

# NICARAGUA

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



UN-HABITAT

LAND TENURE, HOUSING RIGHTS AND GENDER

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2005

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

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

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## **Foreword to Latin America Law And Land Tenure Review**



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

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

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

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

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

A handwritten signature in black ink, appearing to read "Anna Kajumulo Tibaijuka".

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

## Acknowledgements

Global Coordinator and Substantive Editor: Marjolein Benschop, UN-HABITAT

Assisted by Florian Bruyas

Regional Coordinator Law, Land Tenure and Gender Review in Latin America:

Leticia Marques Osorio, Centre on Housing Rights and Evictions (COHRE) – Americas Office

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

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

Translation Spanish-English by Isabel Aguirre

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

Editing: Greg Rosenberg

### *Nicaragua Chapter*

Arenas, Carlos Arenas, Executive Director of the Wisconsin Coordinating Council on Nicaragua (WCCN); and

Ninette Morales Ortega, Director of the Housing Research and Promotion Centre (Centro de Investigación y Promoción del Habitar – Habitar).

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## **List of Abbreviations**

CCER	Civil Emergency and Reconstruction Coordinating Office
CENAGRO	Agrarian National Census
CIP	Inter-institutional Committee Land Administration Programme
CNRC	National Confiscation Review Commission
EMNV	National Household Living Standards Survey
EPS	Sandinista Popular Army
FAO	United Nations Food and Agriculture Organisation
FIDEG	International Foundation for the Global Economic Challenge
FOSOVI	Housing Social Fund
FSLN	Sandinista National Liberation Front
HIPC	Heavily Indebted Poor Countries Debt Relief Initiative
IADB	Inter-American Development Bank
INETER	Nicaraguan Institute of Territorial Studies
INIFOM	Nicaraguan Institute of Municipal Development
INIM	Nicaraguan Institute of Women's Affairs
INPRUR	Institute for Urban and Rural Reformed Property
INVUR	Urban and Rural Housing Institute
MAGFOR	Ministry of Agriculture, Livestock and Forestry
MARENA	Ministry of Natural Resources
NGO	Non-governmental organisation

NORAD	Norwegian Cooperation Agency
NPC	National Political Constitution
OCI	Compensation Quantification Office
OOT	Office for Territorial Ordering
OTR	Office of Property and Rural Titling
OUT	Urban Titling Office
PLC	Constitutionalist Liberal Party
PRODEP	Land Administration Project
RAAS	South Atlantic Autonomous Region
RAAN	North Atlantic Autonomous Region
RPIM	Real Property and Mercantile Registry
SGPRSP	Strengthened Growth and Poverty Reduction Strategy Paper
SINAP	National Protected Areas System
SWOT	Strengths Weaknesses Opportunities Threats
UNAG	National Farmers and Ranchers Union
UNO	United Nicaragua Opposition

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## EXECUTIVE SUMMARY

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

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

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

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

Integration of the poor into the urban economy remains a big challenge, as urban land is costly and beyond the reach of poor households. Some positive developments have emerged in this regard. Recognition of tenure rights of the poor and informal settlement dwellers has been an important driver of land reform in the region. Instruments that recognise the social functions of land have been used in Brazil and the primacy of collective rights to land recognised in Colombia. However, there is a broad consensus that recognition of rights to land has not been sufficient in integrating the poor into the urban fabric and economy. Upgrading of informal

settlements has not occurred on a sufficient scale, and the studies call for going beyond legal recognition of tenure, to addressing the increasing backlog of service provision in informal settlements. In addition, more efforts in availing land for the urban poor need to be made, and this should include financing and lifting the ever-present threat of evictions.

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

The subject of this chapter, Nicaragua highlights a number of other recommendations. Innovative and flexible tenure forms that are being developed still have to be recognised by all players, including the private sector. Indigenous communities have also not fully attained land rights. Poor coordination among governmental institutions is a problem in implementing land and housing rights, and needs to be resolved. There is also still an excessively rural bias in addressing land issues. Finally, systems of accountability and transparency in land management need to be better implemented.

Figure 1.1 Map of Latin America



## Latin America Regional Overview

### 1 Introduction

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

#### 1.1 Inequality

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

Table 1.1 Median Gini coefficients by region and decade

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

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

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

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

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.

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

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

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

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

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-

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>

7 Eclad. (2000:21).

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

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

10 Ibid.

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

12 Clichevsky, N. (2000 :12).

13 UN-HABITAT (2001:197).

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

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

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

17 Torres, I. (2001).

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

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

within public institutions. All Latin American countries subject to this study have approved national plans on the equality of opportunities and treatment between men and women, except for Uruguay and Venezuela.<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

<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).

which Latin America copied two institutions: the federal and presidential systems.

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

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

“Positive prescription” is a method created by law for acquiring ownership. Known as *usucpcion* (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 necessar-

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

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

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

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

<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 and property, and from the fact that it is a legally justiciable right. Tenure can be effected in a variety of ways depending on the constitutional and legal framework, on the social norms, the cultural values, and up to a certain point, the individual preferences. A person or family has security of tenure when they are protected from involuntary removal from their lands or residences, except under exceptional circumstances, and then only by mean of a recognised and agreed legal procedure, which should be objective, equitably applied, contestable and independent. These exceptional circumstances should include situations 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>23</sup> UNDP (2003).

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 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 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 organi-

28 Deere, C. et al (2002).

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

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

31 Deere, C. (2002:101).

32 In 1979, Nicaragua expropriated the land of large landowners. However, the Sandinista agrarian reform could not be implemented in its entirety because of the severe economic crisis combined with their loss of power in the 1990 election. The land destined for land reform was the result of the confiscation of large unproductive properties, which represented 52 percent of the land in 1978 and had come to represent only 26 percent in 1988. Of the confiscated land, 40 percent was distributed to land cooperatives, 34 percent formed state agro-industrial companies and 26 percent was individually distributed among landless rural workers. At the end of the revolution the cooperatives owned 13.8 percent of the land and the state companies owned 11.7 percent. See Centre on Housing Rights and Evictions, (COHRE). (2003).

33 Deere, C. (2002:131).

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

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

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

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

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

38 Examples include the Round Table on Social Policies and Housing (*Mesa de Concertación de Políticas Sociales y Hábitat*) 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.

violence against women, and economic rights. Peasant and urban organised women's groups are the most active in efforts to improve access and rights to land and housing.

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

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

#### ***Argentina: the Occupiers and Tenants Movement<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

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).

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

### **Uruguay: FUCVAM 41**

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

### **CEFEMINA in Costa Rica**

Costa Rica presents a good example in terms of the alliances built by women's organisations in their struggle for housing. The Feminist Centre for Information and Action (CEFEMINA), established in 1981, organised the participation of women in the construction of more than 7,000

houses in diverse regions of the country. In the same year, the National Patriotic Committee was created, and was also among the first to struggle for the housing rights of members of the general population.

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

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

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

42 Blanco, L et al (2003).

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

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

<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).

<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.

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 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*

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

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

49 Souza, M. (2003).

*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 construction that does not meet minimum standards for the quality of life; houses constructed in unsafe and unhealthy locations; lack of security of tenure; building plots smaller than permitted by the legislation; social exclusion due to being on the perimeter of the cities; and extreme poverty.<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.

50 Santos, M. (1982:46).

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

52 CEPAL et al (2001:17).

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

54 Clichevsky, N. (2002:15).

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 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

<sup>55</sup> 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.*

<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).

that men traditionally have over the household and their dependants. One of the major global challenges of the new millennium is growing urban poverty among women. It is estimated that some 25 percent of all households are headed by women and are located in urban areas – especially in Latin America. Women-headed households typically represent a high proportion of those in informal settlements worldwide and they are among the poorest.<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 na-

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

tional 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 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 cadastres.<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.

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59 Erba, D. (2004).

60 Fourie, C. (2001).

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

62 Erba, D. (2004).

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

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

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63 FAO. (1992).

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

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

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

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

## 9.1 Marital property rights

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

Titling programmes have not titled women due to discriminatory laws that favour male heads of household.<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 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

<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 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).

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

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

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

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

69 UN-HABITAT. (2005:26).

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

owned, but in practice if the land is titled under the name of the husband, he can dispose of it without his spouse's signature because the signature rules are rarely enforced.<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>71</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 "unaccepta-

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.

ble”<sup>73</sup> and in violation of the Convention on the Elimination of All Discrimination Against Women (CEDAW). In addition, civil codes and family laws that still allow for unequal marital property management also violate other international human 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>

## 9.2 Inheritance rights

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

In most other countries, the law provides for complete testamentary freedom, which leaves the surviving spouse defenseless 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 subsist-

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

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

ence portions to disabled dependants, minors, elders or the surviving spouse. In Nicaragua, the need for subsistence must be proved.

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

Table 9.2 Rules concerning estate inheritance according to marital

*regime*

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

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

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	Succession of plots allocated by Law
	Testamentary Succession	Intestate Succession	
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.

76 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 percent. In Mexico, the minimum quota is 30 percent; Argentina, 30 percent; Brazil, 25 percent; Bolivia, 30 percent; Ecuador, 20 percent; and Peru 25 percent. These numbers are however yet to be achieved (see Table 1.2 Women's representation in national legislatures in Latin America).

### 9.4 Violence against women

Urban violence against women occurs in the public and domestic domain and has been linked closely with issues of housing and urban development.<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.

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

78 Fundación Arias.

79 Trujillo, C. (2003).

80 UNCHS (2001:48).

81 Ibid.

## 10 Racial and ethnic equality

In recent years, black communities in Latin America have presented demands and employed strategies to establish their “indigenous identity”.<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.

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>

<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.

<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

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

## 11.2 Subsidies and access to credit

Formal financial institutions have not been the main source of credit for the poor, even less so for poor women. Generally, women turn to informal sources such as credit from friends, family, direct cash loans, or payments in kind for credit purchases. Another informal channel is the participation of women in savings and credit organisations. Within this category the following can be found:<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 pre-determined amount of money. The total sum of the savings is then loaned to one member, and once this debt is repaid, this process can be accessed by another member of the organisation. This is one of the main methods of informal financing found in rural Central America;
- Solidarity groups. These are groups of three to 10 people, based on the system of the Grameen Bank of Bangladesh and Banco Sol of Bolivia, who jointly access credit and technical cooperation;
- Community banks: A society of 20-50 neighbours that obtains a loan and maintains a savings rate;
- Rural banks: Informal groups of neighbours interested in accessing financial donors. The capital comes from stocks, savings, donations and utilities; and

- Savings and credit cooperatives: The resources primarily come from the savings of the associates, who define their own policies.

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

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

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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.

87 Karremans, J et al. (2003).

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

89 Clichevsky, N. (2003:31).

90 Durand-Lasserve, A. (1997).

electricity and sanitation, because even if these services pass 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;
- 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 extreme 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.unhchr.ch/html/menu2/6/cescr/cescrs.htm>

After regularisation, payment for land ownership or usufruct is usually required, but at a reasonable price to guarantee housing/land affordability for the beneficiaries.<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 representativity, 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 and reforms in Nicaragua

### 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 Map of Nicaragua



## Background

### 1.1 Historical background

Nicaragua is located in the Central American isthmus, bordering Honduras in the north and Costa Rica to the south. With 148,000 km<sup>2</sup> of total surface area, Nicaragua is the largest country in Central America. Due to its location Nicaragua is highly vulnerable to natural phenomena such as earthquakes, hurricanes and volcanic eruptions. Its location and geographical features have also made Nicaragua a country of strategic military and commercial importance for the past two centuries, not least because of its potential as the site of an inter-oceanic canal.

Nicaragua has the lowest population of all Central American countries – a projected 5.4 million inhabitants<sup>96</sup> in 2005. Geographically, the country has three main regions: the Atlantic region, occupying half of the country's territory; the central mountainous region; and the lower Pacific Coast. Nicaragua is a country of great ethnic and cultural diversity, especially on the Atlantic Coast, where there are four main ethnic groups: indigenous peoples (Miskitos, Mayagnas and Ramas), Creoles, Garifunas and Mestizos. Beyond the Atlantic Coast region, most people are considered mestizos. There are some indigenous communities in the central and Pacific region of Nicaragua, but their indigenous identity has been in dispute for some years because they have not preserved their languages.<sup>97</sup>

The Pacific and central areas of what is today Nicaraguan territory were colonised by Spain from the 16th century. Due to the geographic and climatic characteristics of the Atlantic Coast, as well as the fierce resistance of the inhabitants, the whole region was left almost untouched by the Spanish Crown. The present territory of Nicaragua was not constituted as such until the end of the 19<sup>th</sup> century. Indeed,

from the 17<sup>th</sup> century the Atlantic Coast region was a British protectorate, and was granted special autonomy. When the Nicaraguan central government took control of this territory at the end of the 19<sup>th</sup> century, the region lost its autonomy. Even today, some people on the Atlantic Coast believe that this region was wrongly annexed by the central government in Managua.

Like other Latin American countries, Nicaragua inherited a situation of deep inequality in land distribution from colonial times, featuring a social, political and economic structure marked by the dominance of the *hacienda*.<sup>98</sup> In the early 1930s, the occupying U.S. Marines put the Somoza family in power. The Somoza dynasty and its clique took control of almost all cultivable land by illegally seizing the medium and small plots of peasants. The land reform programmes of the 1960s and 1970s, promoted by the United States through the Alliance for Progress programme, focused on broadening the agricultural frontier, instead of distributing the available cultivable land, and had the effect of concentrating land ownership again into even fewer hands.<sup>99</sup>

In 1979 a popular social revolution led by a political-military movement of socialist leanings, the Sandinista National Liberation Front (FSLN), overthrew the Somoza dictatorship. The implementation of a comprehensive land reform was one of the revolution's first tasks. As a start, the Sandinista government confiscated all rural and urban properties held by the Somoza clique.<sup>100</sup>

When the new government took power it confronted a housing crisis of huge proportions. Due to the effects of a massive earthquake that devastated Managua in 1972, and

<sup>96</sup> Large estate.

<sup>97</sup> A large portion of the Nicaraguan territory was covered by untouched forest. The process of broadening the agricultural frontier was based on cutting down extensive areas of forest to increase the area of land dedicated to agricultural production. In that sense, the peasants who extended the agricultural frontier are considered colonisers of those lands because in that process they established the first settlements in those areas. In Nicaragua, the agrarian reform of the 1960s promoted the colonisation of areas in what is known today as the Chontales and Rio San Juan departments as well as in the Autonomous South Atlantic Region.

<sup>98</sup> Still today, members of the Somoza family have not been able to recover those properties. However, the Somoza family has been trying to recover one of their most valuable assets, a cement factory.

<sup>96</sup> Instituto Nacional de Estadísticas y Censos –INEC. <http://www.inec.gob.ni/estadisticas/proyecciones/proypais.htm>. The number of Nicaraguan inhabitants is a projection due to the fact that the latest census took place in 1995. This projection, the Encuesta Nacional de Medición del Nivel de Vida was done by INEC in 2001.

<sup>97</sup> For a very good historical background on this topic see Gould, J. L. (1998).

combat with Somoza's army during the revolutionary war, a high percentage of houses in most towns were destroyed or severely damaged. In the face of a drastic decrease of available resources as a result of political confrontations with Washington, the Sandinista government focused on "progressive development" programmes.

The FSLN governed the country for 10 years, during which time it fought off the U.S.-backed *contra* forces. It lost the 1990 election amid enormous political, economic and military pressure from the United States. Since 1990 three subsequent conservative governments, led by Presidents Violeta Barrios de Chamorro, Arnoldo Alemán and Enrique Bolaños, have returned Nicaragua to a market economy and re-established close ties with the United States.

While those governments have not reversed the main social gains of the Sandinista revolution, they have amended the Constitution and various laws related to urban and rural land. These reforms have encountered strong opposition within Nicaragua. For example, the agrarian reform during the administration of Violeta Barrios de Chamorro consisted of the elimination of state-owned farming companies as part of the process of privatisation of state assets, promoted by international financial institutions and the US government. These farms, expropriated by the Sandinista regime, were scheduled to be returned to their former owners. The strong pressure of two opposing social groups – the former *contras* and the demobilised combatants of the Sandinista army (EPS) – forced the distribution of many state farms to these former combatants.

## 1.2 Legal system and government structure

Although Nicaragua had a Constitution for most of the 20<sup>th</sup> century, and even held elections on a few occasions, the Somoza dictatorship maintained absolute control of all state powers. The revolutionary government that took power in

1979 drafted a Constitution only in 1987, following extensive popular debate and discussion.

The FSLN government more or less transformed the entire constitutional, legal, institutional, economic and social fabric of Nicaragua. In 1990, with the victory of the National Opposition Union (UNO), a large opposition coalition, a new institutional and legal transformation process began. However, unlike many political transitions, Nicaragua's was not the product of a military defeat, or the collapse of political foundations as was the case with the Communist regimes of Eastern Europe, but the result of the rules of electoral play to which the FSLN had subjected itself since 1984. As a consequence, the first five years of the 1990s saw a process of political negotiation that resulted in a partial reform of the Constitution of 1987 and of some laws, such as those related to urban and agrarian property. While opposing constitutional and legal principles are at play, the Sandinista social project remains the backbone of the Constitution.

The first constitutional reform took place in 1995, drastically reducing the power of the executive branch and increasing the powers of the legislature. The reforms of 2000 made institutional and procedural changes as a result of a political pact between the leaders of the two main political parties of the day – Alemán's Constitutional Liberal Party (PLC) and Daniel Ortega's FSLN.

The coexistence of opposing philosophical principles within the Constitution is not necessarily negative. Indeed, a number of Latin American constitutions, such as the Colombian Constitution of 1991, combine interventionist and neoliberal principles. In the Nicaraguan case, however, the negative side of this coexistence is the absence of a legal and political culture recognising the primacy of the Constitution. This has been compounded by the lack of judicial independence. In Nicaragua, the judiciary is a political battleground.

