1991).

of informal settlements by which property or usage can be held;

- Ownership resulting from land expropriation, including those for urban reform or social purposes; and
- Occupancy rights.

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

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

## 7 Slums and informal settlements

### 7.1 Origins of urban informal settlements in Latin America

The lack of adequate housing for the poor is associated with the urbanisation standards and method of development of the cities, whose disordered growth intensified from the middle of the 20th century as a result of increasing industrialisation that attracted more and more people from the rural areas. A number of other socioeconomic factors have contributed to the expansion of urban informal settlements,<sup>46</sup> including high unemployment and low salaries paid to migrant workers; macroeconomic adjustments imposed by international financial institutions, leading to government austerity policies;<sup>47</sup> and urban regulations that governed

<sup>46</sup> 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.

<sup>47</sup> 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.

some areas but not others (i.e., informal areas), contributing to price differences.<sup>48</sup>

## 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.<sup>49</sup>

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).<sup>50</sup>

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 construc-

tion 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.<sup>51</sup>

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.<sup>52</sup>

## 7.3 Types of urban informality<sup>53</sup>

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.<sup>54</sup>

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,<sup>55</sup> 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

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. *Ensaio 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.

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

49 Souza, M. (2003).

50 Santos, M. (1982:46).



plots to agricultural cooperatives transformed into urban land.<sup>56</sup>

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

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

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

<sup>56</sup> 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.

<sup>57</sup> Clichevsky, N. (2003:16).

high proportion of those in informal settlements worldwide and they are among the poorest.<sup>58</sup>

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.<sup>59</sup>

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

<sup>58</sup> UN-HABITAT (2001:28).

<sup>59</sup> Erba, D. (2004).

are based on colonial laws relating to inheritance, forms of proof, and methods of demarcation that are not suitable for the present-day local conditions. Moreover, despite modernisation efforts, old data collection methods are widespread.

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

Latin American countries predominantly deal with centralised cadastral systems.<sup>61</sup> 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.<sup>62</sup>

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.<sup>63</sup>

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

<sup>60</sup> Fourie, C. (2001).

<sup>61</sup> 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.

<sup>62</sup> Erba, D. (2004).

<sup>63</sup> FAO. (1992).

allocation of land, priority is given to refugee women headed households in the Agrarian Law.

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

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

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

## 9.1 Marital property rights

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

Titling programmes have not titled women due to discriminatory laws that favour male heads of household.<sup>64</sup> 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.<sup>65</sup> Women's movements have, in response, called for the expansion of joint titling.<sup>66</sup> More

<sup>64</sup> Deere, C. (2001:119).

<sup>65</sup> Lastarria-Cornhiel, (2003:11).

<sup>66</sup> Nicaragua and Honduras, for example, have legislation recognising joint ownership of property acquired by a couple and have been implementing systematic titling and

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.<sup>67</sup> 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.<sup>68</sup> 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

registration programmes by including joint titling in the official housing programmes. The study also points out problems in the implementation of joint titling.

<sup>67</sup> 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).

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

and wife. Upon the death of one spouse, the surviving spouse is also entitled to half of the marital property;

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

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

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.<sup>70</sup>

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

69 UN-HABITAT. (2005:26).

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

of the husband, he can dispose of it without his spouse's signature because the signature rules are rarely enforced.<sup>71</sup> Ecuador, Dominican Republic, Guatemala, Honduras, and Mexico favour male management of community property, as shown in the table below.<sup>72</sup>

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' <sup>1</sup>	
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”<sup>73</sup> and in violation of the Convention on the Elimination of All Discrimination Against Women (CEDAW). In addition,

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).

civil codes and family laws that still allow for unequal marital property management also violate other international human rights instruments and may be contrary to the constitutions of these countries.<sup>74</sup>

*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.<sup>2</sup>

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.

## 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.

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

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

*Table 9.2 Rules concerning estate inheritance according to marital regime*

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

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

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

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

If this type of adjudication is regulated by the civil code, the parcel will be subdivided upon death. This system is followed by Bolivia, Costa Rica, Chile, Ecuador, El Salvador, Panama and Paraguay.<sup>75</sup> If land adjudication is regulated by the agrarian law,

<sup>75</sup> Ibid.

the parcel is not subdivided upon death.<sup>76</sup> 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.

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 <i>congrua subsistencia</i> )**	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.

<sup>76</sup> FAO. (1992:9).

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 per cent. 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.<sup>77</sup> 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.<sup>78</sup> Thus there exists a direct relationship between violence against women and the necessity to have adequate housing.<sup>79</sup>

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.<sup>80</sup>

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.<sup>81</sup> El Salvador and Colombia have the highest delinquency levels.

<sup>77</sup> Vadera (1997), quoted by Trujillo, C. (2003).

<sup>78</sup> Fundación Arias.

<sup>79</sup> Trujillo, C. (2003).

<sup>80</sup> UNCHS (2001:48).

<sup>81</sup> 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”.<sup>82</sup> As a result some progressive legal reforms have been introduced.<sup>83</sup> 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.<sup>84</sup> 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.<sup>85</sup> 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.

<sup>82</sup> Wade, P. (1997). This tendency can be seen in Colombia (Palenques), Brazil (Quilombos), Nicaragua (Creoles), Honduras (Garifunas), 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 Garifunas peoples of autonomous ethnicity” as a means of gaining recognition of their rights as peoples.

<sup>83</sup> 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).

<sup>84</sup> 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](http://www.cidh.org/annualrep/2000eng/ChapterIII/Merits/Guatemala11.625.htm)

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

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

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

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

An integral, comprehensive approach to land and housing rights is necessary to marshal the attributes and assets associ-

<sup>86</sup> 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

ated 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:<sup>87</sup>

- 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.

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document every five years about the housing situation, considering the existing demand for housing projects, the population's income, the loans and subsidies to be conceded, the plans for construction of public housing and legislation considered necessary for carrying out the plan. In Chile, since 1978, a system of subsidies for the poor has been in operation. The system is based on an analysis that takes into consideration various characteristics of the family group and gives preference to vulnerable groups, such as, for example, big families, the old, or women head of households.

<sup>87</sup> Karremans, J et al. (2003).

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

An important case study that demonstrates a model of women obtaining access to credit is described in the report on Nicaragua – the experience of the Women's Centre of Xochilt-Acalt.<sup>88</sup> 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:<sup>89</sup> 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.<sup>90</sup>

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

<sup>88</sup> Arenas, C et al (2004:45-46).

<sup>89</sup> Clichevsky, N. (2003:31).

<sup>90</sup> Durand-Lasserve, A. (1997).

nearby informal settlements, the supply companies will not connect the services if the land or building is not titled.<sup>91</sup>

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;

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

- They 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,<sup>92</sup> 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;<sup>93</sup>
- 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.

<sup>92</sup> Clichevsky, N. (2003:23).

<sup>93</sup> 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.unhcr.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.<sup>94</sup>

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.<sup>95</sup> 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

<sup>94</sup> Clichevsky, N. (2002:55).

<sup>95</sup> "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).

projects are neither supervised nor implemented by qualified workers.

## 12 Regional recommendations and priorities

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

- (1) **Government should take on a more proactive role in land matters.** A firmer role is needed of government to reduce the intense speculation in urban land, which leads to exclusion of the poor. Further, increased efforts need to be made to address the glaring land ownership inequalities in the region. These issues lie at the core of providing housing, land and tenure security to the estimated 180 million people living in poverty in the region.
- (2) **There is a region wide need to implement non-discriminatory laws and policies.** While there are aspects of gender equality in the laws of the region, the actual practice has often been lacking. The reform of institutions to include broader gender representivity, attitudinal changes as well as education campaigns are important ingredients in implementation of these laws. International treaties and conventions with their reporting and monitoring procedures can additionally be useful tools for feedback on implementation.
- (3) **Increase efforts in fulfilling the right to adequate housing.** The general regional acceptance of a legal right to housing in various forms should be coupled with scaled up programs for expanding service provision through informal settlement upgrading, granting tenure security and new housing development. Donors and multilateral lending agencies have an important role to play in providing funds for such programmes.
- (4) **Recognise and reinforce the role of small and micro credit institutions among the poor.** The lack of accessible financing for the poor has often left them out in housing programmes. Positively however has been the development across the region of micro credit institutions whose membership is often largely composed of women. There is a need to better target

these initiatives through increased support to better capacitate, capitalise and formally recognise them.

- (5) **Recognise the special needs of indigenous and minority communities.** While there is general recognition and consensus on this ideal, there is a need to better integrate these communities in all land reform and housing programmes.
- (6) **Incorporate civil society into the highest levels of decision-making.** The often active and vibrant civil society in the region needs to be fully integrated into governmental decision organs at all levels. This will ensure they can better influence policy and decision making.
- (7) **Further pursue pioneering concepts in land tenure and reform and enhance shared learning.** The region is considered to be the home of what many regard as positive practices in land tenure and reform, and provides an important source of learning for the rest of the developed world. There is a need to more urgently implement many of these practices on a wider scale as well as share experiences within the region.
- (8) **Integrate the poor living in informal settlements into the urban fabric.** A mixture of colonial legacy and post independent land practices has seen the peripheralisation of the urban poor across the region. While there is no single solution to this phenomenon, urban planning, land reform and housing programmes

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

- (9) **Reform of land registration systems across the region.** This is a broad area of reform and emphasis will depend on the country concerned. However, there is a general need to incorporate the poor into these systems through reconciling the formal and informal systems of land acquisition. In addition, there is need to reform old and outdated colonial laws; modernise the systems through broader use of technology; and increase decentralisation and capacitation of regional and local units.
- (10) **Improve access to information and legal support on land and housing rights.** A common feature in the region is the need to better implement good laws and policies. The public should be better educated on the contents of these laws and legal support provided to prevent violations. Civil society is important in this process.



## Land law reform in Mexico

### 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 1.1: The Mexican Republic*





## Background

### 1.1 History of Mexican land reform

Mexico declared independence from Spanish colonial rule in 1810. Like much of Latin America at the time, the country was characterised by the presence of large estates (*latifundios*). When the War of Independence (1810-1821) began, 97 percent of the land was in the hands of ranchers and rich farmers, 2 percent corresponded to smallholdings, and the remaining 1 percent belonged to indigenous peoples and communities.<sup>96</sup>

The claims of peasants who took part in the Mexican Revolution of 1910 under the slogan “land and liberty” were enshrined in the Constitution of 1917. Article 27(1) of the Constitution declares:

“Ownership of the lands and waters within the boundaries of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property.”

Article 27(3) further stipulated:

“The Nation shall at all times have the right to impose on private property such limitations as the public interest may demand, as well as the right to regulate the utilisation of natural resources ... in order to conserve them and to ensure a more equitable distribution of public wealth. With this end in view, necessary measures shall be taken to divide up large landed estates. ... Centres of population which at present neither have lands nor water nor possess them in sufficient quantities for the needs of their inhabitants, shall be entitled to grants thereof, which shall be taken from adjacent properties, the rights of small landed holdings in operation being respected at all times.”

Thus, the need for land reform was an integral part of the birth of modern Mexico. The Constitution recognised the need to distribute land to rural communities that requested it, mainly under the modality of *ejido*, a type of land tenure that was intended to crystallise the “social” nature of the nation’s

property.<sup>97</sup> The 1917 land reform resulted in the allocation of land in *ejidos* and communities, but not to individuals.

Seventy-five years later, in 1992, within the context of economic liberalisation encouraged by international development agencies, Art. 27 was amended. As part of a package of neoliberal reforms including the North American Free Trade Agreement (NAFTA), the privatisation of state enterprises and the deregulation of agricultural produce markets, the land counter-reform envisions a new *ejido* founded on private land ownership and able to compete in the domestic and global markets.<sup>98</sup>

### 1.2 Legal system and governance structure

Although historically influenced by the legal systems of Spain, France and the United States, Mexico has been able to structure and maintain a distinct and unique legal system. Examples are the institution of “*amparo*”, established to protect the constitutional rights of individuals and companies against violations from public authorities; the notion of “social rights” found in Art. 123 of the Constitution, enumerating the rights of workers as a social class; and the collective land tenure system of the *ejido*, whose original objective was altered by the 1992 amendment.

The United States of Mexico (Mexico) is a federation of 31 states and one Federal District (DF).<sup>99</sup> The DF is the seat of the powers of the nation. The republic is ruled through a Constitution and a tripartite government system.

The executive power lies in the president of the republic, elected by direct vote for a six-year term. The Congress of the Union represents the legislature and consists of the

<sup>97</sup> The origins of the *ejido* can be traced to the prescriptions of the Spanish “Leyes de Indias”, which established the spatial organisation of the new cities to be founded in America. The *ejidos* were the land surrounding the city, collectively owned and designated to common use (recreation, shepherding, hunting, etc.) and mainly to land reserves for the city (López Moreno, 1996). Nevertheless, modern *ejido* is a special form of land tenure resulting from Mexican agrarian reform of 1917.

<sup>98</sup> LRAN (undated).

<sup>99</sup> The 31 states are also referred to as “federative entities”.

<sup>96</sup> Otero, cited in Toledo, V. (1996:99-116).

Chamber of Deputies and the Chamber of Senators.<sup>100</sup> Women's right to vote has been recognised since 1953, but despite constituting 52 percent of the population, they are underrepresented in the legislature. Of the 500 deputies, 121 are women (24.2 percent) while 28 out of 128 senators are women (21.9 percent).<sup>101</sup> The exercise of the judiciary is entrusted to the Supreme Court of Justice, the Electoral Tribunal (for election matters), Collegiate and Unitary Circuit Courts, and District Courts.<sup>102</sup> Separate and autonomous tribunals oversee the administration of agrarian justice.<sup>103</sup>

Each state has its own constitution, which must follow the spirit and the principles of the Federal Constitution. The governor is the head of the state executive and is elected by direct vote for a six-year term; legislative powers are with state congresses, composed of elected deputies. The composition of the state judiciary depends on each state constitution, but normally consists of a Superior Tribunal, an Electoral Tribunal and an Administrative Tribunal. There are also Courts of First Instance and Tribunals of Second Instance (to resolve appeals). Competences between federal and state courts are established according with territorial criteria and specific issues: e. g. drug dealing, smuggling and *amparo* fall within federal courts jurisdiction, while stealing and homicides are addressed to state courts. Thus each state also has its legal codes (penal, civil, administrative). Issues not reserved to the federation are within the competence of the states.

For the DF, there is a separate head of government and legislature. Federation courts rule on matters related to the DF and on federal matters, as well as on disputes where individual guarantees or laws are violated, or when acts committed by federal authorities affect the sovereignty of the states, etc.

<sup>100</sup> The deputies in the Chamber of Deputies are elected every three years by relative majority and proportional representation. The senators are replaced every six years with representatives of each state –half by relative majority, one-fourth by proportional representation and the rest nominated from the first minority (i.e., from the political party that obtained the second highest number of votes in each state).

<sup>101</sup> Inter-Parliamentary Union. *Women in National Parliaments*, situation as of April 302005, available on: <http://www.ipu.org/wmn-e/classif.htm>

<sup>102</sup> Supreme Court ministers last 15 years in their position and are elected by the Senate from a threesome proposed by the president. The Federal Council of the Judiciary elects circuit and district judges for six-year terms.

<sup>103</sup> The magistrates of these tribunals are nominated by the federal executive and ratified by the senate.

The municipality is the basis of the territorial division of the federation and the states. There are 2,443 municipalities. The municipal council is the governing body of the municipality, composed of the mayor and a specific number of councillors.<sup>104</sup> In 2002 there were 97 women mayors – less than 4 percent of the national total.<sup>105</sup>

The prerogative of proposing laws or decrees lies with the president, Congress of the Union and state congresses. Municipal governments may regulate administrative and legal procedures applicable in their jurisdiction, but they cannot create laws. Plebiscites and referendums are included in the constitutions of some states like Jalisco and the DF, allowing citizens to propose bills or demand the repeal of existing laws.<sup>106</sup>

### *Municipal decentralisation*

Mexico has a strong centralist and hierarchical tradition in which municipalities can be subordinated to the power of state governments, which in turn depend for the most part on decisions taken at federal level. The 1984 reforms to Art. 115 of the Constitution, which lists the powers of municipalities, aimed at re-establishing the economic, political and administrative autonomy of municipal authorities. In practice, municipalities continued to be considered as administered (not governed) by the municipal council, which made any effort towards decentralisation a de-concentration exercise only.

In 1999, Art. 115 was once again amended in order to recognise municipalities as a level of government and not as a simple administrative branch. The amendment redefined the duties and public services delegated to municipalities, including infrastructure networks, garbage collection, markets and wholesale supply centres, cemeteries, slaughterhouses, public

<sup>104</sup> The municipal councillors are elected for 3-year terms by direct vote and proportional representation.

<sup>105</sup> Source: *Sistema Nacional de Información Municipal, 2002* and *Coordinación General del Programa Nacional de la Mujer*. See the website of the *Sistema de Indicadores para el Seguimiento de la Situación de la Mujer en México* (SISESIM): (<http://dgcnesyp.inegi.gob.mx/sisesim>).

<sup>106</sup> For a petition to be valid, it needs to be endorsed by a specific percentage of citizens registered in the electoral roster, which can range from 2.5 to 5 percent.

security, etc. Municipalities are also empowered to control, regulate and plan urban development within their territory. However, this organisational scheme is already overwhelmed by the urban reality of Mexico: big, sprawling cities and metropolitan areas extend beyond political-administrative boundaries, creating problems related to coordination, jurisdiction and legal issues. The Constitution prohibits intermediary authorities between the municipal and state governments, which means that metropolitan governments cannot be established. However, municipalities can co-ordinate and establish partnerships to provide better public services.

The armed conflict launched by the Zapatista National Liberation Army (EZLN) in 1994 forced the issue of social and political marginalisation of the indigenous population onto the national agenda. The EZLN and other indigenous groups demanded respect for their dignity, culture, traditional forms of living and to be part of national development. Since 1996, proposals have been made to reform the Constitution in order to give some autonomy to indigenous communities and to municipalities with a majority of indigenous residents. The proposals, known as the COCOPA<sup>107</sup> initiative, included the right to administer resources, receive public funds, coordinate with other indigenous communities, govern according to tradition and control their territory. Nevertheless, federal government considered that this would create conflicts with the existing legal and judiciary system. The constitutional amendment that was adopted in 2001<sup>108</sup> recognises the ethnic diversity of the country, but does not concede any governing autonomy. Therefore, the historical demands for the respect and protection of the collective rights of indigenous peoples have not yet been satisfactorily addressed.<sup>109</sup>

<sup>107</sup> *Comisión de Concordia y Pacificación* (Commission of Concordance and Peace).

<sup>108</sup> Named "Constitutional reform on indigenous rights and culture", enacted in August 14 2001. It is mainly concerned with Art. 2 of the Constitution.

<sup>109</sup> Critics have argued that the approved reform ignores and contravenes Mexico's obligations to Convention 169 on Indigenous and Tribal People of the International Labour Organisation. Ratified by Mexico in 1990, the convention should have the status of supreme national law, according to Article 133 of the Mexican Constitution. See section 4.2.1 on "communal land".

### 1.3 Socioeconomic context

#### *Urban expansion processes and poverty*

The 1910 revolution, the world recession of the 1930s and World War II triggered structural changes throughout Mexico, particularly in the pattern of human settlements. The import substitution policy adopted from the 1940s on until the 1980s fostered uneven industrialisation. Rural immigrants filled the demand for labour, while the accelerated urbanisation processes unleashed by these changes consolidated a national pattern excessively concentrated in three large metropolises (Mexico City, Guadalajara, and Monterrey) and other minor conurbations.

Census data show that in 1940, only 35 percent of the 20 million inhabitants of Mexico lived in cities; in 1970 the urban population reached 59 percent of the total population; and by 2000 three out of four Mexicans lived in cities.

According to the 2000 census, women represent 52 percent of the total population of 97.5 million. Of the total population, 60 percent is considered to be *mestizo*, 30 percent Indian, and 10 percent is categorised as "other".<sup>110</sup> Although the urbanisation rate has slowed from 1.1 percent in the 1960s to 0.5 percent in the 1990s, cities continue to grow, with significant demographic and territorial extension differences: nine large metropolitan areas shelter more than half of the urban population.<sup>111</sup>

It is estimated that in 2000, almost 54 percent of the total population lived in poverty, with incomes that did not guarantee access to basic needs such as health services, education, housing, or public transportation. More than one-fifth of the total population (23.5 million) lived in extreme poverty, which means that they could not meet their nutritional needs. Cities concentrate two-thirds of all poor residents, of which slightly less than half live in extreme poverty. In absolute terms, the "urbanisation of poverty" is an undeniable fact; in relative terms, it is even worse in rural areas: the incidence

<sup>110</sup> See Mexican Law, [http://www.mexlaw.com/best\\_websites/1\\_introduction.html](http://www.mexlaw.com/best_websites/1_introduction.html).

<sup>111</sup> SEDESOL (2001b).

of poverty is 39 percent in large cities, 60 percent in medium-sized cities, 66 percent in small cities and 80 percent in rural areas.<sup>112</sup>

Women-headed households have increased in the last 30 years and in 2000 they accounted for one-fourth of all Mexican households. Eight out of ten women heads of households live in cities and metropolitan areas, and it seems that in years of economic crisis and adjustment, poverty has had a greater effect on women-headed households.<sup>113</sup> In rural areas, women-headed households earn 30 percent less than those headed by men and, compared with them, they use a larger proportion of their income to buy food and pay for housing.<sup>114</sup> Women in urban areas face similar situations, where they are clearly disadvantaged when it comes to accessing housing.

In 1990, the number of rural families without any rights to land reached approximately 500,000 – some 3 million people, half of them were rural women.<sup>115</sup>

### *Indigenous population*

According to the 2000 census, the country's indigenous population is 8.7 million persons, speaking 62 different languages, although 11 languages are more dominant. Out of 2,443 municipalities, 30 percent or more of the indigenous population are concentrated in 803 municipalities. Of this latter number, 407 municipalities are considered highly marginal, and 300 extremely marginal.<sup>116</sup> Most of these municipalities are located in the states of Chiapas, Oaxaca and Veracruz in the south of Mexico. In these states, high unemployment rates, the absence of mechanised farming practices and zero industrial development are registered, resulting in appalling

poverty. The annual per capita income in Chiapas is four times lower than in the rest of the country.<sup>117</sup>

Indigenous migrants in cities survive in extreme poverty. They have unstable jobs (generally in the informal sector), are badly paid and do not have minimum social security services. They work as street vendors, in building sites, as night watchmen, porters, beggars and prostitutes. Most women work as housemaids, living in their employers' homes. They are the first to be excluded from housing programmes.

In both urban and rural areas, housing rights are threatened by discriminatory practices against indigenous people.<sup>118</sup>

### *The housing issue and urban services*

Over the past two decades the housing deficit has declined with respect to the number of existing houses: in the 1980s, the backlog represented 39 percent of the housing stock, dropping to 29 percent in the 1990s and to 20 percent by the year 2000. It is estimated that in 2000 the housing deficit was close to 4.3 million houses. To meet new demand it will be necessary to build an average of 731,584 houses each year, and to repair or improve 398,162 units. One in five houses is rented; the rest are owned by the occupants.<sup>119</sup>

The availability of basic urban services has improved in the last 20 years as shown in the table below.

*Table 1.1 Availability of basic urban services 1980-2000*

Percentage of houses without basic urban Services	1980	2000
Houses without drinking water	28.4%	10 %
Houses without drainage	42.8%	20.9%
Houses without electricity	21.8%	4.5%

Source: INEGI, population census 2000.

112 World Bank. (2002a). In this study, the World Bank considers large cities those with a population of over 500,000; medium-sized cities those with 100,000 to 500,000 inhabitants, and small cities those with less than 100,000.

113 Ibid.

114 INEGI et al (2002).

115 Espinosa, G. (1998:101-119).

116 Indigene National Institute. *National Programme for the Development of Indigenous People (PNPI)*, 2001-2006. p. 31.

117 Pérez, E. (1998:193-221).

118 Oehmichen, C. (2001:181-197).

119 SEDESOL (2001a).

However, these figures do not reveal qualitative differences. In rural areas, only slightly over 20 percent of houses have drinking water in the parcel; in more than 30 percent of all rural houses water must be collected from public faucets, wells, streams, etc. This generally represents an extra workload for women.<sup>120</sup> In municipalities with concentrated indigenous populations, the lack of basic urban services is much more acute: in 1995, barely 29 percent of total indigenous houses had access to three basic urban services (water, drainage, electricity), 30 percent had only two of them, 25 percent had just one service and 16 percent of indigenous houses did not have access to any basic services.<sup>121</sup>

Table 1.2 Houses lacking basic urban services for indigenous people: 1995

Percentage of houses without basic urban Services	National	Indigenous population
Houses without drinking water	14 %	38 %
Houses without drainage	25 %	66 %
Houses without electricity	7 %	25 %

Source: PNPI, 2001-2006.

Land and housing needs of the poor have been addressed in various ways:

- Irregular occupation of *ejidos*, public and private land;
- Low-cost plots without basic services (illegal, simple subdivisions) offered by developers and landowners;
- Progressive urban housing developments resulting from public programmes; and
- Individual or collective rental housing (*vecindades*,<sup>122</sup> rooms for rent, shared houses, deteriorated apartments).

Most of these settlements suffer from one or several of the following forms of informality: illegal tenure of land; overcrowding, illegal construction that violates urban and building regulations and administrative procedures; total or partial lack of basic urban infrastructure; and other physical

<sup>120</sup> INEGI et al (2002).

<sup>121</sup> SEDESOL, (2001a).

<sup>122</sup> That is, collective rental housing located in ancient buildings in the historical centre, generally overcrowded and in a deteriorated state.

and technical aspects that limit the use of an area for housing purposes.

In general, popular settlements (especially slums) are the spatial expression of urban poverty. However, they are not homogeneous.<sup>123</sup> In informal settlements, insecurity translates into anxiety, and fear. These fears relate to: the powers the “owners” may exercise; uncertainty whether the owners will ignore deals and payments made for the land; monetary extortion by authorities, leaders or intermediaries; and the possibility of eviction, especially from areas with high commercial or environmental value.<sup>124</sup>

## 1.4 Civil society and women’s movements

### *Women in social movements*

The struggle for the political, social and cultural rights of women in Mexico, which is intertwined with efforts to achieve land reform, dates back to the early 20<sup>th</sup> century, and went hand in hand with the armed revolutionary movement. Mobilisations seeking equal status and rights for women in Mexico began even earlier. By the first half of the 20<sup>th</sup> century, two women’s congresses had already been held, aimed at the liberation of women in social, economic and political facets of life.<sup>125</sup> After the 1960s, demands and feminist groups multiplied, striving for better living conditions.<sup>126</sup>

During the same period, several NGOs were born, specifically focused on urban and housing problems within a social development perspective. The Housing Cooperative (COPEVI) was followed by the Centre for Housing and Urban Studies (CENVI), House and City and the Social Housing Promotion Fund (FOSOVI).<sup>127</sup> Also, social organi-

<sup>123</sup> Fausto, A. (2003).

