Call for input: Land and the right to adequate housing

Name of submitting entity, organization or individual: Habitat International Coalition (HIC), Housing and Land Rights Network and HIC'S regional LAC and MENA office.

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The responses to the below questions are complementary to other submissions by HIC-HLRN and are based on the experience and expertise of HIC members. Particularly for the cases below, a significant part of the material presented derived from the outcome document of the collective campaign "Our neighborhoods, Our Rights, Our Cities" facilitated by HIC-AL and the Asociación Civil por la Igualdad y la Justicia (ACIJ), launched in 2023.

4. To what extent are communal/collective land ownership, use or access rights recognized in law and practice in your country? What impact do such tenure arrangements have on the right to adequate housing?

The Ecuador Constitution of 2008 recognizes in its article 321 different ownership models including public, private, community, state, associative, cooperative, and mixed property, all subject to the fulfillment of their social and environmental functions[1].

The Constitutional Law on Human Rights and Guarantees of the City of Mexico recognizes in its article 59 "cooperative ownership" as a legitimate tenure model[2]. Similarly, in Brazil while housing movements are in a continuous campaign for the speedily approval of a Federal bill for the recognition and support of self-managed housing[3]legal dispositions at the different levels have advanced the recognition of collective ownership and self-management. These include Federal Law 11.124/05 (2005) that sets the basis for the national system for social housing, including the recognition of foundations, societies, unions, community associations, housing cooperatives as part of the system[4], or the local law 16.587 in the City of São Paulo, enacted in 2016 which covers modalities of self-managed housing and foresees "the

[1] Ecuador Constitution (2008), available at: https://www.defensa.gob.ec/wp-content/uploads/downloads/2021/02/Constitucion-de-la-Republica-del-Ecuador_act_ene-2021.pdf

[2] Constitutional Law on Human Rights and Guarantees of the City of Mexico (2009), available at: https://data.consejeria.cdmx.gob.mx/images/leyes/leyes/LEY_CONSTITUCIONAL_DE_DERECHOS_HUMANOS_Y_SUS_GARANTIAS_DE_LA_CIUDAD_DE_MEXICO_2.1.pdf

[3] PL 4216/2021 on self-managed housing (2001), available at: https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2309586

[4] Law 11.124/05 on the national system for social housing (2005), available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11124.htm

promotion of collective forms of enjoyment of possession or ownership of housing units" on article 5, XI[5].

Moreover, Brazilian legislation includes several instruments for the regularization of land by low-income individuals, which also include dispositions regarding collective ownership. When introducing the general instruments included, the Brazilian City Statute (2001) stipulates on article 4, paragraph 2, that "in the case of social housing programs and projects developed by public administration agencies or entities with specific responsibilities in this area, the granting of real rights to use public property may be contracted collectively". Moreover, the law also introduces the instrument of collective adverse possession (article 10), which had its requirements modified in 2017 and currently stand as: (i) presence of informal urban settlements; (ii) uninterrupted and unopposed possession for five years; (iii) possession of a residential or commercial unit, by each owner, of less than two hundred and fifty square meters; (iv) no ownership of other urban or rural property[6].

Uruguay is known for its fertile cooperative ecosystem under a mutual-aid model and based on collective ownership. Such a model is legally supported by dispositions included in the country's 1968 Housing Law which includes dispositions to support both individual and collective models of ownership[7]. The Uruguayan case was key in influencing the creation of similar models in other parts of the world, such as in Catalonia. Already having a cooperative system, but based on private ownership of the units built, in the last decade the basis was set for the development of a cooperative model based on collective ownership and the right-to-use[8] as a mechanism to address rising housing costs and instability of rental housing, linked to mounting housing speculation.