## Organisation of public powers

According to Art. 6 of the Constitution, Nicaragua is “independent, free, sovereign, unitary and indivisible”. Article 7 adds that Nicaragua is a “democratic, participative and representative” republic. Nicaragua has the classical division of four powers: the legislative, the executive, the judiciary and the electoral. Article 129 points out that the four powers “are independent from one another and harmonically coordinated, subordinated only to the supreme interest of the Nation and to the provisions of the Constitution”. Nevertheless, reality shows that these powers are subordinate to the interests of political parties, taking away their independence and placing them in a situation of permanent lack of coordination that generates continuous struggles, putting the country continually on the edge of institutional crisis.

The legislative power is exercised by a unicameral National Assembly of 90 members elected through “universal, equal, free, direct, and secret” vote.<sup>101</sup> Their first main function is the drafting, approval, amendment and repeal of laws and decrees. Their second core function is interpretation of the law.<sup>102</sup> Of the members of the National Assembly elected for the period 2002-2007, only 22 (24 percent) are women (14 from the FSLN, seven from the Liberal Party and one from the Christian Path Party).<sup>103</sup>

Executive power lies with the president of the republic, “who is the Head of state, Head of Government and Supreme Chief of the Armed Forces of Nicaragua”.<sup>104</sup>

The judiciary is made up of the courts of justice, which form a unitary system, headed by the Supreme Court of Justice, “composed of 16 members elected by the National Assembly, for a period of five years”.<sup>105</sup> Inheritance cases and marital

property cases are dealt with in civil courts, as well as most land and housing related cases. However, some land and housing cases that involve property disputes from the 1980s are handled by property courts.

Finally, there is the electoral authority, exclusively in charge “of the organisation, direction and vigilance of elections, plebiscites and referendums”.<sup>106</sup>

## Administrative division of the state

Article 175 of the Constitution divides the administration of the national territory in three different entities:

- (1) Departments. Nicaragua has 15 departments.<sup>107</sup> However, although it enshrines their existence, the Constitution does not give them any role.
- (2) Municipalities (currently 153). The municipality is the basic unit of the political administrative division of the country.<sup>108</sup> Article 177 of the Constitution states that municipalities “enjoy political, administrative and financial autonomy” from the central government. The same article establishes that a sufficient percentage of the national budget has to be allocated to the municipalities, with prioritisation of those municipalities that have lower revenue-generating capacity. According to UNIFEM, in 2003 only 18 percent of mayors in Nicaragua were women, decreasing their level of participation from 41,4 percent in 1995<sup>109</sup>.
- (3) Two autonomous regions: the North Atlantic and the South Atlantic.

Article 89 of the Constitution recognises that:

*Communities on the Atlantic Coast have the right to preserve and develop their cultural identity within national unity; to provide themselves with their own forms of social organisation and to manage their local affairs according to their traditions. The state recognises the forms of landownership of the*

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101 Art. 123 Constitution.

102 Art. 138.

103 Information from the Nicaraguan National Assembly website: [www.asamblea.gob.ni](http://www.asamblea.gob.ni)

104 Art. 144.

105 Articles 159 and 163. The judiciary power is regulated by Law 260 of 1998 (Organic Law of the Judiciary Power).

106 Art. 168.

107 These departments are: Boaco, Carazo, Chinandega, Chontales, Estelí, Granada, Jinotega, León, Madriz, Managua, Masaya, Matagalpa, Nueva Segovia, Río San Juan, and Rivas.

108 Art. 176.

109 Valdés, T. et al (2005:26).

community on the Atlantic Coast. Likewise, it recognises the enjoyment, use and usufruct of waters and woodlands within their communities.

According to Art. 180 “the state guarantees to these communities the enjoyment of their natural resources, the effectiveness of their forms of communal property, and the free election of their authorities and representatives”. It also grants the preservation of their culture, language, religion, and customs. On the other hand, Art. 181 points out that “the state will organise, by means of a law, the autonomous regime of the indigenous population and the ethnic communities of the Atlantic Coast.” Among other things, that law must regulate the powers of government organs, the relations between the executive and legislative powers and the municipalities, and the exercise of their rights.

In 1987 and after a broad consultation process, the Autonomy Law was adopted. Known as Law 28 (Autonomy Statutes of the Regions of the Atlantic Coast of Nicaragua) it was considered a pioneering piece of legislation in Latin America. However, it was proclaimed only in 2003, through a decree from the National Assembly, No. 3584. One of the most important aspects of Law 28 is the definition of communal property and its legal characteristics.

While Art. 179 of the Constitution states that “the state will promote the integral and harmonic development of the different areas of the national territory”, the reality is that historically there have been huge regional disparities between the isolated and somewhat abandoned Atlantic Region and the rest of the country.<sup>110</sup>

### ***The law-making process***

The president, National Assembly delegates, the Supreme Court of Justice, the Supreme Electoral Council, the autonomous regional councils and the municipal councils can all submit law proposals “in matters of their competence”. Citizens can also propose laws “if they collect 5,000 or more signatures to back the proposal”.<sup>111</sup> The entire procedure that a proposal of law goes through in the National Assembly

<sup>110</sup> The political administrative division is regulated by Law No. 59 of August 15 1989, (Law on Political and Administrative Division), with its multiple amendments.

<sup>111</sup> Art. 140, Constitution.

is described in Art. 141. Once the assembly approves a bill of law, it is sent to the president to be sanctioned, promulgated and published, except in cases where such procedures are not required.<sup>112</sup> The president may totally or partially veto a bill of law.

### **1.3 Civil society**

There is a long tradition of social mobilisation in Nicaragua, which reached its peak with the 1979 revolution. In the 1980s, mass organisations of peasants, workers, urban residents, women and young people promoted sectoral claims and acted together to defend the revolution. This wartime model of mass organisation was excessively centralised, due to the fact that these groups were not autonomous but were guided by the FSLN, and followed its political line.

This organisational model began to show its limitations by the end of the 1980s. Women’s organisations were the first to question this vertical structure. After the FSLN was defeated at the polls, the women’s movement became the first autonomous social movement, starting its activities at a historical national meeting of women’s organisations in 1992. These women’s organisations had varied forms, such as women’s collectives offering medical, legal and psychological services to victims of domestic violence, as in the case of the women’s collective of Managua. Other groups focused on working on organising and supporting rural women, such as the *Comité de Mujeres Rurales* in León, *Fundación Entre Mujeres* in Estelí, the Xochilt Acalt Women’s Centre in Malpaisillo and others. In 1992, with the idea of better coordinating their work, several networks were created, such as the Network of Women against Violence, the Network of Women and Health and the National Feminist Committee.<sup>113</sup>

Today’s women’s movement functions with two organisational models, one according to thematic networks, and the

<sup>112</sup> Contradictorily, Art. 141, par. 8 Constitution establishes that “amendments to the Constitution and to constitutional laws and Decrees approved by the National Assembly do not require sanctioning by the Executive power”. In other words, the most important amendments, such as those of the constitutional text, do not need presidential approval.

<sup>113</sup> Isbester, K. (2001).

other supporting a more centralised and politicised structure. The Women's Network against Violence is the outcome of the first model; the National Feminist Committee the outcome of the second. Today these are the two most important national organisations in an extensive women's movement.

Another autonomous movement that emerged over the past decade was that of housing-producing social organisations, linked to specialised NGOs working on the housing issue. These include Ceprodel, Habitar, Popol-Na Foundation, Rainbow Foundation, Habitat for Humanity-Nicaragua, COLMENA and many others.<sup>114</sup>

Slum dweller organisations have been very active in Nicaragua during the last 15 years but remain under the leadership and control of the communal movement, which was the largest social organisation during the revolutionary years and is still controlled by the FSLN. The achievement of greater autonomy by other organisations has been a slower process, particularly in the case of the labour and peasants' movements.

For a discussion of the role of civil society, particularly NGOs, in the wake of Hurricane Mitch, see the later section on housing policies.

#### 1.4 Socioeconomic context

Half of the 5.4 million inhabitants of Nicaragua are women. Twenty-five percent of the population lives in the department of Managua, most of them in Managua City. The urban population constitutes 58 percent of the population (48 percent female) and 40 percent of the population live in rural areas (52 percent female). Women head 34 percent of urban households in Nicaragua. Nationwide the figure is 28 percent, as there are fewer women heads of households in rural areas (19 percent).<sup>115</sup>

#### ***Housing conditions and access to services***

Although the last national survey to measure the quality of housing (2001) found that 92 percent of Nicaraguans live in houses, housing conditions at a national level are in fact alarming as only 22 percent of homes provide good living conditions. In rural areas only 10 percent of the houses are in good condition. In urban areas things are not much better: only 31 percent of homes are in good condition.

Overcrowding is a major problem and the state of public services, especially sanitation, is precarious. Indeed, nationally 64 percent of homes have only one or two rooms, while the average number of people living in one dwelling is five people. Only 22 percent of homes have a toilet, while 63 percent have latrines, some without treatment (34 percent). Some 14 percent of homes have no sanitation at all.

As far as other public services are concerned, 66 percent of Nicaraguan dwellings have piped drinking water, with 88 percent urban coverage and 32 percent coverage in rural areas. In Managua piped water reaches 96 percent of homes, but only 33 percent of Atlantic Coast homes have this service. However, these numbers do not reflect the quality of the service, because in many places there is access to water for only a few hours each day. With respect to the use of fuel for cooking, 92 percent of rural dwellings and 44 percent of urban homes use firewood. Propane or butane gas is used by only 48 percent of urban homes and 6 percent of rural dwellings.

As a result, fetching water and firewood is an essential activity for many Nicaraguan households. Some 37 percent of homes across the country must fetch water for their needs, while 73 percent of rural dwellings must do so. Throughout the country, 58 percent of the people responsible for these tasks are women. Half of all households must fetch wood for cooking; in rural areas this goes up to 85 percent of homes. Across the country, 69 percent of the individuals responsible for this activity are men.<sup>116</sup>

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114 Morales, O. N. (2002)..

115 INEC (2003c).

116 *Encuesta Nacional de Medición del Nivel de Vida*. (2001).

Electrical power is available to 71 percent of homes – 91 percent of urban homes but only 40 percent of rural homes. Inequality in this service also has a regional connotation. While 98 percent of homes in the department of Managua have electricity, in the central region that percentage drops to 48 percent. Concerning waste disposal, just under half of all Nicaraguans burn their waste, while truck waste collection provides service to a third of households, and the remainder dispose of waste in rivers and open spaces.

Despite this desolate housing scenario, Nicaragua has a series of elements and peculiarities that, given adequate intervention, offer the possibility of large-scale improvements. First of all, most people in Nicaragua live in homes they consider their own.<sup>117</sup> Indeed, 81 percent of Nicaraguans say they live in their own house, 6 percent in a rented house, and the remaining 11 percent occupy a loaned house or live under some other form of tenure. Managua is the city with the largest number of homeowners (87 percent), while only 3 percent rent their homes. Secondly, a high percentage of households are owned by women or by couples. In urban areas, women own 52 percent of homes, while couples own 8 percent. In rural areas, however, only 29 percent of homes are owned by women and 3 percent by couples. The high number of home owners in Nicaragua came about through a process of democratisation of property during the revolution.

*Table 1.1 Housing ownership at national, urban and rural levels by gender*

	<b>Men</b>	<b>Women</b>	<b>Both</b>
<b>National</b>	50.1%	43.5%	6.5%
<b>Urban</b>	39.3%	52.2%	8.6%
<b>Rural</b>	67.0%	29.9%	3.1%

Source: Encuesta Nacional de Medición del Nivel de Vida. (2001). General Report.

This high level of ownership makes it possible to have a lower cost base in building or upgrading houses than is the case in other countries. The fact that women are estimated to own more than half of the houses in cities requires an intervention that takes into account and makes use of the potential afforded by this situation.

### ***Land distribution***

Historically, land ownership in Nicaragua has been concentrated in a few hands. In 1979, the Somoza family owned 20 percent of the available land. The land reform carried out by the Sandinista government, which enforced confiscation and forced sales to the state for land reform purposes, deeply transformed property ownership, with land redistributed to landless peasants. However, land ownership is still highly concentrated despite the distributional character of this agrarian reform. Measured by the Gini coefficient of concentration of property, in Nicaragua land presents a coefficient of 0.86<sup>118</sup>. Considering the amount of land owned, a recent study quoted by the World Bank found that 72 percent of rural households account for only 16 percent of the total land. On the other hand, 28 percent of rural households own 84 percent of total land.<sup>119</sup> The same study found that 38 percent of the total rural population in Nicaragua are landless peasants.

*Table 1.2 Percentage and category of rural population by amount of land owned*

<b>Category of rural population by amount of land owned</b>	<b>Percentage of total rural population</b>
Landless	38%
Minifundio (up to 2 manzanas <sup>3</sup> )	13%
Small farmers (2-5 manzanas)	21%
Medium farmers (5-20 manzanas)	15%
Large farmers (above 20 manzanas)	13%
<b>TOTAL</b>	<b>100%</b>

Source: World Bank (2003b).

<sup>117</sup> This data is based on surveys made by the Nicaraguan government using the same methodology employed during the 2001 Encuesta Nacional de Medición del Nivel de Vida, and not on cadastral data. This methodology is used by the World Bank for the same purposes. The Nicaraguan cadastre is extremely outdated.

<sup>118</sup> A Gini of zero indicates perfect equality, and a Gini of one indicates total inequality. World Bank (2003b:6).

<sup>119</sup> Ibid. p. 7.

### ***Gender of farm producers***

According to information provided by the 2001 Agrarian National Census (CENAGRO) 82 percent of individual producers in charge of farm and livestock land units were men and 18 percent were women. The land held by male producers accounts for 88 percent of the total area of individual farms and livestock land units, and women producers account for only 12 percent of the total area.

These figures are very close to those of the 2001 National Household Living Standards Survey (EMNV), which found that 83 percent of farms were owned by men, 16 percent by women, and 0.6 percent by couples.

### ***Property conflicts***

Lack of clarity in property titling is one of the most complex issues in Nicaragua. This is due to the confluence of a series of factors mentioned earlier, such as illegal land usurpation by the dictatorship, war, natural disasters and the sometimes chaotic agrarian reform of the 1980s. The Sandinista revolution allocated land to individuals and collective cooperatives and also nationalised land through the creation of state-owned agro-industrial companies. However, many of these transfers were never duly legalised, in part due to the belief that the revolution would last forever. After its electoral defeat but before transferring power to Barrios de Chamorro, the Sandinista government issued several laws with the aim of transferring property to beneficiaries of social reforms. However, those last-minute transfers included corrupt transfers of property to high-ranking Sandinistas.

When the opposition took office it attempted to reverse property transfers made by the Sandinista government, generating huge social conflicts and political instability. Finally, Barrios de Chamorro reached a political agreement with the FSLN in 1994. As a result, property transfers made during the revolution would be respected, while former owners of confiscated land, or those who had been forced to sell their land to the state, would be compensated. Also, it was agreed that only dubious transfers would be subject to revision, i.e., those not made in favour of the legitimate beneficiaries of

urban and land reforms. This political agreement was then drafted into Law 209 of 1995.

During the Alemán administration (1996-2000) several similar laws were implemented (mainly Law 278 of 1997, Law 288 of 1998 and Law 309 of 1999) to set an institutional framework to deal with property issues. The Alemán government was able to make the institutions dealing with property issues more efficient in processing claims of people whose land had been confiscated during the Sandinista administration, especially if they were U.S. citizens. As a result, at the end of the Alemán administration nearly \$1 billion had been paid to former owners. However, the performance of those same institutions was very poor when it came to the clarification of property rights of low-income families who were beneficiaries of the urban and agrarian reform.

Enrique Bolaños was elected president in 2001 with the support of the Liberal Party. Bolaños had originally been a member of the old Conservative Party, and served as Alemán's vice-president. However, when President Bolaños decided to move the state apparatus against former president Alemán and jail him for the extremely high levels of corruption in his administration, the political landscape suddenly changed. The Liberal Party withdrew support from Bolaños, leaving him without the support of his own party. Ever since, the Sandinistas have been taking advantage of this situation by making political agreements with the president or the Liberals, depending on their interests.

At the end of 2004, laws and institutions dealing with property issues were caught in the middle of this power struggle, which had been going on since 2002. In this context, the FSLN and Liberal Party agreed to amend the Constitution again. As part of this reform several laws were enacted, including Law 512 of 2005, which creates an Institute for Urban and Rural Reformed Property (INPRUR). The constitutionality of these changes is now in dispute,<sup>120</sup> and it is too early to

<sup>120</sup> At the time of writing the first director of INPRUR had not been yet elected, but there was much speculation regarding his/her political affiliation. Several political analysts said that a Sandinista would be in charge of this institution, and that the creation of INPRUR was the prize that the Liberal Party had to pay for the release of ex-President Alemán from jail.

say whether these and other reforms will survive the increasingly unstable political climate in Nicaragua.