<sup>124</sup> Massolo, A. (1992).

<sup>125</sup> Such as civil, political and labour equality, protection of housemaids, etc. One of these women congresses took place in Yucatan in 1915. Another, national, congress took place in 1923. See Pérez, A. (2002).

<sup>126</sup> Demands incorporated more specific aspects, such as non-violence against women, free and voluntary motherhood, and the classification of sex crimes. Feminist groups included Movimiento Nacional de Mujeres, La Revuelta, Lucha Feminista, Mujeres en lucha por la democracia, Coordinadora Benita Galeana and many others.

<sup>127</sup> These NGOs have been part of the Habitat International Coalition-Mexico since 1995.

sations, housing cooperatives and groups of settlers appeared. They became actively involved in urban popular movements in the 1970s and 1980s – the latter in particular a decade of serious economic and political crises. The urban popular movements focused a relentless struggle to fulfil basic needs such as housing, land, urban services and infrastructure, to which other social demands were added.

Women's advocacy role was thus partly integrated with the struggles of other groups, and has had a key democratising role in society.<sup>128</sup> The important role of women in the urban social movements in Mexico is widely acknowledged, particularly in the central region of the country.<sup>129</sup> The presence of women is felt in mobilisations, in negotiations with authorities, in community organisations and in housing construction. However, in a male-dominated political culture, it is men who hold positions of responsibility and authority.<sup>130</sup>

A number of organisations are active in urban popular movements, for example the Neighbourhoods Assembly, Popular Neighbourhoods Union, Revolutionary Popular Union Emiliano Zapata, Union of Settlers and Tenants Requesting Housing, Tenants Coordination of the Valley of Mexico and National Coordination of Urban Popular Movement. These organisations incorporate groups that are active in a variety of different states.<sup>131</sup> NGOs provide support to these movements through the provision of technical, legal and financial advice during self-help housing processes, and in negotiations with authorities and housing institutions to obtain land and urban services. The academic sector also has an important presence with theoretical and empirical studies, and many professors and researchers are also part of NGOs related to land, housing and urban policies.

### *Citizen participation in urban plans and programmes*

Under Art. 26 of the Constitution, the state should organise a democratic planning system. As stated in the national Planning Law (Art. 20), official channels for citizen participation in development planning are open mainly at consultation level. Diverse institutions have been created as permanent consultation spaces for reviewing laws, policies and programmes – for example the National Housing Council, which includes representatives of civil society groups, professional associations, universities, business and the public housing sector. Typically, however, the associations of businesspersons, industrialists, professional guilds, and corporate bodies like labour unions, farmers and workers have more decision-making powers. Thus, the interests of local economic, social or political pressure groups tend to prevail over those of the poor and marginalised.<sup>132</sup>

There is no true citizen participation in the planning process, as generally inhabitants and representatives of social groups are invited to “public consultations” on urban plans once these have already been prepared by technicians.

## 2 Land Tenure

### 2.1 Types of land

After the land reform of 1917, three types of land emerged:

- Public land: land originally owned by the nation and land assigned to public institutions;
- Social land: *ejido* or communal land; and
- Private land: smallholdings (in rural and peri-urban areas) and urban private property.

<sup>128</sup> Massolo, A. (1992).

<sup>129</sup> See, among others, works by Massolo, A. (1992). Coulomb, R. & Sánchez, C. (1992), Tamayo, S. (1989).

<sup>130</sup> Coulomb, R. & Sánchez, C. (1992).

<sup>131</sup> For example, the organisational scheme of UCISV has been adopted by groups of settlers in the Federal District (UCISV-Libertad) and in Veracruz (UCISV-Ver).

<sup>132</sup> Coulomb, R. (1998:285-303).

*Public land*

The Constitution, the Agrarian Law and the General National Assets Law (LGBN) govern public land.<sup>133</sup> Each state has its own assets law governing state and municipal land.

Public land not yet designated to a specific use is national or vacant land. Before 1992, the government's intention was mostly to grant this land to peasants in agrarian distribution. Since then, it has been made available to the land market.<sup>134</sup> Possessors, having exploited national land for the past three years, have the right of first refusal to buy it.

Public land of common use or reserved for a public service falls under the category of assets owned by federal institutions and cannot be sold. If the status of public domain is disassociated through an administrative procedure, federal immovable property, which is neither designated to a public service nor of common use, may be sold, exchanged, donated and rented. Public land can be designated as land reserves for popular housing, and social land can also be expropriated to create such land reserves (see below). In general, federal land can be subject to concession for up to 50 years. Those who obtain the concession may give part of this land in rent or free loan, if authorised by federal agencies in charge.

<sup>133</sup> The latest LGBN was enacted on May 20 2004, while the previous version dated back to January 8, 1982. According to Art. 3 of the General National Assets Law, national assets include: beds of minerals, oil, carbon, precious stones; water within the seas (as fixed by international law), lakes, rivers, and others listed in Art. 27 (paragraphs 4, 5, 8), Art. 42 (IV) and Art. 132 of the Mexican Constitution; assets of common use (aerial space, beaches, ports, highways, public squares and parks in charge of federal government, etc.); assets and real estate owned by the Federation (national and vacant land, land reserves, archaeological monuments, real estate allocated to federal institutions); assets and real estate owned by the states. Municipal assets are not specified in Art. 3.

<sup>134</sup> Article 27(9) of the Constitution specifically lists criteria and categories under which acquisition of private ownership of national land is possible. While Article 73, XIX of the Constitution and Art. 159 and 161 of the Agrarian Law state that national and vacant land can be sold, Art. 6(VII) of the General National Assets Law includes national and vacant land in the legal public ownership regime, which implies that this land is inalienable (Art. 13). This contradiction is a source of confusion.

Table 2.1 Types of public land

Subtype	Description	Characteristics	Legal basis
National and vacant land	Land not yet sold, granted or designated for a specific use. Unlike national land, vacant land has not been delimited or measured.	Alienable but cannot be obtained through prescription and cannot be seized.	Constitution, Art. 27(1, 4, 5, 6) Agrarian Law, Art. 157 – 162 General National Assets Law, Art. 6
Assets owned by federal institutions	Land and real estate of common use – such as streets, public squares – or reserved for a public service. <sup>3</sup> Land reserves.	Inalienable, cannot be obtained through prescription and cannot be seized. If the status of public domain is disassociated, land may be alienated.	General National Assets Law, Art. 3, 4, 6-13
Assets owned by state and municipal institutions	Land and real estate of common use – such as streets, public squares – or land reserved for a public service. Land reserves.	Similar to federal public ownership, but specific characteristics depend on state legislation.	Constitution, Art. 27 (VI) State laws

### Social land

Social land can be categorised into two subtypes: *ejido* land and communal land.

Art. 27 (9, VII) of the Constitution recognises communal holdings of land (*ejidos*). An *ejido* can either be a group of peasants that holds the land, or a portion of land granted to an *ejido* group. From 1917 on, *ejido* has been the land granted by the Mexican state to *ejido* groups, who have collective rights over the land.<sup>135</sup>

Before 1992, communal land was similar to *ejido* land, the main difference being that communal land was land returned to traditional communities of peasants or indigenous groups, in recognition of the fact that they had possessed this land before the agrarian reform of 1917.<sup>136</sup> So this land is not a state's grant but restitution to a community that originally had rights over it at the time of Spanish colonisation.<sup>137</sup> The Federal Agrarian Law of 1971 recognised *ejido* and community assemblies as internal authorities of *ejido* groups or communities, but stated that representatives of agrarian sector institutions had to intervene to validate the constitution of the assembly, the agreements and most of the important decisions taken in their meetings. Therefore these assemblies had no real autonomy.

An *ejidatario* is the peasant belonging to an *ejido* group. Even if each *ejidatario* could be allocated a parcel of land to work, the collective rights over *ejido* land were indivisible. Then as now, the state gave each *ejidatario* the right of use or exploitation of the land (assumed as perpetual right), but not the ownership of this land. Thus the ultimate ownership remained with the *ejido* as a group.<sup>138</sup> In any case, social land could not be legally transferred, seized or obtained through prescription. *Ejidatarios* had the obligation to work the land directly (they could not hire wage labour) and if they were absent for more than two years, they lost

<sup>135</sup> Before 1992, paragraph X of the Constitution guaranteed that all centres of population who lack communal lands or who have been unable to have communal lands restored to their communities shall be granted sufficient lands and waters to constitute communal lands, in accordance with the needs of the population. In the 1992 reform, this paragraph was deleted.

<sup>136</sup> The constitutional basis for both communal and *ejido* land is Article 27 (VII).

<sup>137</sup> When a group of peasants asked the government for land, they specified if they should be considered as *ejido* or community, and this specification was registered in documents issued by federal authorities. Therefore, a way to distinguish today between communal and *ejido* land is to check the document that was issued by the federal authorities when granting the land. Santiago Hernández, J. G. Interview with the author, February 16, 2004.

<sup>138</sup> As confirmed in Article 9 of the Agrarian Law. Before 1992 the opinion on who held the ultimate ownership of *ejido* land was divided: some argued that *ejido* was a form of land tenancy (mainly a right of use and usufruct), but even in this case not all dared to say that the state was the owner. Others thought that it was a kind of collective property, so belonging to the *ejido* group.



their rights to the land. In fact, *ejido* land was a form of family patrimony. The only way to transfer the rights over such land was through inheritance – to the *ejidatario's* spouse and children.<sup>139</sup> Thus women's right to land was mostly obtained through inheritance or assignment (*cesión*).<sup>140</sup> Women were only provided equal agrarian rights in 1971. While in the 1970s, one out of 100 peasants with agrarian rights was a woman, today two out of 10 *ejidatarios* are women.

In 1992, in the context of economic liberalisation, an agrarian counter-reform took place. It aimed to:

- Allow social land to enter the market;
- Encourage private investment; and
- Create new types of owners – commercial societies that may own 25 times the amount of land an individual can own, broadening the size of properties in order to stop the multiplication of private smallholdings (*minifundios*).<sup>141</sup>

Table 2.2 Types of Social Land

Subtype	Description	Characteristics	Legal basis
Ejido land	Ejido = Group of peasants that holds the land; or portion of land granted to ejido group.  Ejido land is land granted by the state to ejido population groups, who have collective and individual rights over the land.	Under certain conditions, it may be alienated, obtained through prescription and subject to seizure If ejido land is part of the land designated for urban growth, it is subject to urban regulations.  Ejido land can be expropriated for the creation of land reserves, for tenure regularisation and other causes of public interest.	Constitution, Art. 27 (VII) Agrarian Law, Art. 9 – 97 General Law on Human Settlements, Art. 27, 28, 38, 39 Agrarian Law, Art. 2, 87 – 89
Communal land	Land restituted by the state to traditional communities of peasants or indigenous groups, in recognition of the fact that they were in possession thereof before the agrarian reform of 1917.	Inalienable (unless land is contributed to a private company – see below), cannot be obtained through prescription or be subject to seizure. If communal land is part of the land designated for urban growth, it is subject to urban regulations.  Communal land can be expropriated for the creation of land reserves, for tenure regularisation and other causes of public interest.	Constitution, Art. 27 (VII) Agrarian Law, Art. 93 – 107 Agrarian Law, Art. 2, 87 – 89 LGAH, Art. 27, 28, 38, 39

The main changes made in 1992 to Art. 27 of the Constitution, which led to the adoption of a new Agrarian Law, concern the *ejido* and the *communal* tenure regime and can be summarised as follows:

- The end of the state's constitutional obligation to redistribute land to peasants;<sup>142</sup>
- Recognition of the legal status of the *ejido* and of communal population groups: the Constitution and Agrarian Law establish the Ejido Assembly or the Assembly of *Comuneros* as the highest decision-making bodies in these areas. Thus, the internal organisation of *ejidos* and communities is granted autonomy;<sup>143</sup>

139 According to Art. 81 and 82 of the former Agrarian Federal Law of 1971.

140 As is evident by the fact that the average age of the *ejidatarios* is 57 years.

141 Toledo, V. (1996). The Constitution stipulated that the maximum size of land per single private owner was between 100 and 300 ha (Art. 27 paragraph XV) and a minimum of 10 ha for each *ejidatario* (paragraph X). After 1992, this remains the same for private owners but it changes for *ejidatarios*, as mentioned below.

142 Paragraphs X, XI, XII, XIII and XIV that had specified the state's obligations around agrarian distribution were derogated.

143 Article 27, paragraph VII of the Constitution.

- The possibility to privatise *ejido* land was created. Individual rights over *ejidatarios*' parcels are determined on the basis of the Agrarian Law, which specifies who is entitled to have rights to the land. To this end, the certification of *ejido* property and the possibility of assuming full ownership over *ejido* parcels are provided for.<sup>144</sup> In practical terms, this means that *ejido* land may become private land under certain procedures.<sup>145</sup> From this emerges the Ejidal Rights Certification Programme (PROCEDE);<sup>146</sup>
- The organisation of private or commercial companies is allowed, with which *ejidatarios* may form a partnership. *Ejidatarios* contribute land while the investors contribute capital, experience and knowledge to develop several types of projects.<sup>147</sup> For exploitation of *ejido* land for urban purposes, real estate "ejidal companies" have been established. This is a partnership mechanism between *ejidatarios* and the private sector to develop an urban project. This approach is not used for slum upgrading or regularisation of informal settlements; and
- New institutions emerge especially to handle legal problems related to *ejido* and rural land, such as the Agrarian Attorney's Office, the Superior Agrarian Court and Unitary Agrarian Tribunals (paragraph XIX). Also, the National Agrarian Registry is created.

### *Ejido land*

Thus in the 1992 constitutional reform, *ejido* lost its characteristics of social property, to become potential private land. The amendment of Art. 27 of the Constitution allows the rights to the land to be allocated individually to each *ejidatario*,

<sup>144</sup> Article 27, paragraph VII. Article 9 of the Agrarian Law of 1992 states that the *ejido* group is the owner of the land, while Art. 14 and 76 state that *ejidatarios* have the right of usufruct or exploitation of their parcels and of *ejido* common use land (see table 4.2.3, user categories of *ejido* land). Once an *ejidatario* voluntarily assumes full ownership over his/her parcel, s/he becomes a private owner, but at the same time s/he continues to be an *ejidatario* because s/he keeps rights over common use land of the *ejido*. So an *ejidatario* may have different kinds of rights over *ejido* land (parcelled land, common use land or land for human settlement). There may be *ejidatarios* without a parcel, who still have rights over common use land, for example, or there may be parcels in the hands of non-*ejidatarios* (like the so-called possessors and settlers).

<sup>145</sup> These procedures are described in the Regulations to the Agrarian Law related to the Certification of Ejido Rights and Titling of Urban Plots, enacted on January 6 1993.

<sup>146</sup> This is a voluntary programme in which collective and individual rights of agrarian groups are certified and recorded in official documents. The federal government carries out this programme, with the participation of the Agrarian Attorney's Office (PA), the National Institute of Statistics, Geography and Informatics (INEGI) and the National Agrarian Registry Office (RAN).

<sup>147</sup> Article 27, Paragraph IV and VII.

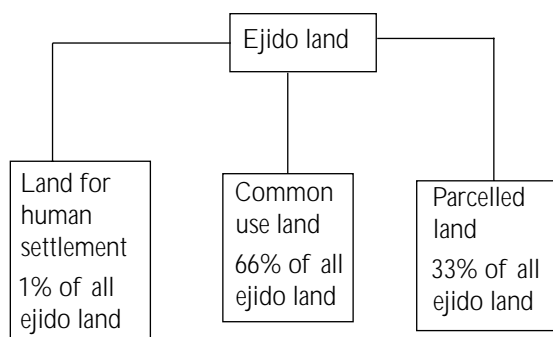
so s/he is fully entitled to take decisions over the land, even if the family would not agree.

According to the Agrarian Law of 1992 (Art. 9), the ownership of the land belongs to the *ejido* group. Only after the reform and through PROCEDE can the rights of *ejidatarios* to their own individual parcels be formalised, which ultimately would allow their privatisation. For this, the *ejido* group must voluntarily decide to participate in the PROCEDE, so once the boundaries of all the parcels are delimited, each *ejidatario* can obtain individual certificates or titles. Finally, if an *ejidatario* wants to change the legal status of his/her parcel – and if the Ejido Assembly agrees – the parcel is deleted from the Agrarian National Registry and registered as private property in the Public Registry Office.

Women have use rights over 17.6 percent of *ejido* and communal land, but while legally they have the equal right to speak and vote in the internal decision-making of the *ejido* they are underrepresented in *ejido* bodies, holding only 5.2 percent of principal and deputy positions in assemblies.<sup>148</sup> This means that they have little decision-making power on issues related to life in the *ejido* group, particularly with respect to land use, although they are responsible for ensuring the livelihood of their families.

<sup>148</sup> INEGI et al (2002).

Figure 2.1 User categories of *ejido* land



### Land for human settlement

*Ejido* land for human settlement includes the legal fund, the urbanised area and the growth reserve. The legal fund is land originally designated for the foundation of the village where peasants or indigenous people would live.<sup>149</sup> The urbanised area is where the houses of *ejidatarios* and *avecindados* (settlers) are located, and the growth reserve is land destined for future housing needs. These two latter categories are delimited by the *Ejido* Assembly in coordination with municipal authorities. In the urbanised area there are urban plots (*solares*), which are held in full, private ownership by *ejidatarios* or *avecindados*, after the PROCEDE process has taken place.<sup>150</sup> Since these privatised plots are part of the *ejido* land for human settlement and this land is considered necessary for *ejido* communal life, urban plots are still listed as *ejido* land, even if they are technically private property (once titled).<sup>151</sup>

Once urban plots are individually titled, civil law applies. This means that ownership over urban plots can be obtained through prescription (adverse possession) and property titles are registered in the Public Registry Office of the correspond-

149 Most legal funds were created since the time of Spanish colonisation; others were created in first middle of the 20<sup>th</sup> century by presidential resolution or by state decrees. See Pérez, J.C. (2002).

150 This is, once the urban plots have been delimited and titled. Before that, urban plots are held by each *ejidatario* as family patrimony (Art. 93 of former Federal Agrarian Law), so they cannot be alienated or prescribed through possession. Once the needs of *ejidatarios* are met, those urban plots that are left could be rented out or alienated to persons wishing to settle down in an *ejido* population centre (Art. 93 of Federal Agrarian Law and Art. 68 of current Agrarian Law). Before 1992, the *Ejido Assembly* was allowed to designate an urbanised area if they did not have a legal fund, but in many cases this lead to the establishment of irregular settlements. See section 4.2.3.

151 Article 63 of the Agrarian Law.

ing state. Agrarian law still governs urban plots that are not titled, while land disputes relating to such plots fall under the jurisdiction of agrarian tribunals. In addition to individual urban plots, there could be other urban plots designated to common activities, such as a plot for building an agriculture learning-centre. These common urban plots as well as the *ejido* growth reserve remain inalienable, cannot be obtained through prescription and cannot be seized.

### Common use land

This is land not formally destined for parcelling or human settlement; it is the common property of all *ejidatarios* and as such has several legal restrictions. However, it can be given as risk capital to commercial or private companies, if the *Ejido* Assembly so decides.<sup>152</sup> Also, the allocation of rights to common use land may involve payment from the beneficiary. Common use land is alienable and can be obtained through prescription by possessors (except if it is a forest).<sup>153</sup> The usufruct of the land could be given as guarantee, so it could also be subject to seizure, but the *ejido* group will have the ultimate ownership of the land.

### Parcelled land

This is the whole of *ejidatarios*' individual parcels. A parcel is a tract of agricultural land that remains under the control of each *ejidatario*. *Ejidatarios* can work their parcels or grant others use or usufruct thereof, or transfer their rights to the establishment of commercial or private companies. They can even sell the user rights over their parcel but only to other members of the *ejido* group, and they have to respect the right of first refusal of their spouse and children, in that order.<sup>154</sup>

152 Common use land cannot be sold, but the rights of ownership may be transferred to a private company. That is why this type of *ejido* land is considered as alienable. Pérez, J.C. (2002:220).

153 According to Article 48 of Agrarian Law, the only *ejidal* land excluded from prescription is land for human settlement or forest land. This is a source of confusion when read with other articles such as Art. 74, which states that common use land cannot be prescribed, unless it is contributed to private companies. Art. 64 implicitly allows urban plots to be prescribed (by excepting them from the dispositions regarding the rest of land for human settlements).

154 This is a kind of pre-emption right. It means that the law grants preference to those having the right to purchase the *ejido* rights put up for sale. This right is valid only for 30 days. Article 80 of Agrarian Law.

If the *ejidatario* wants to sell his/her parcel outside of the *ejido* group, and if the *Ejido* Assembly approves, the parcel must become private property.<sup>155</sup> Once an *ejido* parcel is transformed into private land, it becomes a smallholding and ceases to be *ejido* land. As soon as the land becomes private property, the right of first refusal applies to the relatives of the seller, the people who have worked on the parcel for more than one year, the *ejidatarios*, the settlers and the *ejido* population group, in that order. Thus, the spouse would then have to “compete” with other relatives if she wished to buy it. An additional factor here is that if the parcel is part of the growth reserves of a city (provided in its land use plan), the right of first refusal goes to municipal and state governments.

An *ejidatario* could have privatised his/her parcel, but normally s/he still holds rights over the common use land of the *ejido* and still holds rights over his/her urban plot, so s/he remains *ejidatario* according to the Agrarian Law. This law specifies four categories of persons who may have rights to social land:<sup>156</sup>

- (1) *Ejidatarios*, who may have user rights to their individual parcels and to the common use land of the *ejido* group. Each *ejidatario* can only have user rights to a maximum of 5 percent of the total land of the *ejido*.<sup>157</sup>
- (2) Possessors working the land of an *ejidatario* who has assigned his/her user rights to possessor(s). Possessors may obtain rights over the land if they hold it for five years in good faith or for ten years if possession was in bad faith. Under these conditions, *ejido* land may be obtained through prescription.
- (3) *Avecindados* (settlers) who have resided for more than one year on land of the *ejido* population centre and who have been recognised by the *Ejido* Assembly. The settlers own an urban plot (that must also be titled

through PROCEDE) and could buy an *ejidatario*'s parcel for cultivation, or just buy the use rights over the parcel, because they also have a right of first refusal. So eventually a settler could become *ejidatario*.

- (4) *Comuneros*, who collectively own communal land. Unlike *ejido* land, communal land cannot be divided and titled individually, even if in practice each *comunero* may work his/her parcel and have rights over common areas.

<sup>155</sup> Changing the legal status of *ejido* parcels to private ownership is done through administrative formalities. According to the Agrarian Law, the *ejidatario* must:

- a) Have a legal certificate of *ejido* rights (legal title issued through the PROCEDE),
- b) Have the consent of the *Ejido* Assembly, whose meeting must observe certain formalities stated in Arts. 23-31 of Agrarian Law.
- c) Inform the Agrarian Registry (so they can delete the parcels from their books) and request registration in the Public Property Registry Office.

<sup>156</sup> All of these categories also existed before 1992, except for “possessors”. While the category of *avecindados* already existed, the law now legally recognises it.

<sup>157</sup> Robles, H. (1996:11-39).

Table 2.3 *Legal characteristics of ejido land after 1992 (as per the Agrarian Law)*

Characteristics	Land for human settlement	Common use land	Parcels of ejidatarios
Alienable	Legal fund, growth reserve and parcels for common activities: no (except if ejido designates land to public services)  Titled urban plots: yes  (Arts. 64, 68 and 69)	Yes: User rights over common land may be alienated in exchange of retribution (could be money). Common use land may be given as risk capital to commercial or private companies. (Arts. 57 and 75)	Yes: User or exploitation rights may be sold to other ejidatarios or to settlers but respecting the right of first refusal of the spouse and children. Rights may be given as capital to commercial or private companies (Art. 79 and 80)
Obtainable through prescription	Legal fund, growth reserve and parcels for common activities: no Titled urban plots: yes (Art 64, 68 and 68)	Yes: except for forest land. 5 years for possession in good faith, 10 years for possession in bad faith (Art 48)	Yes (Art 48)
Subject to seizure	Legal fund, growth reserve and parcels for common activities: no Titled urban plots: yes (Art 64, 68 and 69)	Yes: Just the usufruct of the land, not the ownership (Art 46)	Yes: Just the usufruct of the land, not the ownership (Art 46)
Transferable	Yes: Exceeding urban plots can be transferred (rented out or alienated) (arts. 68)	Yes: Through a contract (arts. 45)	Yes: User rights can be rented or subject to contracts for exploitation (Arts. 45 and 79)
Divisible	Yes (Arts. 64 and 89)	Yes (Arts. 56 and 57)	No (Art 18)
Size limited	Undefined by law	Undefined by law	Limited to the same extension allowed for smallholdings or 5% of total ejido land (Art 47)

Source: Pérez, 2002, p. 166

### *Communal land*

The Agrarian Law of 1992 does not describe communal land in a detailed way, so legal ambiguities remain. It would seem that the legal status of this type of land did not change, except that a community may now assign land to a private or commercial company.<sup>158</sup> This is a point of discussion and confusion, because while the Agrarian Law continues to declare communal land inalienable, the possibility to transfer the rights to the land to a private company is in fact alienation.

The Agrarian Law specifies that the way that *ejido* land is disposed of will also be applicable to communal land.<sup>159</sup> If a community wants to, it may be transformed to an *ejido* group (and vice versa),<sup>160</sup> which would introduce the possibility of subdivision of the land in the categories mentioned above, individual parcelling and even privatisation.

Finally, the Agrarian Law stipulates that the authorities shall protect the land allocated to indigenous groups.<sup>161</sup> In general

<sup>158</sup> Article 99 of the Agrarian Law.

<sup>159</sup> Article 107. That is, if such disposals do not contradict what is already stated for communities, in Chapter V, Art. 98 to 106 of the Agrarian Law.

<sup>160</sup> Article 103 and 104 of the Agrarian Law.

<sup>161</sup> Pursuant to the law that is to regulate Art. 2 and 27(VII) of the Constitution, Article 106 of the Agrarian Law states: "The law shall protect the integrity of land of indigenous groups". Nevertheless, no specific law has yet been adopted to address the right to land of such groups.

the characteristics of land ownership by indigenous groups seem to be widely influenced by the way in which the land was distributed. They can have ownership rights or usufruct on national, private and social land. However, the majority of indigenous groups own or use social land (with *ejido* land prevailing within this category), followed by private property and finally, by national land.<sup>162</sup>

There are many concerns regarding indigenous rights to the land, as some people are of the opinion that Art. 2 of the Constitution and some provisions of the Agrarian Law contravene Mexico's obligations to Convention 169 on Indigenous and Tribal Peoples of the International Labour Organisation, ratified by Mexico in 1990. The constitutional amendment of Art. 2 (in 2001) seems to reduce and threaten rights and concepts already defined in Convention 169, such as indigenous peoples, rights to land, territory and habitat, rights to internal institutions and norms for the resolution of conflicts.<sup>163</sup>

### *Social land and urbanisation*

Rapid growth of Mexican cities during the 20<sup>th</sup> century has led to an increasing demand for the surrounding rural lands. Over the past decades, the accelerated growth of urban population and the lack of affordable housing alternatives for popular sectors have found an escape route in the irregular occupation of social land. This category constitutes a supply of cheap land precisely because the law, in its effort to protect social property, restricted its commercialisation.

