COLOMBIA'S URBAN LEGAL FRAMEWORK

By

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April, 1980

This report was prepared under the auspices of the City Study Research Project (RPO 671-47) as City Study Project Paper No. 21. The views reported here are those of the author, and they should not be interpreted as reflecting the views of the World Bank or its affiliated organizations. This report is being circulated to stimulate discussion and comment.

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ABSTRACT

This paper presents a survey of recent laws, actions, and practices that provide the legal framework for the control and planning of urban development in Colombia, with special reference to Bogota. The legally defined urban planning powers are highly centralized in the Ministry of Development and the National Planning Department with residual planning responsibilities accruing to Departmental, Municipal, and soon to be defined Metropolitan bodies. In fact, the planning powers and activities of different agencies often overlap and pursue different objectives within the same urban area. The local planning agencies typically have little real power to implement their plans because of these inconsistencies, and because the national government has severely limited the ability of local authorities to invoke penalties against violators of zoning ordinances. In most Colombian cities the authorities have acted strongly to control invasion developments, but there has been a proliferation of illegal low-income housing developments in the absence of legally mandated affordable alternatives. Local agencies have moved only recently to increase the supply of low cost site and service projects and minimum norms (normas minimas) developments. The government has been reluctant to use expropriation powers to provide low income housing sites in urban areas. In some cases, expropriation powers have been used to compensate persons whose land has been invaded. As in many countries, Colombia has numerous instruments that could be used to promote housing for low income urban dwellers, but to date few of them have been exercised to the benefit of such groups.
PREFACE

This paper forms part of a large program of research grouped under the rubric of the "City Study" of Bogota, Colombia, being conducted at the World Bank in collaboration with Corporacion Centro Regional de Poblacion. The goal of the City Study is to increase our understanding of the workings of five major urban sectors -- housing, transport, employment location, labor markets, and the public sector -- in order that the impact of policies and projects can be assessed more accurately.

This paper presents a survey of recent laws, actions, and practices that provide the legal framework for the control and planning of urban development in Colombia with special reference to Bogota. Other City Study Papers dealing with institutional factors and Colombian urban policy include:


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INTRODUCTION

Much has been said and written about Colombia's housing and urban development problems, but, to our knowledge, no attempt has been made to describe the legal framework within which these problems arise, develop and are either solved or ignored. This is, then, a description of the different government agencies' formal responsibilities and of the Constitutional and regulatory provisions pertaining to urban planning, zoning and land use, subdivided land sales controls, low income land tenure and property rights. There is also a section on Urban Reform in Colombia, which includes an update on recent developments in the field.

This paper will surely elicit more questions than answers, particularly when some thought is given to the actual application of the numerous laws which will be cited. It must be clear, though, that this is not a legal impact study. It is a formalistic description of Colombia's urban legal framework, and will hopefully Clarify legal and institutional constraints which affect low income housing problems, but, more importantly, the paper will hopefully suggest legislative and regulatory courses of action under the Constitution which may help in dealing with these problems more effectively.
I - THE TERRITORIAL SUBDIVISION
OF POWER IN COLOMBIA (1)

This section is intended to answer the question of which tier of
government has the authority to regulate urban related issues; whether
home-rule provisions exist in the Constitution which assign exclusive
authority to municipalities, or whether the present Constitution
centralizes authority in a geographic center. It will contain a
general discussion of the internal geographic delegation of govern-
mental authority in Colombia, as an introduction to Sections 2 and 3,
which will refer in detail to delegation of planning and land use
control responsibilities.

The year 1886 marked the demise of several attempts to establish
a federal division of power among the different "sovereign" states,
due to internal political instability and a poor communications
system in a country where topography severely isolated the various
regions. In that year, the United States of Colombia became the
Republic of Colombia, and a centralized Constitution was issued. State
Legislatures were turned into administrative corporations and their
power to legislate and tax was withdrawn. Local authority was
considerably diminished as a result of the latter. In particular,
local administrative authority became directly dependent on centrally
appointed officials.
The Nation today is divided into twenty-three Departments and several other minor, albeit extensive divisions, known as Intendencias and Comisarias. The latter are under the direct supervision of the central Government, whereas Departments are run by Governors and by Assemblies, whose members are selected bi-annually by direct popular vote. The President appoints all Governors, making sure that major political parties are satisfied with his choices. (2) Since appointments are based on the relative strength of the parties and their factions, shifting alliances mandate annual changes in Governorships. Departamentos, Intendencias and Comisarias are subdivided into Municipios, which represent the smallest territorial division in existence. (3) Municipal Mayors are, in turn, appointed by Departmental Governors, and their turnover is even greater. Municipal Councils, whose members are voted into office, are the center of local political activity, a fact which was overlooked in several Constitutional Amendments; 1968's in particular, which defined their powers as administrative. Councils have difficulty coping both with political and administrative functions, so that in general, Municipalities are very poorly run.

