## APPENDIX

### Appendix I

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

<table>
<thead>
<tr>
<th>Level</th>
<th>Jurisdiction</th>
<th>Constitutional basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union</td>
<td>The federal union has the exclusive authority to:</td>
<td>Art. 21 (IX); Art. 21 (XX); Art. 22, Paragraphs 1, II, IV, XIV, XVII and XV.</td>
</tr>
<tr>
<td></td>
<td>Prepare and implement national and regional spatial plans for economic and social development;</td>
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<td></td>
<td>Adopt guidelines for urban development, including housing, basic sanitation and urban transportation;</td>
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<tr>
<td></td>
<td>Legislative on matters of civil law, procedural law, agrarian law; expropriation, water &amp; energy, indigenous populations, judicial organisation of public legal defence of Federal District and of the territories; and public registers;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Recognise the land rights of the indigenous population, legislate the forms of protection and recognition of the original rights over the lands traditionally occupied by this population, and the demarcation, protection and respect of all of their lands and assets;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Expropriate rural land not performing its social function.</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Adopt state constitutions and laws that regulate their organisation, in accordance with principles of federal Constitution;</td>
<td>Art. 25</td>
</tr>
<tr>
<td></td>
<td>Establish metropolitan regions, urban agglomerations and micro-regions, formed by grouping of adjacent municipalities.</td>
<td>Art. 25 (3)</td>
</tr>
<tr>
<td>Federal District</td>
<td>Same legislative powers as are attributed to the states and municipalities.</td>
<td>Art. 32 (1)</td>
</tr>
<tr>
<td>Union, states and Federal District</td>
<td>Authority to legislate concurrently on:</td>
<td>Art. 24 Par. I Par. XI Par. XIII Par. 1</td>
</tr>
<tr>
<td></td>
<td>- Tax, financial, economic and urban law;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Judicial procedures;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Legal assistance and public defender.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(On these issues, the union must adopt general rules)</td>
<td></td>
</tr>
<tr>
<td>Level</td>
<td>Jurisdiction</td>
<td>Constitutional basis</td>
</tr>
<tr>
<td>-------</td>
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</tr>
</tbody>
</table>
| **Municipality** | When more than 20,000 inhabitants: adopt master plan as basic tool for urban development policy; Implement urban development policy, aimed at full development of the city’s social functions and at ensuring the well-being of its inhabitants; To impose allotment or division of unproductive land and/or apply a progressively increasing tax to buildings or urban property not fulfilling the required social function. Expropriate urban property not performing its social function; Supplement federal and state legislation where pertinent; Levy and collect taxes within their jurisdiction and apply their revenues; Create, organise and dissolve districts, with due regard to state legislation; Promote, wherever pertinent, adequate area planning, by means of planning and control of use, allocation and occupation of urban land. | Art. 182  
Art. 182, Par. 4  
Art. 30, Par. I  
Art. 30, Par. II  
Art. 30, Par. III  
Art. 30, Par. IV  
Art. 30, Par. V  
Art. 30, Par. VI |
| **Union, states, Federal District and municipalities** | Joint authority to: Promote housing construction programmes and the improvement of housing and basic sanitation conditions; Fight the causes of poverty and the factors leading to substandard living conditions, promoting the social integration of unprivileged persons; Provide for health and public assistance and for the protection and safeguard of disabled persons; Protect the environment and fight pollution. | Art. 23  
Par. IX  
Par. X  
Par. II  
Par. VI |
## Appendix II