Various factors made the urbanisation of *ejido* land possible: low productivity and limited profitability of the crops, lack of credits or financial investment in the *ejido* sector, a strong decline in agricultural technological levels, a long tradition of rural labour migration to the United States, etc.<sup>164</sup> Under these conditions it is not very attractive to keep land for agricultural exploitation and even less when there is a strong demand for land for urban purposes.

<sup>162</sup> Robles, H. (2000:123-147).

<sup>163</sup> See Fail constitutional reforms on indigenous rights. *Focus* (spring-summer), 2001.

<sup>164</sup> LRAN, undated.

The process of incorporating social land into urban development supposes the transformation of the nature of land mainly in two senses: from rural to urban and from social (*ejido* or communal) to private. When any of the legal procedures that must regulate these transformations is not respected, the construction or urbanisation could be qualified as irregular or informal – that is, informal or “extra-official” mechanisms for the incorporation of social land into cities are involved. Land markets where social land is traded are also considered informal, as there are no legal documents, no registries and no taxes paid for the transactions, no building or urbanisation permits, no need for credit or bank references, and so on. *Ejidatarios* subdivide parcels into plots that they sell for self-help housing through intermediary land sellers. Since this land is still social property (and was obtained for free, by donation or through restitution from federal government), and because these subdivisions are not provided with any urban service or infrastructure, the price asked for subdivided plots is affordable to low-income people.

Problems regarding informal settlements on *ejido* and communal land are huge and include: land tenure conflicts, lack of infrastructure and urban services, unpaid land taxes, uncontrolled urban sprawl, increasing demand for low-cost land for housing, etc. While irregular urbanisation started out as a problem, it paradoxically seemed to turn into a “solution”, housing legions of poor people and avoiding popular revolts. As a result, federal agrarian institutions and local urban authorities have tolerated informal settlements built on social land. Settlement regularisation programmes became more important than those designed to prevent urban informality.

The expansion of major cities has occupied 20-50 percent of *ejido* the land around them and, although reliable data is not available, it is considered that two-thirds of the land surrounding urban areas is social land. While the urbanisation trends of *ejido* land are very variable,<sup>165</sup> one out of five *ejidos*

<sup>165</sup> Nationwide, 32,000 ha of land suitable for housing have been identified, 37 percent of which is social land, 59 percent is owned by government entities and 4 percent is private land. See SEDESOL (2001).

has been affected by the irregular occupation of their land, even if of almost 30,000 agrarian groups in the country, only 4 percent are considered urban.<sup>166</sup>

But not only popular sectors have encroached on social land: urban middle-class and upper-class housing developments (*fraccionamientos*), industries, tourism complexes, and so on have also occurred. PROCEDE data reveals that between 1995 and 2000, the tenure regime of 102,692 ha of social land was modified and re-categorised as “private” land. Out of this, nearly 22 percent concerned regularised settlements; 3 percent concerned titling of urban plots; 16 percent was allocated to housing; 7 percent was allocated to infrastructure, industry and tourism; and use of the remaining 52 percent was unspecified.<sup>167</sup>

### Private land

In urban areas, private land ownership is regulated through the federal and the state civil code; general urban regulations are contained in the General Law on Human Settlements (LGAH). In rural areas, land can be privately owned, mostly in the form of smallholdings, which may not exceed 300 ha or an equivalent size depending on the quality of land. There are still some agricultural/livestock settlements in collective private ownership. Both types of land are regulated through the Agrarian Law. Since 1992, commercial companies may own 25 times the amount of rural land an individual can own, broadening the size of properties in order to stop the multiplication of private smallholdings.

Table 2.4 Types of private land

Sub-type	Description	Characteristics	Legal basis
Urban land: Individually or jointly owned	See Table 4.2.6 for private land tenure. In addition to application of civil law regulations concerning property, urban real estate is subject to regulations related to urban planning and development.	Alienable, can be obtained through prescription and be subject to seizure.	CCF, Art. 830 – 853 CCF, Art. 938 – 979 (joint ownership) General Law on Human Settlements, Art. 27, 28 State laws
Rural land: Smallholdings	Resulting mainly from post-1917 fragmentation of large estates. Agricultural small- holding of max. 300 or 800 ha, depending on kind of land. Cattle-raising smallholding may not exceed the surface needed to maintain 500 heads of cattle.	Possessed in full ownership. Alienable, can be obtained through prescription and be subject to seizure. Before 1992, could be expropriated for distribution to peasants.	Constitution, Art. 27 (XV) Agrarian Law, Art. 115 – 124
Rural land: Agricultural or livestock settlements	Land allocated to settlers by federal government, originally transferred as a concession and later acquired by the settlers.	Alienable, can be obtained through prescription and be subject to seizure. Individual parcels may not be bigger than smallholdings.	Agrarian Law, Transitory Art. 8 Regulations to the Agrarian Law related to Arrangement of Properties, 1996.
Rural and urban land: Corporate private land (Private companies)	The owners of smallholdings or social land may associate between them or with third persons in order to exploit the land, for agricultural or urban purposes.	The amount of land owned by these companies is limited to max. 25 times the limits stated for smallholdings. Owners of ejido or communal land may contribute the land and associate with investors. Once the land is contributed, it becomes private ownership of the companies.	Constitution, Art. 27 (IV, VII) Agrarian Law, Art. 125 – 133 General Law on Human Settlements (if located in urban areas), Art. 27, 28

<sup>166</sup> Robles, H. (1999).

<sup>167</sup> SEDESOL (2001). While details on what constitutes “unspecified uses” were not available, it is possible that part of this land was used for the creation of land reserves.

In general, the maximum surface allowed for each smallholding owner can be as much as 300 ha<sup>168</sup> if used for agriculture and 800 ha if forest land, but at present less than 3 percent of private owners own more than 96 ha. If used for raising cattle, the maximum surface allowed would be one needed to maintain 500 heads of cattle. The general average of the parcelled area owned by private owners is 9.1 ha.<sup>169</sup> Data on the percentage of women landowners and of joint ownership among this group is not yet available.

Other private land resulted from the allocation of national land to poor peasants and from the creation of agricultural or livestock settlements.<sup>170</sup> The government allowed the “colonisation” or settlement of land not yet occupied and granted such land to groups of settlers under a concession.<sup>171</sup> Later, each settler was allowed to buy his/her parcel, while the group also privately owned land as a collective.<sup>172</sup>

Article 27 of the Constitution stipulates that private property shall be subject to the procedures and limitations dictated by the public interest. In urban areas, all types of land, whether public, social or private, are subject to these procedures and limitations. Among activities in the public interest are:<sup>173</sup>

- Implementation of urban development plans or programmes;
- Establishment of land reserves for urban and housing developments;
- Regularisation of land tenure;
- Construction or upgrading of social and low-cost housing;

<sup>168</sup> The maximum surfaces allowed could be multiplied according to the characteristics of land, to obtain an equivalent productivity. For example, in arid land smallholdings could have even 2,400 ha. See Art. 117 of the Agrarian Law.

<sup>169</sup> Robles, H. (1999:31-60).

<sup>170</sup> Such allocations resulted from the claims of peasants from the north of the country, who were used to work on individual farms and ranches, not within a community.

<sup>171</sup> With several purposes, like: encouraging the creation of new settlements, to distribute more land for increase the production and the economic development, as a concession to people who served to nation's interests, etc.

<sup>172</sup> These settlements have evolved since their appearance in the 19th century. Special laws have regulated these settlements (1824, 1883, 1926, 1946, 1962, 1968, 1980 and 1996), to finally represent a special form of land tenure. Some specialists would consider these settlements as private property, and others think it is should be classified as social land. See Pérez, J. C. (2002).

<sup>173</sup> See Art. 4 and 5 of the General Law on Human Settlements.

- Implementation of infrastructure works;
- Urban services; and
- Preservation of environmental balance.

## 2.2 Types of tenure

### *Legal Provisions*

#### *The Constitution*

Several articles of the Constitution of 1917 have been modified in response to changing social needs, national conditions, and the influence of international developments.

According to Art. 14 no one can be deprived of his/her properties, possessions or rights, except through a court judgement. Article 27 preserves the right of the state to impose limitations on private property in the public interest; expropriations can be done for reasons of public utility but must be accompanied by compensation. This article entitles the nation to dictate measures for the planning and regulation of human settlements, for the implementation of public works and for preservation of the environment. Article 27 is also written in a gender-biased language: persons who have rights over land are always referred to as male (*ejidatarios, comuneros*). The Agrarian Law, which further regulates Art. 27, however, specifies that *ejidatarios* can be men or women possessors of *ejido* rights. According to Art. 27 (VII, 2), the law shall protect the integrity of the land of indigenous groups, but there is no specific law to do this, and the Agrarian Law is focused on *ejido* land, disregarding communal land and avoiding specific provisions related to indigenous rights to land.

Concerning urban planning, Art. 73 (XXIX-C) furthermore authorises the Congress of the Union to pass laws establishing the concurrence of the three levels of government in matters of human settlements. The LGAH regulates competence and powers on the matter. Article 115 (V) entitles municipalities to elaborate, approve and administer urban development plans, to participate in creating and administering land reserves, to authorise and control land use within their boundaries and to intervene in land tenure regularisation.



### *Federal Civil Code (CCF)*

The provisions of the CCF are applicable throughout Mexico with respect to federal matters and to actions having effect in the DF, although each state has a civil code of local application. Federal matters are those involving, for example, federal authorities or institutions, actions accomplished in a foreign country, or actions not yet regulated by a state civil code. State civil codes regulate tenure issues including those dealing with private property, rental housing, adoptions, inheritance and marriage.

### *Land legislation*

Several federal laws contain provisions that regulate basic aspects related to forms of tenure over land. Based on an elementary distinction between rural and urban use, two legal and institutional areas are defined that have traditionally been the source of conflicts, due to the different interests that governs them: the agrarian and the urban.<sup>174</sup>

The current federal Agrarian Law dates back to 1992 and regulates rural land, particularly social (*ejidal* and *communal*) property.<sup>175</sup> This law does not explicitly recognise women's equal land rights, but it specifies in Art. 12: "Ejidatarios are the men and women that hold *ejido* rights." This law specifically elaborates on the broad issues included in Art. 27 of the Constitution.

In turn, the LGAH<sup>176</sup> regulates the transformation of rural land for urban use, urban planning processes and ways of social participation, control of urban development and concurrence of authorities. Under Art. 118 of the Constitution, this law assigns a major portion of the powers on this matter to municipalities, largely leaving aside the intervention of state governments. However, state congresses have issued their own laws, allocating certain powers, as a consequence of which competence conflicts may often occur.<sup>177</sup>

<sup>174</sup> Several studies have documented the lack of articulation or even open competition between the urban and agricultural sectors of the federal public administration: Azuela, A. & Duhau, E. (1987); Azuela, A. (1999); Azuela, A. (ed). (1993).

<sup>175</sup> The Agrarian Law was enacted on February 26 1992, in line with the amendment of Article 27 of the Constitution, enacted previously on January 6 1992.

<sup>176</sup> July 9, 1993. This law substituted the one enacted on May 26 1976.

<sup>177</sup> Azuela, A. (1999).

The LGAH law states (Art. 27 and 28) that land and real estate of an urban centre, irrespective of the applicable legal regime, are subject to urban regulations. It also specifies that state laws shall include provisions regarding land use planning, housing construction, urban infrastructure, land tenure regularisation, ecological protection, land reserves, etc. (Art. 32 – 34). Municipal government must elaborate and manage land use planning, which should specify: delimitation of the urban area, uses permitted, prohibited or conditioned, population and construction density, etc. (Art. 35).

The law also provides conditions related to urban regulation (federal, estate, municipal) of *ejido* land located within urban limits. *Ejido* land for human settlements and tenure regularisation of informal housing on *ejido* land are subject to urban planning and must have authorisation of municipal government (Art. 38 – 39). Special attention is paid to land reserves as a way of controlling urban land speculation and irregular settlements (Art. 40 – 43). Tenure regularisation on any type of land, must consider urban upgrading, according to a specific urban plan.

The mentioned laws also include provisions for the use of land that, in one way or another, must be congruent with other laws that regulate issues included in the Constitution:

- (1) The General Law on Ecological Balance and Environmental Protection, which contains provisions for the preservation and re-establishment of ecological balance and sustainable development. This law states that a national environmental policy should take into account that participation of women in environmental protection and sustainable development is essential.
- (2) The Federal Expropriation Law contains provisions to expropriate, temporarily occupy and in general limit the rights of ownership of someone over his/her own property, under justified causes of public interest.
- (3) The Planning Law establishes rules and guidelines to organise a democratic national development planning system, from which sector plans or programmes de-

rive, which must be respected by the entities of the Federal Public Administration.

- (4) The General National Assets Law, which regulates all aspects related to federal public land and establishes the basis to make concessions to individuals for the use of nation-owned property.
- (5) The CCF and the civil codes of each state, as well as other specific laws that govern condominium property.

Except for the Agrarian Law, practically all the laws mentioned (even the Housing Law), have a complementary law in each state of the republic.

### *State civil codes*

As a general rule, they tend to be inclusive. Several explicitly declare equal legal capacity of men and women (as in the CCF).<sup>178</sup> Others (for example, the civil code of Jalisco) stipulate equal treatment for all persons, declaring that the use of masculine terms is just a grammatical distinction. Most civil codes have made advances in family matters, such as recognising equitable distribution of family responsibilities (children, maintenance, administration), the right of married women to work and to administer community in property.<sup>179</sup>

### *Formal and informal tenure types*

Formal tenure types

The main formal tenure types in existence in Mexico are listed and described below, followed by an overview and description of the more informal forms of tenure. For practical purposes, certain references and descriptions are taken from the CCF. But it is worth noting that each state has its own civil code of local application, and provisions regarding land tenure may present variations from state to state.

<sup>178</sup> While all state civil codes should be in line with the Constitution and concur to the CCF, not all state civil codes have been updated yet.

<sup>179</sup> Perez, J. C. (2002).

Table 2.5 Formal tenure types

Type	Description	Characteristics	Legal basis
Full ownership	Freehold, unconditional, indefinite.  May be individual or joint ownership (two or more owners).	A property can only be expropriated for reasons of public utility and with compensation. If in urban area, civil law and regulations related to urban planning and development also apply.  <u>Joint ownership</u> : each owner may alienate, mortgage or burden their property, without consent from the other owners.	Constitution, Art. 27 (2,3) Federal civil code, arts. 830– 853 General Law on Human Settlements, arts. 27, 28 Federal Civil Code, arts. 938– 979 Civil codes of each state
Ejido rights	Ejido population groups have collective and individual rights over ejido land.	Ejidatarios have user rights to their individual parcels and to the common use land of the ejido group. Each ejidatario can only have user rights to a maximum of 5% of the total land of the ejido. In addition, ejidatarios may have ownership rights to their individual parcels (once privatised) and urban plots (once titled). The settlers (avecindados) own an urban plot and could buy a parcel (or the rights over it) for cultivation, because they also have a right of first refusal. So eventually a settler could become ejidatario. Possessors that have been entitled by an ejidatario to work his/her land (a parcel or common use land), are de facto exercising the rights of the ejidatario.	Constitution, Art. 27, vii Agrarian law, Art. 14, 47, 68, 69, 73, 74, 76 – 79, 81-83.  Agrarian law, Art. 80 and 84  Agrarian law, Art. 48
Collective ownership of communal land	<u>Comuneros</u> , who collectively own communal land.	Unlike ejido land, communal land cannot be divided and titled individually. Each comunero has user rights to his/her parcel and has rights over common areas.	Constitution, Art. 27, vii Agrarian law, Art. 98-107
Possession	De facto exercise of power over land or house or over a right. There are two possessors when the owner grants the right to hold the land/house temporarily, through judiciary fact.	Possession is - In good faith when there is a title conceding possession rights and if possessor is not aware of eventual faults of the title. - In bad faith when there is no such title, or when the presumed possessor knows about the eventual faults of the title. If possessors have exploited national land for the past 3 years, they have the right of first refusal to buy it.	Constitution, Art. 14 Federal Civil Code arts. 790 – 829 Civil codes of each state Agrarian law, Art. 48 Agrarian law, Art. 162
Positive prescription (named usucapión in some state civil codes)	Ownership may be prescribed through possession, which may extinguish the rights of the owner and assign these rights to the possessor.	<u>Private real estate</u> : prescription through possession in a peaceful, continuous and public way. <u>Ejido land</u> : prescription through possession, if possessor was granted rights by an ejidatario to hold the land. Prescription applies in 5 years if in good faith, or 10 years if in bad faith.	CCF arts. 1151-1157 Civil codes of each state Agrarian Law, Art. 48

Type	Description	Characteristics	Legal basis
Lease + sublease	A person grants the temporary use of the land or real estate to another person, who will pay for it (money or something else).	<u>Private land</u> : indefinite, terminable by written request (15 days in advance if urban, 1 year if rural) from lessor or lessee. <u>Housing</u> : max 10 years. right of first refusal for those who are leasing a house or dwelling <u>Ejido land</u> : max 30 years, although renewable. <u>National real estate</u> : may be leased if not of common use or reserved for a public service.	CCF Art. 2478 – 2496, Federal civil code arts. 2398– 2496 civil codes of each state  Art. 45, 79 agrarian law general national assets law, Art. 84
Rent + Subletting	Individual (rooftop rooms, rooms, house) or collective housing (vecindades).  Many houses/dwellings are in precarious physical condition and in practice fall outside existing regulations.	If tenant dies, the spouse, concubine, children and other relatives may continue renting, with the same rights and obligations stated in the contract.  no max rent ceiling provided for by law. Tenant has right of first refusal to buy if house is sold. minimum duration of a rent contract must be one year, unless agreed otherwise.	CCF arts. 2448 – 2448k civil codes of each state
Share leasing	On rural land, the owner may grant his/her land to another person to exploit it. The fruits or benefits will be shared by both of them, according to the contract or the local uses.	The <u>aparcerero</u> (who will work on another's land) will never get less than 40% of the harvest. S/he will have a right of first refusal in case of a new share lease over the land, provided that s/he accomplished his/her commitments. <u>Ejido land</u> : share leases may not exceed 30 years, but are renewable.	CCF Art. 2739 – 2751  Agrarian law, Art. 45, 79
Free loan	The use (not the fruits) of a property is granted for free, and the property must be restituted once the contract is finished.	Without permission of the person providing the loan, the borrower cannot grant the use of the property to a third person. If no period for the free loan is specified in the contract, the owner may demand the restitution of the property whenever s/he wants. <u>National real estate</u> : free loan possible for a social purpose and if assets are not of common use or reserved for a public service.	CCF Art. 2497 – 2515 civil codes of each state  General national assets law, Art. 84
Concession	A right of use or exploitation of national land and federal real estate that may be granted to individuals.	Concession over federal real estate may not exceed 50 years, although it can be later extended. Federal real estate could be leased or granted under free loan by one who has the right of concession, under certain conditions.	Constitution, Art. 27 (vi) general national assets law, Art. 16 – 20; Art. 72 – 77
Usufruct	A temporary right to enjoy and use another person's property (and the fruits of it). Can be established free of charge or through payment.	The right of usufruct may be alienated or leased. The one who holds the usufruct also has a right of first refusal to buy the property.	CCF Art. 980 – 1048 Civil codes of each state
Dwelling	The right to occupy rooms in another person's house, without cost, as needed for the living of the dwelling right holder and their family.	This right is not alienable, cannot be leased and is not subject to seizure.	CCF Art. 1049 – 1056

Type	Description	Characteristics	Legal basis
Family patrimony	Family patrimony can only be constituted on private property, if the owner agrees. The members of the beneficiary family have the right to use the property, but the ownership remains unchanged. The right to use the house and cultivate the plot in turn becomes an obligation for the family.	The assets registered as family patrimony (i.e. a house or a parcel) are inalienable, cannot be obtained through prescription and are not subject to seizure.  Beneficiaries recognised by the law are the spouse of the person establishing the patrimony and those whom that person is under the obligation to feed.	Constitution, Art. 27 (xvii) and 123 (xviii) CCF arts. 723 – 746 Civil codes of each state.
Right of surface	The person who has this right can sow or build on another's land, and both properties (the land and the building) cannot be mixed while this right exists.	This right is alienable and transmissible by inheritance. The right of surface must be expressed in a deed registered in the public registry office in order to have effects over third persons.  The right of surface holder has a right of first refusal if the landowner wants to sell the land and vice versa.	Civil code of Jalisco, Art. 1213-1223 Civil codes of other states.

### *Full ownership*

Possession, ownership and shared ownership are regulated in the CCF and in each state civil code. Land and housing in full, private ownership exist in urban or rural areas and take the form of smallholdings, agricultural/livestock settlements, former *ejido* land, titled *ejido* urban plots, etc. Real property can only be expropriated for reasons of public utility and accompanied by compensation. Public utility is for example declared to be the acquisition of land by the government, in order to sell it for the constitution of a family patrimony or for building rental housing for low-income families. The public authority could also occupy a private property and even destroy it (paying compensation to the owner) to prevent risks for the population or to do public works. The right of way established for public utility will be ruled by special laws or, by default, by civil codes.

### *Joint ownership*

Two or more persons may own a thing or a right. Each joint owner has full ownership of his/her corresponding property, so it can be alienated, transferred or mortgaged. This includes the rights of the common goods or areas related to the ownership. The group of apartments, houses or pieces of a building that could be used independently (for housing, industry, commerce, etc.) and have different owners is called a condominium. The civil code of each state regulates joint ownership and some states could also have special legislation regarding real estate condominium regime. In the case of the DF, for example, there is a Real Estate Condominium Property Law, according to which joint owners have priority over a tenant concerning the right of first refusal in case one of the properties will be sold. Spousal co-ownership is regulated according to the marital regime chosen by the couple: "community of property," voluntary or as in legal society.

### *Possession*

The owner grants the right to temporarily use their property to another person, as user, tenant, creditor, trustee, or another title. This must be accomplished through a judiciary fact and will result in two possessors: the original owner and the person enjoying derived possession. Possession could be in good faith or in bad faith; possession in good faith is always presumed, so the person who accuses a possessor of bad faith must prove it. Possession may be lost through:

- Abandonment;
- Cession (free or payment);
- Destruction or loss of the thing possessed;
- Judicial resolution;
- Deprivation for more than one year;
- Demand of the owner; and
- Expropriation for public utility.

### *Positive prescription*

Acquisition of ownership of property through possession is called positive prescription (or adverse possession, known as *usucapión* in some state codes). The ownership of land can be acquired through prescription if the possession has taken place for a minimum period of five years and is peaceful, public and in good faith. It can be acquired in 10 years if possession is peaceful but in bad faith or if it was obtained by violence, if such violence has ceased. In any case possessor must hold the property as if s/he were the owner. The person who has possessed a property within the time and conditions defined in civil code, may go to court to demand legal recognition that prescription has taken place and that s/he has acquired ownership.

There are restrictions for prescription: for example, it cannot be exercised on family patrimony, between spouses, disabled people, or co-owners. It should be stressed that the rights of possession do not apply to the assets belonging in community of property, which can negatively affect women in informal settlements, if family conflicts occur. That is because in general, it is the man who makes the deal to buy a plot (even if both spouses gather money to do this), so he obtains from the seller a piece of paper that could eventually prove who was granted the possession of the plot. If later the couple have family problems leading to a separation or divorce, the woman would be in a difficult position to claim rights over the (informal) property.<sup>180</sup>

<sup>180</sup> Varley, A. and Blasco, M. (2000).

### *Lease or Rent*

Articles 2448 to 2448(k) of the CCF regulate the rental of buildings, which must meet good hygienic and health standards. However, in reality, these and many other legal provisions are disregarded. Several studies show that most houses or dwellings leased to low-income populations are in precarious physical condition and in practice fall outside existing regulations.<sup>181</sup>

Laws regulating rent have been identified as one of the main factors that discourage the supply of rental housing.<sup>182</sup> Major regulations are the competence of state governments. A general chapter related to rent is included in the civil code; the Federal Consumer Protection Law also included some provisions. However, in 1995 changes were made to this law and to the civil codes of several states concerning the relations between tenants and landlords. Based on this, frozen rents and rent increase controls were repealed, freeing the tenancy market, making it more profitable<sup>183</sup> and leaving tenants even more defenceless. On the other hand, urban renewal policies in inner areas continue to represent a threat of eviction for people living in rental houses or rooms, because the trend is towards converting residential buildings to other, more profitable, uses.

As a form of house tenure, rent is an important category although in relative decline, because housing policies widely favour access to ownership. During the 1950s and 1960s, several public institutions like IMSS and ISSSTE built rental houses in Mexico City and in other cities. Other state institutions, including the State Pensions Office of Jalisco, followed their example. Later on, several strategies to promote the rental housing market emerged, with inconsistent results.<sup>184</sup>

In the 1990s, rental policies were practically abandoned: financing for production was drastically reduced, and no new economic, fiscal or legal incentives to maintain the supply

<sup>181</sup> Coulomb, R. and Sánchez, C. (1991).

<sup>182</sup> See Zanetta, C. (2004); Azuela, A. (1999).

<sup>183</sup> García, V. L. (undated)(b).

<sup>184</sup> López, M. E. (1996).

of this type of housing emerged. In fact, housing funding systems through mortgage loans are centred in access to ownership of the property, which allows investors and developers to recover their investment more quickly and to reap more benefits.<sup>185</sup>

Rental is not the type of “residual” tenure to which the poorest sectors are limited – it also includes well-to-do families.<sup>186</sup> However, the issue of rental housing is not yet a priority on the agenda for the revision of housing policies.

### *Family patrimony*

Under Art. 723 to 746 of the CCF, the house – and in some cases a arable plot destined for the construction of a family house, or the whole parcel and the rights over it – can be declared as family patrimony.<sup>187</sup> Under this legal concept, only the right to use the property is allocated to members of the family, not the ownership. The right to use the house and cultivate the plot in turn becomes an obligation for the family. Beneficiaries recognised by the law are the spouse of the person establishing the patrimony and those whom that person is under the obligation to feed.

The member of the family who wants to establish a family patrimony has to submit a precise written request to a judge of his/her domicile, indicating in detail which property will be affected. The family property, if granted, is registered in the Public Registry. Family patrimony can be applied for under certain conditions. The person who applies for it has to live in the place where the patrimony will be constituted; to prove familial ties between those that will benefit; to prove that s/he is the owner of the goods and that there are no economic burdens on them; to prove that the value of the goods does not exceed the amount resulting from multiplying the daily minimum wage in the DF by 3,650; and to demonstrate

that the person that constituted the family patrimony shall represent the other beneficiaries and administer the goods.