The Catalan right to housing law (18/2007) introduces the concept of "right to use" as a model that can be applied to social and public housing[9]. Based on these ideas, the Catalan law on cooperatives (12/2015) introduces the legal bases for such right-to-use cooperatives by referencing the modality of enjoyment of use" stating that if the cooperative "retains ownership, the social statutes shall establish the rules of use and the rights and obligations of the partners and the cooperative"[10]. Under

[5] Local law 16.587 (São Paulo, 2016) on self-managed housing, available at: https://legislacao.prefeitura.sp.gov.br/leis/lei-16587-de-12-de-dezembro-de-2016
[6] Brazil City Statute (2001), available at: https://www.planalto.gov.br/ccivil_03/leis/leis_2001/l10257.htm
[7] Uruguay Housing Law (1968), available at: https://www.impo.com.uy/bases/leyes/13728-1968
[8] Sostre Civic, the Right-to-use model: https://sostrecivic.coop/es/com-funciona-model-cessio-us/
[9] Catalonia Right to Housing Law (2007), available at: https://portaljuridic.gencat.cat/ca/document-del-pjur/?documentId=473076
[10] Catalonia Cooperatives Law (2015), available at: https://www.boe.es/buscar/doc.php?id=BOE-A-2015-9140

these legal bases, a series of cooperatives and support organizations were created in the territory.

In the case of Barcelona, the first right-to-use cooperative projects were set-up through public contents in which the City Council opened the use of buildings and plots of land, in which the housing projects were set-up. In 2020, an agreement was signed between the municipality and the main cooperative federations and social entities dedicated to social housing provision, the ESAL Agreement, which regulates and establishes the mechanisms for allocation of public land to social entities for housing development, the transfer of land and public aid for such projects. Since then, 20 municipal plots have been allocated, totaling 681 homes, 430 of which are for social rental housing and 251 for right-to-use cooperatives. This translates into the fulfillment of 70% of the objective set in the agreement, which is the construction of 1,000 homes in 10 years, of which 60% will be for rent and 40% for right-to-use cooperatives[11].

5. Please describe the legal regime governing the expropriation of land in your country for public purposes. Please explain to what extent the legal regimes governing expropriation or the withdrawal of land use or access rights are compliant with international human rights standards and the protection against forced evictions, arbitrary resettlement and forced displacement in law and practice.

The Argentine Law on Popular Neighborhoods (Land Tenure Regularization and Socio-Urban Integration) of 2018[12], and then amended in 2022 (modifying even this paragraph) stipulates that, all real estate located in the popular neighborhoods listed in the National Registry of Low-Income Neighborhoods (RENABAP) is considered to be of public utility and, thus, subject to expropriation as advance the aim of promoting urban integration.

The General Law of Human Settlements of Mexico (2016, last modified in 2024) states that, as stated in the Constitution, expropriations may only be carried out for reasons of public interest (*utilidad pública)* and with compensation[13]. The Mexican Law on Expropriation (1936, last updates in 2012) includes among such motives of public interest the conservation and improvement of population centers, implementation of urban development plans or programs, and construction or

[11] The Barcelona City Council renovates the ESAL agreement: https://ajuntament.barcelona.cat/premsa/2025/01/17/lajuntament-renova-el-conveni-amb-les-entitats-dhabitatge-social-i-incrementa-els-ajuts-per-la-construccio-i-la-rehabilitacio-dhabitatge-protegit/

[12] Argentinian Ley de Regularización dominial e Integración Sociourbana (2018), available at: https://www.argentina.gob.ar/normativa/nacional/ley-27453-315739/actualizacion

[13] The General Law of Human Settlements of Mexico, available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LGAHOTDU.pdf

improvement of social and low-income housing, as well as measures necessary to prevent damage to property that could harm the community[14].

The Protocol for Action on Vacant or Degraded Buildings Montevideo, Uruguay regulates the participation of the Municipality in the implementation of National Law No. 19,676 of 2018 on vacant and degraded urban properties, setting out the powers and responsibilities of the various services and units involved. This law declares that it is in the general interest to comply with duties relating to real estate, establishing processes and guarantees for taking action on unused urban real estate in order to rehabilitate them for socially useful purposes with adequate conservation. It also provides a mechanism for the acquisition of real estate by the Ministry of Housing or the National Housing Agency, depending on the possibility of acquisition on advantageous terms in the absence of interested parties at judicial auction or through the right of first refusal granted to these agencies, which may acquire the property on the terms of the highest bidder's offer, to be used for their urban strategies and, more specifically, for their portfolio of properties for social housing. This law is part of the instruments considered in the National Urban Land Strategy (ENASU). Uruguay's National Urban Land Strategy, created in 2018, sought to promote significant changes in the use and availability of urban land for social housing programs and urban development. This strategy establishes goals and lines of action based on the recognition of the social function of urban land, inequalities in access, and the role of the state in facilitating access to urbanized land (with services) for housing, but also for equitable access to and enjoyment of the city.