### ***Titling of rural land***

According to a recent World Bank study, “about 30 percent of land is being held without clear title”,<sup>121</sup> a situation that affects about 100,000 people, most of them poor and small producers.<sup>122</sup> The World Bank says that “in the case of Nicaragua, lack of registered title reduces land value by about 30 percent, even though there is not evidence of an impact on credit”.<sup>123</sup> However, “there is indeed a high demand for secure property rights – but that only properly registered land title (not other documents that merely certify possession) is considered to provide such tenure security”.<sup>124</sup> In fact, in a survey of households without titles conducted by the International Foundation for the Global Economic Challenge for the World Bank, it was found that 90 percent of the respondents indicated that it was not worth the effort to obtain a title. The same survey found that 69 percent of households that have a title to the land responded that it would be desirable to register their plots, but that they lack resources or time to do it. Those responses are summarised in the following table.<sup>125</sup>

*Table 1.3 Reasons given for not obtaining title or registration*

Reasons	Plots that have no title	Plots that have not registered
Don't know how to get it	1%	7%
Not worth the effort	90%	5%
Worth it but lack the resources/time	7%	69%
Other reasons (including no title)	2%	18%

Source: World Bank (2003a:18)

The World Bank concludes: “A systematic programme of land rights regularisation and titling would clearly be targeted toward and respond to demand from the poor.”<sup>126</sup>

### ***Informal settlements***

In many Nicaraguan cities, low-income neighbourhoods face legal irregularity because legalisation of lot ownership is still pending. In addition, the growth of these settlements does not conform to urban development regulations, which results in functional problems with physical structure as well as deficiencies in the provision of housing, infrastructure and basic services. Inhabitants in these neighbourhoods live in a low-quality environment, resulting in a negative impact on the health and well being of those families. Lack of legal title results in highly insecure land tenure and prevents people from accessing resources to improve their living conditions. These circumstances have led to social and spatial segregation of the lower-income neighbourhoods, increasing urban inequality.

## **2 Land Tenure**

### **2.1 Relevant constitutional provisions**

Since 1995 the Constitution has guaranteed the right to private property. However, it also states that laws may establish some limitations and obligations on this right “by virtue of the social role of property... for reasons of public utility or social interest”.<sup>127</sup> Similarly, while it prohibits confiscation, it also recognises the possibility of expropriation in exchange for compensation of “uncultivated large estates for land reform purposes”.<sup>128</sup>

The Constitution combines the forms of property that existed during the revolution with the forms of private property fostered by the return of the market economy. Article 99 (amended in 1995) declares that “the state is responsible for protecting, facilitating and promoting forms of private

<sup>121</sup> World Bank. (2003a:16).

<sup>122</sup> Ibid. p.18.

<sup>123</sup> Ibid. p.16.

<sup>124</sup> Ibid. p. 18.

<sup>125</sup> Ibid. p. 18.

<sup>126</sup> Ibid. p. 18.

<sup>127</sup> Art. 44.

<sup>128</sup> Ibid.

property, private economic management and private, state, cooperative, associative,<sup>129</sup> community and mixed enterprise, to guarantee social and economic democracy". The original text from 1987 is, however, preserved in Art. 103: "The state guarantees the democratic coexistence of all forms of public, private, cooperative, associative and community property; all of these are part of a mixed economy and are subordinated to the nation's higher interest, and fulfil a social role."

Title VI still harbours the structure and part of the original language of the 1987 Constitution, including a chapter dedicated to land reform.<sup>130</sup> In one amendment made to this chapter in 1995, the properties of peasants who benefited from land reform in accordance with the law are guaranteed, while land reform as an essential instrument for the democratisation of property and fair land distribution is recognised.<sup>131</sup>

Amended Art. 107 reads:

**Land reform will eliminate idle large estates and will principally be executed with state land.... Land reform will eliminate any form of exploitation of peasants or indigenous communities, and will promote forms of property compatible with the nation's social and economic objectives established in this Constitution. The land property regime of indigenous communities will be regulated by the laws on this matter.**<sup>132</sup>

In addition, Art. 89 recognises special land rights of the indigenous communities of the Atlantic Coast. It says: "The state recognises communal forms of property of land of the communities of the Atlantic Coast. At the same time, it recognises the enjoyment, use and usufruct of the water and forest of their communal lands."

The original articles of this Land Reform chapter, laid down in 1987 and still in effect today:

- Guarantee ownership to landowners who work their land productively and efficiently;

<sup>129</sup> "Associative" property is not defined by the Constitution, but it seems to refer to other forms of collective property that are not owned by cooperatives, or community property owned by indigenous communities.

<sup>130</sup> Chapter II, Title VI of the Constitution is entitled "Land reform", and consists of six articles, two of them (Articles 106 and 107) amended in 1995.

<sup>131</sup> Art. 106.

<sup>132</sup> Art. 107.

- Focus on state promotion of agricultural cooperatives and incorporation of small and medium-sized farmers into economic and social development plans; and
- Recognise the right of peasants "to participate in the formulation of policies for an agrarian transformation, through their own organisations".<sup>133</sup>

## 2.2 National laws related to land and property rights

The table in Appendix I shows the main land and housing legislation applicable in Nicaragua.

## 2.3 Types of land

Land in Nicaragua is classified in five different categories: national land, private land, communal land, protected areas and *ejidal* land.

### ***National land***

The 100-year-old Nicaraguan civil code refers to two types of land: private and national. It states that all land that has not been transferred to individuals or does not have an owner is to be considered state property.<sup>134</sup> Until the enactment of Law 445 in 2002, it was common for government officials to consider communal indigenous land, which had not been officially declared as such, to be national land. The problem, as clearly stated before the Inter-American Court of Human Rights by the Mayagna community of Awas Tigni, is that until 2002 it was not proper procedure for Nicaraguan law to be able to declare communal land, nor was there a state office in charge of that function.

### ***Private land***

Article 108 of the Constitution guarantees land ownership to all owners who "work their land in a productive and efficient way". Article 44 states that land ownership rights could be limited to accomplish the "social function of property". Collective land property by cooperatives is one form of private property protected by the Constitution under Art.

<sup>133</sup> Articles 108-111.

<sup>134</sup> See Art. 64 of the Nicaraguan civil code, adopted in 1904.

99. Individual private property suffered several limitations during the Sandinista revolution. However, since 1990 individual private property guarantees have been fully restored, especially after the constitutional reform of 1995.

### ***Communal land***

The Constitution recognises communal forms of land ownership of indigenous peoples of the Atlantic Coast.<sup>135</sup> It also states that the land tenure regime of indigenous communities will be regulated according to the law on that topic.<sup>136</sup> That law is Law 28 of 1987, known as the Autonomy Law of the Nicaraguan Atlantic coast. Article 36 of Law 28 defines communal property as follows:

**Communal property is constituted by the communal lands, waters and forests that have traditionally belonged to the community. Communal property is subject to the following provisions: 1) Communal land cannot be sold, seized, or taxed; their communal status cannot expire. 2) The inhabitants of the communities will have the right to work on communal plots of land and are entitled to the benefits generated therefrom.**<sup>137</sup>

However, it took 15 years of pressure from the indigenous communities (culminating in submission of the case to the Inter-American Court, which ordered the Nicaraguan government to legislate on this matter) for the National Assembly to pass a law on this topic, known as Law 445, which regulates the property regime of communal property of indigenous communities and other ethnic groups on the Atlantic Coast. This was approved in 2002. After three more years, on May 24 2005 the government extended the first five titles of communal property to 80 Miskito and Mayagna indigenous communities, with a territorial extension of 8,000 km<sup>2</sup>.<sup>138</sup>

### ***Protected areas***

Protected areas are defined by Art. 3 of Decree 14-99 as “areas whose purpose is to preserve, manage and restore plant and animal wildlife and other life forms, as well as the biodiversity and the biosphere. This category also includes

national territory that, by being protected, allows the state to restore and preserve geomorphologic phenomena and other sites of historical, archaeological, cultural, scenic or recreational importance”. The status of protected area could be declared on state, private or communal property.

### ***Ejidal land***

In Nicaragua, land owned by municipalities is referred to as *ejidales* land.<sup>139</sup> The origins of and regulations on this land are confusing. They seem to include both what was previously known as *ejidales* and communal land. *Ejidales* land was the communal land of indigenous populations that covered a specific area around the village, taking the central square as reference point. Communal land was other land collectively owned by indigenous communities either allocated to them by the Spanish Crown or bought by them.<sup>140</sup> Article 44 of Law 40 on Municipalities states that “*ejidales* lands are municipal property, of communal nature; they may be leased but not sold. Uses of *ejidales* land will be determined by the relevant municipal council, pursuant to the law enacted on this matter”. However, until now no specific law has been enacted for this type of property.

## **2.4 Land policy**

Execution of a comprehensive land reform was one of the 1979 revolution’s first tasks. The FSLN government’s actions affected between 2.7 and 3 million *manzanas* or 35 percent of all rural productive land. This process was carried out through two main methods. One was the confiscation of the rural and urban properties held by the Somoza dynasty and its relatives.<sup>141</sup> Three decrees were issued ordering the confiscation of the property of the Somoza dynasty and relatives: Decrees #3 and #38 of 1979 and #329 of 1980. According to Stanfield, these decrees affected some 2,000 properties, representing 34 percent of all rural land acquired by the state during the revolution. These properties amounted to 1,400,000 *manzanas*, or 49.6 percent of the entire area

<sup>135</sup> See Art. 89 of the Constitution.

<sup>136</sup> See Art. 107 of the Constitution.

<sup>137</sup> The quotes of the English version of Law 28 have been taken from the text of the law inserted as an appendix in the following book: Hale, C. R. (1994). *Resistance and Contradiction. Miskitu Indians and the Nicaraguan State. 1894-1987*. Stanford University Press, Stanford, pp. 231-239.

<sup>138</sup> Tremiño, W. (2005).

<sup>139</sup> *Ejidal* land, however, is not mentioned in the Constitution.

<sup>140</sup> Barahona, T. (2003).

<sup>141</sup> The confiscation of property owned by the dictatorship and its cronies was based in the illegal character of that ownership and was not indemnified.

affected by the revolution.<sup>142</sup> The second method used was land expropriation through land reform laws, especially Decree #782 of 1981, through which 29 percent of the reformed area was expropriated.<sup>143</sup>

As mentioned earlier, during the last three months that the Sandinistas were in power they made massive transfer of properties that were in hands of the state. Those transfers were authorized by three main laws:

- Law 85 (“Law of transfer of ownership of housing and other property owned by the state and other public institutions”);
- Law 86 (“Special law for the legalisation of houses and land”); and
- Law 87 (“Law to transfer jurisdiction and agrarian procedures”).

Some of these lands were later turned over to former combatants.

Over the last years, the agricultural frontier has grown, with more and more people settling on “national land” on the Atlantic Coast. This situation has created fertile ground for a relative increase in land concentration. It has also expedited the dissolution of a significant number of cooperatives that benefited from the land reform of the 1980s, which in many cases have been purchased by powerful landlords, including former president Arnoldo Alemán.

### ***Approaches towards a land use management policy***

In recent years, the government has advanced in the discussion toward a land policy. However, there has been a lot of institutional dispersion and confusion about what land policy means and what it should include. The government has sent out different signals. It has established a General Policy for Territorial Ordering with a broad understanding of land issues, under the responsibility of a set of institutions, including the Nicaraguan Institute of Territorial Studies (INETER),

<sup>142</sup> Stanfield, J. D. (1996).

<sup>143</sup> Ibid. The expropriation of property for agrarian reform purposes was intended to be through a compensatory process, but in reality this did not always happen.

the Ministry of Natural Resources (MARENA) the Ministry of Agriculture, Livestock and Forestry (MAGFOR), the Ministry of Development, Industry and Trade<sup>144</sup> and the Ministry of Finances and Public Credit, through the Office of Property and the Rural Titling (OTR). However, it has of late relied more on one institution: MAGFOR.

### ***The General Policy for Territorial Ordering***

Article 3 of Presidential Decree 90-2001 defines the policy as follows:

**A Policy for Territorial Ordering is the set of measures and objectives aimed at contributing to settle land disputes related to adequate and planned use of land assets, such as natural resources, environment, population distribution, organisation of the economy, planning of investment processes coherent with land features, prevention and mitigation of natural disasters and the exercise of territorial sovereignty by the Nicaraguan state.**

Decree 90-2001 underlines the government’s interest in strengthening INETER, “as one of its main attributions is the management of the territory at its various levels, except with respect to the demarcation and titling of indigenous communities, which is the responsibility of the Rural Titling Office of the Ministry of Finance and Public Credit” (Art. 6).

Through Decree 78-2002, the government established rules, guidelines and criteria for land management, which will have to be developed and executed by municipal governments. Land management will be based on municipal land management plans, which will have to be prepared by the municipalities. For this purpose, they will rely on the technical assistance of the Nicaraguan Institute of Municipal Development (INIFOM). Under Decree 78-2002, these plans have the following essential goals: 1) formulating a municipal policy of land management for sustainable development; 2) preparing a concerted proposal to guide land uses; 3) proposing and implementing measures for the settlement of disputes related to municipal urban and rural land management; and 4) guiding different land uses (Art. 60).

<sup>144</sup> Its responsibilities include formulating, proposing, directing and coordinating the planning and use of state natural resources; and coordinating and managing its Cadastre System.

### ***Policy proposed by the Land Policy Unit of MAGFOR***

Law 290 of 1998 established the regulatory framework of MAGFOR, and assigned the establishment of a land policy to this ministry. For that reason, the Land Administration Project (PRODEP)<sup>145</sup> helped to create a Land Policy Unit as part of MAGFOR. As of June 2005, that policy has not yet been implemented. Instead there exists a draft document for discussion on that policy. The World Bank has been very critical of the decision to assign the elaboration of a land policy to MAGFOR. According to the Bank, the creation of the Land Policy unit was a “very positive step. However, placing it at MAGFOR risks giving the unit a purely rural focus that neglects important broader implications of land policy.”<sup>146</sup>

In fact, it seems that is exactly what is happening. For instance, the draft document on land policy elaborated by MAGFOR defines land policy as follows:

**The national land policy is defined as the principles, guidelines and strategies toward the establishment of an efficient system of land management. That policy will allow the democratic consolidation of several property regimes and the correction of distortions that put at risk the applicability of policies for the development of the rural productive sector. A land policy should guarantee the link at the territorial level of the actions for regularisation of tenure and the distribution, with services that support production.**<sup>147</sup>

Under this short definition, other important aspects that should be included in a national land policy are excluded, such as an urban land policy, policies regarding communal land of indigenous peoples, protected areas, and all the institutional aspects necessary to effectively manage the land, including coordination and interactions among all the institutions dealing with those issues.

## **2.5 Tenure types**

The following classification of different forms of land tenure needs to be seen within the context of a range of informal

formal (illegal-legal) types along a continuum, with some settlements being more illegal in comparison to others.<sup>148</sup>

### ***Types of informal tenure***

Informal types of tenure vary depending on whether the land is urban or rural, or if it is considered indigenous territory or a protected area. Treatment has varied at different times and under different political circumstances, influencing the way the issue is addressed by the government with respect to the level of repression/negotiation.

#### ***De facto occupants of public or private urban land***

In Nicaragua urban land seizures are known as “spontaneous settlements”, and have been treated differently at different historical moments. As we will see in the case study of the city of León, before 1979, spontaneous settlements were established mainly in areas considered high risk due to environmental problems (e.g. garbage dumps, flood-prone areas or highly unstable land). In the 1980s these occupations changed radically, as people began to occupy land suitable for housing developments located next to public urban developments. The revolutionary government did not promote those settlements, but did not repress them either, resulting in the government’s de facto blessing. Since 1990, “spontaneous settlements” have reappeared due to the lack of land for low-income families, and sometimes those families have been evicted.

#### ***De facto occupants of rural land***

In Nicaragua, rural land seizures have been carried out to press for land reform. This is also a method used by former *contras* and demobilised EPS combatants (in lower numbers), to pressure the government into fulfilling its promises for land reversion after demobilisation. Usually negotiations take place between occupants and the government; sometimes occupants are allowed to stay in the property and sometimes they are relocated.

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<sup>145</sup> Programa de Ordenamiento de la Propiedad.

<sup>146</sup> World Bank. (2003a:52)

<sup>147</sup> Gobierno de Nicaragua. (2005).

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<sup>148</sup> United Nations Human Settlements Programme. (2003:8).

### *De facto occupants of indigenous land*

The lack of clarity regarding indigenous land has led to a situation of many landless people occupying territories claimed by indigenous communities as their own. Until now the government has ignored this. However, this situation creates violent clashes between indigenous communities and the de facto occupants.

### *De facto occupants of protected areas*

This results from two different situations. In the first case, invaders occupy national land and/or land claimed by indigenous communities as part of their territory, which is later declared as a protected area by the government. The second situation occurs when such illegal occupation takes place on land that has already been declared a protected area. In general the government does not have the institutional capacity to prevent this situation: there are few functionaries responsible for protected areas.

### *Types of formal tenure*

#### *Rental*

Considering the high level of ownership, rent is not very common in Nicaragua. Only 6.6 percent of the population rent the property where they live. The number is slightly higher in urban areas (7.4 percent) than in rural areas (5.5 percent).

#### *Undocumented tenure*

The tenant acts as landlord and owner, but has no document to certify his/her status as owner. This occurs often in a succession, when heirs do not receive any legal documents to prove they are the legitimate owners.

#### *Tenure with a document issued by a judge*

The holder/owner has acquired property through the issuance of a supplementary title by a judge. This title arises from a formal request to a judge to call two or more witnesses who, under oath, respond to a number of questions. In property matters, these usually involve: whether or not they know the person who lives in the house, whether or not that person built it with their own money and how long that person has been in unchallenged possession of the property. Depending

on the answers to these questions, the judge may declare that the person who inhabits the house, and who has sought the title, should be considered the effective owner of the property, so long as no one with a better claim appears.<sup>149</sup> This legal mechanism is a major source of corruption and complicates property issues.

#### *Collective tenure*

This is the form of tenure enjoyed by indigenous communities and cooperatives, which benefited from the land reform. In the case of indigenous communities, this form of tenure may be documented or undocumented. Some indigenous communities have colonial titles, others hold titles provided by the British Crown, and some others have titles issued during the agrarian reform of the 1980s. Other communities have undocumented collective tenure rights over land they consider part of their ancestral rights.

#### *Documented tenure but unregistered rights*

This is the type of tenure held by most beneficiaries of land and urban reform implemented during the revolution. Tenants are socially considered as owners because they hold some kind of document that serves as deed, granted at some point by some state agency. This kind of tenure includes people who have received specific certificates (*solvencias*)<sup>150</sup> but whose property has not been registered. The main problem faced by these owners is that often their land is not accepted as a guarantee when they apply for a loan because the bank system requires duly registered deeds.