Family patrimony cannot be constituted over public land or social land.

Family patrimony has been used in housing programmes since the mid 20<sup>th</sup> century in Mexico City to restrict subsequent sale or leasing of property by the beneficiaries of low-cost housing programmes and to prevent housing subsidies from becoming income to the detriment of other people who need these houses. Subsequently, these policies and their protective intention – with paternalistic overtones – were abandoned.<sup>188</sup>

### *Right of surface*

Other rights related to property to be found in state codes include the right of surface (Art. 1213 - 1223, Jalisco), which allows to plant, sow or build on (or under) other people's land, without both properties becoming confused. The right of surface is not included in all state civil codes, or in the CCF, so its use is still limited. Unlike in Brazil, this right has not been considered to guarantee access to land for informal settlers.

### *Tenure relations on social land*

As mentioned above, *ejidos* and communities are allowed to associate with third persons in order to exploit the land. To use rural (either private or social) land, different arrangements can be made: rental, share leasing, loans and royalty contracts.<sup>189</sup> Three out of 10 *ejidatarios* transfer their rights to use land: 40 percent to share leasing, 30 percent to leasing, 20 percent to a loan and 1 percent to land sales. In general 80 percent of all arrangements are done verbally.<sup>190</sup> These are common practices.

<sup>185</sup> Lopez,, M. E. (1996).

<sup>186</sup> Coulomb, R. & Sánchez, C. (1992).

<sup>187</sup> Other civil codes, like that of Jalisco, also include personal property that provides economic support to the family, such as a motor vehicle, equipment, and the tools of a small industry.

<sup>188</sup> Azuela, A. (1999) and personal interview February 16 2004.

<sup>189</sup> *Ejidatarios, comuneros, vecindados* and private small holders, if they are owners of the land or have user rights on it, may associate with third persons.

<sup>190</sup> *Estudios Agrarios*, No. 2001, p. 149.

### *Informal tenure types in urban areas*

The informality or irregularity of land occupation for urban purposes is present on all types of land: private, public, *ejido* and communal, although attention at national level has been focused on the latter two. The origins of these informal land markets are not only found in structural issues (widespread poverty, accelerated demographic growth, land speculation, etc.) but in networks of interests of several agents (owners, developers, leaders and intermediaries, agrarian and urban authorities), as well as inadequate mechanisms of management and regulation of urbanisation processes.<sup>191</sup>

*Table 2.6 Informal tenure types*

Type	Description	Characteristics	Legal issues – level of security
Irregular occupation / urbanisation on public land	Dwellings and settlements built on land belonging to municipal, state or federal government, without a previous disassociation from the public property regime. The occupants do not have legal tenure documentation.	Lack of information about the size of occupied land, its location, physical characteristics, owner institution, etc. Slums, self-built housing but also low-cost plots resulting from housing programmes. Insufficient urban services and infrastructure.	Insecure legal tenure for occupants in settlements begun as invasions. Low-cost housing programmes with problems for titling to beneficiaries (often because of the lack of documentation proving public land ownership).
Irregular commercialisation and occupation of social land (ejido and communal)	Pre-1992: no legal documentation and informal land market, because the law restricted commercialisation of social land. Post-1992: legal procedures to disassociate land from social regime and sell it are not respected. Legal documentation could be inexistent or faulty.	Simple subdivision of land into plots. No (or insufficient) urban services or infrastructure. No respect for urban land use plans or urban laws. Sometimes built over risk area. Neither land taxes paid nor building permission obtained. Self-built housing but also “formal” uses (industry, hotels, residence...).	Condoned and quite secure in practice; evictions do not occur often. But lack of attention from municipal authorities because of irregular nature of occupation.
Irregular occupation / urbanisation on private land	Legal or administrative procedures for commercialisation of land, building and urbanisation are not properly fulfilled.	Frequently, simple subdivision of land into plots. No (or insufficient) urban services or infrastructure. Mostly self-built housing. No respect for urban land use plans or urban laws. Sometimes built over risk area. Land taxes could have not been paid. Lack of building and urbanisation permission.	Land is sold or rented to occupants without formalising these transactions. Insecure legal tenure for occupants when settlements begun as invasions or without the agreement of landowner. In general, condoned by authorities.

## 2.3 Irregular occupation of ejido, private and public land

### *Public land*

This is quite vulnerable to irregular occupation, and includes:

- Dwellings and slums built on the border of streams and rivers, which is federal land not designated for construction (areas at risk);
- Slums built over infrastructure such as like gas or oil pipelines, high voltage lines and railroads; and
- Occupation of public urban land that remains unused. Although designated for urban services (parks, schools, squares, etc.), in popular settlements this land frequently looks abandoned.

<sup>191</sup> Iracheta, A. (2000).



There is no reliable data on the amount of public land occupied in Mexico, mainly because a great variety of institutions own land, and because they do not seem to have efficient control and registration of their properties. Recognising informal settlements built upon public land begins with regularisation of land tenure, so this land must be disassociated from the public property regime. Regularisation would be achieved by issuing a legal document to the settlers, assuring their security of tenure. Nevertheless, a great amount of this land is classified as non-constructible because of ecological or physical risks, so tenure cannot be assigned to settlers. Normally this situation is tolerated by authorities, unless a disaster arises that obliges them to relocate settlers elsewhere.

Problems with public land tenure are not limited to informal settlement; “formal” urbanisations like low-cost plots resulting from housing programmes also exist. In many cases houses have not been titled to their occupants because initial documentation proving public land ownership is incomplete. During the second half of the 20th century, urbanisation and land titling controls had several deficiencies in most of the cities, so it was not difficult to carry out housing programmes, although it was – strictly speaking – illegal. Progressive urban housing authorised on public land frequently lacked basic infrastructure and urban services.

Regarding *ejido* land, before 1992, *ejidatarios* used to sell their land, even if by law it was inalienable; therefore, there were no legal documents that register these transactions.<sup>192</sup> The former Federal Agrarian Law allowed the Ejido Assembly to designate an urbanised area (*zona de urbanización ejidal*) or enlarge it for the needs of the *ejido* population; and also to sell or rent the exceeding urban plots to persons wishing to settle and work for the *ejido*.<sup>193</sup> In practice, the feature of the urbanised area allowed the informal commercialisation of *ejido* land and the creation of informal settlements within *ejidos*

192 In the 1960s and 1970s a way to occupy *ejido* land was through invasions from popular organisations, but later these became less frequent with the development of an informal market in *ejido* land.

193 Federal Agrarian Law, Art. 90 to 93. The urbanised area had to be designated within the presidential resolution conceding the land to the *ejido*. If this did not happen and if the *ejido* had no legal fund, then the assembly could designate an urbanised area taking into account the opinion of the Ministry of Urban Development and Ecology (SEDUE, which no longer exists).

close to urban areas. Since the legal procedures to authorise urbanised areas were long and complex, in most of the cases *ejidatarios* simply neglected them.<sup>194</sup> This led to buyers without any deed or property title, so the tenure became irregular. The informal *ejido* real estate market continues today: there are no legal and registered transactions, no taxes paid and no legal security of tenure. Besides, *ejido* land is often subdivided to sell off individual plots, mostly without urban services or infrastructure.

The occupation of *ejido* land may be illegal but it undoubtedly has become legitimate from a social and political standpoint, in practice granting secure tenure to those who have built their homes on it.<sup>195</sup> Although obviously a lack of legal security of tenure compounds the problems of poverty and theoretically exposes the occupants to the dangers of forced eviction, which is however uncommon in practice, in fact the most serious problem is that the informality of their tenure and occupation is used as an excuse by the municipal authorities to deny them access to basic services.

Since 1992, those *ejidatarios* who have become private owners have been able to legally benefit from the development of their land for urban purposes. They can do this as individual private owner, or they can establish an *ejido* real estate company alone or in partnership with third parties (from the private or public sector).<sup>196</sup> Actually, these real estate companies connect private developers with *ejidatarios* to carry out urban projects and most of them are focused on big developments, like tourist complexes (Los Cabos, in the state of Baja California Sur, 261 ha); golf and riding clubs (DF, 45 and 31 ha); industrial urbanisation (Mazatlán, in the state of Sinaloa, 1,257 ha); residential developments (Torreón, in the state of Coahuila, 532 ha), among others.<sup>197</sup>

194 See Cruz, S. (2001).

195 For debates on informality and illegality of human settlements in Mexico, see Duhau, E. (1998); Azuela, A. & Tomas, F. (1997). In the international context, see papers presented in the NAERUS. (2001). International Workshop.

196 By 1999, 25 real estate companies had been organised, involving 12,809 ha of *ejido* land. See Setién J.M. et al. (1999).

197 Cruz, S. (2001).

However, in other cases *ejido* land is still being irregularly urbanised, as the procedures provided in agrarian, urban and civil laws are not always respected. *Ejidatarios* continue to sell land without having first changed its legal status to private ownership, without respecting the right of first refusal of other members of the *ejido*, and without observing building and urbanisation regulations (payment of taxes, permits, projects and technical studies, infrastructure works, etc.). This often happens out of ignorance, but at other times with the intention of evading the responsibilities that go along with urban land use.

There are “informal rights” of possession. Their informality appears in the documents requested by the authorities for validating these rights. Federal regularisation programmes normally ask for proof of rights granted by the Ejido Assembly or papers signed by an *ejidatario*, where it is stated that the rights on the land have been transferred. There is no one criterion to determine which documents are valid or which requisites should be met; this depends on each programme and is often at the discretion of the officials who apply them.

In informal settlements, women will find themselves in a vulnerable position if their name is not recorded in any document that could demonstrate that they also have (informal) rights of possession. If their husband dies or if the couple separates, a legal claim to division of the property held in common, even if they were married in community of property, is difficult without tenure documentation.

### *Private land*

Informal settlements on private land could be:

- Created by the landowners, who subdivide their land and directly sell plots to potential occupants, or they sell to another person who will subdivide it. Problems with land tenure arise since such sales are not formalised by legal mechanisms, and because in many cases landown-

ers do not have a proper title themselves, or ownership is disputed;

- Created by other agents<sup>198</sup> like social leaders, intermediaries, land subdividers and informal building enterprises, that is, persons who are not the rightful owners of the land. Many such plot sales are fraudulent: land subdividers or informal building enterprises take advantage of the absence of landowners and present themselves as owners, selling the same plot to different persons; and
- The result of land invasions by a group of settlers. While this is not the main way to occupy private land, invasions were frequent at certain times, for example in the periphery of the DF in the period 1940-1960, or in Monterrey between 1960 and 1970.<sup>199</sup> This form of occupation now has low security of tenure: depending on the political, economical or social power of a landowner, s/he could evict occupants before the settlement is consolidated.

In general the authorities have tolerated such occupations in order to avoid social conflict. Besides, irregularly occupied private land is not very attractive on the urban market, as it is often socially and politically unstable. Frequently it also has problems that make it unsuitable for urbanisation, such as steep slopes, watersheds or easily flooded land, difficult access, etc. Tenure regularisation is possible through negotiations between landowners and occupants, although, as a general rule, authorities also intervene.

Inconsistencies existing in various laws concerning tenure are notorious. For fiscal purposes, possession, ownership and user rights are recognised. In the sphere of urban development and building, ownership and user rights prevail; possession rights are considered with ambiguity, especially in informal settlements. When inhabitants of these settlements demand urban services, a typical argument of municipal authorities is that, as tenure is not legally defined, taxes are not being paid

<sup>198</sup> Who may be associated with local politicians.

<sup>199</sup> See García, O. Roberto. (2001).

and therefore there is no money to guarantee the requested services.

Other land management tools originally created to help mitigate the housing needs of the poor have scarcely been implemented, such as pre-emption right of local authorities to buy private or former social land (once privatised) to constitute public land reserves. As stated in urban laws, public land reserves should help discourage land speculation and should be designated to popular housing programmes. Pre-emption rights and the constitution of land reserves have traditionally have been ignored in federal urban housing programmes.

### Box 2.1 Types of land in Mexico

Mexico has a landmass of 195.9 million ha, 90 percent of which is rural land.

Of rural land:

- 53 percent is social land (44 percent *ejido* and 9 percent communal)
- 38 percent is private land
- 9 percent consists of national land and agricultural or livestock settlements.<sup>200</sup>

#### Rural private land:

- 1.6 million private owners own 73.12 million ha (each smallholding has an average surface of 46 ha)
- 618 agricultural or livestock settlements, with 52,483 parcels, extending over 3.7 million ha.

#### Social land:

Out of about 100 million ha of social land, approximately 33 percent is parcelled land, 66 percent is common use land and 1 percent consists of urban parcels and parcels for specific use (land for human settlements). Out of an estimated 27,416 *ejidos* and 2,103 communities:

- 3.2 million *ejidatarios* hold 85 million ha
- 548,000 *comuneros* hold 16 million ha<sup>201</sup>

<sup>200</sup> INEGI et al., (2002:141).

<sup>201</sup> RAN, cited in *Estudios Agrarios*, No. (2001:149).

By January 2001, PROCEDE had certified collective and individual rights (ownership or possession rights for *ejidatarios*, possessors, or settlers) in 21,246 *ejidos*, representing almost 76 percent of agrarian groups in the country; slightly over 2.7 million *ejidatarios* holding 49.1 million ha have benefited. 14.8 percent of that land was certified to women.<sup>202</sup>

Less than 3 percent of total agrarian groups in Mexico had launched privatisation processes over 253,000 ha (constituting 0.25 percent of all social property). In other words, so far very little *ejido* land has been privatised. One third of the 3 percent of *ejido* groups are found in urban areas.

#### National land:

Adds up to 7.3 million ha (divided in 144,000 parcels). The state had to go through a regularisation process to get this national land properly registered. This has resulted in the issuance of 24,000 titles covering 300,000 ha.<sup>203</sup>

#### Indigenous groups:

Municipalities with high concentrations of indigenous groups are mainly located in the Yucatan peninsula, along the Pacific coast, in the central region of the country, and in Veracruz. Over 90 percent of the territory of these municipalities is rural land (almost 27 million ha). 71 percent of this land is held in social ownership (mainly as *ejidos*), 26 percent is held in private ownership, while 3 percent consists of national land and other agricultural settlements.<sup>204</sup>

## 2.4 Ejido and gender relations

Historically, women have been excluded by the legislation that regulates access to *ejido* land.<sup>205</sup> In the 1920s, only women heads of household could be *ejidatarias* (only in the absence of a man and provided they had children to maintain). Only in 1971 were the same agrarian rights granted to men and women and with that, the right to speak and vote in the

<sup>202</sup> INEGI et al. (2002).

<sup>203</sup> Robles, H. (1999:35).

<sup>204</sup> Robles, H. (2000).

<sup>205</sup> See Ejidal Law of 1927, Federal Law of Agrarian Reform of 1971.

internal decision-making bodies of the *ejido*. Although the population of rural women is relatively young (sixty percent of 10 women are younger than 25 years old, and only four percent are over 60), the average age of *ejidatarias* is 57 years. This is due to the fact that most of them only have access to land through inheritance (55 percent) and allocation by the *ejido* authorities, free of charge (*cesión gratuita*: almost 23 percent).<sup>206</sup>

The “feminisation” of rural areas seems to be on the increase. As women assume more and more tasks and responsibilities, even though they are not legally the owners, many are left in charge of the parcel when their partners migrate in search of better opportunities. Women represent an important part of the workforce, but this does not imply an improvement in their living conditions.<sup>207</sup> Public policies in the 1980s that targeted rural women have had very little impact on this matter.<sup>208</sup> This is also illustrated by the limited establishment of Women’s Industrial Agricultural Units, provided for in the Agrarian Law to support productive projects undertaken by women: in the late 1990s, only one-fourth of all agrarian groups had these units, while only one-third reported any activity.<sup>209</sup> In fact, many of the activities developed by these units are considered secondary (for example, tortilla makers, bakeries, grocery stores, dressmakers) or are otherwise used as a source of credit and government assistance for agricultural projects controlled by men.<sup>210</sup>

Women own 17.6 percent of *ejido* and *communal* land and represent 27 percent of subjects with agrarian rights: most are *comuneras* and *avecindadas*.<sup>211</sup> In spite of this, they are

<sup>206</sup> Such allocation could have taken place before or after 1992, on the basis of Article 72 of the former Federal Agrarian Law and on basis of Art. 56 to 59 of the current Agrarian Law.

<sup>207</sup> Katz, E. (2000).

<sup>208</sup> Because these policies are not truly suited to the diversity of problems women face, because not enough resources are devoted to this purpose, because it affects the continuity of programmes, and even because of the ancient patriarchal culture that gives little value to women’s work.

<sup>209</sup> Vázquez, V. (2001). Only 25.8 percent of *ejidos* have Women Industrial Agricultural Units, representing 1.2 percent of plots certified to *ejidatarias* and possessors. See INEGI et al (2002: 150).

<sup>210</sup> Katz, E. (2000).

<sup>211</sup> According to figures based on *ejidos* certified by PROCEDE, in 2001 were registered:

underrepresented in *ejido* bodies, holding only 5.2 percent of principal and deputy positions in assemblies.<sup>212</sup> This means that they have little decision-making power, particularly with respect to land use, although they are responsible for ensuring the livelihood of their families. Under the agrarian legislation, the individual rights of *ejidatarios* prevail over the rights of families provided in the civil code.<sup>213</sup>

In areas of urbanisation of the *ejido*, women may have greater participation in decision-making, as they represent one-third of *avecindados*. However, although Art. 41 of the Agrarian Law provides for the existence of a “board of neighbours” to handle aspects related to the village and to social and urban services (including the regularisation of parcels), such a board seems to be a still uncommon body in many *ejido* groups.

Each *ejidatario* has the prerogative of appointing a list of successors – that is, those who will inherit the parcel after their death; this is applicable even in the case of civil marriages under the community of property regime. If a list of successors does not exist, the Agrarian Law establishes an order of preference for the transmission of rights, with the spouse in first place, followed by the concubine.<sup>214</sup> Although inheritance traditions vary according to the region, generally the main beneficiaries are the spouses and male firstborns (each representing 38 percent), while in almost 9 percent of

- 400,000 *ejidatarias* (representing 23 percent of the total of 1.75 million *ejidatarios*),

- 73,896 women possessors (23 percent of the total of 316,149 possessors),

- 84,000 *comuneras* (69 percent of 122,175 *comuneros*) and

- 223,140 *avecindadas* (32 percent of 700,000 settlers),

- in addition to 318,000 women private owners (*Estudios Agrarios*, N° 16, 2001, p. 149).

<sup>212</sup> INEGI et al. (2002).

<sup>213</sup> Under the Agrarian Law (Art. 2), civil federal laws and, as required, commercial laws supplementing agrarian legislation. However, there are legal vacuums, differences of interpretation and problems of adaptation causing legislative confusion (Jimenez, E. 2002. Rivera, I. 2002).

<sup>214</sup> With certain limitations for the concubine: inheritance rights subsist only if the relationship continues at the time of death of the *ejidatario*. If for instance, the relationship ended months prior to his/her death, the right is lost even if the couple has children, in which case one of them may inherit the father’s or mother’s agrarian rights. The situation is complicated if several “concubines”, with or without children, come forth See Hinojos, V. L. (2001). About two-thirds of cases submitted to Agrarian Courts concern inheritance disputes, many of which seem to originate in the legal limitation that prohibits subdividing the agrarian rights. See Robles et al. (2001).

cases a daughter is designated.<sup>215</sup> This reinforces the idea that the right of women to own land is transitory, as in reality they are seen as a link to transmit the land to the husband or male children.<sup>216</sup>

The fragile position of spouses (or concubines) and daughters of *ejidatarios* is worsened in the case of family conflicts, which, if they turn into lawsuits, must be resolved by agrarian courts. *Ejidatarios* may sell their rights to their parcels and even their land once it has been privatised, without the consent of other family members. Although the spouse has right of first refusal in the case of sales of rights, if the intention is to sell the parcel, the spouse would have to “compete” with other relatives if she wished to buy it.<sup>217</sup> These intra-family transactions are probably uncommon, either because it would be highly difficult for the woman to afford such purchase (only 10 percent of *ejidatarias* bought their land from another *ejidatario*) or because of the low percentage of *ejidatarios* enjoying full ownership. Despite this, some foresee negative implications for women, who are left in a disadvantaged position because of decisions that are made by other members of the family ostensibly for the welfare of the family as a whole.<sup>218</sup>

## 2.5 Land policy

### *National Programme on Urban Development and Regional Planning*

The latest National Programme on Urban Development and Regional Planning (NPUD 2001-2006) addresses mid- and long-term spatial planning, with horizons of 2006 and 2025. It focuses on strategic planning to reduce regional inequalities, incorporating environmental control measures, improving the efficiency of urban municipal administrations and strengthening municipal public finances with their own revenues. It also provides for the updating of urban legislation, particularly the planning system laid down in the LGAH,

215 Katz, E. (2000).

216 INEGI et al (2002:116).

217 Also, if the parcel is part of the growth reserves of a city provided in its land use plan, right of first refusal goes to municipal and state governments.

218 Katz, E. (2000).

to include new spatial dynamics such as those arising in the metropolitan areas.

The NPUD briefly identifies major problems regarding land and urban development: a real estate market ruled by land hoarding and speculation; overcrowding and informal settlements, with the consequent negative effects on health, family integration, social cohesion, municipal resources and preservation of the environment. The NPUD confirms that meeting the demand of the poor for land is a challenge to sustainability and a social justice imperative. Since it is also recognised that private resources are not attracted to the informal land market because of low profit margins and other risks, the plan points to the establishment of land reserves managed by the government and linked to overall projects that help build trust among investors.

Three leading programmes are derived from the NPUD: Regional Planning, Habitat<sup>219</sup> and Land Reserve. These programmes are proposed in line with strategic objectives that seek to maximise the economic efficiency of the national territory, integrate cities and metropolitan areas into a coherent Urban National System, and incorporate urban land development concerns into a National Land Policy. Nevertheless, the NPUD does not introduce basic principles or guidelines for such a policy. So the main proposition regarding urban land problems is limited to the creation of land reserves, which is an old and unsuccessful strategy (see below). Other significant problems related to land tenure and informal settlements are neglected.

### *The General Law on Human Settlements (LGAH)*

This law establishes a hierarchical planning system for urban development from national to local level. In spite of this hierarchy, the urban development planning system has been

219 Although the same Ministry (SEDESOL) handles social, spatial and housing policies, it is hard to find a direct relation and correspondence between its respective sector programmes. For instance, the Habitat programme mentioned in this section focuses on a spatial planning strategy targeted at regions, metropolitan areas and cities, while the Habitat Programme of 2003, is aimed at fighting poverty. Other programmes have different names, although their goals and basic principles are comparable, such as the Land Reserve Programme (*Suelo-Reserva Territorial*), the Free Land programme (*Programa Suelo Libre*), or the Social Land Incorporation Programme (*Programa de Incorporación de Suelo Social - PISO*).

frequently criticised for its dependence in practice on municipal authorities. Urban plans tend to be concerned only with the physical aspect of urban growth, ignoring economic dynamics, the environment, the political and social context and the external trends or pressures (migration flows, foreign investment) that shape the cities. More often than not, urban plans are used to legitimise decisions already taken by the authority; in fact, public investment is rarely applied as provided in planning documents. Generally, pressure groups – speculators, *ejidatarios*, and neighbours' organisations – decide whether urban projects are executed or not, and furthermore, it is largely investors or developers who establish the priorities and the modalities of these works.<sup>220</sup>

In addition, planning timetables are not aligned with the growth rates of Mexican cities, and their potential application is reduced to those areas developed within formal processes. However, most urban growth takes place outside the law, notwithstanding optimistic estimates by the federal government that 27 percent of housing needs in Mexican cities will be left out of the formal land markets.<sup>221</sup> Another source estimates that actually 73 percent of the rural land incorporated into urban areas has been irregularly occupied and every year 100,000 families settle on irregular lots.

## 3 Housing

### 3.1 The Constitution

Article 4 states that every family is entitled to suitable and decent housing. While “family” is not defined in the Constitution, in practice the head of the household is interpreted to be the husband, so this right may be disregarded in terms of “families” constituted by single women, divorcees or widows. The Constitution does not deal with issues regarding marriage, cohabitation, inheritance, and other personal rights. There are also no provisions to guarantee the right to housing.

<sup>220</sup> Garcia, G. & Rodriguez, F. (1998).

<sup>221</sup> According to National Programme on Urban Development, there were close to 14.8 million households in Mexican cities in 2000; of these, it is estimated that 500,000 did not have a house to live in and close to 3.5 million were forced to occupy land irregularly. This makes 4 million households (27 percent of the total household in the country) having to turn to the informal land market.

Article 123, which deals with the right to work, establishes the responsibility of employers, “who shall be obliged to furnish workmen with comfortable and hygienic living quarters”, for which a national fund for the financing of houses is established.<sup>222</sup>

### 3.2. Federal Civil Code

#### *The Federal Housing Law*

This was adopted in 1984 to establish mechanisms to implement the right to decent housing, as laid down in the Constitution. Despite the intention to address the housing needs of the poor,<sup>223</sup> the existing policies and institutions have proved to be inadequate for a variety of reasons:<sup>224</sup>

- In addition to finished houses, other modalities more in line with the needs and forms of production of houses of poor people should be fostered, like progressive housing and upgrading programmes; and
- Participating housing institutions belong to different sectors of the public administration, making coordination difficult.<sup>225</sup> There is no Ministry of Housing and no unified national housing policy.

From 2001 on, initial attempts to redefine housing programmes and coordinate them were carried out by a new institution, the National Housing Promotion Commission (CONAFOVI). Hence, the Chamber of Senators on April 14 2005 approved a new Housing Law, which includes substantial changes. Article 2 specifies that “decent housing” should fulfil legal standards regarding construction, habitability and

<sup>222</sup> On the basis of Article 123 (paragraph B, XI, f), in the early 1970s the National Workers Housing Fund Institute (INFONAVIT), the Housing Fund of the Social Security and Services Institute for State Workers (FOVISSSTE) and other housing financing agencies were created, with the contributions of employers.

<sup>223</sup> According to the provisions of this law, the national housing policy will abide by, inter alia, the following guidelines (Art. 2): preferential attention shall be given to low-income urban and rural population; land reserves shall be established and a public land market for social housing shall be created to funnel more funds towards non-salaried workers, marginalised people in urban areas, farmers and middle-income population; finally, support shall be given to the construction of service infrastructure for housing with the organised participation of the community. This law states that, under equal circumstances, preference will be given to people with the lowest income and to heads of household (Art. 46).

<sup>224</sup> Santillán, V. Interview with the author, February 16 2004.