Bogotá, the National Capital, is a Special District, run much the same way other Municipalities are, with the difference that the Mayor is appointed by the President and has the administrative authority of a Governor. The Council, in turn, has the powers of a Departmental Assembly.

General urban planning and land use regulations are issued at the national centralized tier, while other levels of government exert
residual authority, at best, to issue regulations. (4) In particular Mayors and Councils both implement centrally issued regulations but responsibilities have been divided between them by the Constitution and by the Congress. Physical planning, such as zoning maps and lot by lot land use regulations, is done at the Municipal level, under a limited version of home rule provisions. (5)

In the next two sections we will consider the Constitutional and legal division of responsibilities in detail.

To summarize this section, it is safe to say that governmental authority, following the geographical distribution criterion, is unevenly divided among the three basic tiers: national, departmental and municipal. Departmental authority is controlled by national authority, and municipal authority, in turn, is controlled by both departmental and national authority. Increasingly, though, national authorities are pre-empting the responsibilities of the other authorities, as is evidenced by the National Police Code, which lay down insignificant penalties for zoning violations, thus barring Municipalities from establishing effective ones.(6)
FOOTNOTES TO SECTION ONE


(2) Under the Constitutional Amendment of 1968, the President must share power within the executive branch with the next largest party, if such party decides to participate. Leading up to this permanent arrangement is the 20 year National Front system, whereby the Liberal and the Conservative parties rotated the Presidency every four years. See Dix, Robert H. Colombia: The Political Dimensions of Change, New Haven, Yale University Press, 1971; and Martz, John D., Colombia, A Contemporary Political Survey, Chapel Hill, N.C., The University of North Carolina Press, 1962.

(3) Article 196 of the Constitution provides for the creation of an even lower tier of territorial authority, known as Juntas Administradoras Locales or Local Administrative Committees. None exist, as the Constitution calls for an implementing law which has not been issued.

(4) The residual authority of Assemblies is to be found in Article 187 of the Constitution. Metropolitan Area Government, defined in Article 198 of the Constitution and in Decree Law 3104 of 1979, will further reduce the authority of both Municipalities
and Departments, with respect to major cities, when such agencies are created. More on Metropolitan Areas in Section 3.

(5) See Article 197 of the Constitution for a listing of Municipal Councils' powers, which are always exercised under the guidelines set down by laws issued by the Congress. Section 1 of Article 197 contains the home rule proviso.

Urban planning laws are not expressly provided for in the Constitution, so that when we refer to them, we must remember that the authority to issue them resides in the general Constitutional provisions on planning, which were introduced in 1936 in the following terms:

"Free enterprise and private initiative are hereby guaranteed, within the limits required by the common good, but the general direction of the economy shall be the responsibility of the Government. It shall intervene, under the authority of the law, in the production, distribution, use and consumption of goods and of public and private services, in order to rationalize and plan the economy and thereby achieve integral development." (1)

Having established in Section One that governmental authority is geographically centralized, it will be convenient to examine potential planning activity at the different levels of government.

2.1. NATIONAL PLANNING

Congress has the authority to issue social and economic development plans and programs, as well as the authority to establish the public works to be continued or executed. (2) In 1968, a Constitutional Amendment provided that a Special Permanent Congressional Committee had the responsibility to approve these social and economic plans and programs before they went to the House and Senate floors. The
Committee is supposed to be made up of a Senator and a Representative from each Department, and two more Representatives from the other territorial subdivisions known as Intendencias and Comisarías, elected by Congress proportionally to the relative weight of each party in both Houses. The President has the exclusive Constitutional authority to introduce such a Bill in the Committee, which must pass on it within five months, after which the House acquires exclusive authority to pass on the Bill. If the House neither rejects nor approves the Bill within three months, the Senate acquires exclusive authority to pass on the Bill. If, in turn, the Senate does not act on it, the President may issue a Decree which contains the Bill. (3)

The geographical and political criteria established for the composition of the Committee have been identified as the major difficulty involved in the election of its members. Congress has not been able to elect them in over a decade, ever since the Constitutional Amendment of 1968 provided for the existence of the Special Committee. Nevertheless, the real reason behind Congress's inability to elect the Committee members may lie in its reluctance to relinquish authority in favor of the President after eleven months, particularly when one considers that Congress is aware it does not have the planning expertise necessary to analyze and pass critically on the President's Bill.