#### *Documented tenure with registered rights*

This type of tenure receives the most state benefits. The owner has a deed, free of encumbrances and duly registered at a cadastre office. In Nicaragua, this is the type of tenure targeted by multilateral bank projects.

<sup>149</sup> Rogelio, P. P. & Bolívar, R. & Bolívar T. (1997:137).

<sup>150</sup> *Solvencias* are documents created as part of the process to regularise property in Nicaragua. They are issued by a state agency and certify that the person who holds that document has an ownership right over a property.

## 3 Land Management Systems

### 3.1 Main institutions involved

#### ***Institutional structure before Law 512, 2005***

Land management in Nicaragua is in the hands of a complex network of institutions, some traditionally belonging to the executive branch and others to the judiciary. However, these institutions have been in the middle of a power struggle not only between political parties, but also recently between the executive and the legislative branches of government.

In early 2005 the National Assembly passed Law 512, transforming the institutional structure of land management. Considering that these reforms are the result of an unresolved political confrontation between state powers it is too soon to know if the reforms will prevail. As a result, in this section we will present the institutional structure of land management that was in place before Law 512, and then explain the main changes introduced by that law.

#### ***The National Confiscation Review Commission (CNRC)***

The National Confiscation Review Commission (CNRC) was created in 1991 and reformed in 1992 after a Supreme Court ruling that some of its functions were unconstitutional. The CNRC is an administrative body composed of the attorney general and four other officials directly appointed by the president. Every kind of claim that relates to property purportedly confiscated under the Sandinista government must be presented to the CNRC. According to a recent report by several NGOs, of all cases submitted to this commission, the CNRC had favourably resolved (by ordering compensation or return of properties) 80 percent of the cases and had denied only 13 percent; the remaining 7 percent were still pending. As of August 2002, the CNRC has ordered compensation in respect of 14,784 properties (that is, 74 percent of the claim cases resolved), denied compensation in 2,592 cases (13 percent of the resolved cases), and ordered the return of 1,171 properties (5.8 percent of the resolved cases).<sup>151</sup>

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<sup>151</sup> COHRE et al (2003).

#### ***The Office of Property 152***

This office is a unit within the Ministry of Finance and Public Credit. It deals with claims resulting from confiscation, expropriation and occupation of assets, as ordered by the CNRC. This includes determining the amounts and ordering payment of compensation. In addition, this unit reviews and processes applications for the titling of property belonging to the state and other public institutions.<sup>153</sup> In 2002, this unit was turned into a deconcentrated entity with technical autonomy, designated as the Finance Ministry's "specialised unit to address all property-related administrative issues".<sup>154</sup> The head of the unit was also given authority to issue and sign property titles.<sup>155</sup>

The Office of Property has a gender unit in charge of educating functionaries and beneficiaries of titling programmes on gender issues.<sup>156</sup> Despite the public recognition by the Nicaraguan government and the World Bank of the importance of promoting land ownership among women, the gender unit lacks the appropriate resources and personnel. It has only one functionary.

The Office of Property consists of four sub-units.<sup>157</sup>

#### ***The Office for Territorial Ordering (OOT)***

The government created the OOT to review cases under Laws 85, 86 and 88. The OOT decides whether the transfer of properties under those laws were carried out in regular manner. It is mandated to:

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<sup>152</sup> Created by Decree 56 of 1998. This office is called "Intendencia de la Propiedad" in Spanish.

<sup>153</sup> Art. 1 of Decree 56-98.

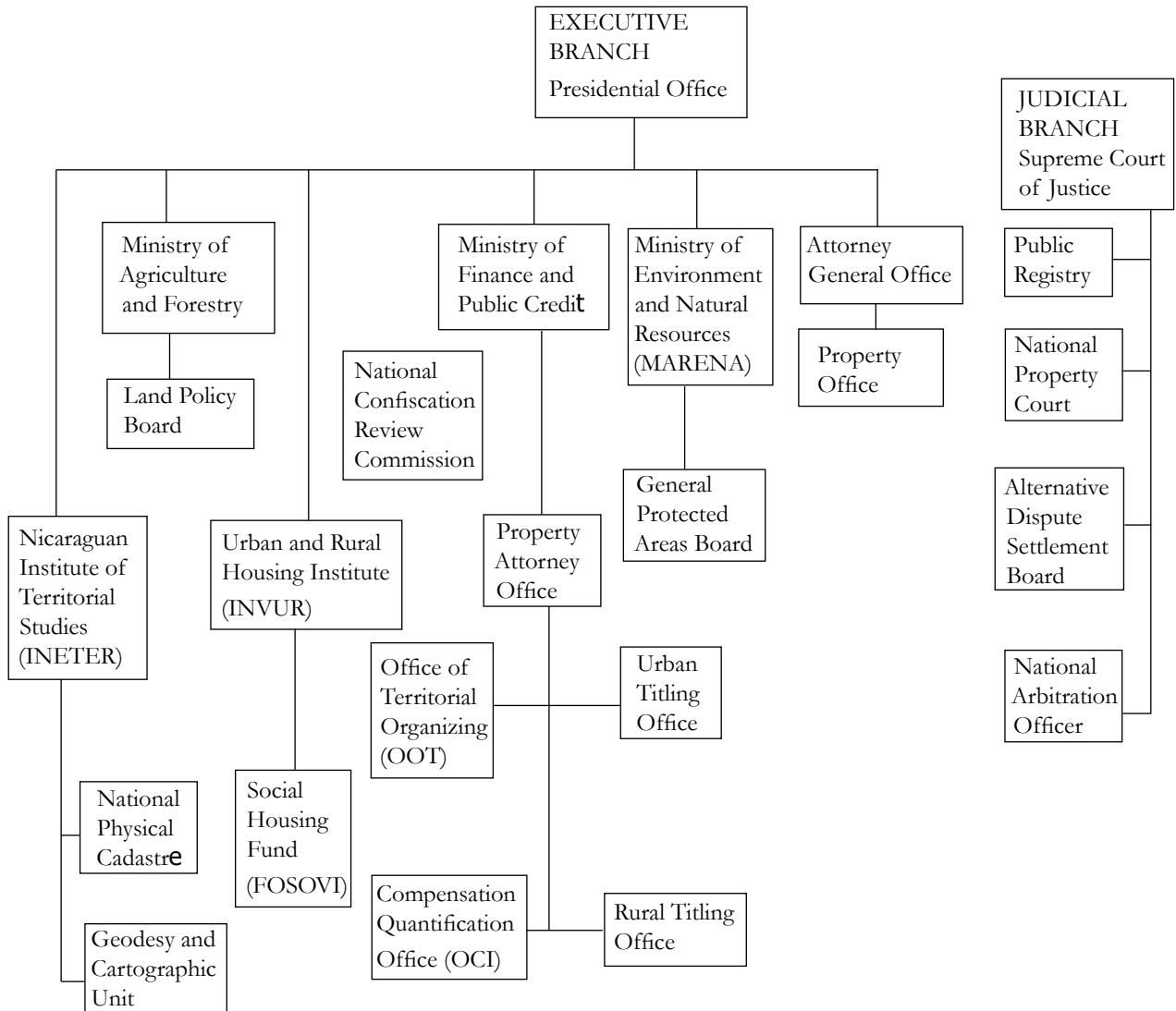
<sup>154</sup> Art. 2 of Decree 45-2002.

<sup>155</sup> Art. 4 of Decree 45-2002.

<sup>156</sup> Hernández, P. Interview with the author, June, 2004.

<sup>157</sup> Art. 2 of Decree 56-98. The organic structure and the functions of the Office of Property and its agencies were ratified by Decree 118-2001, known as "Reforms and incorporations to the regulation of Law No. 290: Law of organisation, competence and procedures of the Executive power".

Figure 3.1 Institutional structure related to land and housing management (pre-Law 512-05)



- Grant *solvencias* of review and disposal of acquisitions that have complied with all the requirements set by the relevant laws<sup>158</sup>; and
- Inform the Office of the Attorney General in cases of identified transactions that (may have) failed to meet legal requirements.<sup>159</sup>

A recent international NGO report found that between July 1991 and July 2001, the OOT received 146,291 cases of urban and rural properties for review. By mid-2001, it had reviewed 88 percent of these cases. Of these, 106,907 were approved – in other words, the OOT issued *solvencias* in 83 percent of cases, meaning that the transfers of those properties were legal, 11 percent were submitted for appeal and the remaining 6.3 percent were rejected, meaning that those transfers were illegal.<sup>160</sup>

#### ***The Compensation Quantification Office (OCI)***

Created to appraise and quantify assets claimed by private individuals at the CNRC, the OCI also determines the value of property affected by confiscation, expropriation and invasion. It informs the Treasury for relevant payment.<sup>161</sup>

#### ***The Rural Titling Office (OTR)***

This has three functions:

- Coordinate and direct the processing, classification, control and management of documentary and technical information to issue deeds over pieces of national rural land and land owned by indigenous communities;
- Plan, organise, conduct topographic measurements, legislation, titling and inscription of real estate property at the property registry office; and
- Coordinate the planning, organisation, supervision and execution of perimeter description and topographic surveys for rural titling processes with the Geodesy and INETER.<sup>162</sup>

<sup>158</sup> As mentioned earlier, a *solvencia* only certifies that the person holding the document has a right to the property. Once a *solvencia* is granted, the person should obtain a title from the urban or rural titling office.

<sup>159</sup> Art. 113 of Decree 118-2001.

<sup>160</sup> COHRE et al (2003).

<sup>161</sup> Art. 114 of Decree 118-2001.

<sup>162</sup> Art. 116 of Decree 118-2001.

#### ***The Urban Titling Office (OUT)***

The functions of this office are to process, classify, control and manage documentary, legal and technical information needed to prepare deeds for urban plot holders that have been granted *solvencia* of review and disposal; and deeds and conveyance of real estate property as compensation in favour of demobilised Nicaraguan former *contras*, army and Interior Ministry personnel. It also processes the registration of deeds in the relevant property registry.<sup>163</sup>

#### ***The Property Attorney's Office***

The Property Attorney represents the state in matters of assets that have been subjected to adjudication or conveyance, or affected in any other way, in which the state may have interests.<sup>164</sup> Some of its functions are to:

- Receive, hear and advise individuals who have received or are waiting for a favourable resolution from the CNRC;
- Facilitate the legalisation of reversions recommended by the commission; and
- Request from competent judicial authorities the restitution of properties that have been acquired in violation of the Constitution or the law to the state.<sup>165</sup>

#### ***The Cadastre***

The development and maintenance of a national physical cadastre is an exclusive responsibility of the state.<sup>166</sup> The body in charge of that responsibility is the Physical Cadastre Office, an entity within the INETER.<sup>167</sup> Under Law 290, INETER is a decentralised entity under the control of the presidency, with technical, administrative and financial autonomy. There are cadastral offices in the departments of Chinandega, León, Managua, Carazo, Masaya, Granada, Rivas, and Estelí,

<sup>163</sup> Art. 115 of Decree 118-2001.

<sup>164</sup> Art. 17, Decree 24-2000 ("Regulations to the Organic Law of the Republic Attorney General's Office").

<sup>165</sup> Art. 18, Decree 24-2000.

<sup>166</sup> Art. 1, Law 1772-70 ("Law of Actualization and Maintenance of the National Cadastre").

<sup>167</sup> Law No. 311-99; Decree No. 120-99.

all under the direction of the Physical Cadastre Office of INETER.

The area registered by the cadastre covers only 22,300 km<sup>2</sup> of the territory (15 percent of the total national surface).<sup>168</sup> Furthermore, it is estimated that at least 40 percent of the cadastral information is outdated.<sup>169</sup> The World Bank is currently developing the PRODEP project to modernise the cadastral system, including the drafting of a new law, and a pilot project to update the cadastre – initially in the departments of Estelí, Madriz and Chinandega – with the aim of then extending it to the whole country. As a result of this effort, in January 2005 the National Assembly approved Law 509 or the General Law of National Cadastre.

### ***The Public Registry***

In general terms, the public registry in Nicaragua is regulated by the civil code of 1904, Title XXV, and by its Public Registry Regulation of 1904 and subsequent amendments. The central piece of the public registry is the Real Property and Mercantile Registry (RPIM). The RPIM has two main functions: 1) “provide legal security to landowners and any others with property interest”,<sup>170</sup> and 2) “the conservation of registry records and other documents that track property transactions and the rights and interest that they engender. Any transaction that involves the creation, transfer, modification, or cancellation of property rights must be inscribed in the RPIM to have effects on third parties”.<sup>171</sup> The administration and control of the public registry and the appointment of registrars and other staff are the responsibility of the Supreme Court of Justice.<sup>172</sup> There is a public registry office in each department and in the autonomous regions of the Atlantic Coast. They are managed by a public registrar and assistant registrars.<sup>173</sup>

<sup>168</sup> The web page of the General Physical Cadastre is [www.ineter.gob.ni/Catastrofisico/principalcatastro.htm](http://www.ineter.gob.ni/Catastrofisico/principalcatastro.htm)

<sup>169</sup> Chevez, F. Interview with the author, June 11, 2004

<sup>170</sup> Trackman, B. et.al. (1999:5).

<sup>171</sup> Ibid.

<sup>172</sup> Art. 2 of Law 80 of 1990.

<sup>173</sup> Law 301 of 1998, Art 1; and Law 260 of 1999, Art 187.

The public registry has been plagued with problems. An evaluation made by a team from Harvard University in 1999 found the following:

- “The accuracy of the information is doubtful. Geographic information about property, for example, is usually neither tied to a physical cadastre nor independently verified. Other information may be out of date.”<sup>174</sup> During the war, the records in the departments of Chinandega, Estelí, Masaya and Matagalpa were completely destroyed, and despite the effort to reconstruct them, it is suspected that they are not very accurate;
- “The physical conditions of the records in many offices is poor;”<sup>175</sup> and
- “Information within the RPIM system as a whole is not centralized, and the RPIM offices are not linked electronically.”<sup>176</sup>

Until recently, most registry books were maintained manually<sup>177</sup>. However, the public registry office is being modernised.

### ***The property courts***

Property Courts were created by Law 287 of 1997, which established that the Supreme Court of Justice had the power to create Property Courts within the Courts of Appeal, run by three principal and three deputy “arbitration judges”. These courts are in charge of hearing first appeals filed against administrative decisions on property-related cases in ordinary and arbitration proceedings.<sup>178</sup> However, these courts deal only with urban and rural properties that were affected under the Sandinista government. Other property related cases, such as inheritance cases or marital property cases are under the jurisdiction of regular civil courts. As mentioned before, courts in Nicaragua are highly politicised, especially the Supreme Court of Justice. For three years FSLN members on the Supreme Court delayed the establishment of Property

<sup>174</sup> Trackman, B. (1999: 8).

<sup>175</sup> Ibid, p.8.

<sup>176</sup> Ibid, p. 9.

<sup>177</sup> Aragón, R. W. (2005).

<sup>178</sup> Art. 69 of Law 287 of 1997.

Courts. In 2000, four Property Courts were established, but only two years later, three of them were closed, ostensibly for economic reasons and the limited number of pending cases.<sup>179</sup> In 2003, the Supreme Court of Justice renamed the Property Courts the National Property Court, consisting of five judges.<sup>180</sup>

#### ***The Alternative Dispute Settlement Board***

Law 278 of 1997 establishes arbitration jurisdiction and orders the creation of a Mediation Office under the control of the Supreme Court of Justice.<sup>181</sup> However, when the Supreme Court of Justice failed to issue the relevant regulations, the president decided to enact a “mediation regulation”.<sup>182</sup> A few days later the Supreme Court of Justice issued its “arbitration regulations” creating the National Arbitration Office under the Alternative Dispute Settlement Board.<sup>183</sup>

#### ***The Land Policy Board***

This board is part of the structure of MAGFOR. It formulates policies related to land distribution, land ownership and use of rural land owned by the state.<sup>184</sup>

#### ***The General Protected Areas Board***

This board is part of the structure of MARENA. It is mandated to plan, regulate and manage the National Protected Areas System (SINAP). This includes coordination of environmental protection areas with relevant agencies and promoting the participation of civil society. It also entails the provision of assistance and support to programmes and projects for the development and use of protected areas and their resources.<sup>185</sup>

<sup>179</sup> Agreement No. 223 of the Supreme Court of Justice, November 19, 2002. This decision is not a ruling but an administrative decision made by agreement of all the members of the Supreme Court. According to a member of the Attorney General's Office, the Property Courts resolved only 83 cases in their first two years.

<sup>180</sup> Agreement No. 52 of the Supreme Court of Justice, February 28, 2003.

<sup>181</sup> Articles 50 et seq. Art. 50 states that in property disputes under this law, the judge in charge of the case shall first order a conciliation procedure for a period of 10 days. This means that both parties to the dispute are summoned to appear at the court for a conciliation meeting, in the presence of a mediator appointed by the judge.

<sup>182</sup> Executive Order No. 75 of March 7, 2000.

<sup>183</sup> Judicial Agreement No. 76 of April 12, 2000.

<sup>184</sup> Art. 24c, Law 290, 1998.

<sup>185</sup> Art. 267, Decree 118-2001.

#### *Institutional Structure After Law 512, 2005*

As mentioned earlier, Law 512, 2005 is one of several laws implemented at the beginning of 2005 by the National Assembly after a constitutional reform, the main objective of which was to limit the powers of the executive branch.

#### ***Creation of the Institute for Urban and Rural Reformed Property (INPRUR)***

Law 512, 2005 focuses on issues related to properties affected by the Nicaraguan revolution that have still not been resolved. This law clearly intends to shift the focus of priorities in the resolution of property issues, especially the claims of urban and rural beneficiaries of the distributive urban and rural reform. The beneficiaries of the 1980s land reforms who are still waiting to receive titles to their urban or rural properties will be the main clients of INPRUR, which by law can only exist for five years (Art. 1). INPRUR will be the only entity in charge of property issues, taking under its control the CNRC and the Property Attorney's Office – which were directly linked to the president – and all the other institutions in charge of property issues that were part of the Ministry of Finance and Public Credit, such as the Property Office, the Territorial Ordering Office and the Titling Office (Art. 1).