<sup>225</sup> The Fund for Bank Operations and Housing Funds Ope (FOVI) is administered by the Bank of Mexico; INFONAVIT is an autonomous body; FOVISSSTE depends on the health sector; FONHAPO, previously a trust of BANOBRAS (National Bank for Public Works and Services), is now part of SEDESOL.

sanitation; it also should have basic services and provide security of tenure and physical protection to face the elements of nature. Article 3 states that provisions of the law shall be applied under principles of equity and social inclusion in order to avoid discriminating on the grounds of gender, age, health or labour conditions, ethnicity or political or religious beliefs. A National Housing Policy addressing the objectives of the law should promote opportunities for access to housing, especially for poor, vulnerable and marginalised people (Art. 4).

In this sense, the National Housing Programme should specify the instruments and support that will be given to address housing needs of the poor. The programme should also include mechanisms to promote social housing production and progressive housing. In the same way, strategies to facilitate the access to public and private housing finance for indigenous people will need to be included (Art. 6, V, XI, XII).

Rental housing it is not widely developed in the new law. It has just been mentioned that the National Housing Programme must also include strategies to encourage the development of a rental housing market (Art. 6, XIV). Coordination between federal housing institutions is also expected to promote rental housing (Art. 28, VI). The rules of these institutions must allow households' mobility up the housing ladder (Art. 42). The law does not however contemplate any rent control.

A National Housing System is proposed as a permanent mechanism for coordination, consensus and collaboration of public, private and social sectors (Art. 12).

The law establishes a National Housing Information and Indicators System, in order to gather and organise information that shows the real situation of the housing market. This should help the planning, implementation and evaluation of the National Housing Policy (Art. 31-34).

The importance of social housing production is recognised, so federal, state and municipal government must support it

through programmes addressed to individual housing-constructors, housing institutions (cooperatives, civil associations, etc.), NGOs and private assistance institutions (Art. 69, 70).

### 3.3 Other relevant legislation

On December 9 2003, the General Law on Social Development was enacted. It aims to guarantee the full exercise of social rights enshrined in the Constitution: education, health, food, housing, a healthy environment, work and social security, and those rights related to non-discrimination. The principles of social development include the respect of diversity (ethnic, gender, social status, health, etc.) to overcome discrimination. In addition, this law requires that special attention should be given to "social groups in conditions of vulnerability", that is, population centres or persons facing risk situations or discrimination. Areas or regions with high poverty and exclusion rates are to be identified and declared "priority attention areas" by the federal Chamber of Deputies. The identification of these areas will be revised each year and their declaration as such will be published together with the expenditure budget.<sup>226</sup>

### 3.4 Housing policy

The 2001-2006 Sector Housing Programme is an instrument for the coordination of public actions of federal, state and municipal government institutions, as well as activities of groups and individuals related to housing issues. Its objectives include promoting and establishing policies and programmes to purchase, build, lease or improve housing, with the participation of the three levels of government and civil society. It also aims at consolidating the housing market, so that houses become the driving force behind economic development, as well as at promoting competitiveness and the quality of the housing sector to reduce the housing deficit. Finally, it seeks to reactivate development banks, to foster, in addition to construction and acquisition of social housing, trading in the stock market. Now, as in the past decades, housing policy is

<sup>226</sup> These programmes include, among others, those targeting vulnerable groups, priority attention areas, housing, basic urban infrastructure works, environmental sanitation and urban infrastructure.

focused on the construction of housing for sale, while rental housing is widely neglected: the programme does not even include a diagnosis of the rental housing market or the need for it.

Housing policy objectives make no gender distinctions, as, according to the interpretation of Art. 4 of the Constitution, their goal is to ensure the right of all families or households to decent housing. In fact they are gender blind, assuming that because heads of families or households will benefit the rest of the household or family will also necessarily benefit. For practical purposes, it is recognised that the composition of households is variable (nuclear family, single parent, male or female-headed households, single persons, several families etc),<sup>227</sup> but normally this does not represent a criterion for inclusion or exclusion in housing programmes. However, according to the Housing Law and the Social Development Law, housing funds and programmes would first have to target disadvantaged groups: families in situations of extreme poverty, excluded populations, indigenous groups. Women are not explicitly mentioned among disadvantaged groups.

In the Sector Housing Programme it is recognised that the existing supply of urban land is insufficient for the increasing demand. Two factors determine high costs of urban land: land hoarding and speculation. On the one hand, an efficient and continuous system to incorporate *ejido* land into urban areas is still needed, respecting legal and planning procedures. On the other hand, there is still vacant land within cities with full infrastructure and services that has been wasted. So the “parallel” land market is translated into irregular occupation of land, creating a circle of informal occupation and regularisation that has overridden urban planning and any chance to establish land reserves. Since this is closely linked to poverty and self-help housing, the strategies proposed by the programme include:

- Design of legal, financing and economic tools and the

provision of technical support to self-help housing;

- Consolidation programmes and institutions to give direct subsidies benefiting low-income families;
- Upgrading and tenure regularisation programmes;
- Encouraging the establishment of land reserves that respect urban planning and sustainable development;
- Promoting construction of basic infrastructure to low investment costs;
- Implementing densification programmes linked to housing programmes; and
- Modifying laws and regulations regarding land for housing.

In the 1990s, the housing sector underwent important changes: public institutions like INFONAVIT, FOVISSSTE and FONHAPO stopped promoting the construction of housing and began to concentrate on financing. Previous credit allocation schemes of INFONAVIT and FOVISSSTE were controlled by different syndicates; now, more transparent and flexible schemes are used. Credit lines have diversified, giving workers the option to purchase, build, repair, extend or improve their dwellings. While this represents options previously not available, internal regulations of housing institutions create a strong distortion in favour of the purchase of new houses.<sup>228</sup>

Although these changes are intended to clean up the operations of financial entities and give all workers the possibility of buying a house, the truth is that the new scheme favours those who represent less risks in the recovery of loans – based on income, job stability, years of contributions to the fund and age. Authorities admit that the greatest weakness of this new operational approach lies in its lack of attention to vulnerable groups: single mothers, disabled persons, inhabitants of marginal areas, indigenous groups and low-income families.<sup>229</sup>

<sup>227</sup> As explained in a document provided by Victor Santillán (CONAFOVI). The glossary of the 2001-2006 Sector Housing Programme defines household as a unity composed of one or more persons tied or not by bonds of relationship, that live in the same dwelling and have common expenses for food. Households are classified as of family character (amplified, composed, nuclear) or not of family character (co-dwelling, one person living).

<sup>228</sup> Noriega, C. (2002).

<sup>229</sup> SEDESOL. (2001a).



### *Programmes for low-income populations*

Currently, progressive housing programmes incorporate a new approach aimed at promoting and creating savings funds, and subsidising demand, making direct transfers of money to the beneficiaries. This is how the Progressive Housing Savings and Subsidies Programme (VIVAH) and the Special Housing Credit and Subsidy Programme (PROSAVI) operate – the first relying on prior savings, and the second on the extension of a loan.

#### *Box 3.1 Progressive Housing Savings and Subsidies Programme (VIVAH)*

**VIVAH (now Tu Casa) was created in 1998 and operated by SEDESOL. It is based on the concept of shared responsibility between federal, state, and municipal governments and programme beneficiaries. It targets people living in extreme poverty with progressive housing projects (new or extension), including basic drainage, drinking water and electricity. For 2001, the federal government provided a subsidy of 23,000 pesos (\$2,370), the beneficiary 7,000 pesos (\$722) and the local government donated the developed plot for construction or the investment required for development (refundable in six years). If the loan is for house improvement (building an additional room), the federation gives 7,000 pesos, the local government 4,000 (\$412), and the beneficiary 3,000 pesos (\$309).**

**PROSAVI was launched in 1996 in the DF and in 1999 it began operating in the rest of the country. It is a programme implemented by FOVI. Families are granted a direct subsidy (of up to 20 percent of the value of the house). It offers finished houses at credit rates lower than those existing on the market. To obtain the subsidy, applicants must give a down payment of 7.5% of the value of the house, which is sometimes supported with loans granted by local authorities. The amount of the loan is defined on the basis of the applicant's ability to pay and in the end most loans are granted to higher income groups.**

Housing policies are still far from creating the conditions to enable the entire population (and especially the poor) to realise their right to adequate housing. Even previous programmes are subject to conditions that hinder access to houses to poor families. The lower the amount of the loan, the higher the administrative costs of the contracts, thus negatively affecting families earning less than three times the

minimum salary (these families are targeted by PROSAVI). Their reduced ability to pay hinders their capacity to buy a finished house; also, these groups have a high labour turnover, lowering their chances to qualify for a loan.<sup>230</sup> People in extreme poverty are categorised as such precisely because their income hardly allows them to buy food and clothing, so that saving the down payment required by VIVAH is extremely difficult. According to the rules of the programme, only 22 percent of the total cost of basic and social houses can be used to buy the land, which means that these houses are built in marginal urban areas.

As part of the restructuring of housing institutions, FONHAPO will have to concentrate and unify its housing subsidy policy, remaining in charge of the programme Your House (Tu Casa, previously VIVAH) and in charge of PROSAVI. In addition, FONHAPO will run other housing improvement programmes, such as Firm Floor, which consists of replacing earthen floors with low-cost and quick-setting concrete floors, implemented in coordination with state governments. Subsidies will be designed on the basis of the characteristics of beneficiaries and will be linked to savings programmes.

The goal is to attract popular savings, formalising and regulating them so as to integrate them into national development. This scheme includes savings groups, savings and loans societies, credit unions, civil cooperatives and associations; all of them will join to become a “social bank”. To enhance the role of popular savings, in addition to the development of a Popular Savings and Loans Law, which will become effective in 2005, the National Savings and Financial Services Bank S.N.C (BANSEFI) was created. Its main tasks include promoting a permanent culture of savings.<sup>231</sup>

With respect to affirmative action, although policies do not explicitly mention gender equity, such aspects are indeed considered in the implementation of housing programmes. In the late 1990s, during the first phase of PROSAVI in the

<sup>230</sup> Ibid.

<sup>231</sup> Garcia, V. L. undated (a).

state of Yucatan, loans were preferably extended to women. In turn, in 1998, INFONAVIT and then FOVISSSTE established operating rules whereby their scoring systems granted additional points to single mothers or women heads of households to increase their possibilities of having access to housing loans.<sup>232</sup> It is worth noting that subsidised government programmes and those programmes promoted by civil society organisations targeted to the poor population represent one of the main opportunities for women to have access to housing, even when the programmes are not specifically aimed at them; some studies show significant percentages of loans or subsidies granted to single women and women heads of household, ranging from 14 percent to 79 percent.<sup>233</sup>

### Rental housing

Since the 1990s, rental policies have been practically abandoned: financing for production was drastically reduced, and no new incentives to maintain the supply of this type of housing have emerged. In fact, housing funding systems through mortgage loans favour access to ownership of the property, which allows investors and developers to recover their investment sooner and to reap more benefits.<sup>234</sup>

Between 1980 and 2000 the percentage of houses owned by their residents has increased from 70 to 78. In 2000, only 13 percent of houses were leased. Rental housing is less representative in rural areas (less than 13 percent is leased, borrowed or other). In large cities, this form of tenure tends to be found mostly in historical centres, like collective housing (known as *vecindades*), rooftop rooms, and old houses and buildings. In popular settlements undergoing consolidation, rental rooms inside a house or a parcel can also be found, increasing overcrowding and worsening other existing problems, such as lack of basic urban services.<sup>235</sup> There are indications

that the proportion of women heads of household that rent their houses (especially in central areas) is larger (29 percent) than those who occupy a parcel in self-built settlements (less than 5 percent).<sup>236</sup>

The need for rental housing is not limited to the low-income population. It includes well-to-do families,<sup>237</sup> foreign executives, students, tourists and so on. However, the issue of rental housing is not yet a priority on the agenda for the revision of housing policies. The Sector Housing Programme presents very few (and mostly generic) strategies: to promote rental housing construction; to promote changes in laws and regulations in order to favour this; the coordination of federal, state and municipal government to propose programmes; and the creation of incentives for rental housing construction.

Housing programmes do not take into account the ethnic, social and cultural diversity of the country and the particular needs of indigenous groups, the elderly, women and groups at high risk (such as people with HIV/AIDS). Other vulnerable groups, such as disabled persons, are practically ignored in the definition of housing design and construction standards. Official housing programmes consider popular sectors as homogeneous and with identical family structures, so their building and financing designs are rigid and not adapted to the needs of the various groups,<sup>238</sup> particularly women, rural people or indigenous groups.

It is hard to make gender distinctions concerning the impact of housing policies, as detailed data about the number of women assisted with housing loans and subsidies is not included in the statistics of the sector or in the programmes managed by housing institutions. For example, in 2001 and 2002, one-third of the loans granted by INFONAVIT went to women;<sup>239</sup> however, their marital or family status, or even their percentage in relation to the total of eligible persons,

<sup>232</sup> Ibid.

<sup>233</sup> In programmes executed mainly in Mexico City, 14 percent of single women were registered among beneficiaries of self-management practices promoted by unions of settlers and housing cooperatives (Coulomb, R. & Sanchez, C. (1992). In her study, Villavicencio (1998) stresses that women heads of household assisted by FONHAPO represented 29 percent of total beneficiaries. In a co-financed programme fostered by FOSovi and the DF Housing Institute, García (see below) reports 79 percent of credits extended to women. See Villavicencio, J. (1998).

<sup>234</sup> Lopez, M. E. (1996).

<sup>235</sup> Villavicencio, J. (1995:85-101).

<sup>236</sup> Varley, A. (undated).

<sup>237</sup> (Coulomb, R. & Sanchez, C. (1992).

<sup>238</sup> García, V. L. Undated (b).

<sup>239</sup> Data provided by CONAFOVI, México D. F., February 2004. Of 230,003 loans granted in 2001, 75,697 went to women; of 275,000 loans provided in 2002, women received 89,533 loans.

is unknown. We cannot even be sure the houses acquired through those loans legally belong to the above-mentioned women, since many of them could have decided or been pressured to put the husband's or a son's name on the deed.

Federal institutions do not have gender disaggregated data or studies that would help gender-conscious policy planning.

Instead, sector policies issued from the three levels of government are applied with little or no coordination. As a result, there is a great lack of information about whether and how land and housing rights are being fulfilled, particularly regarding urban land. As a general rule, government authorities at all levels treat land information with secrecy.

### 3.5 Main institutions

In July 2001, two agencies were created to manage the Sector Housing Programme: the National Housing Promotion Commission (CONAFOVI) and the National Housing Council (CONAVI). Both institutions were included in the 2005 Housing Law so that they are now permanent. The recent Housing Law institutionalises CONAFOVI, which now depends directly on the Federal Executive (Art. 26-27). CONAFOVI is also in charge of coordinating the efforts and actions of federal public entities related to the housing sector and promoting the active participation of state and municipal bodies and other local stakeholders. In this sense, it is also in charge of establishing CONAVI, which has become a forum for the exchange of opinions and which operates as a consultative and advisory body of the federal executive. The CONAVI council consists of representatives of the public sector, state-housing agencies, the business sector, civil society groups, professional associations, and universities, all of which work on housing issues. CONAVI is organised into four working groups: land market, financing, growth, and productivity.

The challenge facing CONAFOVI is huge, and work is being done in several areas to help define the direction of the sector. As a general rule, the financing issue dominates the formula-

tion of housing policies, so the idea now is to have a broader vision that would allow the combination of the housing issue with environmental and urban development policies. The idea is also to place more emphasis on the quality of housing, promoting subsidy programmes to improve the housing stock, mainly of self-help houses. CONAFOVI must also assess and follow up on the Sector Housing Programme; hence, it is working on the creation of a single housing and urban services information and statistics system. Along this line, a methodology is being developed to gather information on the building of houses in the informal sector.<sup>240</sup>

Under the Housing Law an Interministerial Housing Commission is created. It is responsible for implementing the National Housing Policy that which will be defined by the Sector Housing Programme. Agreements achieved within this commission will be mandatory for participating institutions, including the ministries of Social Development, Environment and Natural Resources, Energy, Economy, Communications and Transport, Tourism and Agrarian Reform.<sup>241</sup> It should also propose investments and financing mechanisms to enlarge the housing market and to facilitate access to credit by all.

### 3.6 The segmentation of the housing market

The private sector produces mass housing financed by banks or fiscal funds (Fund for Bank Operations and Housing Funds, FOVI) for those who have access to loans. These are generally persons earning more than five times the minimum salary.<sup>242</sup> For housing developers, investment in housing for low-income populations is not profitable, and scarce bank credits are used mainly to build houses for middle-class families. Only a minimal part of the population can pay a house built on commission – that is, designed and built

<sup>240</sup> Fernández Cortina, B. S. Interview with the author, February 16, 2004.

<sup>241</sup> Arts. 20-25 of the Housing Law

<sup>242</sup> FOVI is a fund that provides loans to banks and limited purpose financial societies for constructing and purchase of housing. It obtains its resources from the Bank of Mexico, loans from the World Bank, and funds obtained through the recovery of portfolio and fiscal revenues. Between 1995-2001, 57 percent of FOVI loans were extended to people earning more than 5 times the minimum salary (ms), 29 percent went to groups earning 3 to 5 ms and 14 percent to those earning between 2 and 5 ms, see SEDESOL (2001a).

according to the tastes and requirements of the owners.

INFONAVIT and FOVISSSTE are public institutions created in the early 1970s to manage social savings funds (contributions from employers to employees' accounts). These institutions fund housing construction and grant individual mortgage loans to workers for buying a house. But these institutions only assist less than one-fifth and one-fourth (respectively) of workers who have the right to request funding. In practice, population groups that benefit most from this fund are those earning between three and five times the minimum salary. This means that other workers entitled to such public housing must look for another way to get a house, maybe financed by the private sector, FOVI or even by the Popular Housing National Fund (FONHAPO, see below).

FONHAPO was created in 1981 as a trust of BANOBRAS to assist workers in the informal sector and poor people not served by other public institutions or not eligible for loans. These groups account for more than 60 percent of the total population of Mexico. At that time, FONHAPO operated with fiscal revenues and funds from the World Bank, extending loans to social organisations (group loans) and public agencies for the upgrading and self-building of houses in progressive developments, with subsidies of up to 50 percent. However, since the early 1990s it has suffered drastic budget cutbacks and has now been completely restructured, favouring individual loans. This institution is now attached to SEDESOL.

Since rental has not been included in housing policies, the two-thirds of the population unable to access housing in the formal market must necessarily build their own homes. This is a slow process that takes years. As there is no legal supply of land at affordable prices for the entire population, the "parallel market" of *ejido*, devalued private land or areas threatened by physical risks become an opportunity to solve the housing problem.

Figure 3.1 Number of new houses (finished and in progress<sup>243</sup>) financed by institutions, 1977 - 1992.

Institution / year	1977-82	1983-88	1989-92	Total	%
PFV/FOVI	107,920	468,637	103,250	679,807	29.9
Banks			215,986	215,986	9.5
INFONAVIT	219,753	361,141	239,731	820,625	36.1
FOVISSSTE and others	41,663	32,862	21,464	95,989	4.2
FONHAPO	932	110,115	56,697	167,744	7.4
BANOBRAS	8,357		2,783	11,140	0.5
INDECO	99,171			99,171	4.4
Other	29,451	109,273	42,471	181,195	8.0
Total	507,247	1,082,028	682,382	2,271,657	100.0

Source: modified table based on Connolly (1998:32).

A minimal part of the resources for housing is channelled to benefit people earning less than three times the minimum salary and working in the informal sector – the majority of the population.<sup>244</sup> This is explained by the fact that the housing policy prioritises the role of housing in economic development, rather than its role in meeting a social need. For this economic development, more funds are being channelled to the building industry for the production of finished houses, relegating progressive housing to a distant second place and practically forsaking the construction of rental houses.

<sup>243</sup> New houses that are in progress (also known as progressive housing) are dwellings that began with a simple room and the rest is built little by little, according to economic resources of the occupants.

<sup>244</sup> Of all new houses (finished and progressive) financed by the federal government from 1977 through 1992, INFONAVIT, FOVISSSTE and other similar funds (FOVIMI) contributed 40 percent; FOVI and commercial banks financed 39 percent; FONHAPO financed only 7 percent, (almost all progressive houses); and the remaining 13 percent was financed by other institutions.

## 4 Inheritance and marital property rights

### 4.1 Relevant constitutional provisions

Article 4 of the Constitution was amended in 1974 to recognise the equality of men with women under the law. However, the text of the Constitution alone cannot radically change the customs of a society such as Mexico, where the traditional pre-eminence of men (“machismo”) has been stereotyped even at an international level.

Article 1 prohibits any type of discrimination based on race, sex, age, social status, creed, opinions, preferences, civil state or any other type of discrimination affecting human dignity. This paragraph was part of the “Constitutional reform on indigenous rights and culture”, enacted on August 14, 2001.<sup>245</sup> Through this constitutional amendment, Art. 2 was entirely modified to recognise indigenous populations and with them, the ethnic and cultural diversity of the Mexican nation. Article 2 entitles the states to regulate indigenous rights in their constitutions and laws, according to the specific characteristics of indigenous groups.

Although Art. 2 allows for some autonomy of indigenous people<sup>246</sup> (in their organisation, regulation, settlement of internal conflicts, etc.), this autonomy must be exercised while respecting the general principles of the Constitution.<sup>247</sup> While indigenous groups may apply their own norms and dispute resolution systems in the regulation and resolution of their internal conflicts, they must respect human rights and especially the dignity and integrity of women. However, no specific provisions are made to guarantee that human rights, and in particular women’s rights, are respected in such processes; it is just mentioned that the law will establish the cases and procedures by which judges and tribunals should

<sup>245</sup> Amendments to the Constitution were made to Article 1 (the second and third paragraph were added); Art. 2 was entirely modified; the first paragraph of Art. 4 was derogated; a sixth paragraph was added to Article 18 as well as the last paragraph of the third part of Art. 115. Finally, four transitory articles were added.

<sup>246</sup> Article 2, Paragraph A (I to VIII).

<sup>247</sup> For example, regarding access to land, this must be achieved according to the type of land and tenure recognised in the Constitution (Article 2, Paragraph A, VI).

validate the application of indigenous dispute resolution systems.

The participation of women must be guaranteed under conditions of equality with men in the election of authorities or representatives, and in development issues.<sup>248</sup> However, in practice it is common that indigenous communities continue to prevent women from participating in assemblies, even if they hold the rights over their lands.<sup>249</sup>

Article 2, paragraph B, calls upon the federation, the states and municipalities to establish institutions and determine policies needed to promote equal opportunities for indigenous peoples and to eliminate discriminatory practices. The policies should be designed and implemented together with the indigenous population. Such a participatory approach has proved difficult, since the EZLN and other indigenous groups rejected the constitutional reform from the very beginning.

The authorities are also obliged to address the needs of the indigenous population. For example, they should facilitate the access to public and private funding for housing construction and upgrading, and thus for wider basic social services in indigenous communities.<sup>250</sup>

### 4.2. Federal Civil Code

The Mexican Constitution does not define the term “family” and does not deal with rights related to it. Neither does the CCF specify what should be considered a family. Therefore, differences between federal and state civil codes can be found.<sup>251</sup> Thus for certain dispositions concerning a family – for example, the constitution of family patrimony – some

<sup>248</sup> Article 2, Paragraphs A (III) and B (V) of the Constitution.

<sup>249</sup> So indigenous peoples have the right to have a translator and a defender familiar with their language and culture (Article 2, Paragraph A, VIII).

<sup>250</sup> Article 2, Paragraph B, IV of the Constitution.

<sup>251</sup> Article 259, III of the civil code of Jalisco considers the legal notion of family linked to marriage: “with marriage, the family is legally established...” In contrast, Article 138 (5) of the civil code for the Federal District states: “family legal relations generating rights, duties and obligations emerge between persons related by marriage, relationship or co-habitation”.

state civil codes (e.g. Jalisco and the DF) consider the family in a broad sense, including all those who live in the same house, whether related by marriage, cohabitation or consanguineous kinship yet others ignore cohabitation (e.g., Aguascalientes in the case of family patrimony).

### 4.3 State civil codes

Most state civil codes have made progress in family matters, recognising equitable distribution of family responsibilities, and the right of married women to work and to administer family property.<sup>252</sup>

#### *Legislation related to marital property rights*

The rights and obligations within a marriage are laid down in Art. 162 to 177 of the CCF. There are equal responsibilities and rights for both spouses (Art. 164). Both should have shared authority, irrespective of their economic contribution to the household (Art. 168). Each spouse may conclude contracts and administer his/her property without the need for permission of the other spouse, except when it concerns common property (Art. 172).

#### *Community of property*

Articles 178 to 182 deal with marital property regimes, namely the “community of property” regime (*sociedad conyugal*) and the “separation of property” regime. While the community of property regime constitutes all jointly held property, it allows for separate property by gift, inheritance, or that which is brought into the union. This regime is further regulated in Art. 183 to 206. The community of property regime could begin with marriage or be constituted during the marriage. This regime may also terminate before the end of the marriage, if both spouses so agree (Art. 187).<sup>253</sup>

Article 189 of the civil code lists marital arrangements to be made for the administration of the community of property

regime. These arrangements must include:

- A detailed list of real estate each spouse will contribute, which has to be registered in the Public Property Registry;
- A description of the personal debts, specifying if the marital union will respond to them, or if the union will only take the debts contracted after the marriage;
- An explicit declaration if the community of goods will include all the goods of the spouses or just the products of the goods; also if future goods acquired during marriage will belong only to the acquirer or to both spouses;
- A declaration if proceeds from each spouse's job will belong exclusively to the one who worked or if it will form a part of the proceeds for the other spouse, specifying the proportion;
- A statement that specifies who will be the administrator of the community, clearly stating their powers. This will, in practice, often mean that the husband will take the role of community administrator, even if Art. 168 of the civil code stipulates that both spouses should have shared authority.

In practice these kinds of arrangements are not common. In the absence of such arrangements the normal contract rules apply (Art. 183).<sup>254</sup> Usually, there is just a form to choose the type of property arrangement a couple will adopt. In general, for the community of property regime, it will concern property acquired after marriage. There are no legal provisions on joint titling, only rules specifying that for alienation or mortgage of the common property both spouses must express consent.

In general, the community of property regime would be more frequent, since for this there is no need of contracts or marital arrangements. However, the default regime varies in each state: in Jalisco and Aguascalientes it is “legal society”

<sup>252</sup> Perez, A. (2002).

<sup>253</sup> One of the spouses could also demand cancellation of this marital regime if the spouse who administers the goods proves to be negligent, if the latter transmits property to creditors without the consent of the partner or if the administering spouse is declared bankrupt (Art. 188).

<sup>254</sup> Some states specify that in absence of marital agreements, rules of a legal society would apply (which in general means that marital property is owned in equal shares). In the State of Aguascalientes, community of property regime could be voluntary (when there are marital agreements) or legal (legal society). In Jalisco “legal society” is presented as a third marital regime, which would be the most common.