### Table II.1 Tenure types in urban areas

<table>
<thead>
<tr>
<th>Type of Tenure</th>
<th>Sub-categories and description</th>
<th>Legal basis</th>
</tr>
</thead>
</table>
| Ownership (legal possession) | Purchase and sales of real estate:  
Also used in cases of collective irregular occupation on private or public lands: in this case, a popular movement organises a civil Association and buys the land from the owner.  
Donation:  
Has been used by municipalities and states to provide popular housing to families in situations of risk, e.g. during floods and landslides.  
Urban adverse possession  
(Usucapião Urbano)  
Under certain circumstances, the irregular individual or collective occupant(s) acquires legal possession of an urban plot. The collective option is often used to regularise entire informal settlements.  
Joint titling is not mandatory, but the ownership title and concession of use shall be granted to the man or woman, or both, regardless of their marital status. | (a) Art. 481-528 of the Civil Code  
(b) Art. 538 -564 of the Civil Code  
(c) Criteria in Art. 183(3) and 189 of the Constitution, Art. 1240 Civil Code and Art. 9-15 of City Statute (see main text below)  
(d) Art. 183(1) of the Constitution and Art. 1240, par. 1 of the Civil Code (urban adverse possession and Special Concession for Housing Purposes) |
| Formal lease and rent | Lease of land: used in formal real estate market.  
Lease of housing: Individual or of collective ‘tenement houses’ (multifamily collective housing rental (cortiços)).  
Rent/sub-lease/sub-letting of housing. | Art. 565-578 Civil Code  
Federal Law 8,245 of 1991 |
| Informal lease or rent | Lease and sublease of land, housing  
Lease of housing  
Widely used both in formal and informal leasing/renting.  
Informal rental in tenement houses is very common, with low security of tenure, high rental rates and bad living conditions. | |
| User rights | (a) Special Concession for Housing Purposes (concessão de Uso Especial para Fins de Moradia - CEFM).  
Collective form of this right is used in slums/informal settlements.  
(b) Concession of Real Right to Use (Concessao do Direito Real de Uso – CDRU)  
Collectively used in social housing programmes. If government agrees, no need to go to court – administrative procedure only.  
(c) Use; or a loan for use.  
(d) Right of surface. Ensures access to land. | (a) If the criteria in Art. 1 of Provisional Measure 2220 of 2001 are met (see below), occupant acquires user right to public property of max. 250 m².  
(b) Decree 271 of 1967 and City Statute, Art. 4°, V, g and Art 48. Public and private land.  
(c) Art. 1412 —1413 Civil Code; Art. 26 Federal Law 6766/79  
(d) Art. 21 City Statute; Art. 1369 — 1377 Civil Code |
Appendix III: International Law

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

Universal Declaration on Human Rights (UDHR) 184

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

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

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

International Covenant on Civil and Political Rights (ICCPR) 187

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

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

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

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

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

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

184 Universal Declaration of Human Rights, adopted on 10/12/1948 by General Assembly Resolution 217 A (III), UN GAOR, 3rd Session.
186 The right to adequate housing consists of the following elements: (1) legal security of tenure irrespective of the type of tenure; (2) availability of services, materials, facilities and infrastructure; (3) affordability; (4) habitability; (5) accessibility (including access to land); (6) location; and (7) cultural adequacy. See UN Committee on Economic, Social and Cultural Rights, General Comment No. 4 on the Right to Adequate Housing. UN Doc. EC/12/1991/41 (1991). For full text see: http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/4694d9f1a9378221c12563ed0053547e?OpenDocument
188 International Convention on the Elimination of All Forms of Racial Discrimination, adopted on December 21, 1965 by General Assembly resolution 2106 (XX), entry into force on January 4, 1969. As of June 2005, 170 states were parties to this Convention, while 84 had signed but not (yet) ratified.
women’s equal right to bank loans, mortgages and other forms of financial credit;

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

Convention on the Rights of the Child (CRC) 191

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

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

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

American Convention on Human Rights (ACHR) 193

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

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

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194 After country representatives have signed an international or regional agreement, their head of state has to approve it. Upon such approval the signed agreement is ratified. Whether ratification is necessary or not is stated in the agreement. If a state has not signed and ratified such agreement, it can still accede to the treaty at a later date. By ratifying or acceding to an international or regional agreement, the state becomes party to it is bound to the obligations laid down in that agreement. If the state only signs but does not ratify, it is nevertheless bound to do nothing in contravention of what is stated in that agreement.
<table>
<thead>
<tr>
<th>Treaty</th>
<th>Argentina</th>
<th>Bolivia</th>
<th>Brazil</th>
<th>Chile</th>
<th>Colombia</th>
<th>Costa Rica</th>
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<th>Dominican Republic</th>
<th>Ecuador</th>
<th>El Salvador</th>
<th>Guatemala</th>
<th>Honduras</th>
<th>Mexico</th>
<th>Nicaragua</th>
<th>Panama</th>
<th>Paraguay</th>
<th>Peru</th>
<th>Uruguay</th>
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</tr>
<tr>
<td></td>
<td>NO</td>
<td>S: 1999</td>
<td>, but not R</td>
<td>YES</td>
<td>YES</td>
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<td>YES</td>
<td>YES</td>
<td>YES</td>
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</tr>
</tbody>
</table>

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*b: 1980
r: 1980
s: 1980
a: 1980
1992
---

**Table 1. Status of ratification of main human rights instruments in Latin America**
<table>
<thead>
<tr>
<th>Treaty</th>
<th>Argentina</th>
<th>Bolivia</th>
<th>Brazil</th>
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</table>