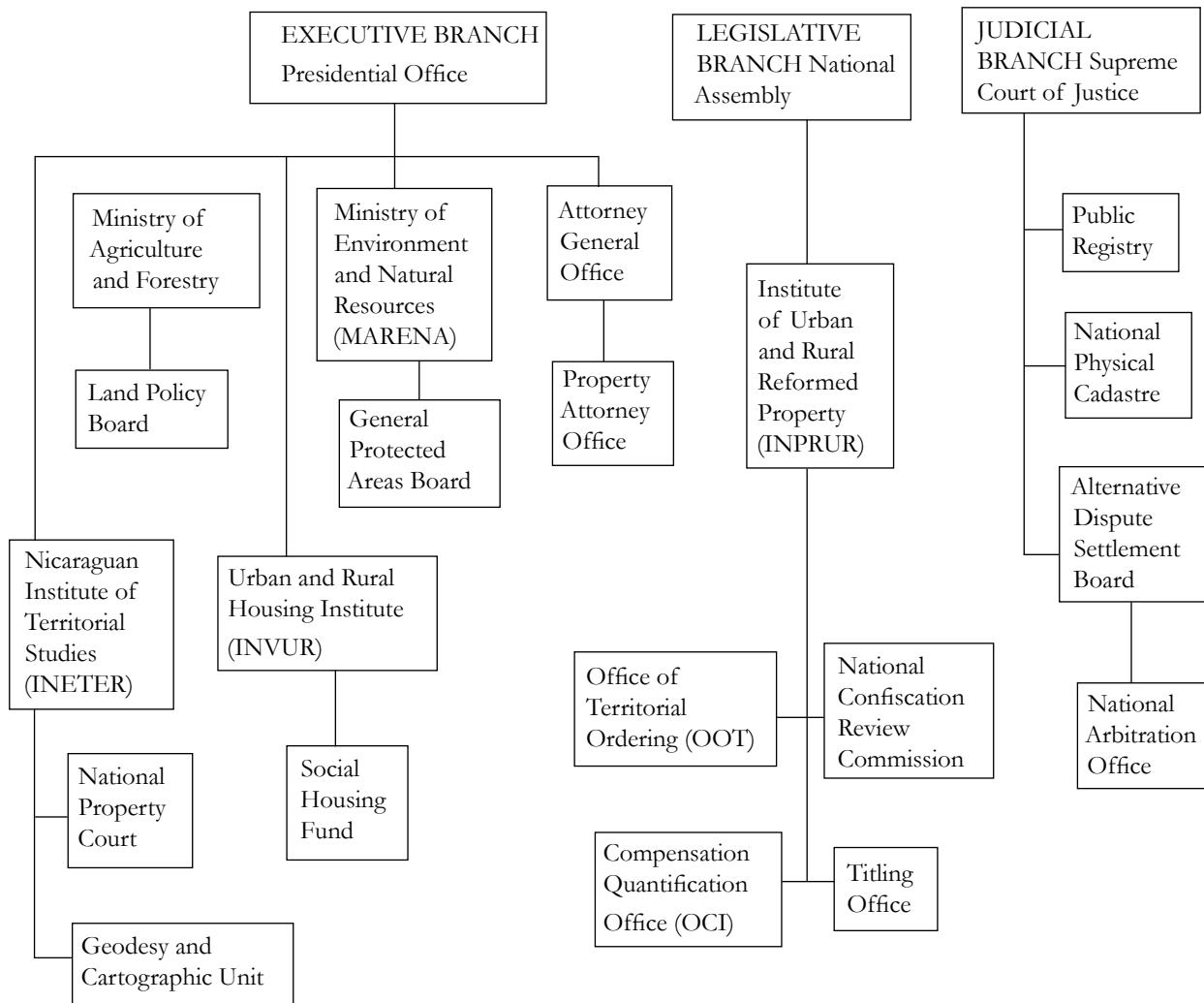
Article 9, of Law 512, 2005 establishes the following three main objectives of INPRUR:

- Propose the adoption of legal measures to resolve property conflicts regarding urban and rural reformed property;
- Generate a more flexible process to pay compensation; and
- Grant highest priority and resources to legalisation of property titles to those occupants that have legitimate possession over urban and rural properties.

The work of the National Property Courts is likely to be paralysed, because Art. 35 of Law 512, 2005 states that until INPRUR is effectively established, all civil and criminal cases against beneficiaries of the urban and rural reform will be

suspended for a period of 180 days. Additionally, it suspends for the same term the execution of all judicial sentences on those cases (Art. 36).

Figure 3.2 Institutional structure related to land and housing management (post-Law 512-05)



### **3.2 The Land Administration Project (PRODEP)**

In June 2002, the World Bank approved a \$32.6 million loan for the government of Nicaragua to finance a Land Administration Project (PRODEP)<sup>186</sup> to improve land tenure security and “thereby boost investment in agriculture, contribute to social fairness, promote the sustainable use of natural resources, and increase collection and facilitate planning at the municipal level”.<sup>187</sup> According to the World Bank:

**Before launching a massive land rights regularisation programme, a suitable land administration framework needs to be established. This is the focus of the proposed five-year project, whose medium-term objectives are to develop the legal, institutional and technical framework for the administration of property rights, and to demonstrate the feasibility of a systematic land rights regularisation programme, initially in the rural areas where the majority of the poor reside.**<sup>188</sup>

PRODEP seeks greater coordination among entities responsible for land and property issues. For this purpose, in 2001, during the process that lead to the approval of PRODEP, President Alemán created the Council for Coordination and Implementation of the Land Administration Project.<sup>189</sup> This council was originally composed of the heads of the five main entities involved in land issues in Nicaragua: the Ministry of Finance and Public Credit (MHCP), the INETER, MAGFOR, MARENA and the Supreme Court of Justice. In 2004, President Bolaños reformed this council, changing its name to the Inter-Institutional Committee of the Program (CIP) and added two delegates: the head of the Nicaraguan Institute for Municipal Support (INIFOM), and the presidential representative for issues related to autonomy and ethnic affairs.<sup>190</sup>

<sup>186</sup> The acronym PRODEP comes from the Spanish title: Programa de Ordenamiento de la Propiedad.

<sup>187</sup> World Bank. (2002). Project Appraisal Document on a Proposed Credit in the Amount of SDR 26.2 million (\$32.2 million) to the Republic of Nicaragua for a Land Administration Project (PRODEP). Report No: 22399-NI. The World Bank, Washington D.C. ('World Bank, 2002').

<sup>188</sup> Ibid. p. 3. It is worth clarifying that hereafter the word “property regularisation” in the Nicaraguan context generally is used to mean settlement of property disputes regarding property issues affected during the Sandinista government in the 1980s. In the context of this article, “regularisation” is not associated with the “regularisation” of irregular/informal settlements that need to be “regularised”.

<sup>189</sup> Executive Order No. 108 of March 27 2001.

<sup>190</sup> Executive Order No. 95 of March 9 2004.

PRODEP focuses primarily on rural property issues with six main components:

#### **Legal and political reforms**

Includes three main elements:

- A land policy framework containing a political analysis and a participatory policy framework;
- Regulatory and legal changes, including a new public registry law, reforms to the Cadastre Law, a law to define criteria and titling and delimitation procedures of indigenous areas; and
- Changes in procedures and operation manuals of institutions working on these issues.

#### **Institutional strengthening and decentralisation**

Includes five main elements:

- Assistance to MAGFOR for land policy formulation and follow-up;
- Decentralisation and strengthening of land rights management, specifically of the Office of Property, INETER, the Property Registry and the Alternative Dispute Settlement Board of the Supreme Court of Justice;
- Assistance to community-based organisations and other stakeholders in the implementation of specific technical and basic legal services intended to be delegated;
- Institutional capacity building for municipalities on land issues; and
- Assistance to the management of PRODEP.

#### **Titling and regularisation**

- This is PRODEP’s most ambitious and expensive component. According to the World Bank, “the ultimate goal of this component is to develop, apply and validate a methodology for the clarification of property rights and, therefore, the elimination of land conflicts and the provision of secure land tenure”.<sup>191</sup> For this, the Bank will focus on three departments (Esteli, Chinandega and Madriz), where it will undertake a systematic process of regularisation of land rights for the 47,000 plots that are estimated to exist in these depart-

<sup>191</sup> World Bank (2002:5).

ments, with the intention of later extending it to the national level. Likewise, the Bank intends to support projects and previous efforts carried out on this matter in Nicaragua since 1990.

#### ***Demarcation and consolidation of protected areas***

This component has six elements:

- Adjustments in land policy for protected areas;
- Demarcation of 11 protected areas in the Chinandega, Estelí and Madriz departments;
- Consolidation of areas protected through management plans, regularisation of land tenure, promotion of protected areas co-managed by MARENA, local communities and NGOs;
- Identification and revision of areas proposed to be placed under protection;
- Social communication and environmental education on protected areas; and
- Management of information on protected areas in the charge of MARENA.

#### ***Demarcation and titling of indigenous territories***

There are three elements:

- Establishment of a regulatory framework via a law for indigenous territories and other regulations and bylaws as required;
- Technical assistance, institutional capacity building and institutional development of indigenous communities; and
- Pilot demarcation and territorial management under a methodology designed through mutual agreement with indigenous communities and other stakeholders.

#### ***Property information systems***

PRODEP will develop an information system to interconnect the information systems of cadastre offices and department registry databases.

#### ***The status of PRODEP***

After the first two years of implementation outcomes are mixed. Progress has been very slow, a problem attributed in large part to the lack of institutional direction due to several

changes in staff. Additionally, PRODEP does not have an institutional culture of openness about its work. As a result, it is very difficult to access information about the current status of the project. PRODEP's internet site has never been activated, making it extremely difficult for civil society organisations or other government agencies to keep abreast of developments. When PRODEP functionaries speak at public events, they focus on the goals of the project, not its specific progress (or the lack thereof).<sup>192</sup>

Among the positive aspects of PRODEP are the following<sup>193</sup>:

- In May 2005 the Nicaraguan government granted the first five titles to several indigenous communities. PRODEP has been an important player in the implementation and follow-up of the Inter-American Court ruling on the Mayagna community of Awas Tingni;
- The National Assembly approval some legal reforms for which PRODEP had been advocating and providing technical support, especially the new cadastral law, approved at the beginning of 2005. A draft for a new registry law is currently in the National Assembly; and
- There are some advances in the cadastral “sweep” in some municipalities in the northern regions, specifically Chinandega and San Pedro del Norte, despite being several months behind schedule.

### **3.3 Relevant jurisprudence**

Nicaraguan courts have a strong tradition of a very formalistic approach to the law. There is a lack of a legal tradition to protect constitutional rights and judges are not trained to do so in their rulings. In addition, Nicaraguan courts are highly politicised: members are often selected because of their political affiliations and judges often openly follow the will of political leaders. It is a common view that the courts today are dominated by the FSLN. As a result, their rulings lack public trust and are generally perceived as partisan deci-

<sup>192</sup> That was the case, for instance, of the presentation of Max Stadthagen, on behalf of the Ministry of Finances and PRODEP, at a conference on land policies in Central America, held in Managua, organised by the University of Wisconsin-Madison in August 2004.

<sup>193</sup> Chevez, F. Interview with the author, June 11, 2004.

sions. To make things worse, court rulings are not properly publicised, so it makes very difficult access them.

## 4 Housing

### 4.1 Relevant constitutional provisions

Article 64 enshrines the right to adequate housing by stating: “Nicaraguans have the right to decent, comfortable and safe housing that guarantees family privacy. The state will promote the attainment of this right.” The right to a healthy environment is laid down in Art. 60.<sup>194</sup>

### 4.2 National laws related to housing

See Appendix I for a table setting out all the legislation applicable to land and housing

### 4.3 Housing policies

Nicaragua has faced a housing deficit for decades. This deficit became critical by the end of the 1970s as a result of the 1972 earthquake that destroyed Managua, and because of the state of war imposed by the Somoza dictatorship against the popular uprising led by the FSLN. As the main confrontations with the army took place in the municipal capitals, the effects on housing were enormous. Somoza bombed and destroyed many cities and towns in a vain attempt to contain the revolutionary forces. For this reason, the revolutionary government set the reconstruction of many municipalities as an urgent task. Some of those reconstruction projects were funded by the World Bank.<sup>195</sup>

Once the emergency situation was resolved, housing continued to occupy an important place in government social programmes, along with health and education. Nevertheless, the Sandinista government had to face the reality of a drastic decrease of resources as a result of political confrontations

with Washington, which closed off access to multilateral bank credit. As a result the Ministry of Housing and Human Settlements (MINVAH) had to work under the pragmatic principle of “equitable distribution of limitations”.<sup>196</sup> Miguel Vigil, the former Sandinista housing minister, has calculated that about 42,000 new houses were built by the Sandinista government, half of them in rural areas.<sup>197</sup> However, Mathey offers a lower estimate of 28,000 homes, most of them (25,800) built between 1980 and 1986.<sup>198</sup> It is safe to say that the real number is in between those two estimates.

As resources became scarce, housing programmes were severely affected. The government implemented “progressive development” programmes that entailed the grant of a piece of land to homeless families, with or without public services, to be progressively developed through the joint efforts of the individuals and the community, and with the support of the state.<sup>199</sup> This is why the distribution of land to homeless families was a main focus of the Sandinista housing policy. In general, those plots of land were confiscated from the dictatorship or expropriated from private owners.

One of the main mistakes of the Sandinista revolution was the lack of institutionalisation of land reforms and of the transfers of urban plots to settlers with housing needs.

For the period 1990-2000 housing was not a government priority. The few state-supported housing programmes were part of the process of peacemaking and disarming of forces in conflict. Illustrating a clear change in priorities, 40 percent of state resources for housing were oriented towards middle- and upper-class sectors.<sup>200</sup> Since the early 1990s, in response to the abandonment of housing programmes by the government and as a result of the social energies unleashed by the revolution, many social organisations emerged to produce

<sup>194</sup> Curutchet, M. (1987:51).

<sup>197</sup> Vigil, M. E. (1999).

<sup>198</sup> Mathey, K. (1990:87).

<sup>199</sup> There is no reliable data on how many plots were distributed. Miguel Vigil, former Sandinista Minister of Housing calculated that number to be 102,235. However, Bolaños and Martínez, estimated that number in 77, 870. See Vigil, E. .(1999); Bolaños, L. and Martínez , T. (1995).

<sup>200</sup> COHRE et al (2003).

social housing. Additionally, many organisations, particularly women's organisations and cooperatives, devoted their efforts to building houses.

By the end of Barrios de Chamorro's term (1996), the government of Nicaragua had designed a long-term housing and settlement policy. This policy was summarised in the National Action Plan for Housing and Human Settlements 1996-2000, as part of preparations for the Habitat II Summit at Istanbul in 1996. The plan, however, remained on paper, because the Alemán government showed no political interest in its implementation or continuity.

In mid-1998 Hurricane Mitch struck a devastating blow to Central America. The destruction caused, and the ensuing wave of international solidarity, produced a proliferation of housing programmes in Nicaragua. Once more, national and international social housing production organisations became the main home builders, accounting for 78 percent of all homes built, while the central government only built 19.2 percent, and local governments 2.8 percent.<sup>201</sup> Nicaraguan NGOs created the Civil Emergency and Reconstruction Coordinating Office (CCER), in an effort to channel and monitor all the international assistance. Once the immediate crisis was over, the coalition decided to continue its work in the form of the Civil Coordinating Office. The Housing Network is an organisation made up of several NGOs devoted to housing production for low-income sectors and it is a very active member of the Civil Coordinating Office.

The end of Alemán's term (2000) coincided with a proposal by the Inter-American Development Bank (IADB) to design and finance an ambitious housing programme. To this end the bank pressed for the setting of appropriate legal and institutional frameworks, which spawned the Urban and Rural Housing Institute (INVUR). At the end of 2002, the IADB approved a \$22.5 million loan to the Nicaraguan government for the first phase of housing programmes, and said that it had an additional \$20 million available for a second phase. This loan has placed Nicaraguan housing policy in a unique

position that may influence the programmatic design in years ahead. Social housing organisations were at first overlooked during the design of the new programme, but as result of their pressure they are slowly beginning to be recognised as legitimate actors in the design and implementation of housing programmes.

## 5 Inheritance and Marital Property Rights

### 5.1 Relevant constitutional provisions

The Sandinista revolution made a pioneering effort in the region to overcome legal discrimination between men and women through a series of important constitutional and legal provisions.

In 1981, Nicaragua signed the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>202</sup> The principle of equality under the law and non-discrimination, including gender discrimination, is established in Art. 27(1) of the Constitution.<sup>203</sup> Article 48 states that in matters of rights, obligations and political responsibilities, "there is absolute equality between man and woman". In the same way, it enshrines the obligation of the state to eliminate the obstacles that in practice constrain equality and active participation in political, economic and social affairs.<sup>204</sup>

Article 49 lists a series of social sectors, including women, which have the right to form their own organisations free of any discrimination "so as to fulfil their aspirations in accordance with their own interests and to participate in the

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<sup>202</sup> Since then, the government of Nicaragua has submitted reports to the Committee on the Elimination of Discrimination against Women.

<sup>203</sup> "All persons are equal under the law and have a right to equal protection. There will be no discrimination for reason of birth, nationality, political creed, race, sex, language, religion, origin, economic position or social condition."

<sup>204</sup> Art. 48 states: "The unconditional equality of all Nicaraguan people in the enjoyment of their political rights, in the exercise thereof and in the fulfilment of their duties and responsibilities is established; there is absolute equality of men and women. The state is in the obligation of eliminating obstacles that in fact prevent equality among Nicaraguan people and their effective participation in the political, economic and social life of the country".