(legal community of property), while in Michoacán there is a separation of property regime.

### *Separation of property*

This regime can be established by marital arrangements agreed before or during the marriage, or by a court order (Art. 207-218). Separation of goods may be total or partial (Art. 208). In this regime, each spouse holds their properties and administers them (Art. 212) and this includes the wages each one gets from a job or other remunerating activities (Art. 213). It is worth mentioning a specific disposition of the civil code for the DF that benefits mostly women in cases of divorce: in the separation of property regime, the spouse who dedicated most of their time to household activities may claim compensation from the partner – up to 50 percent of the total goods this latter acquired during marriage.<sup>255</sup>

### *Legislation related to inheritance rights*

A person leaving a will (testator) is free to establish conditions for the disposition of their goods (Art. 1344). The testator must provide food for: descendants younger than 18 years, descendants of any age if they cannot work, the surviving partner when s/he cannot work and did not have enough goods (this right will last until s/he remarries and has an “honest life”), ascendants, the concubine if they lived together for five years before the death or the one with whom the testator had sons<sup>256</sup>, the siblings and other collateral parents in fourth degree if they are not capable or are younger than 18 years and do not have goods for their needs. The right to food cannot be renounced.

Articles 1599-1637 regulate inheritance rights in case there is no will; or if there is, but the testator had not included all of his/her assets; or if the inheritor in terms of the testament dies first or if s/he does not fill the conditions required by testator. Within these articles those who have inheritance

rights, the orders of succession and the portion each inheritor should receive are specified. Legitimate succession considers both the spouse and the concubine (Art. 1602). Their rights depend on the proximity of other relatives and their family relationship with the deceased, as shown in the table below.

<sup>255</sup> Art. 289 bis. This provision could apply if: a) the couple is married under the separation of property regime; b) during marriage, the claiming spouse's time was mostly dedicated to household or children care; c) the claiming spouse did not acquire any goods during the marriage or if case she/he did, these goods are notoriously lesser than his/her partner's goods. See also section 4.4.4 on most relevant jurisprudence.

<sup>256</sup> In any case, this right last until the concubine marry and if s/he observes good behaviour. If testator lived with several persons as if they were married, no one will have right to food.

Table 4.1 *Inheritance rights according to the FCC*

Succession of descendants	Variants
If there are only children, the estate is divided in equal parts between them (Art. 1607).	
If there are descendants and a surviving spouse, s/he will have the same portion as a child, if s/he has fewer goods than the portion accorded to the child (Art. 1608).	
If there are children and ascendants, the ascendants will only have the right to food, which may not exceed the portion corresponding to one child (Art. 1611).	If there are adopting parents and descendants of the adopted person, parents will only have the right to food (Art. 1613).
If there are no descendants or spouse, the mother and the father will have equal parts of the estate (Art. 1615).	If there is only one parent, s/he will have the whole the estate (Art. 1616).
If there are only ascendants (except parents) in one line, the estate will be divided in equal parts (Art. 1617).	If the ascendants come from two lines (paternal and maternal) the estate will be divided in two equal parts, one for each line (Art. 1618). The members of each ascendant line will divide between them in equal parts the portion (Art. 1619).
If there are adopting parents and ascendants of the one adopted, the estate will be divided in equal parts between all of them (Art. 1620).	If the surviving spouse is left together with the adopting parents, two-thirds of the estate is for the spouse and the rest for the adopting parents (Art. 1621).
The surviving spouse has the rights of a child if her/his goods are fewer than the portion corresponding to a child. The same applies if the children are adopted (Art. 1624).	If the spouse has no goods, s/he will inherit the complete portion; having any goods, s/he will only have what is needed to equal the portion assigned (Art. 1625).
If the spouse is left together with the ascendants, the state will be divided in two equal parts, one for the spouse and the other one for the ascendants (Art. 1626).	The spouse will have the portions mentioned in Arts. 1626 and 1627 even if s/he has goods.
If the surviving spouse is left together with one or more siblings, s/he will have two thirds of the estate. The other third will be divided in equal parts between the siblings (Art. 1627).	If there are no ascendants, descendants or siblings, the surviving spouse will have all the estate (Art. 1629).
If there are only siblings, these will have equal parts of the estate (Art. 1630).	If the siblings have half brothers or half sisters, the siblings will have double the portion than these latter (Art. 1631).
If the siblings have nieces or nephews – children of deceased siblings or half brothers/sisters who cannot inherit – each sibling will inherit a portion and the nieces/nephews will have to divide a portion between them, according what is stated in Art. 1631 (Art. 1632).	If there are no siblings, their sons will inherit and the state will be divided between the dead siblings and later, each portion will be divided between their sons (Art. 1633).
If there are no collaterals (mentioned in Art. 1630-1633), the estate will be divided in equal parts between the relatives in fourth grade (Art. 1634).	Dispositions regarding collaterals will observe what stated in Art. 1635 (succession in cohabitation).
For cohabitation the same rules apply as for a surviving spouse, but only if the partners lived together for the past five years prior to the death or if they had children in common and only if both were unmarried during cohabitation (Art. 1635).	If several concubines or partners are found, no one will inherit (Art. 1635).



With respect to cohabitation, the provisions related to spouses are observed, provided that the couple has lived together for the five years prior to the death or if they have children together.<sup>257</sup> However, this is applicable only if both are unmarried and there is only one concubine, otherwise the concubine loses the right to inherit. Some states (for example Aguascalientes) recognise the concubine, but grant her fewer rights: if the concubine is left together with children who are not hers (only of the deceased), the portion that would correspond to a child is reduced by half. The same happens when the property is divided between the concubine and the deceased's ascendants. These situations are frequent, because in Mexico it is not unusual for married men to have one or more concubines.

#### 4.4 Informal settlements, regularisation and gender rights

In informal settlements, insecure tenure is faced by all, but is exacerbated for women when family conflicts arise, a risk that the regularisation of tenure could help mitigate.<sup>258</sup> While family members may inherit formal rights related to housing tenure (possession, lease, and ownership), women in informal settlements may find themselves in a vulnerable position if their name is not stated in any document that could demonstrate rights of possession. If the husband dies or if the couple have family conflicts and decide to separate, it is difficult to legally claim the division of the property they held in common, even if they were married under the regime of common property.

Officials in the Commission for Land Tenure Regularisation (CORETT, the national agency in charge of regularisation of informal settlements of *ejido* land), claim that over 50 percent of regularised plots are certified to women.<sup>259</sup> It was, however, impossible to verify this.

On the other hand, some studies report that the regularisation of plots in settlements on private land and on *ejidos* tends to favour men. Social customs may influence the choice of the name that appears on the property title. Under these rules, it is assumed that the property must be registered in the name of the male, in view of his perceived role as protector of the family, to safeguard the property and ensure its fair allotment among his children in the future.<sup>260</sup>

Unlike PROCEDE, which constantly delivers disaggregated information on the number, the type of titles, the category of land use and the genre of users, the CORETT regularisation programme has been characterised by a persistent reluctance to share information on the beneficiaries. This makes it rather difficult to tell which one of the above arguments describes the reality more adequately.

## 5 Land Use and Management Systems

### 5.1 Main institutions involved

For the purpose of this report, the main institutions that manage or regulate public land at federal level are the Ministry of the Public Function, the Ministry of Environment, Fisheries and Natural Resources (SEMARNAT), and the Ministry of Agrarian Reform (SRA).<sup>261</sup> The figure below shows the main regulations that establish the various levels of government and the scope of competence of institutions or bodies in charge of enforcing legal provisions.<sup>262</sup> The division of responsibilities is not very clear or precise, and the scope of their actions may overlap with other areas.

<sup>257</sup> Art. 1635 CCF. There are variations in civil codes, which are key for the recognition of the concubine. In Jalisco, even if the couple has children, they must have lived together before the death (for five years if they have no children and three years if they do).

<sup>258</sup> Varley, A. (2000).

<sup>259</sup> Méndez Zamudio, J. R. Interview with the author, February 17, 2004.

<sup>260</sup> Varley, A. & Blasco, M. (2000).

<sup>261</sup> Besides these three ministries, the General National Assets Law names the Ministry of Interior, the Ministry of Communications and Transports (SCT) and the Ministry of Public Education (SEP) as institutions that administer real estate.

<sup>262</sup> The references to laws and to offices at state and municipal level are mentioned as examples.

### *Ministry of Agrarian Reform*

The SRA manages social land and is in charge of applying regulations to private rural land according to the Agrarian Law. The Agrarian Attorney's Office<sup>263</sup> (PA) is in charge of defending those who may hold *ejido* and communal rights, through legal advice and representation, reporting irregularities or violations of agrarian laws, assisting in dispute resolution, reporting when employees or functionaries of agrarian offices are not fulfilling their responsibilities, etc.

### *The Commission for Land Tenure Regularisation (CORETT)*

Agrarian groups are part of a corporate structure developed under the protection of federal institutions in the agrarian sector, which have traditionally enjoyed broad political and economic support, more than those operating in the urban sector.<sup>264</sup> CORETT, created in 1972, is in charge of regularising tenure in informal settlements built on *ejido* land. It presumes the absence of illegal transactions,<sup>265</sup> and proceeds with expropriation of *ejido* land. Compensation for agrarian groups expropriated comes from a National Funding Trust for Ejidal Development (FIFONAFE), which is a public trust depending on SRA.<sup>266</sup> Subsequently, CORETT will sell the new urban plots to their occupants and issue the property titles. But CORETT only focuses on tenure regularisation, leaving a large number of problems unsolved.

Coordination problems continued even after 1999, when CORETT was transferred to the urban sector, as part of the Ministry of Social Development (SEDESOL). SEDESOL was created in 1992 and is in charge of defining social policies and programmes, including those related to poverty, housing and urban development. Under this ministry, the promotion of the establishment of land reserves for urban develop-

ment and housing was officially made the new objective of CORETT, which was also empowered to regularise tenure of federal land occupied by informal settlements.

The National Bank for Public Works and Services (BANOBRAS) provides funding and technical assistance regarding infrastructure and urban services projects to municipal and state governments. This institution has a special responsibility to fund land acquisition and urbanisation (land reserves, urban densification and basic infrastructure), land tenure regularisation, sites and services, etc.

<sup>263</sup> Agrarian Law, Art. 134 – 147.

<sup>264</sup> Corporate organisations in the rural, working-class and business sectors were the three pillars that sustained the political power of the PRI, which ruled the country for over 70 years.

<sup>265</sup> Based on former Federal Agrarian Law, Art. 52, 53 and 75.

<sup>266</sup> FIFONAFE must supervise that the cause of public utility justifying expropriation is verified. The Trust is also a funding organism for agricultural projects (especially if conducted by indigenous women or young peasants) and real estate ejidal companies.

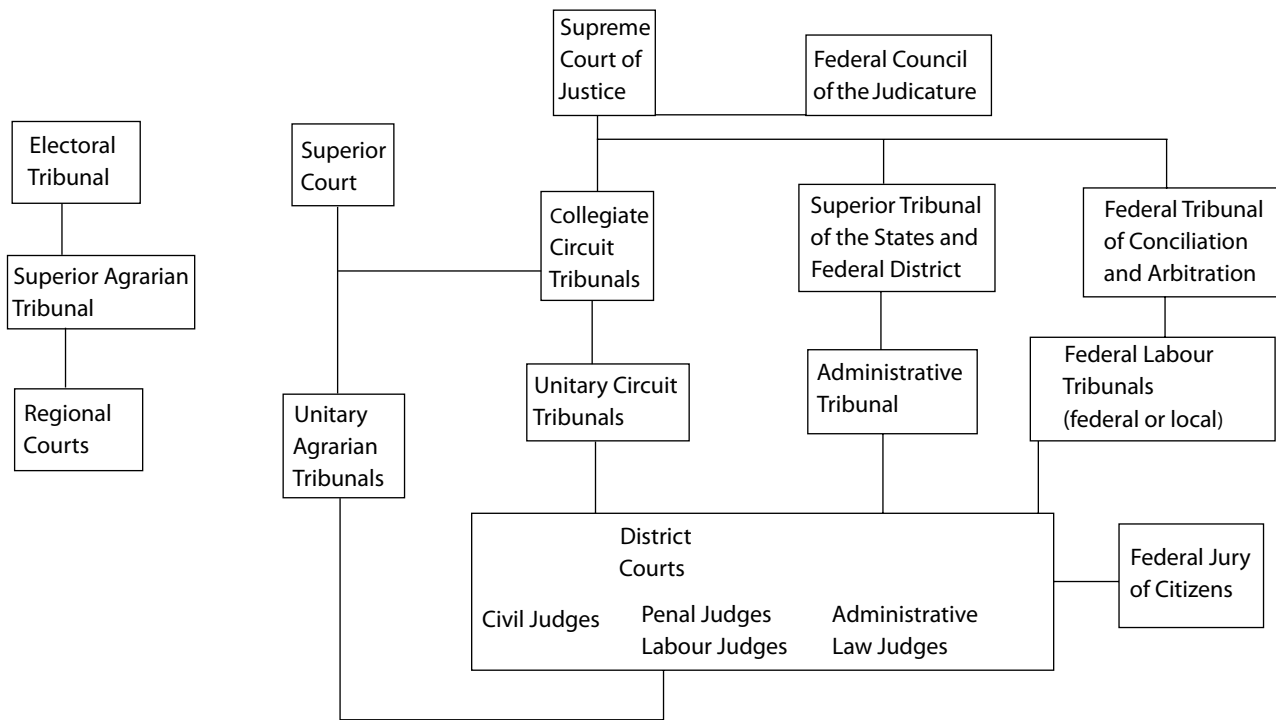
Table 5.2 Main land management institutions

	Agrarian/rural	Urban Land	Housing	Administrative	Environmental
Federal	<ul style="list-style-type: none"> <li>- Ministry of Agrarian Reform (SRA)</li> <li>- Commission for Land Tenure Regularisation (CORETT, before 1999)</li> <li>- National Funding Trust for Ejidal Development (FIFONAFE)</li> <li>- Agrarian Attorney's Office (PA)</li> </ul>	<ul style="list-style-type: none"> <li>- Ministry of Social Development (SEDESOL)</li> <li>- Commission for Land Tenure Regularisation (CORETT, after 1999)</li> </ul>		<ul style="list-style-type: none"> <li>- Ministry of the Public Function</li> <li>- Federal and State Property Real Estate Committee (to be created)</li> <li>- Assessment Commission of National Assets (CABIN)</li> </ul>	Ministry of Environment, Fisheries and Natural Resources (SEMARNAT)
		National Bank for Public Works and Services (BANOBRAS)	<ul style="list-style-type: none"> <li>Fund for Bank Operations and Housing Funds Open (FOVI), later Federal Mortgage Society (SHF)</li> <li>Popular Housing National Fund (FONHAPO)</li> </ul>		Environmental Protection Federal Attorney's Office (PROFEPA)
			<ul style="list-style-type: none"> <li>National Workers Housing Fund Institute (INFONAVIT)</li> <li>Housing Fund of the Social Security and Services Institute for State Workers (FOVISSSTE)</li> <li>- National Housing Promotion Commission (CONAFOVI)</li> <li>- National Housing Council (CONAVI)</li> <li>- Inter-ministerial Housing Commission (to be created)</li> </ul>		
	Agrarian National Registry (RAN)	- National Institute of Statistics, Geography and Informatics (INEGI)			
State		Secretariat of Urban Development	Housing Institute	<ul style="list-style-type: none"> <li>- Institute or Department of Information (territorial, economics, real estate)</li> <li>- State's Real Estate (Patrimony) Office</li> </ul>	Secretariat of the Environment
		Special Attorney's Office (in urban development, sales of urban plots)			
		Public Property Registry Office			
		Cadastral Office (in agreement with some municipalities)			
	Land or Human Settlements Regularisation Commissions (mainly for private land)				
Municipal		<ul style="list-style-type: none"> <li>- Public Works Department</li> <li>- Planning Institute, Commission or Department</li> <li>- Human Settlement's Regularisation Department</li> </ul>	Housing Department	<ul style="list-style-type: none"> <li>- Urban Cadastral Office</li> <li>- Municipal Patrimony Office</li> </ul>	Environmental or Ecology Office

*The Ministry of the Public Function*

This ministry is in charge of defining and conducting a real estate policy that will guide the actions of the federal public administration. In this regard, the creation of a Federal and State Real Estate Property Committee<sup>267</sup> is also being contemplated as a forum for analysis and discussion to prepare for public real estate management. Finally, the Assessment Commission of National Assets (CABIN)<sup>268</sup> is in charge of valuing national land and federal real estate for sale, exchange or concession. CABIN also does appraisals of land or real estate that will be expropriated by federal agencies, and determines the compensation for private, *ejido* and communal land.

Figure 5.1 Federal court system organogram



Disputes related to urban growth and sustainable development are becoming more frequent. However, environmental planning is associated more with regional planning than with urban planning and different laws and institutions regulate each of these aspects of planning. Spatial plans rarely include environmental purposes in line with urban development goals. In many states, the Federal Ministry of Environment, Fisheries and Natural Resources (SEMARNAT) has more weight than the

267 General National Assets Law, Article 27. The committee will include federal institutions that administer real estate (Ministry of the Public Function, SRA, SEMARNAT, SCT, SEP, Ministry of Interior), the Ministry of Finance and Public Credit, and representatives of the five states that owns the most real estate.

268 In the LGBN a new organism is proposed, decentralised from the Ministry of the Public Function, that will substitute CABIN, but will keep its main functions.

same agency at state level as well as local authorities themselves, particularly through the Federal Ministry's responsibility for carrying out environmental impact assessments.<sup>269</sup>

All this happens even when the content of the laws requires integrated planning of human settlements, the sustainable use of natural resources, environmental protection and the incorporation of *ejido* and communal land into urban development.

Legal procedures for the transformation of social land to private property for urban development are mostly in the hands of federal institutions in the agrarian sector. Procedures for the legal transformation of rural to urban land depend mainly on municipal authorities, through urban land use plans, building permits, public services, cadastre registries, etc. In this regard, coordination between agencies from different sectors and levels of government is, in the best of cases, inefficient. Land management and control also implies collecting taxes and, unfortunately, fiscal policies have not traditionally been aligned with urban policies.<sup>270</sup>

Various federal institutions are in charge of the definition, funding and implementation of national housing policies. At state level there is a Housing Institute that will coordinate with federal agencies to carry out programmes in terms of national guidelines and, sometimes, specific state programmes. These Housing Institutes can also manage land reserves bought from private owners or land granted from federal institutions. Management of other real estate depends on different institutions or on a centralised office or state department. Normally, each state has its own Assets and Real Estate Law.

While regularisation of informal settlements built on social land is the responsibility of federal agencies, programmes for housing regularisation on private or public (state) land are carried out at state level. With regard to private rural land, very few states have an additional office (e.g. an urban at-

torney's office) to supervise whether the process of urban development respects the existing regulations.

A series of problems converge on the issue of peri-urban land. Peri-urban properties are often located outside the boundaries of urban development plans, therefore they are considered rural and not subject to planning regulations. So, while a large part is sold by owners (real or presumed) and used for urban purposes (informal settlements, warehouses, industries, rest homes), the corresponding taxes are not paid and urbanisation, environmental or security controls are evaded. Given the variable efficiencies of the different registration systems responsible for rural and urban land, and because this is peri-urban land in transition, tenure problems are frequent. Such problems include lack of reliable and updated registries, undefined boundaries, non-existent deeds or deeds that do not correspond to the land, and unknown or intestate owners.

Planning and urban control are within the competence of municipal authorities, as is the provision of infrastructure and basic public services. Municipalities therefore have the final responsibility for regulating urban growth and upgrading, land use, property taxes and so on. This is done through a variety of offices and the work is not always well coordinated between them. In general, each municipality has an office or department to deal with irregular settlements on private and *ejido* land, although its main role does not concern legal tenure, but urban upgrading.

### *Land Registry*

The Agrarian National Registry (RAN), an agency of the SRA, manages social land: it registers, certificates and extends titles and other documents related to it, and provides technical assistance and information. It cooperates with PROCEDE. A little over half (55 percent, or 57 million ha) of social land existing in Mexico has been certified and titled through PROCEDE, which means that it is duly registered in the RAN. So this land has been delimited and the *ejidatarios* or

<sup>269</sup> Azuela, A. (2003).

<sup>270</sup> Iracheta, A. (2000).

*comuneros* who have property or user rights over the land have been given official deeds.

The Institute of Statistics, Geography and Informatics (INEGI) uses sophisticated techniques to make topographic surveys of *ejido* and *communal* land, and information with data on rights holders is processed at a level of disaggregation that enables a picture to emerge of the situation facing women on social land.

But while RAN has the task of updating the rural cadastre, it is still unable to cover all public and private land. To date, the most important inputs to establish a national cadastre of rural property have come from PROCEDE and other SRA programmes.<sup>271</sup> As a result, the cadastre covering rural areas mostly includes social and national land.

There is a relative disorder and confusion in the management of public land and real estate related to:

- The concepts themselves (i.e. no law defines the term “public service”);
- The uses allowed and the legal procedures sustaining them (concession, free loan, tenancy, expropriation, etc.);
- Which agencies must participate in the processes and what their area of competence is; and
- Lack of a complete inventory of federal property. This is important because there are federal institutions that have large amounts of land reserves that could be used for urban development, but which are at permanent risk of invasion or irregular occupation due to inadequate federal control.

The General National Assets Law of 2004 states that the Ministry of the Public Function must gather information of federal public assets and create an inventory, a cadastre, a property registry, and an information or documentation centre related to federal land and real estate. The states should

also create their own inventories, cadastres and information centre.

Each state operates a Public Property Registry Office (RPP) where private and public land must be registered. The RPP also handles all related legal or administrative acts: property titles, constitution of family patrimony, condominium regimes, tenancy leases, mortgages, assignment of inheritance rights, constitution of surface rights, expropriation decrees, urban development plans and programmes, subdivision of property, rural sharecropping contracts, etc.

Municipalities only began to operate urban cadastral offices in the 1990s. Before then such functions were performed by the state administrations.<sup>272</sup> Very few municipalities have the institutional and administrative capacity to efficiently operate an updated cadastre, a fact that has negative repercussions for collection of land taxes. The process of modernisation has been uneven: only 23 percent of states have updated cadastral legislation; 25 percent of cadastres have homogeneous and updated tax rates, and 50 percent have concluded the integration of cartographic and statistic information.<sup>273</sup> Differences are notable even in conglomerated municipalities within metropolitan areas. The greatest backlogs are found in rural municipalities.

These problems, as well as the lack of coordination with other agencies that participate in the management of urban land, sharply limit the statistical potential of the urban cadastre. Moreover, many entities exhibit a lack of interest with respect to the need to establish permanent urban land information systems.

However, CONAFOVI's programme to modernise public registries and cadastres provides an opportunity to incorporate a gender perspective to assist in the definition of public policies. This could be done by collating data on the basis

271 These programmes include: a) regularisation of agricultural or livestock settlements; b) regularisation of vacant and national land and titling of national land, mainly in highly marginalised regions inhabited by indigenous groups; c) social property expropriation and compensation; d) incorporation of social land. Tinoco, “El ordenamiento de la propiedad rural. Logros y límites de la regularización de la propiedad social y su vinculación con el catastro rural”. (2001).

272 The decentralisation of 1982 reverted this function to the municipality, which can sign agreements with the state government to have it continue managing the cadastre.

273 SEDESOL (2001b).

of sex, marital status and forms of tenure, in order to assess women's access to urban land and housing.

## 5.2 Dispute settlement mechanisms

Since 1992, land-related legal disputes have been settled at two levels: agrarian tribunals settle disputes over social and national land or smallholdings (private property); and disputes concerning private property are settled by civil courts. Most disputes arise from the lack of definition of property rights or of parcel boundaries. Civil courts handle issues related to private property in urban areas, where the lack of definition of rights becomes a social problem when it is expressed through fraud in sales of parcels, evictions and insecure tenure.

In suburban *ejidos* there are problems of legal interpretation and institutional competence, because conflicts arise related to the possession of *ejido* lands that constitute urban sites. Thus, agrarian tribunals issue rulings that affect not only the rights of peasants, but also the right to housing, mainly of poor residents, in urban areas. Unitary Agrarian Tribunals must settle conflicts over urban plots that are not yet titled.

The diversity of specialised courts (civil, penal, administrative and labour) may create confusion regarding their competence within land disputes. So the disputes should first be settled according to the nature of the action involved.<sup>274</sup> For example, cases of land deprivation, even if they concern *ejido* land, fall under the jurisdiction of penal judges, since deprivation is considered a crime. But dispute resolution jurisdiction also responds to the regime of property: federal tribunals are in charge of conflicts involving land of public domain belonging to the federation.

Inheritance disputes regarding rural private land are addressed to civil courts. Nevertheless, agrarian courts settle the same kind of problems, but in relation to *ejido* land. In these cases, individual rights over *ejido* land override inheritance or joint ownership rights stated by civil codes. For *ejido* land disputes,

<sup>274</sup> Collegiate Circuit Tribunals, Jurisprudence thesis 82/1998.

the marriages are considered as if they were under the regime of separation of goods (even if the marriage regime is legally community of property). The *ejidatario* is the only owner of *ejido* rights over the land, and these rights cannot be included as part of the common assets of the couple.

Under the Agrarian Law, the uses and customs of indigenous groups must be considered in lawsuits, provided they do not violate the provisions of the law or affect the rights of third parties. When possible, agrarian tribunals try to interpret the customs so as to make reference to them in the legal arguments of an agreement that is then passed as a ruling by the agrarian tribunal.<sup>275</sup> In any case, tribunals give priority to conciliation between parties involved, looking to solve conflicts before they go to judgements.

Land disputes in municipalities with predominantly indigenous groups immersed in conflicts or armed uprisings, such as in Oaxaca and Chiapas, are another problem. After the 1970s, agrarian problems in these areas were already evident, as the distribution of land promised by the 1910 revolution was implemented only partially and slowly. The armed conflict headed by the EZLN triggered the agrarian issue: the unsatisfied demands of peasants gave way to invasions of private land.<sup>276</sup> Hence the implementation of special solutions: nearly 240,000 ha were purchased from private owners and given to peasants' organisations, and an additional 250,000 ha were returned under rulings from the Superior Agricultural Tribunal.<sup>277</sup>

## 5.3 Property taxes

Under Art. 115 of the Constitution, municipalities are in charge of determining contributions on real property, including sectioning, division, consolidation, transfer, upgrading, and change of value. Schematically, land taxes refer to possession of real estate (land tax), transactions (income tax and tax on the acquisition of property, or tax on property

<sup>275</sup> Núñez Ramírez, R. Interview with the author, February 16 2004.

<sup>276</sup> In 1994, more than 1,000 parcels were invaded in 70 municipalities out of the 111 existing in the entity. See Pérez, M. E. (1998).