On these bases, the Montevideo Municipality launched in 2015 the “Abandoned buildings programme”[15], which seeks to amplify the offer of affordable housing in central areas of the city through three main instruments: payment of debts in kind (“dación en pago”), expropriation, and public auction. For the expropriations, these are justified using a series of norms related mainly with the owner's duties concerning the obligation to properly maintain buildings (see full list here). The project is implemented in three phases: identifying possible buildings, analyzing and executing the transfer of property to the municipality and, finally, determining the final use of the building and renovating it. Buildings have been destined both to housing (through cooperatives or public rental housing) or community uses. In its initial pilot phase, the project included 25 buildings, covering 6.700 m2 to create 280 housing units.

[14] The Mexican Law on Expropriation, available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/35.pdf
[15] Proyecto Fincas Abandonadas: https://montevideo.gub.uy/sites/default/files/biblioteca/proyectofincas20919web.pdf

6. Please share any examples of land use, land governance or land management policies that have been successfully employed in your country, region or city to realize the right to adequate housing for all without discrimination.

In addition to some of the instruments and policies cited above, we include the following cases:

As noted above, the Brazilian Cities Statute introduces a series of instruments to comply with the principle (introduced in the constitution) that all property must fulfill its social function (to be determined at the municipal level in the Master Plan). These include the progressive Urban Property Tax (IPTU), Mandatory Land Division, Building, and Use (PEUC), and Punitive Expropriation. These are a series of instruments, still under-used, through which the government notifies the owner that it will subdivide, build, or use their property for not fulfilling its social function. If the obligation is not fulfilled, the municipality will progressively increase the tax (IPTU) payable on the property over a period of five years, up to 15% of its value. If the property still does not fulfill its social function, the government can sanction the owner by expropriating it and paying for it in annual installments over 10 years through public debt securities[16]. In addition, the law also includes the possibility of establishing Special Zones of Social Interest (ZEIS) that may delimit marginal neighborhoods and popular territories that must be prioritized for regularization, urbanization, and reservation for low-income housing. In these zones, occupancy and construction regulations are adapted to the characteristics of the territory itself and can protect it from the advance of the middle- and upper-class real estate market[17].

Argentina's National Urban Land Plan (PNASU) seeks to link land policy with territorial development in order to promote “compact, equitable, and accessible” cities. introduces land market regulation instruments to ensure that municipalities themselves benefit from price increases from regulatory changes and public works. Within the framework of the PNASU, the National Land Production Program promotes two main lines of action: the generation of lots of land provided with basic services and the creation of land banks for urban development projects. Both policies promote access to quality new urban land for families living in low-income neighborhoods registered in the national registry. Since its creation in 2020, more than 20,000 lots with services have been delivered in 18 provinces.

[16] “Parcelamento, edificação ou utilização compulsória (PEUC) E IPTU progressivo no tempo”, CAPACIDADES (2015), available at: https://www.capacidades.gov.br/capaciteca/parcelamento-edificacao-ou-utilizacao-compulsoria-peuc-e-iptu-progressivo-no-tempo

[17] “DEMANDAS COLECTIVAS POR EL MEJORAMIENTO Y LA INTEGRACIÓN SOCIO-URBANA DE LOS BARRIOS POPULARES DE AMÉRICA LATINA”, Latin American Campaign “Our Neighborhoods, Our Rights, Our Cities” (2023), available at: https://acij.org.ar/wp-content/uploads/2023/06/Documento-de-demandas-y-propuestas.pdf