<sup>201</sup> *Ibid.*

construction of a new society".<sup>205</sup> The right to equality is extended by the Constitution to family relations. Article 73 establishes:

**Family relations rest on respect, solidarity and absolute equality of rights and responsibilities between man and woman. Parents must ensure household sustenance and the integral education of their children through common efforts, with equal rights and responsibilities.**

Article 72 states that "marriage and stable civil unions are protected by the state", and establishes that the law will regulate this matter.

Article 82 establishes the right of workers to work in conditions that secure the principle of equal wage for equal work, without any form of discrimination, including gender.<sup>206</sup> In the same vein and with respect to land reform, Art. 109 points out the interest of the state in promoting the organisation of peasant co-operatives "without gender discrimination".<sup>207</sup>

However, the Sandinista revolution did not achieve the liberation of women. While the revolution generated a social mobilisation environment favourable for the political and social advancement of women, their liberation was a promise that was never fulfilled.<sup>208</sup>

An essential step towards the complete elimination of legal discrimination against women is the draft Law of Equal Rights and Opportunities. However, since 2003, this bill has

been stagnating at the National Assembly due to lack of interest.

While the Constitution recognises marriage and stable civil unions, and establishes that the law will regulate this matter,<sup>209</sup> to this day the law has not regulated stable civil unions. The civil code also recognises de facto unions in its Art. 3178, which states that "a de facto union is established when two persons of opposite sex get together to lead a common marital life, with common assets or interests ... [these] de facto partnerships end when one partner contracts marriage."

## 5.2 Legislation related to marital property rights

The civil code, adopted in 1904, establishes the separation of property regime as the default option. If a community of property has not been established by a prenuptial agreement, each spouse owns and may freely dispose of the assets in his/her possession before contracting marriage and of assets acquired by any means during marriage.<sup>210</sup> The prenuptials can be arranged before or after the marriage and may be modified.<sup>211</sup> They must be expressed in a public deed and registered at the property registry office.

### *Family Patrimony*

Article 71 of the Constitution states that "all Nicaraguans are entitled to establish a family. Family patrimony is guaranteed; it cannot be object of seizure and is exempt from any public tax. The law will regulate and protect these rights." This provision relates to a civil law tradition of establishing and protecting a portion of individual property that is allocated exclusively to the family for their own well being. The Nicaraguan law defines family patrimony as the rural or urban property that is separate of the individual property of a person and that is transferred directly to low-income families. The main purpose of a family patrimony is to guarantee a better satisfaction of the necessities of that family. A

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<sup>205</sup> Art. 49 states: "Urban and rural workers, women, young people, farmers, craftsmen, professionals, technicians, intellectuals, artists, religious groups, the Communities of the Atlantic Coast and all Nicaraguan residents in general are entitled to establish organisations, without any discrimination whatsoever, with the goal of fulfilling their aspirations according to their own interests and to participate in the construction of a new society."

<sup>206</sup> Art. 82, paragraph (1) states: "Workers have the right to working conditions that ensure, particularly: 1. equal pay for equal work in identical conditions, adequate to their social responsibility, without discrimination for political, religious, social, gender or any other reason, to ensure well being compatible with human dignity".

<sup>207</sup> Art. 109 reads: "the state will promote the voluntary association of peasants in farming cooperatives, without gender discrimination and, according to their resources, will facilitate the required material means to increase their technical and productive capabilities, in view of improving their living conditions".

<sup>208</sup> Molyneux, M. (1985:227-254).

<sup>209</sup> Art.72.

<sup>210</sup> Art. 153 civil code.

<sup>211</sup> Art. 154, civil code

family patrimony could be declared by law, or by the will of an individual. Despite being enshrined in the Constitution, the law in effect on this matter is still Decree 415 of 1959 (the “Organic law of family patrimony and compulsory testamentary allocations”). This decree, which has not been expressly repealed,<sup>212</sup> uses strong discriminatory language against women, especially in Art. 17: “Family patrimony will be administered by the husband, in his capacity as legal representative of the family.”<sup>213</sup>

#### *Joint titling in Nicaragua: 1980s*

Claims to land titles including the name of the wife appeared late during the Sandinista period. Indeed, it was only in 1989 that a document titled *Plan de Lucha de las Mujeres Campesinas Organizadas en UNAG* (the plan of action of the organised women peasants of UNAG – the National Union of Farmers and Ranchers) first mentioned the issue. The plan was approved at the first national meeting of UNAG women, held in February 1989.<sup>214</sup> In this document, UNAG women emphatically state: “we will demand that land titles are issued in the name of the couple, for the benefit of the family”.<sup>215</sup>

Although the Sandinista agrarian reform formally advocated equal access to land for men and women, the reality was that no specific measures were established to materialise the titling of properties in women’s names. However, we should keep in mind that the agrarian reform privileged the creation of state-owned farm companies over large areas of land expropriated to Somoza and his relatives, as well as the creation of cooperatives, and to a lesser degree individual titling.

<sup>212</sup> In some Latin American countries, such as Nicaragua, Constitutional provisions do not automatically override laws that are opposed to them. Some countries have overcome this problem through the adoption of Constitutional Courts, such as Colombia did in 1991, where any person could challenge the constitutionality of any law.

<sup>213</sup> This provision has led Deere and León to state: “in Argentina, Chile, Nicaragua and Honduras the husband still represents the household and is the sole administrator of conjugal society under the default marital regime. This continues as the main form of legal discrimination against married women, even though these countries are signatories to the 1979 UN Convention to End All Forms of Discrimination Against Women, a convention that explicitly guarantees men and women equal rights before the law.” See Deere, C. D. & León, M. (2001:49).

<sup>214</sup> The establishment of the women’s section of UNAG was publicly proposed in April 1986 during the 1st Congress of Farmers, and its first objectives were established in its January 1987 plan (Ibid: 60).

<sup>215</sup> This does not mean that the claim did not exist before among Nicaraguan peasant women, but it reflects the late interest of rural labour organisations (such as UNAG) on gender issues.

In this sense, women had access to collective forms of land ownership, such as cooperatives, although fewer women than men actually did so. The first national census on cooperatives of 1982 revealed that 44 percent of cooperatives had at least one woman among its members, but only 6 percent of the total members of cooperatives were women.<sup>216</sup>

It is commonly stated that of those who received individual titles during the land reform only 8 percent were women.<sup>217</sup> However, this figure corresponds to 1984 and does not include titles given after that. An additional problem concerns the flawed titles given during the Sandinista period to beneficiaries of the agrarian and urban reforms. In this sense, titling figures do not reflect the exact number of beneficiaries, many of whom received provisional titles that were never formalised. Likewise, in the last months of the Sandinista regime, many properties that had never been titled were transferred, making the chaos in titling matters even worse. This problem was inherited by subsequent administrations.

#### *Promoting joint titling after the 1990s*

The agrarian reform during the administration of Barrios de Chamorro was part of a process of privatisation of state farming companies. Several international cooperation agencies played a key role in programmes of individual adjudication of state farming companies, including the Norwegian cooperation agency NORAD and United Nations agencies such as the Food and Agriculture Organisation (FAO). The concern for joint titling became an objective promoted by several international agencies and to a lesser degree by the women’s movement which, among other things, opposed the privatisation process.

Indeed, in 1992 FAO began a programme of institutional support to the Nicaraguan Institute of Women’s Affairs (INIM),<sup>218</sup> with funds from the Norwegian government,

<sup>216</sup> Padilla, M. L. Clara M. & Criquillón, A. (1987:128).

<sup>217</sup> Agurto, S. & Guido, A. (2003:16). The Rural Titling Office has stated that “between 1979-1989, 8% of women had direct access to land individually, equivalent to 2,000 women peasants who benefited from the Agrarian Reform, and 3,800 women joined production co-operatives, representing 11 percent of the beneficiaries”.

<sup>218</sup> The INIM is an entity under the control of the president.

to raise the gender awareness of state officials with respect to the farming sector. According to records of the agrarian reform institute (INRA), covering the 1990-92 period, of a total of 35,545 titles issued, 25 percent were extended to women, mostly in joint fashion.<sup>219</sup>

Legally speaking, the issue of joint titling appears for the first time in Law 209 of 1995, through the establishment of a legal presumption, whereby from the date of enactment of this law, titles in the name of the head of the household – generally the man – will be extended also in the name of the spouse or stable partner. Article 29 of this law states: “By the mere application of this Law, agrarian reform titles extended in the name of the head of household shall be deemed extended also in the name of the spouse or partner in stable civil unions”.<sup>220</sup> While this law was repealed by Law 278 of 1997, Art. 49 of the new law literally repeats article 29 of Law 209.

However, in a second phase of the joint titling process,<sup>221</sup> which began in 1997 with the support of FAO and the World Bank, it was found that gender disaggregated information did not exist, and that joint titling had been given in the name of two or more people of a single family but not necessarily in the name of the couple. The table below shows a balance of titling in rural property between 1992 and 2000 and the magnitude of the confusion with respect to joint titles. In 2000, family joint titles represented 25 percent of all titles extended, and those extended jointly to couples were only 7.8 percent.

Table 5.1 Number of rural titles and percentages by type of title, 1992-2000

Titling Modality	Number of titles	Percentage
Joint couple	2,619	7.85%
Joint family	8,346	25.03%
Individual	21,429	64.28%
Collective	656	1.98%
Cooperatives	284	0.86%
<b>TOTAL</b>	<b>33,334</b>	<b>100.00%</b>

Source: Agurto and Guido (2003), based on data from the Rural Titling Office  
Agurto and Guido also found an increased number of women who obtained titles in their own name in the period 1995-6 and 2000 – an increase from 13 percent to 15 percent.<sup>222</sup>

Patricia Hernandez, in charge of the Gender Unit of the OTR, which replaced the INRA, has said that “between 1993 and 1996, it was highly unclear. Mostly we discussed the importance of extending titles to women, but it was never said that they were titles for couples, either from civil unions or legal marriages. At that time the concept was poorly managed. I say this because I can find no other explanation.”<sup>223</sup>

Agurto and Guido identify three types of problems faced in joint titling efforts: cultural, legal and economic.<sup>224</sup> Cultural problems are “especially related to the patriarchal cultural schemes prevalent in the country”. These problems were

219 Galán, B. B. (1998:45).

220 In fact, this law does not use the expression joint titling. To this point we have failed to identify any law in Nicaragua that refers to it.

221 Agurto, S. & Guido, A. (2003:18).

222 Ibid. p. 8.

223 Agurto, S. & Guido, A. (2003:18).

224 Ibid p.18.

shared by male beneficiaries and to a certain point even by the technicians in charge of the titling process. Legal problems relate to the lack of clarity of the articles related to joint titling, which left room for diverse and contradictory interpretations. Finally, economic problems relate to the lack of commercial value the market gave to agrarian reform titles, which prompted many beneficiaries to convert those titles into certifications provided by a public notary, and in some cases the name of the woman was not included.

Agurto and Guido conclude that one of the major problems currently faced by joint titling programmes in Nicaragua is “the lack of political will to proceed with the process, reflected in the lack of allocation of economic resources required to execute the various activities required”.<sup>225</sup> For example, they found that in departments like Matagalpa, the regional OTR does not have money to make topographic surveys, and therefore the beneficiaries have to pay for this service. As many beneficiaries also do not have money, some of them have opted to grant collective titling, grouping up to 20 beneficiaries and making one single topographic measurement. Afterwards they divided the property and formalised it in a certification provided by a public notary.<sup>226</sup>

Finally, Agurto and Guido also found that according to some OTR officials, there are beneficiaries of joint titles who are sceptical with respect to the advantages offered by the titles. According to some, their husbands will do as they please with the property and they have nowhere to turn to report this type of abuse.<sup>227</sup>

#### ***Authority of the parents over children, or “patria potestas”:***

Decree 1065 of 1982 (the “Law to regulate relations between parents and children”) put an end to the exclusive power of the father concerning authority over his children, placing the mother on equal terms. Article 1 of this decree stipulates that “the mother and father are jointly responsible for the

<sup>225</sup> In our recent visit to the OTR we found that the Gender Unit consists of one single person.

<sup>226</sup> Ibid. p.18.

<sup>227</sup> Ibid. p.18.

care, upbringing and education of their minor children, as well as of their representation and the administration of their assets”.

### **5.3 Inheritance rights**

The civil code establishes absolute testamentary freedom by stating that “there are no compulsory heirs. Accordingly, testators may freely dispose of their assets.”<sup>228</sup> Despite this testamentary freedom, the civil code applies two restrictions on testators: “pension rights accorded by the law to certain persons” and “the conjugal portion in favour of the surviving spouse who lacks the necessary means to ensure her adequate subsistence”.<sup>229</sup> Article 1197 calls these restrictions “compulsory allocations”. It states: “Compulsory allocations are those which testators are compelled to make, and which are made in their stead if testators have failed to do so, even against testators’ own express testamentary provisions. Compulsory allocations include: 1) pensions due under the law to certain persons; 2) the conjugal portion”. As the conjugal portion is a compulsory allocation, the surviving spouse may resort to amending the will in order “to include her conjugal portion”.<sup>230</sup>

Article 1201 of the civil code defines the conjugal portion as “the portion of the estate of a deceased person, allocated by the law to the surviving spouse who lacks the necessary means to ensure her adequate subsistence”. In turn, Art. 1207 of the civil code identifies it as follows: “the conjugal portion is one-fourth of the assets of the deceased person”. Article 1205, paragraph 2 establishes that: “the conjugal portion will include all the assets which the surviving spouse may be entitled to receive under any other concept from the succession of the deceased, including half of all earnings, unless the surviving spouse has waived her right thereto”.

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<sup>228</sup> Art. 976, civil code

<sup>229</sup> Art. 976, civil code

<sup>230</sup> Art. 1222, civil code. However, under Art. 1223 this action may only be filed “after the death of the testator”, and lapses 4 years after the moment the surviving spouse became aware of the will.

Given the fact that the conjugal portion complements other assets, Art. 1205 of the civil code provides that if the surviving spouse has assets, which are not as valuable as those of the conjugal portion, s/he shall only be entitled to part (to match the conjugal portion) of the conjugal portion. However, Art. 1209 of the civil code clarifies that “the conjugal portion will be allocated even when the surviving spouse is able to live off her/his daily personal work, and whether the widow or widower is of legal age or not”.

Also, it can be stated that the conjugal portion is a subsidiary right, obtained only if demanded upon the death of the spouse.<sup>231</sup>

The spouse loses her right to the conjugal portion if she has abandoned the other spouse without just cause, and if the former has not rejoined the latter at least 30 days prior to the death (Art. 1208, civil code). Also, in case of separation, if the surviving spouse “has not given motive for the separation due to any action or fault”, the surviving spouse shall not lose her right to conjugal portion (Art. 1202).

Article 1000 of the civil code establishes the following general principle: “Intestate successions do not abide by sex or primogeniture”. The succession order privileges descendants (legitimate and to a lesser extent illegitimate), over the spouse, who is not included in the first order of succession, as such spouse will receive the conjugal portion.

The succession order is indicated in Art. 1001 et seq. as detailed in the table below.

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<sup>231</sup> As stated in Art. 1206 of the civil code: “The surviving spouse may freely retain her assets or what is owed to her, waiving her rights to conjugal portion, or request such conjugal portion, waiving her right to her other assets and entitlements.”

Table 5.2 Order of succession according to the civil code

Order of succession	Variants
<p>First order of succession (Art. 1008):  If there are legitimate children, the estate is divided in four portions (without prejudice to the conjugal portion):  * three portions for legitimate children;  * one portion for natural children or grandchildren.</p>	
<p>Second order of succession (Art. 1010):  If there are no legitimate descendants, the estate is divided in three equal portions:  * one for legitimate ascendants;  * one for the spouse;  * one for natural children or grandchildren.</p>	<p>If there is no spouse or natural children or grandchildren, the legitimate ascendants inherit everything;  If there is no spouse, her portion is divided in equal parts among the two other parties in this order of succession;  If there are no natural children or grandchildren, their portion is divided in equal parts among the two other parties in this order of succession.</p>
<p>Third order of succession (Art. 1011):  If there are no legitimate ascendants or descendants, the estate is divided in five portions:  * one for legitimate siblings;  * two for the spouse;  * two for natural children or grandchildren.</p>	<p>If there is no spouse, the estate is divided in four portions: one for legitimate siblings and three for natural children or grandchildren;  If there are no natural children or grandchildren, one half of the estate is divided among legitimate siblings and the spouse;  Legitimate siblings may inherit everything in the absence of natural children, grandchildren, and spouse.</p>
<p>Fourth order of succession (Art. 1012):  If there are no descendants, ascendants or siblings, the estate is divided thus:  * One half for the spouse;  * One half for natural children or grandchildren.</p>	<p>If there is no spouse, natural children or grandchildren inherit everything.</p>
<p>Fifth order of succession (Art. 1013):  If there are no legitimate descendants or ascendants, natural children or grandchildren, the estate is divided in two portions:  * One half for natural parents or grandparents;  * One half for the spouse.</p>	
<p>Sixth order of succession (Art. 1014):  If there are no legitimate or natural descendants, legitimate ascendants, or legitimate siblings, the estate is divided in three portions:  * One for natural siblings;  * Two for the spouse.</p>	<p>If there are no natural siblings, the spouse inherits everything;  If there is no spouse, natural siblings inherit everything.</p>

One of the restrictions established in the civil code concerning intestate succession refers to the case of legal separation. Article 1015 states that “a spouse legally separated shall not have any right to a portion of the intestate assets of his/her spouse, if the legal separation may be attributable to that spouse. Surviving spouses who without just cause abandon the other spouse for more than six months shall not be entitled to inherit from the deceased spouse, if the death took place during this time.”