<sup>277</sup> Pérez, M. E. (1998).

transmission), urban development (taxes on land use, construction, sectioning, subdivision or fusion of parcels; contributions for improvements or increased value, co-operation works, infrastructure user fees, etc.). Except for the income tax, which is collected by the federation, other taxes go to the municipalities.

Although land tax could become the municipalities' most important source of income, it represents a very low percentage of it – 16.6 percent in the best of cases (Quintana Roo and Nuevo Leon) and 1.6 percent in the worst (Tabasco).<sup>278</sup>

Land tax is assessed on possession, regardless of the legal situation of the parcel; thus, in many cases, the residents of informal settlements built over *ejido* land may be paying this tax even if they do not have property titles.

Other taxes or duties are created at municipal level and are authorised by state congresses and vary accordingly. Most municipal finance laws contain rebates or exemptions in the payment of some fiscal obligations, for example, to encourage the construction of affordable housing or the development of industries, or to favour vulnerable groups such as the elderly. The lack of a fiscal policy with respect to real property is reflected in the lack of coordination on tax collection, and in the absence of shared information systems linking fiscal and territorial information, which would allow continued updating. All of this results in low collection rates.

Social property has a preferential treatment in fiscal terms, because it does not pay tax on property transmission the first time it is sold as a private property. In some states, *ejidos* and communities do not pay land taxes, while in others the tax to be paid is very low.<sup>279</sup>

Some *ejidos* prefer not to regularise the land for human settlements to evade paying the land tax, which obviously

278 SEDESOL (2001b).

279 Former Federal Agrarian Law (Art. 106) stated that land taxes could never exceed 5 percent of annual commercialised production of each *ejido*. An *ejido* exercising a provisional possession over land (while waiting for the execution of a presidential resolution to recognise *ejido* land) was not obligated to pay the whole amount of land tax.

promotes informality in land markets. In some suburban *ejidos* representatives collect quotas on the usufruct of land: a sort of “land tax” or monthly rent for the land, to allow the establishment of industries, warehouses or other urban uses in common areas. So *ejido* representatives authorise subdivisions of land and register them in their books; they then issue assignment documents to settlers and in exchange for a fee, they affix the seal of the Ejido Assembly to “certify the legality” of what began as an irregular occupation.<sup>280</sup>

#### 5.4 Most relevant jurisprudence

*Ejido* lands surrounding the cities are frequently sold by single *ejidatarios* to private investors or even urban speculators. These are irregular sales since the Agrarian Law (Art. 80) allows alienation of rights over *ejido* land only to members of the *ejido* group or to *vecindados*. In 2002, the 2<sup>nd</sup> Tribunal in Chihuahua stated that the *Comisariado Ejidal* (who represents the Ejido Assembly) is entitled to nullify these sales, which are in conflict not only with individual rights over the land but also with the collective ones of the *ejido* group. Art. 27 of the Constitution recognises the legal status of *ejido* and communal population groups, and it also protects their ownership of land, so the *ejido* group may initiate this legal process itself.<sup>281</sup>

Regarding marital property within the DF, the Supreme Court of Justice unanimously decided that, in case of divorce, compensation for the spouse more active in household activities may be demanded even in the case of marriages celebrated before this compensation was introduced in the civil code for the DF (June 1 2000).<sup>282</sup> The magistrates of the Supreme Court considered that when a spouse remains in charge of household or childcare, this could prevent her/him from exercising a profession or taking a job. According to the mag-

280 Fausto, A. (2003).

281 Second Collegiate Court of the XVII Circuit (XVII, 2<sup>o</sup>. 24 A). Direct *Amparo* 90/2002. Ejido Labor de Dolores, municipality and State of Chihuahua. October 25, 2002. Unanimity of votes; court reporter: Gerardo Dávila Gaona. Secretary: Hilario B. García Rivera.

282 The judges' opinions on this differed. Some declared that compensation could not take place for marriages celebrated before that date, since Art. 14 of the Constitution states that laws cannot have retroactive effects to the prejudice of any person. Supreme Court of Justice, thesis contraction 24/2004-PS.



istrates, while the separation of goods regime recognises the right of each spouse to his/her properties and the separate administration of them, it does not confer “a subjective and irremovable right that guarantees each spouse’s properties remain intact in the future”, so in the separation of goods regime “ownership rights are necessarily modulated by the need to attend basic purposes of the matrimonial institution”.

## 6 National Programmes on Urban Poverty Reduction

### 6.1 The National Development Programme

Under Art. 26 of the Constitution and the Planning Law, a national development plan must be prepared every six years. The current National Development Programme (NDP, 2001-2006) indicates the goals that will guide the various economic, social, democratic, educational, environmental, cultural, health and other aspects of national life. It states general objectives regarding the main areas of concern for national development and briefly proposes strategies derived from these objectives. The NDP should be a guide that federal agencies follow when they prepare their own work programmes. This partly explains why it is difficult to find direct references to gender, and its relationship to land issues. That is, the general policy and objectives of these areas are supposed to be found in the specific programme addressed to them.<sup>283</sup>

#### *Gender and vulnerable groups*

In the NDP 2001-2006 it is recognised that women do not enjoy the same opportunities as men, which means that inequities and discrimination still prevail, mostly regarding employment and the situation within the home. Along with women, the NDP mentions other social groups that have suffered discrimination, such as indigenous people and disabled people. According to the NDP, the rights of indigenous

people are not sufficiently recognised; they have the lowest levels of education and the highest level of child mortality. In general, the poorest regions in the country match the areas of concentration of the indigenous population.<sup>284</sup>

Recently, to address the concerns and challenges raised by the search for gender equality, the government has tried to promote institutional mechanisms to incorporate a gender perspective in the design of public policies. In this sense, the establishment of the National Institute for Women (INMUJERES), created in 2001 as an autonomous body with legal status, should be highlighted.<sup>285</sup> This institute is faced with the enormous challenge of influencing the gender mainstreaming of federal policies, programmes, regulations, guidelines and activities.

One of the strategies for increasing the welfare of excluded groups is to design programmes for the reduction of poverty and to broaden the access to basic infrastructure in highly marginalised areas. SEDESOL’s Habitat Programme (see below) addresses this strategy. Another poverty reduction programme is the Human Development Opportunities Programme, launched in 2002, which targets families in extreme poverty, providing support through scholarships, basic health services, food supplements and cash.

#### *Urban land*

The most specific references to urban land are found within the section related to economic growth, as part of an objective to try to encourage an equitable regional development and urban development planning. In this regard, irregular settlements are supposed to discourage economic activities,

<sup>284</sup> In another section of the document, it is stated: “The analysis of groups excluded from development signals that the extreme cases of poverty are basically concentrated in the indigenous population and particularly in women” (p. 116).

<sup>285</sup> The main goals of this institute are to “promote and foster conditions to enable non-discrimination, equal opportunities and treatment between the genders, as well as the full exercise of the rights of women and their equitable participation in the political, cultural, economic and social life of the country”. The institute gathers the experiences of the National Commission for Women, which was created in 1998 as a part of the Ministry of Interior and is now substituted by INMUJERES.

<sup>283</sup> For example, the National Programme on Equal Opportunities and Non-Discrimination against Women (*Proequidad*) implemented by INMUJERES. In turn, SEDESOL is responsible for the National Social Development Programme, the Sector Housing Programme and the National Urban Development and Regional Planning Programme.

while contributing to high and unplanned costs for urban services.<sup>286</sup>

Other strategies that have indirect connections to urban land are those related to housing. While this strategy is part of a package to improve education and welfare, it is also focused on economic concerns (“to consolidate housing market in order to transform housing sector in an engine of development”).<sup>287</sup> So authorities must encourage planning projects, public services, building and housing improvement that will be attractive to public and private investors. Access to adequate housing is conceived by means of the existence of credits, public or private.

### *Rural land*

Rural land is briefly mentioned in the NDP, not under headings like fighting poverty or agriculture, but as part of broader objectives of social development, addressed to improve levels of education and welfare and to foster citizens’ trust in government institutions. Within these strategies, training and organisation programmes are proposed to educate peasants about their rights to land. There is also mention of necessary coordination between the three levels of government to support people in rural areas and to ensure that peasants will be the main beneficiaries when land is designated for urban development.<sup>288</sup> The document also says that actions will be taken that will lead to security of tenure for the rural population and will help to settle land disputes.<sup>289</sup>

## 6.2 Programmes related to urban poverty and gender

The Habitat Programme, launched in 2003 by SEDESOL, seeks to combine social policy objectives with those of regional planning and urban development policies. It was conceived as a poverty reduction programme to be implemented in urban areas. The idea is to promote social services and

community development activities, improving infrastructure, equipment and services in some 300 marginal areas located in 54 cities. The programme is aimed at poor families through seven modalities, two of them directly related to land and gender:

- (1) Overcoming urban poverty: aimed at building capacity (the “human capital”) through general education courses, training workshops for productive activities, preventative health programmes, food support, etc.
- (2) Opportunities for women: aimed at supporting women with activities that contribute to the development of their skills, improving their work performance or their incorporation into productive activities and generally improving the quality of their lives. An important part of this programme is the establishment of low-cost day care centres, which give women better chances of finding paid jobs.
- (3) Upgrading of neighbourhoods: introducing basic infrastructure in urban marginal areas. In 2003, this activity was allocated slightly over half of all the resources of the Habitat Programme, mainly for the introduction of drinking water, sanitation and paving works.
- (4) Land reserves: provides support to selected cities and metropolitan areas in the acquisition of land.
- (5) Regional planning: aimed at lowering the vulnerability of the population residing in selected neighbourhoods and areas faced with threats of natural origin.
- (6) Housing development agencies: aimed at promoting the development of spaces that gather the relevant agents of urban and social development to foster local development initiatives and practices, and strategic city projects.
- (7) Improvement of urban facilities and the urban image: a new modality that will focus on the renewal of whole city areas, where basic needs are covered but which require maintenance or renewal of the urban setting.

The Habitat Programme was created recently and is still in progress; for 2004 several strategies were being redesigned and others were being planned, according to the needs or requests of the communities. In addition to assessments of its impact, the programme should be revised in light of other

<sup>286</sup> NDP, p. 121.

<sup>287</sup> *Ibid.*, p. 82.

<sup>288</sup> NDP, p. 83.

<sup>289</sup> NDP, p. 95.

recent initiatives focused on fighting poverty, such as the Social Development Law enacted in late 2003.

## 7 Implementation of land, housing and property rights

### 7.1 Forced evictions

There are no official figures concerning those whose right to housing is threatened, or who lose their properties due to displacements and evictions. It is estimated that between 1997 and 1999, contingencies and natural phenomena (hurricanes, fires, explosions, earthquakes) caused the displacement of more than 154,000 people, leaving 84,000 of them, or almost 19,000 families, homeless. Evictions of "invasions" of ecological areas or reserves affected 11,000 families, which can be added to 5,000 families evicted for tenancy reasons in Mexico City. At the end of the 20<sup>th</sup> century, armed conflicts caused the displacement of some 20,000 people, mostly indigenous.<sup>290</sup>

In Chiapas, the construction of infrastructure such as hydro-electric dams, oil wells and roads in the second half of the 20<sup>th</sup> century resulted in significant displacements of peasants and indigenous groups. There have also been evictions in the jungle region arising from political and macroeconomic factors, and Zapatista Indians have denounced violent land disposessions perpetrated by paramilitary groups and PRI sympathisers who act under the protection of the state police – and even of the federal army.<sup>291</sup>

### 7.2 Informal settlement regularisation

Regularisation of informal settlements has to deal with two kinds of procedures: formalising the transmission of land rights to the occupants and recognising the settlement as part of an urban area that will receive the minimal level of urban services. Nevertheless, regularisation policies are focused on land titling, which is usually not accompanied by ac-

tions to supply or improve basic services and infrastructure. Thus, tenure regularisation programmes rely more on the management of administrative and legal procedures than on financial resources.<sup>292</sup> In general, regularisation policies and programmes are closely linked to the type of land involved.

#### *Public land*

Regularisation procedures for informal settlements on public land are an undefined area, because such initiative depends on the institution that owns or manages the land, and because all three levels of government are involved. So regularisation policies would be subject to the priority accorded by each institution or government, which in turn could be related to settlers' claims. Since 2001, SEDESOL has been in charge of preparing reports to determine the feasibility of incorporation of social land, national land and land owned by federal institutions to urban development. This incorporation implies actions for tenure regularisation and for the creation of land reserves, both tasks having been assigned to CORETT. In the case of regularisation, the prevailing approach seems to be one of excising land from the public property regime (which means it is inalienable); thus land may be sold or donated to the occupants and titled to them. Formal tenure types other than ownership (e.g., rent, concession, right of surface, etc.) are not common, although collective titling to housing cooperatives or settlers' associations has been used.

#### *Private land*

There are no federal programmes, institutions or funds addressed to the regularisation of tenure on private property, since this is mostly regulated by state laws. Each state may have a specific entity in charge of applying, coordinating or supervising regularisation programmes. Three main approaches prevail with regard to tenure regularisation:<sup>293</sup> negotiation with landowners, court decisions and, if problems prevent these two approaches, expropriation.<sup>294</sup>

290 Casa y Ciudad, A. C. (1999).

291 LRAN, (Undated).

292 Duhau, E. (1998).

293 Ibid.

294 Putting aside the supremacy of the public interest stated in the Constitution, because in many cases landowners contributed to the creation of an informal settlement and benefit from it. Duhau, E. (1998).

The diversity of legal situations facing informal settlements built on private land makes massive regularisation programmes and efficient management by local authorities difficult to implement. Scattered urban development activities arising from various sector policies are often executed within the same municipality with little coordination between them and even without first regularising tenure.<sup>295</sup> In general, local authorities lack specialised staff to solve property and urban conflicts, and the continuity of programmes and personnel are threatened when governments change every three or six years.

### *Social land*

The regularisation of tenure in informal settlements is legally recognised as being in the public interest, so expropriation of social land is regularly applied by CORETT to benefit settlers. Until 1992, this was the only way to regularise tenure, but later two new possibilities emerged along with PROCEDE based on conciliation procedures: the privatisation of *ejido* parcels already occupied, and the designation of social land occupied as part of the urbanised area. Two elements characterise regularisation of social land: a sort of protectionism of agrarian groups, by exonerating them from their responsibilities with respect to violations of agrarian and urban laws;<sup>296</sup> and the centralisation of programmes, decisions and resources in the hands of federal authorities, so that implementation is top-down and reduces participation of local governments to a minimum.

### *Expropriation by CORETT*

Since its creation CORETT has executed its regularisation programme on social land, through expropriations in the public interest. The main steps in the process are:<sup>297</sup>

- (1) CORETT identifies and defines the area to be regularised, which must be at least 80 percent occupied. This means the settlement should be consolidated and

should have permanent constructions; remaining unoccupied land or plots must be sparse. Also, the area to be regularised should be considered by municipal land use plans as adequate for urban development, and surfaces presenting natural or physical risks will be excluded.

- (2) CORETT prepares a dossier with basic information on the settlement: the time it began, average size of plots, density, type of constructions, existing services, unoccupied land or plots. CABIN determines compensation to be paid to *ejidatarios* or *comuneros*, based on the commercial value of the land.<sup>298</sup> Compensation will be finally disbursed by settlers, since each one of them must pay a fee for regularising his/her plot, according to the size and the type of construction. So when *ejidatarios* or *comuneros* participate in irregular sales, settlers would have paid them twice for their plots.
- (3) The technical dossier prepared by CORETT supports the official request the SRA will address to the president, requesting him/her to issue an expropriation decree of the area to be regularised. In many cases, the area expropriated is just a part of the total land of an *ejido* or community, so agrarian groups remain involved.<sup>299</sup>
- (4) Expropriation can be reverted if within the next five years the public interest is not verified;<sup>300</sup> FIFONAFE may then proceed with restitution of the land. Related to this, most problems concern expropriations for land reserves or urban infrastructure developments of social land that is not yet occupied. All the same, there is always the risk of opposition from those affected and dissatisfied with the amount of the compensation, and expropriation can be challenged both by judicial and extra-judicial means.<sup>301</sup>
- (5) Expropriation decrees are issued in the name of CORETT, which becomes the owner of the land. Next,

<sup>298</sup> According to Federal Expropriation Law, Art. 10. However, various problems could arise regarding compensation, for example when the appraisal refers to agricultural use instead of urban use, which compensation would be much higher. In this sense, intermediate approaches have been tried, including "concerted" expropriation, agreeing beforehand with *ejidatarios* the amount of the indemnity or other compensation, so as to speed up regularisation procedures.

<sup>299</sup> Federal Expropriation Law, Art. 20.

<sup>300</sup> Federal Expropriation Law, Art. 9.

<sup>301</sup> As mentioned before, any *amparo* against rulings by agrarian courts are heard by federal civil tribunals. The agrarian tribunals deal with the expropriation cases in first instance and with appeals related to these.

<sup>295</sup> Fausto, A. (2003).

<sup>296</sup> See Azuela, A. (1999:116 & 125). Although *ejidatarios* or *comuneros* sold inalienable land, Agrarian Law declares any land transaction inexistent. State and municipal authorities have never dared to apply sanctions to agrarian groups for the multiple contraventions to urban laws: subdividing and selling land without urban services, unpaid land taxes and other related to transactions and titling, etc.

<sup>297</sup> See SEDESOL (2002).

CORETT issues individual property titles to each settler and inscribes them in the public registry office. Thus settlers will have individual ownership rights and each plot becomes private property. The regularisation fee is usually made to CORETT in deferred payments.

As of 2001, CORETT had expropriated close to 137,000 ha of social land for the regularisation of human settlements.<sup>302</sup> Different assessments of this programme have been offered. One view is that tenure regularisation is not accompanied by any official commitment to provide urban services; that systematic land regularisation encourages the informal social land market; and that land titling has been used for obtaining political benefits, etc. Another view is that the regularisation of tenure on social land is the real unwritten federal land policy targeting low-income persons.

#### *Conciliation procedures: regularisation by PROCEDE*

PROCEDE offers two alternatives to regularisation:

- (1) On parcelled land already occupied by informal settlements, *ejidatarios* are invited to adopt full ownership over their parcels. Once in possession of property titles, the regularisation commission or entity of state government can assist them in issuing deeds to each possessor, as for private land regularisation.
- (2) Via conciliation, in order to have agrarian groups certify land rights to informal settlers. If the *ejido* or community assembly recognise areas irregularly occupied as urbanised area, titles for urban plots can be issued to settlers (as if they were *avecindados*, who have rights over social land).

As is generally true for regularisation programmes, collective approaches are not promoted. Both approaches mentioned above may contemplate compensation for agrarian groups as part of the negotiations with local authorities and settlers.

Local governments have traditionally shown little interest and leadership when it comes to regularisation programmes regarding social land, for this is perceived as the domain

<sup>302</sup> SEDESOL (2001b). Over 40 percent of this area was expropriated between 1986 and 1992, as part of the strategy of the National Solidarity Programme, aimed at fighting poverty, which tried to soften the negative effects of economic liberalisation.

of federal agrarian authorities. And it is true in practice, as evidenced by the lack of true decentralisation of resources channelled to programmes like PROCEDE.<sup>303</sup>

According to the different applicable laws, the main authorities responsible for handling informal settlements on social land are:

- The Ejido Assembly or community assembly, which is entitled to assign and certify *ejido* rights over social land. This is done through PROCEDE to regularise social land tenure; and
- The municipality, which is responsible for urban development and may intervene in settlement regularisation, without distinction as to the type of land.

If municipalities had sufficient funding, technical support and negotiation capacities, they could implement complete regularisation programmes. From a broad perspective, such regularisation would involve the provision of property titles to settlers (substituting PROCEDE with a municipal-led certification programme on social land), infrastructure and urban services, housing improvement, relocation of informal settlements in risk areas, etc. This would undoubtedly require great efforts and improved coordination between institutions involved in land management and housing, but it would result in an effective decentralisation of federal powers.

#### *Land reserves for popular housing*

From 1995 to 2000, 150,000 ha of land were considered necessary for the future growth of localities included in a federal programme called 100 Cities, which covered four metropolitan areas and 116 medium-sized cities (mostly social land). CORETT was in charge of handling the orderly incorporation of this land into urban development through expropriations within the Social Land Incorporation Programme (PISO, which in turn relied heavily on PROCEDE).

The results of PISO show that the possibility of establishing public land reserves is surpassed by tenure regularisation actions, especially the privatisation of *ejido* land: 102,692 ha

<sup>303</sup> PROCEDE mobilises not only economic resources, but also human, technical, organisational. As noted before, important federal institutions participate in this programme: INEGI, RAN, SRA, PA.

of *ejido* land changed tenure between 1995 and 2000, but only 17,579 ha became land reserves – an amount that would hardly suffice to meet the demand for land for social housing for six months. One-fourth of *ejido* land (25,675 ha) was regularised and a little over half (53,044 ha) became private property; the rest (6,394 ha) was allocated to real property *ejido* associations.<sup>304</sup>

During the 2001-2006 period, it was estimated that 95,000 ha of developed land (equal to 1.3 times the urban area of the DF) would be needed to match the growth of Mexico's largest cities. CORETT now operates the Free Land Programme (*Suelo Libre*), to facilitate the creation of public land reserves through "concerted" expropriations<sup>305</sup> with *ejidatarios* and *comuneros*. Nevertheless, the possibilities of access to land by the poor through legal means are increasingly reduced. The example shown above indicates that most of the *ejido* land surrounding the cities is becoming private property,<sup>306</sup> instead of having been acquired by the government as public land reserves to build popular housing. There are signs that, in many cases, parcels over which full ownership is sought have already been promised to private investors.<sup>307</sup>

The reality is that institutional and economic resources are still mainly aimed at regularising human settlements in *ejido* areas, so that preventive actions via early offers of public land reserves to poor people are left on paper. In 2002 and 2003, the share of regularised land and land incorporated as reserve was 4-5:1.<sup>308</sup>

304 SEDESOL (2001a).

305 Land expropriation and compensation are previously negotiated with *ejidos*, to prevent conflicts that fall under courts jurisdiction. Three conditions are asked to implement Free Land Programme: a) the consent of local government, b) the agreement of the *ejidatarios* or *comuneros* and c) a final user, to whom CORETT will sell the expropriated land. This user could be a local government wishing to have its land reserves or a private developer.

306 Once becoming private property, land can be legally sold, so the prices would be higher than those obtained in the informal market, selling *ejido* land. Then, it would be comprehensive that *ejidatarios* wanted to become private owners, which will reduce the supply of *ejido* land to sell in informal land market (the main type of land popular sectors can afford).

307 See Azuela, A. (2002).

308 Data from SEDESOL, (2003 & 2001b). In 2003, support was given to the incorporation of 2,450 ha as land reserves and the regularisation of 13,750 ha (SEDESOL, 2003).

After 20 years and in spite of unimpressive results,<sup>309</sup> the creation of public land reserves maintains its initial conception and operating procedures: it targets *ejido* land; it is coordinated by federal agencies; some execution mechanisms depend on agrarian sector institutions; the funds available do not correspond to the demand for land; there is no clear connection with other financing programmes to support the construction or extension of popular houses or the improvement of infrastructure and services; and so on. In cities like Colima, Morelia and Aguascalientes, public land reserves could have accommodated 20 percent to 30 percent of urban growth<sup>310</sup> before 2000, while in the Guadalajara metropolitan area this proportion is less than 3 percent.<sup>311</sup> There are exceptions, such as the city of Aguascalientes, which in the 1980s managed to successfully implement a land reserve and housing construction policy capable of generating a permanent supply of land for low-income population that discouraged the proliferation of informal settlements.<sup>312</sup> Legal instruments to support the constitution of public land reserves have not evolved either, and in fact instruments such as the pre-emption right laid down in the LGAH have hardly been used.

Conversely, land reserves and planning in general have focused on marginal land around cities, completely neglecting the optimisation of inner areas that have already been developed. No steps have been taken to fight land hoarding and accumulation of vacant urban spaces inside cities, which represent an important underutilised realty stock that could

309 See Fausto, A. (1998); Duahu, E. (1998). Iracheta, A. (2000).

310 Though we must say that in some cases, expropriation procedures for constituting land reserves out of *ejido* land took many years like in Morelia. So, by the time the land was officially expropriated as land reserve, it was already occupied with irregular settlements.

311 Fausto, A. (1998).

312 Only 1 percent of the population lived in informal settlements, occupying nearly 4 percent of developed areas; in other cities, these percentages may reach 50 percent. In Aguascalientes, the expropriation of *ejido* land for housing, infrastructure and urban services was four times greater than expropriations for the regularisation of land tenure. Jimenez, E. (2000).

represent 10 percent or 40 percent of the surface of cities like Morelia and Mazatlan, respectively.<sup>313</sup>

## 8 State Laws and Policies

### 8.1 State of Jalisco: background

Approximately 6.5 percent of all Mexicans live in Jalisco, the country's fourth most populous state with an estimated population of 6,322,000 (2000). The state capital, Guadalajara, is one of the three largest cities outside the DF. In 2000, the Metropolitan Area of Guadalajara (AMG, consisting of eight municipalities) was home to nearly 3.5 million people. One-fourth of all neighbourhoods in the AMG and 18 percent of its developed area (approximately 300 neighbourhoods extending over 8,402 ha) are informal settlements built on social and private land. Of these, at least 87 settlements with 480,000 inhabitants, extending over 4,000 ha, are surrounded by a particularly adverse physical environment. They survive in precarious or vulnerable settlements, with little or no essential services such as drinking water or sanitation and often they are located in high-risk areas, resulting in insecure land tenure.<sup>314</sup>

Local laws and policies have done little to alleviate these problems or to guarantee suitable and decent housing for poor and vulnerable groups. A few legal and institutional advances at state level – such as the enactment of Decree 16664 to regularise settlements on private land, and the creation of the Urban Development Attorney's Office – contrast with the outdated and inefficient housing proposals aimed at popular sectors, which for decades have been limited to the regularisation of ownership, progressive urbanisation and establishment of land reserves.

In the state of Jalisco, policies on informal settlements in effect since the 1990s are basically scattered among three instruments: the State Urban Development Law, enacted in

1993; the Housing Law; and Decree 16664 on the regularisation of settlements on private property (1997).

### 8.2 The State Urban Development Law

The chapter in the State Urban Development Law (LDU) related to land for urban development and housing is one of the shortest. The scarcity of land suitable for development in the AMG has been an obstacle to benefiting from federal housing subsidy programmes, which have a ceiling for land purchases. Provisions to establish land reserves – contained in national guidelines and focused on *ejido* land – via the use of pre-emption rights have been a dead letter in the case of social housing policies.