According to Law 38 of 1988, the grounds for civil divorce are mutual consent and the will of one of the spouses.

## 6 Strengthened Growth and Poverty Reduction Strategy Paper

The second phase of lending after the Heavily Indebted Poor Countries Debt Relief Initiative (HIPC) by the World Bank and the International Monetary Fund led to eligible countries preparing a Strengthened Growth and Poverty Reduction Strategy Paper (SGPRSP).

From the start, debate on the SGPRSP generated a significant mobilisation of civil society. Organisations from various sectors made contributions, facilitated by the Civil Coordinator Office, an organisation that groups together several NGOs and which is focused on the analysis of government policies related to the SGPRSP. In 2001, after a broad process of consultation at national level, the Civil Coordinator published a document called *La Nicaragua que queremos: Enfoque y prioridades para una estrategia resultado del proceso de consulta, debate y análisis* (The Nicaragua we want: Focus and priorities for a strategy arising from a process of consultation, discussion and analysis).

Subsequently, the Civil Coordinator became the main critic of the SGPRSP and the only body carrying out a serious and systematic follow-up of its implementation.

Housing, land and gender issues are not a priority in the SGPRSP. Since 2001, housing producing social organisations have made proposals for the inclusion of the housing issue in the SGPRSP. Indeed, the document published by the Civil Coordinator collected the proposals made by the Housing Network for a housing policy.<sup>232</sup> However, in the period 2001-2003, investment in housing was minimal, representing only \$1.9 million or 0.8 percent of the total HIPC relief destined to address poverty issues at that time (\$235 million). Additionally, investment in this area is decreasing, accounting for 1.6 percent of total expenditures in 2001, 0.7 percent of the total in 2002.

<sup>232</sup> The Housing Network is an organisation made up of several NGOs devoted to housing production for low-income sectors.

## 7 Implementation of land and housing rights

### 7.1 Land rights

Most beneficiaries of the Sandinista land and urban reforms are regarded as owners, because they hold some kind of document or *solvencia* that serves as deed or specific certificate, granted by a state agency, but they have not been registered as owners. The main problem faced by these beneficiaries is that often their land is not accepted as a guarantee when they apply for a loan, because the banking system requires duly registered deeds. The new body INPRUR aims to clarify and resolve the claims of the reform beneficiaries. It is too soon to know if these reforms will succeed.

Since 1990, “spontaneous settlements” have reappeared due to the lack of sufficient land for low-income families, and sometimes those families have been evicted. Organisations such as the People’s Legal Practice have helped various neighbourhoods organise, form residents’ associations under Law 309 of 1999 on the Regulation and Titling of Spontaneous Human Settlements, and claim their rights to legalisation of their settlements.

In terms of the land rights of indigenous groups, Law 445 of 2002 regulates the property regime of communal land of indigenous communities and other ethnic groups from the Atlantic Coast. The first five titles to communal land were finally extended to 80 Miskito and Mayagna indigenous communities of the Atlantic Coast in May of 2005. It remains to be seen whether this law will be further implemented.

### 7.2 Adequate housing

Social housing production organisations have been the main home builders in the country. This situation may have resulted from the progressive housing developments of the Sandinista era, which may explain why 81.4 percent of Nicaraguans say they live in their own house. However, it is likely that a large number of these houses have underly-

ing titling issues. The Housing Social Fund, under the new INVUR, only recognises a subsidy beneficiary if s/he has a proper title to the land on which the house will be built. Thus access to housing subsidies hinges on the success of the future work of INPRUR.

### **7.3 Joint titling**

Three main problems have occurred in the implementation of land and housing rights.

First, cultural problems related to the patriarchal cultural schemes prevalent in the country. These problems were shared by male beneficiaries and to a certain point even by the technicians in charge of the titling process. Second, legal problems related to the lack of clarity of the articles related to joint titling, which left room for diverse and contradictory interpretations. Finally, economic problems related to the lack of commercial value the market assigned to agrarian reform titles, prompting many beneficiaries to convert those titles into public deeds, and in some cases the name of the woman was not included in that process.

### **7.4 Independent titling for women**

In cities, more than half of the house owners are women. Furthermore, during the joint titling programme based on Law 278, more women obtained independent titles (13-15 percent) than jointly with their spouses or stable partners (7.8 percent). This finding confirms the problems experienced with the joint titling programme, but may also indicate a preference for independent title, when the opportunity exists.

### **7.5 Land management**

The Gender Unit of the Property Office lacks sufficient resources and personnel. This situation contributes to the lack of gender awareness among technicians in charge of titling and registration of land. In general, the main titling offices follow a centralised approach and are perceived as being slow,

except prior to elections. Coordination among the main land management institutions is often lacking.

### **7.6 Access to justice**

According to Art. 129 of the Constitution the judiciary is independent from the other state powers. In reality it lacks independence, which has serious consequences in terms of access to justice for Nicaraguan citizens. Not only are court cases expensive, complex and lengthy, their decisions are seen as politically biased, and records of court cases cannot easily be accessed. This further widens the gap between justice and the people. The public defender system has only recently been established and is still focused on criminal cases. Legal aid is provided by a few organisations, such as People's Legal Practice, which also seek to create an arena in which the people get involved in the implementation of justice, to raise awareness of and training on people's rights, involve the media and lobby for adoption of laws formulated with the participation of the people.

### **7.7 Marital property and inheritance rights**

Without proper access to court records, it is extremely difficult to gather information on how marital property and inheritance rights are implemented. The fact that heirs often do not receive any legal document to prove they are the legitimate owners of inherited property points towards other problems in inheritance procedures.

## **8 Local Laws and Policies**

### **8.1 The role of local government**

The institutional revival of municipalities in Nicaragua began with the Constitution of 1987. As basic units of the political and administrative division of the country, municipalities enjoy political, administrative and financial autonomy.<sup>233</sup> The state's obligation to allocate sufficient resources to mu-

<sup>233</sup> See Articles 176 and 177 of the Constitution. The city of Managua is not granted any special regime different from that of other municipalities in the country.

nicipalities, prioritising those with lower revenue-generating capacity, revived their financial independence.<sup>234</sup>

In 1988, the Law on Municipalities was approved.<sup>235</sup> As a general principle, the competence of municipalities includes matters affecting their development, the preservation of the environment and the fulfilment of the needs of their population.<sup>236</sup> There are two specific competences of municipalities that interest us for this study: the control of urban development and land use, and the powers on urban and vacant lots as outlined in Articles 3 and 5 of Decree 895-1981, which decree further regulates the Law on Municipalities.<sup>237</sup>

The law also authorised municipalities to implement activities on housing. It grants them power to set up companies for the production of building materials for the construction of housing, the improvement and maintenance of road infrastructure, and drainage.<sup>238</sup>

In addition, the law emphasised the importance of inter-institutional coordination with regard to physical and economic planning, while promoting the inclusion of the municipality in such processes. The mayor is assigned the task of “promoting the participation and inclusion of the municipality in regional and local planning”.<sup>239</sup>

## 8.2 Legislation in effect on municipal issues

In 1997, almost 10 years after the enactment of the Law on Municipalities, and in an entirely different political context,

<sup>234</sup> See Art. 177(2), which also indicates that the law will set percentages and distribution.

<sup>235</sup> Law 40 on Municipalities, 1988.

<sup>236</sup> Art. 6 of Law 40-1988.

<sup>237</sup> Art. 7 of the Law on Municipalities. These articles stated the following: Art. 3: “The Ministry of Housing and Human Settlements is authorised to declare via ministerial agreement the public utility and social interest of projects to develop, with the obligation to indicate the assets and rights to which this law refers and which must be acquired”. On the other hand, Art. 5 states that “the Ministry of Housing and Human Settlements, upon the declaration of public utility and social interest, may make topographic surveys and all required technical studies by simply notifying the owner(s) of the property, which in no case signifies a commitment by the state to purchase such property. In any case and to enforce this provision, the Ministry may request the assistance of the police.”

<sup>238</sup> Articles 10 and 60 of the Law on Municipalities.

<sup>239</sup> Articles 9 and 33 of the Law on Municipalities.

this law was substantially amended.<sup>240</sup> The amendment was included in the agreements reached by the country’s major political forces in 1995, which were documented in Law 199 of July 3, 1995, called the Framework Law of Implementation of Constitutional Reforms.<sup>241</sup> The most relevant areas of interest for this study, included in the amended Law on Municipalities, and other related laws, are below.

### ***Municipal autonomy***

The amended law defines municipal autonomy as “the right and the effective ability of Municipalities to regulate and administer, under their own responsibility and for the benefit of their residents, those public matters indicated by the Constitution and the laws”. The state is the guarantor of this autonomy.<sup>242</sup>

Only recently have Nicaraguan municipalities slowly begun a process of financial strengthening, which will undoubtedly result in greater autonomy. Since 1987, the constitutional obligation of the state to allocate sufficient resources to municipalities had been in place. However, it was only in 2003 that the National Assembly adopted Law 466, called the Law on Budget Transfers to Municipalities of Nicaragua. This law defines transfers to municipalities as “a line of the General Budget of the Republic allocated to municipalities with the goal of complementing their financing in view of the fulfilment of the competences established in the Law on Municipalities”. The original General Budget line designated to transfers to municipalities was 4 percent of all tax revenues in 2004, with the goal a gradual increase to 10 percent in the year 2010. The Municipality of Managua will receive a fixed percentage – 2.5 percent of this line item – and for other municipalities a series of specifically defined criteria will be used, such as fiscal equity, efficiency in the collection

<sup>240</sup> Law to amend Law No. 40 on Municipalities, 1997.

<sup>241</sup> Art. 22, Law 199 of 1995 stipulates: “The Law on Municipalities will be amended in a process of broad consultation and consensus with municipal authorities of the country in order to strengthen municipal autonomy and management”.

<sup>242</sup> Articles 2 and 38 of the amended Law no. 40 on Municipalities.

of the real estate tax, number of inhabitants, and execution of transfers.<sup>243</sup>

### **Municipal competence**

The scope of competence of municipalities generally covers matters affecting the socioeconomic development and environmental preservation of each municipality, and functions that may be efficiently performed within its jurisdiction or that require a close relationship with its own community. Economic resources for the exercise of these competences will be generated from their own revenues and from those transferred by the government.<sup>244</sup>

Among the more specific competences of municipalities, the following are listed in Art. 7 of the amended Law 40:

- Planning, regulating and controlling the use and development of urban, peri-urban and rural land;<sup>245</sup>
- Declaring public utility of urban and vacant lots;
- Providing the population with basic water, sanitation and electricity; and
- Developing, preserving and controlling the rational use of the environment and natural resources.

Municipal governments, upon approval of the municipal council, may agree with the national government to take under their responsibility some of the services legally under the responsibility of the national government. However, this can only happen if it is accompanied by the necessary budgetary transfers.<sup>246</sup>

The municipal council also may approve the creation of development committees for the planning and execution of projects and municipal works at community level, and those that affect the socioeconomic development of the municipality.<sup>247</sup>

<sup>243</sup> Articles 5 and 13 of the Law on Budget Transfers to Municipalities of Nicaragua, 2003.

<sup>244</sup> Articles 2 (3) and 6 of the amended Law 40 on Municipalities.

<sup>245</sup> It is interesting that this law does not refer more to housing issues with the exception of building regulation.

<sup>246</sup> Art. 11 of the amended Law 40 on Municipalities.

<sup>247</sup> Art. 7.

### **Municipal property**

As discussed previously, land that is the direct property of municipalities is called *ejidales*.<sup>248</sup> Article 44 of Law 40 (as amended) states “*ejidales* are municipal property of communal nature; they may be leased but not sold. Uses of *ejidales* will be determined by the relevant Municipal Council, pursuant to the law enacted on this matter”. However, no specific law has been enacted concerning this type of property. Municipalities have been using *ejidales* to regularise informal settlements and to develop new housing projects.

Decree No. 52-1997, which regulates the amended Law on Municipalities, states with respect to municipal property that the mayor “must, within 180 days of taking office, investigate all assets held by the municipality under any capacity”. After finishing this inventory, the mayor must “submit to the council a list of the real property of the municipality”, and indicate the *ejidales*. This statement, approved by the council, will be sent to the relevant Real Property Registrar.<sup>249</sup> However, this regulation has not been enforced and *ejidales* are still not registered in the public property registry office. As a consequence, regularised settlements and housing projects on such land are not registered either.

Finally, it is worth noting that the government has allocated land to municipalities via decrees, from areas designated as national land, turning them into *ejidales*. Such is the case of the land of Estero Padre Ramon in the municipality of El Viejo, and Cerro Musun in the municipality of Rio Blanco.

### **Municipalities in autonomous regions**

Municipalities in the autonomous regions of the North Atlantic and the South Atlantic are governed by the Autonomy Law of the Regions of the Atlantic Coast of Nicaragua and by Law 40.<sup>250</sup> The Autonomy Law states that municipalities in the autonomous regions will be organised and established

<sup>248</sup> Barahona, T. (2003).

<sup>249</sup> Articles 92 and 93 of Decree No. 52, 1997.

<sup>250</sup> Art. 62 of Law 40 (as amended).

by the corresponding regional councils, in accordance with the traditions of each autonomous region.<sup>251</sup>

### **Indigenous communities**

Article 177 of the Constitution states that the Law on Municipalities must include the relationships “with indigenous groups throughout the country”. Article 67 of the amended Law 40 on Municipalities states that “municipalities will recognise the existence of indigenous communities located in their territories, legally or illegally established, as per the provisions of the Laws on Indigenous Communities of 1914, 1918 and others, whether they own communal land or not. Likewise, they will respect their formal and traditional authorities, who will be taken into account in municipal development plans and programmes and in decisions that directly or indirectly affect their population or their territory”. It is fair to say that this article has not been taken seriously, or at least has not been implemented yet, in part due to the lack of a national policy on indigenous peoples.

## **9 Best practices**

### **9.1 The consultation process in León**

The city of León is the second-largest city in Nicaragua, after Managua, the capital. In 2002 it had an estimated population of 181,927 inhabitants. Some 63 percent of the population lives in poverty and a similar percentage (65 percent) live in low-income neighbourhoods characterised by physical and legal irregularity.

In mid-2001, a consultation process was launched in León on the issue of “social and spatial integration of low-income neighbourhoods with high levels of migration”. This process, headed by the municipal mayor, brought together government officials, public institutions and NGOs. It has been a forum for reflection, analysis and proposals on issues related to the management and improvement of urban land and the

provision of assistance to vulnerable populations. Residents organised by the Nicaraguan Community Movement participate, and technical assistance is provided by the NGO HABITAR, which works with housing and human settlement issues. This process has the financial and technical support of the UN-HABITAT Urban Management Programme for Latin America and is part of a broad programme of city consultations in more than 40 cities in the Latin American region.

The city consultation process was developed in two stages: Stage I (2001-2002), during which the problems faced by low-income neighbourhoods were identified and analysed; and Stage II (2003-2004), aimed at formulating a series of investment projects to significantly improve the living and housing conditions of urban settlers.

The situation in León is illustrated in the following table showing the percentage of people from low-income neighbourhoods living in each type of land tenure.

*Table 9.1 Type of land tenure in low-income neighbourhoods in the city of León*

Type of land tenure	Percentage of lots
Unauthorised or “informal” urban development	34%
Public urban development or progressive development	56%
Land invasion or spontaneous settlement	10%
<b>TOTAL</b>	<b>100%</b>

After the research stage, organised settlers and other local actor stakeholders developed a series of proposals for action with the support of technicians from HABITAR, and the goal of speeding up the process of legalisation of the lots in those low-income neighbourhoods. The results obtained are valuable as a final product and as a participatory process whereby social actors have been sensitised and challenged to analyse the problem and look for integral solutions.

<sup>251</sup> Art. 10 of Law 28 of 1987 (The Autonomy Law). The two autonomous councils, one in each region, are the main authority bodies in each autonomous regions of Nicaragua. Each council has at least 30 and not more than 50 representatives, elected by the inhabitants of the region.

The action plan includes proposals for the legalisation of lots, improvement of housing and environment, as well as proposals for alternative economic development.

This experience allowed participants and policy makers to understand the complex processes of occupation of urban land for housing developments by lower-income residents, the private and public interests at stake, and the most deeply rooted demands of their residents for expeditious ways to secure land tenure.

## 9.2 Titling of houses and land to women in Malpaisillo<sup>252</sup>

### Background

The Xochilt Acalt Women's Centre was founded in 1991 by several women members of the municipal council of Malpaisillo. The centre began as a clinic for women, and was renowned in rural areas where it operated a mobile clinic. In 1993, the centre conducted a survey to better understand the primary needs of the women of Malpaisillo. As a result of the survey, the centre decided to extend its services beyond the clinic, and launched two productive projects: cultivation of vegetables in household gardens and the breeding of goats.<sup>253</sup> Within a very short time, the families could see tangible results.

When the centre began its productive programmes it also began investing more resources in other productive projects, for which it obtained funding from international cooperation agencies. However, it soon became apparent that the women were unprotected in terms of property rights. The centre carried out a census among women in the 20 communities where it worked, and found that 98 percent of all women did not own or possess the land where they lived and worked. So

<sup>252</sup> Interviews for the documentation of this best practice were conducted in the locality of Malpaisillo at three different dates; the first in June 2003, the second in January 2004 and the third in June 2004. We appreciate the generosity and openness of the women of the Xochilt Acalt Women's Centre we interviewed, who shared with us many aspects of their lives. An additional interview was conducted in Madison, USA, in October 2004, when one member of the centre was invited to share their successful experience.

<sup>253</sup> The goat project began as a pilot project in the community, and only after its success was verified it was implemented in other communities.

the idea emerged of titling the property in the name of the women.<sup>254</sup>

In 1996 the centre began helping 24 women to become agricultural producers. Three conditions applied for women to participate:

- They had to prove that they had done well in the cultivation of their home gardens;
- Families had to have become involved in home garden activities; and
- The women had to own the land they were going to cultivate.

This last condition created a very interesting process of negotiation within the family. Women had to convince their husbands, brothers and/or fathers to transfer ownership to them and to legalise the property in their names. The result has been an increase in the autonomy of women, in their self-esteem and in their negotiation powers within the family.

Considering that not all the women owned land, the centre purchased land, which it then loaned to women for cultivation. Some women have established production groups, consisting mostly of women, to cultivate the land owned by the centre. The crops chosen were beans, corn and sesame, because these crops improve the family diet, can be eaten all year long and can be sold for profit at the market.

The programme has had a number of important results:

- A significant number of women with titles: Since the beginning of the titling project, the centre has helped 480 women obtain title to their house and land;<sup>255</sup> Increased emotional stability and self-esteem among women;
- Increased negotiating power of women at home;<sup>256</sup>
- Contribution to the legal clarification of ownership of other family members; and

<sup>254</sup> Ibid.

<sup>255</sup> The centre has estimated that the titling process has cost it almost 650,000 cordobas (\$43,000). Ibid.

<sup>256</sup> It is worth underscoring the fact that this transfer of property is free. It is not sold, but it is the voluntary decision of the man as a result of the negotiation with his empowered wife.

- Increased family stability. Contrary to common belief, giving title to women is not done to seek power confrontations with men. In fact, the centre is convinced that it helps increase family unity.

Titling property in the name of women is very important. However, there is no automatic link. Women who are given titles are not automatically empowered. When the titling process is accompanied by other initiatives of empowerment, impressive results in the lives of women can be achieved, as evidenced by the women who participate in the programmes of the Xochilt Acalt Women's Centre.

## 10 Conclusions and Recommendations

### 10.1 Institutional structure on land and property issues

The institutional structure set since 1990 to deal with land issues has been severely affected by the prevailing political views of the last three conservative governments on property issues. These governments prioritised the solution of property claims of former owners affected by the Sandinista reforms. The institutional structure has also been greatly influenced by the views put forward on such matters by the U.S. government, and international financial institutions such as the World Bank and IADB. As a result, the clarification of property rights and security of tenure for thousands of low-income families who were beneficiaries of the redistribution of rural and urban land during the 1980s has not received the same attention. Many of those families are still facing problems with their properties. Only when there are social mobilisations or violent protests of former combatants does the government make a special effort to title these properties.

As we describe at some length in this report, at the beginning of 2005 the National Assembly introduced a drastic change to this institutional structure with the creation of INPRUR. Although this changes the previous priorities on land issues to now focus on the demands of those low-income families

that have been waiting for 15 years to clarify their property rights, there are concerns both about the way in which this change was done and about the likely outcomes. It may be that, in many ways, the creation of INPRUR will create additional problems in relation to the already complex issue of property rights. The way in which this process was conducted is likely to erode public confidence in democratic institutions. The imposition of institutional reforms by the National Assembly without the involvement of the executive branch (or even with its active opposition) do not help to advance the necessary improvement of property rights of the poorest sectors of society. It is necessary that the executive and legislative branches work together.

Nicaragua needs a broader land policy, with a focus that goes beyond rural land issues. A land policy strategy should include the clarification of property regimes, such as the legal status of *ejidal* land. Furthermore, it is important to enforce those laws that mandate the registration of *ejidal* land owned by municipalities.

### 10.2 Approaches to resolve property issues

There are at least two distinct approaches to address property claims. The first approach is the ambitious programme PRODEP, funded by the World Bank. One of the main objectives of this programme is to create a reliable national cadastre and a national public registration system. Despite the obvious importance of those measures, there are concerns about the efficiency of creating and updating a system that will be extremely expensive for a country such as Nicaragua to implement.

The second approach is a participatory one, as reflected in the successful experience of consultation carried out in the city of León, presented above as a best practice.

A combination of these two experiences is probably advisable: PRODEP should be involved in places such as León where there are communities and local authorities mobilised to resolve property issues; and, at the same time, the parti-

patory experiences of León should be incorporated into the work of PRODEP in other parts of the country.

Regarding PRODEP it is recommended that:

- PRODEP's work is opened to public scrutiny, including the activation of a web site with all the relevant documents about the project; and allow participation of civil society organizations, such as *Coordinadora Civil*; and
- an in-depth evaluation of PRODEP's two years of programme implementation is completed. If the results so far are well behind the original goals set by that project, the entire project should be reevaluated. It is important to open a national discussion with participation of all sectors of civil society to redesign the main goals of that programme.

### 10.3 Housing issues

The institutional structure dealing with housing issues is extremely weak. The government has a very ambitious housing programme, but it does not have a national plan built on a long-term perspective. As a result, it has advanced according to the priorities established by international financial institutions, specifically the IADB.

INVUR is busy hiring a consultant to write a national housing plan. This may be the easiest, but not the best way to go. Nicaragua has accumulated experience on the issue of housing that has not been used by the last three governments. There are dozens of former functionaries of the old Ministry of Housing and Human Settlements under the Sandinista government who were purged from state institutions. This represents an institutional loss of experience and accumulated social knowledge on this matter. At the same time, a national plan on housing does not have to be created from scratch. There are several relevant documents that originated in the mid-1990s as part of a process initiated by the United Nations Summit of Habitat II in Istanbul in 1996. Several high-quality policy documents were formulated, some of them with broad social and political participation.

The challenge is to create a policy that is not an academic exercise to be delegated to experts, but a political process that should allow for a national discussion and consensus among the main actors involved in the field, from organised settlements without adequate housing to officials of several ministries.

In view of this the following points are recommended:

- Open a process of consultation and discussion of long-term national policies on housing, under the leadership of INVUR and the Housing Network. This could start with discussion of the proposed law on housing promoted by the Housing Network; and
- A current condition to receive a housing subsidy from INVUR-FOSOVI is to have a proper title to the land where the house will be built. The government should not penalise thousands of families who have been waiting several years to be properly titled, and still do not have title due to the weak institutional structure. The government should not exclude such people. If they are selected as beneficiaries, the government should help them legalise their tenure.

### 10.4 Women's rights to land and housing

As the Xochilt-Acalt Women's Centre experience indicates, there is a lot of potential in titling land to organised women. Nicaragua has some experience in this regard. The following measures to extend this process are recommended:

- Continue to educate officials in charge of titling at all levels about the importance of including women in property titles;
- Strengthen the gender unit of the Office of Property. A single functionary cannot have a broad impact on this important issue; and
- Create a clear legal framework that explicitly deals with the issue of joint titling and titles to women. This could be done through the amendment of Law 278 to explicitly mention the importance of joint titling and state some guidelines to implement it.

Some NGOs working on housing issues have been promoting joint titling of newly constructed houses financed by the

government. However, success here demands an institutional effort on a national scale. INVUR-FOSOVI should include, as a mandatory requirement, the extension of joint titles of houses to those beneficiaries of state subsidies for housing.

## 10.5 Proposals made by residents of León during the consultation process

As the consultation process of low-income communities in León has shown, residents of neighbourhoods lacking proper titling, or suffering the effects of a lack of urban planning, have many ideas on how to resolve their own problems. These and other communities should be listened to. As a result, some of the recommendations made by the León residents deserve to be adopted more widely:

- (1) The immediate formulation and dissemination of a Municipal Programme on Legalisation of Urban Land that combines the efforts of all the agencies of the central and local government, and that takes into account:
  - The realities of each neighbourhood with respect to forms of accessing land;
  - Socioeconomic characteristics of the population;
  - Community organisation forms;
  - Overcoming environmental risks and land use conflicts; and
  - Real estate taxes, etc.
- (2) Rationalising processes to lower the costs of topography surveys, notarisation of deeds, cadastre and registration, and to obtain funds from the central government to pay compensation to third parties, when needed. All this requires the administrative decentralisation of the central government's legalisation programme, something that will significantly improve its effectiveness, providing greater internal coordination between the various administrative units, and greater commitment to goals and results.
- (3) That the mayor and the central government:
  - Regulate the legalisation processes carried out by third parties, in this case the indigenous community of Sutiava. This would guarantee

secure land tenure to residents settled on communal land; and

- Organise processes to incorporate vacant land into the urban fabric for housing purposes.

(4) Strengthen citizen management with respect to control and following up the legalisation process, and the adequate use of the land purchased in order to prevent vacant lots.

(5) Due to the fact that legalising lots is closely related to urban reorganisation, improvement of social infrastructure and provision of public services, the situation calls for:

- Reinforcement of community negotiations with competent public agencies and the development of cooperation agencies;
- A greater dissemination of laws, regulations and norms on urban development; and
- Formulation of a plan to facilitate access to land by low-income families, promoting new urban developments where lots can be bought at low prices and providing financing to this end, so that this supply matches population growth and becomes an effective way to prevent the appearance of new informal settlements.

To be able to implement these proposals, improvement of administrative mechanisms and instruments is necessary to facilitate coordination at all levels of government competent to deal with the issue of land for human settlements, as well as among public institutions and social, community-based organisations, the church and the private sector.

For this reason, local residents and stakeholders have emphasised the need to establish a local human settlements council, with the participation of the social actors involved in this field. The council would include five commissions: legalisation; urban reorganisation and public services; urban developments and land bank; housing production and improvement; and population and mobility. This council would improve the composition and the operations of the current municipal council housing commission and would be a suit-

able talking partner to introduce these issues in the strategic planning and management of municipal development.

The council would also promote the formulation, approval, follow-up and monitoring of a municipal legalisation programme, which is one of the key proposals arising from the consultation process. This last element is aimed at speeding up legalisation procedures to provide secure land tenure to the residents of the low-income neighbourhoods of León.



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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>257</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>258</sup>

- Article 11(1) recognises the right to adequate housing;<sup>259</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>260</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>261</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.

<sup>257</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>258</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>259</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.unhchr.ch/tbs/doc.nsf/MasterFrameView/469f4d91a9378221c12563ed0053547e?OpenDocument>

<sup>260</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>261</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.

These housing and property rights include the right to return.<sup>262</sup>

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>263</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>264</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>265</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>266</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.

<sup>262</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.unhchr.ch/tbs/doc.nsf/\(Symbol\)f6d5109c180658d58025651e004e3744?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)f6d5109c180658d58025651e004e3744?OpenDocument)

<sup>263</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>264</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>265</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/ratifce.pl?C169>

<sup>266</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>

## Appendix 2

Table I.I Main land and housing legislation, 1979 - 2004

Type/Number	Date	Issue
Decree No. 3	July 20 1979	Confiscation of the Somoza family's properties
Decree No. 38	August 8 1979	Clarification of and addition to Decree No. 3: confiscation of properties from military personnel and other allies of the Somoza regime
Decree No. 97	September 26 1979	Law on illegal redistribution of property
Decree No. 137	November 2 1979	Law on nationalisation of the mining sector
Decree No. 282	February 7 1980	Revision of the decrees applied to date: legal position of those expropriated or under investigation
Decree No. 329	February 29 1980	Expropriation of certain rural estates
Decree No. 760	July 19 1981	Appropriation of abandoned properties
Decree No. 782	July 19 1981	Law on Agrarian Reform
Decree No. 832	October 12 1981	Regulation of the Agrarian Tribunals
Agreement No. 8	October 16 1981	Regulation of the Law on Agrarian Reform
Decree No. 895	November 14 1981	Law on expropriation of abandoned premises in the inner city (of central Managua)
Decree No. 1017	January 14 1982	Amendments to the law on titles to plots under supervised redistribution
Decree No. 1117	September 21 1982	Law on title to plots under supervised redistribution
Decree No. 1170	December 30 1982	Clarification of Decrees No. 3, No. 38 and N. 282.
Agreement No. 12	October 26 1983	Amendments to the regulation of the Law on Agrarian Reform
Decree No. 1368	December 6 1983	Amendments to the law on illegal redistribution of land
Law No. 14	January 13 1986	Amendment to the Law on Agrarian Reform
Agreement No. 22	February 4 1986	Regulation of the Law on Agrarian Reform
Decree No. 171	March 16 1986	Amendments to the regulation of the Agrarian Tribunals
Law No. 85	March 30 1990	Law on transfer of ownership of housing and other real estate belonging to the state and its institutions
Law No. 86	April 1990	Special law on legalisation of housing and lands
Law No. 87	April 5 1990	Law on the transfer of jurisdiction and agrarian procedure
Law No. 88	April 1990	Law on protection of agrarian property
Dec./Law No. 11-90	May 23 1990	Decree/Law on confiscation review
Decree No. 23-91	June 3 1991	Applicability of Decree/Law 11-90
Decree No. 35-91	August 19 1991	Establishment and functioning of the Oficina de Ordenamiento Territorial (OOT).
Decree No. 47-92	September 10 1992	Reestablishment of the National Confiscation Review Commission (CNRC)
Decree No. 51-92	September 30 1992	Establishment of the Oficina de Cuantificación de Indemnizaciones (OCI)
Decree No. 31-93	May 27 1993	Regulation of the state Attorney's Office for Property
Decree No. 39-94	September 13 1994	Establishment and functioning of the Urban Titling Office
Law No. 209	November 1 1995	Law on stability of property
Law No. 278	December 16 1997	Law on reformed urban and agrarian property
Decree No. 14-98	February 13 1998	Regulation of Law 278 on urban and agrarian property reform
Law No. 309	July 28 1999	Law on the regulation of spontaneous human settlements
Law No. 445	January 23 2003	Law on the regulation of communal property of the indigenous peoples and ethnic communities of the autonomous regions of the Atlantic Coast, and of the Bocay, Coco, Indio Maiz Rivers.
Law No. 512-05	February 24/05	Law that creates INPRUR

In Table 1.1 above, an overview is provided of which countries in Latin America are party to these human rights instruments.<sup>267</sup>

Table 1. 2 Status of ratification of main human rights instruments in Latin America<sup>a</sup>

Treaty	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Cuba	Dominican Rep.	Ecuador	El Salvador	Guatemala	Honduras	Mexico	Nicaragua	Panama	Paraguay	Peru	Uruguay	Venezuela
ICESCR	NO A: 1982	YES A: 1992	YES S: 1969	YES S: 1966	YES S: 1966	YES S: 1966	NO R: 1968	YES A: 1978	YES A: 1967	YES S: 1967	YES A: 1988	YES S: 1966	YES A: 1981	YES A: 1980	YES S: 1976	YES A: 1992	YES S: 1977	YES S: 1967	YES S: 1969
ICCPR	YES S: 1968	YES A: 1986	YES A: 1982	YES S: 1969	YES S: 1966	YES S: 1966	NO R: 1969	YES A: 1978	YES A: 1968	YES S: 1967	YES A: 1992	YES S: 1966	YES A: 1981	YES A: 1980	YES A: 1980	YES S: 1976	YES S: 1977	YES S: 1967	YES S: 1968
Optional Protocol to ICCPR of 1966 <sup>b</sup>	YES A: 1986	YES A: 1982	NO A: 1992	YES S: 1966	YES S: 1966	YES S: 1966	NO R: 1968	YES A: 1978	YES A: 1968	YES S: 1976	YES A: 2000	YES S: 1966	YES A: 2002	YES A: 1980	YES A: 1980	YES S: 1976	YES S: 1977	YES R: 1967	YES S: 1976
ICERD	YES S: 1967	YES S: 1968	YES S: 1966	YES S: 1966	YES S: 1967	YES S: 1966	YES R: 1967	YES S: 1983	YES A: 1966	YES A: 1979	YES S: 1967	YES A: 2002	YES S: 1966	YES A: 1978	YES A: 1978	YES S: 1966	YES S: 1967	YES R: 1966	YES S: 1967
CEDAW	YES <sup>c</sup> S: 1980	YES <sup>d</sup> S: 1985	YES <sup>e</sup> S: 1980	YES <sup>f</sup> S: 1981	YES <sup>g</sup> S: 1980	YES <sup>h</sup> S&R: 1980	YES <sup>i</sup> S: 1986	YES <sup>j</sup> S: 1982	YES <sup>k</sup> S: 1981	YES <sup>l</sup> S: 1981	YES <sup>m</sup> S: 1982	YES <sup>n</sup> S: 1983	YES <sup>o</sup> S: 1981	YES <sup>p</sup> S: 1981	YES <sup>q</sup> S: 1981	YES <sup>r</sup> S: 1993	YES <sup>s</sup> A: 2004	YES <sup>t</sup> S: 1980	YES <sup>u</sup> A: 1991
Optional Protocol to CEDAW of 1999 <sup>i</sup> but not R	NO S: 2000	YES S: 1999	YES S: 2001	NO S: 1999	NO S: 1999	YES S: 1999	NO R: 2000	YES S: 2000	YES S: 1999	NO R: 2001	YES S: 2000	NO R: 2000	YES S: 1999	NO R: 2002	YES S: 2002	YES S: 2001	YES R: 2001	YES S: 2000	YES R: 2000

<sup>267</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 acceding to an international or regional agreement, the state becomes party to it and is bound to the obligations laid down in that agreement. If the state only signs but does not ratify, it is nevertheless bound to do nothing in contravention of what is stated in that agreement.

Treaty	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Cuba	Dominican Rep.	Ecuador	El Salvador	Guatemala	Honduras	Mexico	Nicaragua	Panama	Paraguay	Peru	Uruguay	Venezuela
CRC	YES S&R: 1990	YES S&R: 1990	YES S&R: 1990	YES S:& 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	YES S: 1969	YES S: 1969	NO	YES A: 1993	YES S: 1969	YES S: 1969	YES S: 1969	YES S: 1969	YES A: 1969	YES S: 1969	YES S: 1969	YES S: 1969	YES S: 1977	YES S: 1977	YES S: 1977

Source: Office of the High Commissioner for Human Rights: <http://www.ohchr.org/english/law/index.htm> ;

ILO database: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C169> ; OAS database: <http://www.oas.org/juridico/english/Sigs/b-32.htm>

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