The Urban Development Law contains other popular sector housing proposals, including progressive developments (sites and services, called *acciones urbanísticas por objetivo social*), in which the gradual introduction of infrastructure would mostly be financed by the beneficiaries themselves via monthly quotas. Thus, the law updates progressive developments built during the second half of the 1980s, some encouraged by public agencies and others by individuals. Overall, they represented an alternative – with very limited impact – for people excluded from the formal housing supply to access land. However, as they were disconnected from other urban and self-building support programmes, they duplicated many of the problems blamed on the irregular occupation of land: marginal areas, with deficient or non-existent services and infrastructure; problems in the titling of plots; and low rates of occupation and consolidation of developments. Unfortunately, neither the LDU nor the Housing Law offer proposals to prevent repetition of the same mistakes.

### 8.3 The Housing Law

The Housing Law for the State enacted in 2000 is an example of the official position of “non-recognition” of irregularity, which is surprising in view of the magnitude of this problem. In practice, regularisation programmes in Jalisco are mostly

<sup>313</sup> Fausto, A. (2005).

<sup>314</sup> Fausto, A. (2003).

focused on private land, although this may not be specified in state laws.

In the Housing Law, the regulation of self-help housing and assistance, and upgrading of dwellings and plots with services, is not primarily focused on informal areas. Rather it explicitly targets social or low-cost houses (finished houses for income groups earning three to 10 times the minimum salary). The law has no provisions regarding rental housing. Likewise, other proposals related to productive incentives, building materials, land purchase and technical assistance do not suggest any commitment to unprotected groups relegated from housing market – because under this law these groups do not exist.

This serious omission stands out when compared with other legislation, such as that of the DF (also enacted in 2000), which stipulates the provision of assistance to vulnerable low-income populations in risk situations. In the law, the term “vulnerable population” includes adults, disabled persons, women heads of household, single mothers, and indigenous groups. The law also prohibits other forms of discrimination, by pointing out that the right to adequate housing must not be hindered for economic, social, ethnic, age, gender, political or religious reasons. Moreover, it reflects the experience in self-management practices of social housing over the past three decades by incorporating a chapter related to the social production of housing and establishing mechanisms for the participation of social organisations and technical assistance agencies (NGOs, cooperatives, associations) in public housing programmes.

#### 8.4 Decree 16664 on the regularisation of settlements on private property

In the mid-1990s, demands for services grew considerably, as did possession problems arising from irregular sales of privately owned plots. As a result, in September 1997, Decree

16664 was issued to regularise settlements on private land.<sup>315</sup> The Decree has several points in its favour:<sup>316</sup>

- (1) It analyses irregularity from three viewpoints: technical, legal and administrative. This makes it possible to assess the feasibility of regularisation in an integrated way that involves not only property title deeds but also urban improvement works.
- (2) The responsibility of municipal governments to implement regulations is tacitly acknowledged. Hence, the creation of a municipal committee for the regularisation of settlements has been institutionalised, with powers to call on other municipal or state entities linked to the regularisation process, mainly concerning the provision of services and infrastructure. State governments provide technical support for the development of an inventory of irregular settlements in each municipality.
- (3) By acknowledging a de facto situation, it can, in some cases, relax the strict enforcement of fiscal, administrative, civil, and urban rules and laws.
- (4) The decree is based on the principle that there must be shared responsibility among agents who contribute, with their actions or their omissions, to create an irregular situation.<sup>317</sup> So it concerns those directly involved in irregular practices: developers, land sellers and owners, buyers and settlers.
- (5) It tries to foster social participation, by allowing neighbours – organised in associations – to promote the regularisation of their settlements and to follow up the process, thus mitigating the problems caused by changes of officials at the end of the mandate of the municipal administration (every three years). Also, the owner of land occupied by an informal settlement may request its regularisation, but if his/her consent cannot

<sup>315</sup> The original decree was valid for a two-year period, which did not yield sufficient results in view of the amount of settlements to be regularised. Therefore this period was extended by a new decree issued on September 17 2002.

<sup>316</sup> A more detailed analysis made in cooperation with Martin Marquez is included in Fausto, A. (1999).

<sup>317</sup> It is worth noting that there are practically no land invasions in the AMG, but an informal market with buyers and sellers, although fraudulent actions are often committed.



be obtained, the authorities may resort to expropriation.

In practice, it is difficult to realise all these benefits, and the regularisation of a private settlement generally takes up to two years.

### 8.5 The Urban Development Attorney's Office (PRODEUR)

Established on the basis of the LDU of 1993, this institution began working in 1995. PRODEUR is a decentralised public body of the executive, in charge of guiding and defending citizens in the enforcement of urban legislation, overseeing its adequate execution and promoting the settlement of urbanisation issues. PRODEUR has no binding or conflict settlement authority but it can file complaints, request the annulment of actions and the enforcement of penalties, represent citizens before the authorities and make recommendations to enforce provisions that regulate and direct urban development, turning it into a sort of urban ombudsman.

Despite being a pioneering institution at national level,<sup>318</sup> PRODEUR has failed to root itself in local society in terms of its ombudsman-type role. Only very rarely has this office issued an opinion in the most important debates in the Guadalajara metropolitan area or in the state of Jalisco. The fact that citizens do not openly and persistently request PRODEUR's intervention in defence of their rights and in large urban conflicts reveals a lack of knowledge or a lack of confidence in the abilities of this institution.

On the other hand, PRODEUR has addressed informal settlements in some important ways, mainly in the training of municipal authorities and the provision of technical support to regularisation operations. Also, it plays a key role in the collection and custody of a statewide inventory of informal settlements on private land, offering a guarantee of continuity in regularisation procedures that would otherwise

<sup>318</sup> Only Jalisco has such an institution. The State of Mexico has a special Attorney's Office for crimes committed by *fraccionadores*. In other states, there may be a sort of Social Attorney's Office (as in the DF) that provides guidance and support to the population regarding housing and urban issues.

be threatened when a new municipal administration takes office.<sup>319</sup>

## 9 Best Practices <sup>320</sup>

### 9.1 PROMEJORVI, DF <sup>321</sup>

In 2001, the government of the DF presented the Spatially Integrated Social Development Programme, aimed at bringing actions and resources to popular settlements, neighbourhoods, villages and housing units to assist the population of the DF, especially residents living in medium, high and very high marginality areas. This is the basis of a programme that grants loans to low-income families for the extension and upgrading of dwellings (PROMEJORVI). This programme is carried out by the Housing Institute (INVI).

PROMEJORVI works on plots not affected by high physical risks, on urban land that is regularised or in process of regularisation. It provides support to individual housing self-help processes. Its main goal is to address issues of overcrowding, family enlargement, precarious or provisional housing, supporting family and neighbourhood sustainability. It has two modalities: (a) housing improvement and extension – replacing or reinforcing structural elements in dwellings, and improving sanitation conditions or habitability in general; and (b) new housing, mainly construction of two- and three-storey houses to replace precarious dwellings and/or de facto subdivisions on plots and parcels owned by low-income families in poor neighbourhoods.

One of the outstanding features of the programme is its target population: adults of 64 years or older, indigenous and disabled persons, women head of households and single mothers,<sup>322</sup> – in other words, groups that in practice

<sup>319</sup> Fausto, A. (2003).

<sup>320</sup> This section was prepared by Noemi Briseño, Social Research Coordinator of CENVI.

<sup>321</sup> A more detailed study of this programme, prepared with Oscar Caloca, is included in Massolo, A. (2004).

<sup>322</sup> To access a loan from PROMEJORVI, women must: a) have the deeds of the land or house where the credit will be used, or a written authorisation of the owner; b) have an average income of up to three times the minimum salary or up to six times the

are excluded from most housing programmes. In 2001, PROMEJORVI reached its goal of 18,395 interventions; in 2002 the goal rose to 23,443; in 2003 it reached a total of 60,000 interventions of extension, upgrading and building of new houses. It invested 5 billion pesos over the three-year period. No accurate data concerning total loans granted to female heads of households or single mothers is available; official figures mention only that 56 percent of total loans correspond to women (specifying that in some cases they are just lending their name to a family relative).

CENVI (Centre for Housing and Urban Studies, an NGO) participates in the programme by providing technical assistance in participatory designs and in the execution of the works. Although PROMEJORVI helps improve the quality of life of a significant number of women, there is still a considerable backlog in the design of a housing policy to assist single mothers and female heads of household in particular, as they are part of a framework that includes other priority groups. However, we should stress that PROMEJORVI is a significant effort by the DF government to address the low quality of housing for single mothers and female heads of household.

## 9.2 Housing programme for peri-urban areas in the Xalapa, Veracruz

This project emerged to improve housing, urban conditions and the quality of life of residents of 80 informal settlements in the periphery of the city of Xalapa in the state of Veracruz, where housing is precarious and neighbourhoods lack urban services.<sup>323</sup> These areas grew mostly due to rural migration; in 1991 almost 46 percent of the 350,000 inhabitants of Xalapa lived in the periphery. Entities that have cooperated in this project are the Union of Settlers and Tenants Requesting Housing in Veracruz (UCISV-VER, a community-based organisation), CENVI, the municipal government of Xalapa,

minimum salary if the family salary is considered (not necessarily verifiable); c) repay the loan within max. eight years, in payments that will be adjusted according to the minimum salary in effect, without interest. Loans for new housing amount to 72,000 pesos and 32,000 pesos for improvement.

323 In 1998, this project was granted the Dubai International Award for Best Practices to Improve Living Environment.

and the Urban Development Secretariat of the State of Veracruz (SEDUVER).

The project began with the implementation of an urbanisation plan, which included all the settlements and used participatory planning methods. The urbanisation plan ended in April 1991 with the participation of most of the 80 informal settlements, but particularly of women living in 18 marginal settlements. Their requests included the provision of land suitable for housing, water, drainage and electricity services, schools, milk collection centres, mobile markets, transportation, churches; all related to improving their everyday activities. UCISV-VER and CENVI obtained subsidies from the Dutch development aid agency NOVIB to give a series of training workshops to local leaders on housing and planning issues. The initial plan has grown considerably and now includes a housing project, a savings and loan plan managed by and for women (*Tanda-Loan*, see below) and a project for community services, food and education.

In 1992, the government of the state of Veracruz gave land for the construction of cheap housing, as provided in the urbanisation plan. Approximately 1,350 plots were granted in an area called Xalapa 2000. In September 1993, UCISV-VER submitted a draft Human Settlements Law to the state government. The draft, which later became law, included the establishment of land reserves for subsidised housing, land regularisation, sustainable environment alternatives for urban services, and community participation in planning land uses. In 1993, negotiations were carried out with municipal authorities for the establishment of a low-cost housing programme on a state land reserve, targeting the population settled in areas unsuitable for living. In May 1996 UCIS-VER and CENVI inaugurated a prototype housing unit. It was built on reserves land, with financing from those organisations (through the British funding agency Homeless International) and with the economic assistance of state authorities.

However, families lack savings with which to build a house on land allocated to them, so in 1997, UCIS-VER and CENVI organised a popular savings and loan system, addressed to

women, who administer it. The *Tanda*-Loan system is based on a savings method, which is a Mexican tradition, common among low-income groups called "*Tanda*" (in the sense of turn or batch). In this case, a group of seven people agree to save a specific amount of money over terms according to their income; the number of terms equals the number of participants. At the end of each term, one participant collects the total sum saved during the entire period. That participant continues paying his/her part until all members collect their savings – usually without problems because payments are affordable to participants.

At the end of the *Tanda*, UCISV-VER and CENVI lend the equivalent of one and a half times their total savings to each participant, and the state authority grants twice that in kind (building materials). CENVI and UCISV-VER loans must be reimbursed in full, via the participation of members in another *tanda*, while the state contribution is a subsidy. The success achieved with the first group of the *Tanda*-Loans led to a second phase: in 1998 the programme financed and carried out 49 housing projects; in 1999 the number of families assisted grew to 98, adding a total of 154 families assisted by the programme in three years. In 2003, nearly 700 families had joined the programme.<sup>324</sup>

In the first phase, there was a proposal to foster the construction of living spaces of approximately 16 m<sup>2</sup>, built from the *Tanda*-loans. However, the needs expressed by applicant families, their own and borrowed resources, and the various conditions of the structures existing in each plot led to adjustments and the proposal for a flexible model to support progressive housing (extension, development and upgrading of existing constructions). The amount of funds per project has been also adjusted, and thanks to the financial resources obtained from international cooperation and increased public budget resources allocated to social development, the financial support provided to participating families has also increased, along with the number of families that have benefited. Over eight years, management of the project has improved by incorporating administrative and control

<sup>324</sup> Information for the 2000-2003 period is being systematized by CENVI and UCISV-VER.

mechanisms. The experience and capability of technicians (planners and developers) and managers from UCIS-VER has grown. And the financial resources of the project managed by UCIS-VER nearly reached \$1 million.

The significance of this experience is that, traditionally, most participants in urban and housing programmes are women. For this reason, a loan programme targeting women was designed, reviving cultural practices deeply rooted among them such as the *Tanda*-Loan model. Likewise, the active participation of the community through its leaders (mostly women) and their financial commitment has ensured its continuity. In addition, its links with local and federal authorities bode well for the future.

Table 9.1 *Tanda-Loan financial model*

<b>PARTICIPANTS (women)</b>	<b>Contribution \$</b>	<b>Percentage</b>
Families assisted (a)	1,600	18.4
Revolving Fund Ucisv-Ver/Cenvi (b)	2,400	27.6
Local government (c)		
State	4,000	46.0
Municipal	700	8.0
<b>Total by housing project (d)</b>	<b>8,700</b>	<b>100</b>

Notes:

- (1) Each family saves \$200 every two weeks for eight weeks.
- (2) Contribution of revolving fund is recovered 100 percent in bimonthly payments after the housing project is finished.
- (3) Contributions of local government are refunded after recovering the revolving fund, at 50 percent for the first two years of the programme and at 70 percent for the remaining period.
- (4) Denominated in Mexican pesos.

## 10 Conclusions

Women's rights to land ownership, possession, adequate housing and inheritance are contained in a range of Mexican laws. However, the principles of coordination are not always complied with in the application of these laws and ensuing

policies and programmes, leading to confusion, legal and implementation vacuums, institutional inefficiency and corruption. In addition, these laws generally do not clearly indicate that women have equal rights with men in terms of land and housing; worse still, they fail to acknowledge that women have disadvantages with respect to access to these assets.

But even if laws could be amended to include express declarations of equality and non-discrimination, deeply rooted behaviours, customs and social norms persist that interfere with their adequate application and enforcement. Such behaviours and attitudes are manifest not only among citizens – both men and women – but also in the culture of the public service.

Thus, security of housing and land tenure of women can be doubly threatened by external factors or intra-family conflicts. Awareness of women's rights with respect to family assets, and mechanisms existing for their defence, are also neglected. The existence of NGOs assisting poor people and women are not enough; even if some of them support self-help housing and community organisation, they can hardly cover legal areas related to tenure, land family assets, housing and urbanisation.

The new federal Housing Law presents advances in the recognition of the rights of vulnerable sectors, the prevention of discriminatory practices and the importance of social housing production. However, it ignores crucial issues like security of tenure of housing and land, or measures against forced evictions and displacements. Advances made in housing legislation and programmes to focus on the poor still have to be accompanied by an effective reallocation of economic resources.

There are notorious inconsistencies between civil, urban, agrarian, and finance legislation concerning ownership, which are exacerbated in informal settlements. While some laws recognise rights of possession, use or usufruct to implement their programmes and even to settle conflicts, others

are based only on the right of ownership. This undoubtedly undermines the efficiency of the programmes.

Land management programmes operate in a fragmented fashion and with uneven results, particularly those that depend on local authorities. Unlike CORETT's regularisation programme – which for three decades has worked efficiently and continuously – programmes for the establishment of land reserves have been characterised by fragmented or weak implementation, lack of institutional support and ineffective financial mechanisms.

At the municipal level, the lack of initiatives to implement regularisation programmes is due not only to a shortage of economic resources, but also to management deficiencies. This includes the inability to establish and stick to medium- and long-term policies. Since municipal administrations have three years in office, staff competent in regularisation programmes are often dismissed after three years. A reluctance to share information among different departments often characterises municipal administrations, as does the low importance granted by officials to the creation and updating of databases.

On the other hand, housing planning and management, ownership and urban development rules are so complex that, rather than supporting citizen participation, they become a new form of exclusion and control if no resources are available to hire specialists. Poor residents are at the mercy of intermediaries or under the guidance of leaders who, in addition to flaunting their rights, manage to evade the rules. In such cases, the application of a law that should be based on principles of citizen equality is turned into a method for promoting narrow self-interest.

## 11 Recommendations

### 11.1 Legislation on land tenure and housing

The Housing Law should be amended to include provisions on security of tenure and rental housing, which should also

be recognised as an alternative for disadvantaged sectors of the population, particularly women.

Housing laws of the various states will need to be adjusted accordingly. This begins with the explicit recognition of women's equal rights and prohibition of discrimination of vulnerable groups. Each state should also revise building standards, administrative regulations, titling costs and so on to make them accessible for the social production of housing and to encourage the participation of the private sector in the housing market addressed to the low-income population.

Federal and state laws must be reviewed to harmonise recognised tenure forms in urbanised areas, associated rights and documents that grant them validity, such as in the case of possession. At the federal level, the LGAH, LGBN, Housing Law, Agrarian Law and CCF should provide guidelines that would later be defined in corresponding state laws.

The possibility of implementing alternative secure tenure forms to reduce the cost of housing projects should be foreseen, especially in intra-urban areas. For example, in entities where the civil code allows for the disassociation of land ownership rights from use or building rights (as for right of surface).

In a similar vein, the right of possession and the legal procedures to determine this right should be evaluated in view of providing security of tenure in informal settlements, so legal approaches should be reoriented to protect the right to housing. This implies amendments to the Constitution (Arts. 4, 14 and 27) and to state civil codes.

## 11.2 Education on rights related to land and housing

Education programmes should be designed and implemented to target public officials, mainly from municipal and state government, to diminish male-biased attitudes in legal and administrative procedures concerning land and housing.

NGOs working in specific areas or settlements should be key players if they can broaden or coordinate their interventions to advise women on issues mentioned above. Federal programmes can establish guidelines and channel resources in this direction. The Habitat Programme could offer support, including training workshops and citizen participation spaces.

Likewise, federal and state legal consulting entities should include specialised areas or units addressing land and housing problems (taxes, licences, inheritance, tenure, etc.) since most government consulting organs are focused on civil and penal matters. In this sense, institutions like the Urban Development Attorney's Office of Jalisco or the Attorney's Office for crimes perpetrated by *fraccionadores* of the State of Mexico could be replicated in other states. Nevertheless, autonomy or freedom of action with respect to local authorities must be guaranteed by law.

Training campaigns regarding housing and urbanisation laws and programmes should be permanently undertaken by municipal and state authorities, mainly addressed to leaders or representatives of popular settlements and colonies. This should be complemented with mechanisms to assure participation of the low-income population in the whole urban planning process. This calls for a review of social participation committees to eradicate corporative practices and guarantee democratic representation of all groups.

Particular attention should be given to peri-urban *ejidos* and communities. The Agrarian Attorney's Office and local authorities in charge of urban development should coordinate a permanent programme to educate agrarian groups regarding their responsibilities in selling land for urban purposes. The recognition of their right to benefit from the urbanisation of their land must be accompanied by these and other means

(including sanctions) to guarantee they will fulfil obligations stated in urban and civil laws.

### 11.3 Housing policies and programmes

The next National Housing Programme should clearly state how a National Housing Policy will address concerns regarding vulnerable populations. Recommendations should include:

- Arranging a more equitable redistribution of government funds (FOVI, FONHAPO, BANOBRAS) allocated to housing programmes. At least one-third of government support should be targeted to the poor and vulnerable groups whose income does not exceed three minimum salaries (41 percent of Mexican households);
- Specifying the characteristics and criteria to define priority assistance groups eligible to receive this support: indigenous groups, women heads of households, single women, old people, settlers in excluded or risk areas. Assistance will be open and permanent, as the criteria for the selection of marginal areas for the application of social programmes leave out a lot of vulnerable population;
- It is important to channel technical, financial and fiscal aid to aid self-help construction and housing improvement in popular settlements;
- Special funds or subsidies to encourage the housing rental market and/or a minimum percentage of programmes designated for the construction of houses to rent. The production of new and the maintenance of existing rental housing, the design of fiscal and financial incentives to promote private investment, the establishment of a percentage of public funds destined to support this form of tenure, and general provisions to provide security both to tenants and owners, should be ensured. A key line of support should be allocated to the informal housing supply existing in consolidated peri-urban settlements, in view of reducing the illegality in which it operates and improving housing quality;
- Innovative participatory planning experiences in housing should be recognised and promoted, probably through a special financing line contemplated in fed-

eral and state housing programmes. Particularly relevant would be the shared schemes of financing popular housing that combine funds from institutions, NGOs, and savings of beneficiaries (made through popular practices such as the traditional "*tandas*"); and

- To support these recommendations, both CONAFOVI and CONAVI should work in close cooperation with INMUJERES to add an adequate gender perspective in the design of all housing programmes, which undoubtedly begins with the availability of gender-inclusive indicators to make assessments. Priority should be given to programmes that handle subsidies, given the unfavourable economic conditions that generally affect single women or women heads of household. Likewise, women's organizations in the states must include the housing issue on their working agenda.

### 11.4 Land policies and programmes

The first great challenge is to define a land policy at national and local levels that will offer real alternatives to irregular occupation, establish priorities and coordinate the efforts of various federal, state and municipal institutions. This would allow the co-ordinated use of existing instruments that apply in areas of irregular urbanisation (building permits, land tax, agreements between authorities, inhabitants, *ejidatarios*) and of other instruments that have not been used successfully, such as the right of pre-emption to establish public land reserves.

A federal agency or special commission dedicated to the formulation and implementation of this land policy seems a viable solution, but coordination with the main stakeholders dealing with land (agrarian groups, land developers, private and public landowners), must be guaranteed. The agreements achieved in defining land policies should be mandatory for public institutions. The need for a similar commission or agency must be evaluated in each state. Care must be taken to ensure coordination of institutions operating in housing, urban and environmental issues across all levels of government.

Once municipal or metropolitan land policies are formulated, coherence and permanence in programmes aimed at the orderly incorporation of land for urban development and housing should be guaranteed. A municipal/metropolitan land commission (as mentioned above) or a planning institute could undertake this, provided that representatives of the main stakeholders and civil society play an important role in its decisions. This would avoid changes in public programmes and allocation of resources due to political interests.

Local governments must assume an active role in the definition and implementation of their own policies aimed at informal settlements, not only those built on private land but also on social land. Decentralisation policies have granted them the responsibility to do this, but the main resources (economic, organisational, technical and human) continue to be centralised by federal government. A part of the budget managed by SEDESOL or a special federal fund should be designated to those municipalities and metropolises displaying the most severe problems caused by irregular occupation of land. Federal institutions that participate in PROCEDE could sign coordination agreements with municipal and state authorities to give technical support for the implementation of local regularisation programmes in social land.

In large cities, it is urgently necessary to have information systems that allow for the analysis of quantitative and qualitative data from several institutions related to population, housing, infrastructure and equipment, urban risks, land market, tax collection and metropolitan growth. This would be a basic tool for local authorities to conceive and undertake comprehensive regularisation programmes and improve municipal revenues. The new Housing Law already proposes the creation of a National Housing Information and Indicators System, thus a similar or complementary area that manages information on land market and urbanisation should be promoted at a national level, and linked to an analogous system in each state.

In line with the above, land and public registry modernisation programmes now underway should include gender

criteria, for which it is necessary to define shared – or at least comparable – methodologies for data collection, treatment, and registry.

It is urgent to promote accountability and transparency in land and housing, to discourage speculation and corruption related to land use planning and management. National and local land policies should clearly state this and declare the citizen's right to information on land, housing, planning and urban development. Land inventories, databases, land reserves, planning documents, programmes and budgets, institutional agreements and so on must be available at any time for public consultation. If information is considered confidential, authorities must explain the criteria that justifies denying its diffusion.





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## APPENDIX

### Appendix I: International Law

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

Universal Declaration on Human Rights (UDHR) <sup>325</sup>

- 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) <sup>326</sup>

- Article 11(1) recognises the right to adequate housing; <sup>327</sup>
- Article 2(2) prohibits discrimination; and
- Article 3 recognises equal rights between men and women.

International Covenant on Civil and Political Rights (ICCPR) <sup>328</sup>

- 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) <sup>329</sup>

- 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. <sup>330</sup>

<sup>325</sup> *Universal Declaration of Human Rights*, adopted on 10/12/1948 by General Assembly Resolution 217 A (III), UN GAOR, 3<sup>rd</sup> Session.

<sup>326</sup> *International Covenant on Economic, Social and Cultural Rights*, adopted on 16/12/1966. General Assembly Resolution 2200 (XXI), 21<sup>st</sup> 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.

<sup>327</sup> The right to adequate housing consists of the following elements: (1) legal security of tenure irrespective of the type of tenure; (2) availability of services, materials, facilities and infrastructure; (3) affordability; (4) habitability; (5) accessibility (including access to land); (6) location; and (7) cultural adequacy. See UN Committee on Economic, Social and Cultural Rights, General Comment No. 4 on the Right to Adequate Housing. UN Doc. EC/12/1991/41 (1991). For full text see: <http://www.unhcr.ch/tbs/doc.nsf/MasterFrameView/469f4d91a9378221c12563ed0053547e?Opendocument>

<sup>328</sup> *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.

<sup>329</sup> *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.

<sup>330</sup> See UN Committee on Elimination of Racial Discrimination, *General Recommendation nr. XXII on Article 5: Refugees and Displaced Persons*, 1996. Available on: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/fed5109c180658d58025651e004e3744?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/fed5109c180658d58025651e004e3744?Opendocument)

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) <sup>331</sup>

- 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) <sup>332</sup>

- 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) <sup>333</sup>

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

American Convention on Human Rights (ACHR) <sup>334</sup>

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

In Table 1.1 below, an overview is provided of which countries in Latin America are party to these human rights instruments. <sup>335</sup>

<sup>331</sup> *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., 34<sup>th</sup> 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.

<sup>332</sup> *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.

<sup>333</sup> *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/ratific.pl?C169>

<sup>334</sup> 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>

<sup>335</sup> 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

Table 1.3 Status of ratification of main human rights instruments in Latin America<sup>a</sup>

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: 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 <sup>b</sup>	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: 1978	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 <sup>c</sup> S: 1980 R: 1985	YES S: 1980 R: 1990	YES <sup>d</sup> S: 1981 R: 1984	YES <sup>e</sup> S: 1980 R: 1989	YES S: 1980 R: 1982	YES S: 1980 R: 1986	YES <sup>f</sup>	YES S&R: 1980	YES S: 1980 R: 1981	YES <sup>g</sup> S: 1980 R: 1981	YES S: 1981 R: 1982	YES S: 1980 R: 1983	YES <sup>h</sup> 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 <sup>i</sup> A: 1991
Optional Protocol to CEDAW of 1999 <sup>j</sup>	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
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 <sup>k</sup> 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/ratific.pl?C169> ; OAS database: <http://www.oas.org/juridico/english/Sigs/b-32.htm>

According 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.

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