Constitutional Amendment Number One of 1979, passed in early December, modified the rules governing the Special Planning Committee. It established that the House and Senate Floor Committees would designate the Special Committee members, following a similar geographical and political criterion, if the Committee members were not elected within thirty days after the start of a new legislative
period. The members so designated would serve on the Committee until each House elected his replacement. Additionally, the Amendment provided that the President could enact his Bill, under a Decree-Law, if Congress did not pass on it within one hundred days.

It is still too soon to judge whether these recent innovations will work. The key question is whether the Floor Committees will ever reach an agreement on the correct political distribution of the Special Committee. Even so, there is no evidence that Congress is better equipped to analyze and pass critically on the President's Bill, so that presumably, the Floor Committees will also be reluctant to designate Special Committee members.

In the absence of the Special Committee, planning priorities and objectives are embodied in the annual national budget law, as well as in the regulations issued by the Monetary Board and the President, which refer, among others, to interest rates and to the availability of credit resources for certain areas and projects. The regulations are usually formulated with the advice of the National Economic and Social Policies Council, which is the Government's main advisory body in the economic and social development areas. Several Ministers and heads of specialized agencies sit on the Council, under the personal direction of the President. Its main responsibility is to review the development plans and programs which the National Planning Department, the Council's Executive Secretariat, prepares for the President and which he will ultimately take to Congress for approval. A special reference to the formulation of urban and regional development recommendations
can be found in the Council's by-laws. (4)

At the national level, in addition to the Council, there are two other agencies which formulate policies affecting urban areas. They are the Ministry of Development and the National Planning Department. Each institution also supervises the execution of specific projects or programs which specialized agencies such as the housing agency, the regional development agencies, and the urban development corporations are responsible for. The Minister or the Department Head are the Chairmen of the Boards of these specialized agencies.

In general, the successful and timely completion of a specific project will depend on the attitude and interest of the Minister or Department Head. Additionally, as Cabinet Members, they are in a position to influence the formulation of priorities and the consideration of new projects. Given the importance of these two institutions, we will briefly summarize their responsibilities, as defined by law, in order to establish the scope of their potential impact on national urban planning.

2.1.1. Duties and powers of the Ministry of Development (5)

The Ministry, a part of the Executive branch of Government, executes a host of responsibilities, mainly in the Foreign Trade area. In addition, The Ministry is in charge of:

a. Formulating the Government's Policies in the areas of industry, tourism, internal trade, and housing and urban development.
b. Programming urban development and housing policies, in coordination with the National Planning Department.

Attached to the Ministry is the Committee on Housing and Urban Development. Both government officials and private sector representatives sit on the Committee, which acts as an advisory body to the Minister. The Committee has not met in several years.

The national housing agency, Instituto de Crédito Territorial, is under the general supervision of the Ministry of Development; so are the urban development corporations, Empresas de Desarrollo Urbano, which exist in more than 10 cities.

2.1.2. Duties and Powers of the National Planning Department (6)

The Planning Department is also within the Executive Branch of Government. A powerful and highly regarded agency, it is charged with:

a. Issuing the regulations to be followed by the planning office of Ministries and other public agencies in the preparation and presentation of plans, programs and projects in the sectorial, and urban development areas;

b. Advising public agencies in the above mentioned areas, evaluating their projects and proposing necessary changes.

c. Encouraging the formulation of sectorial, regional and urban development policies, plans and programs with the aid of Ministries, specialized agencies, Departments and Municipalities.
d. Issuing an opinion prior to the signing of contracts with the National Government, specialized agencies, departments and municipalities, relating to urban, regional and sectorial development studies;

e. Preparing the necessary studies for the identification of socio-economic regions and metropolitan areas, and encouraging coordination between them for the preparation and execution of urban and regional development plans and programs.

Specifically, the Urban and Regional Development Unit within the Department has the responsibility to prepare the basic studies necessary for the formulation of the Government's plans and policies in the housing field. It is worth noting that the Regional Development Corporations, Corporaciones Autónomas Regionales, are under the supervision of the National Planning Department.

A cursory reading of the duties and powers of the two institutions suggests the existence of dual responsibilities in the housing and urban development fields. At times, and depending on the personalities of the Minister and the Department Head, this duality creates conflict. Legally, the distribution of responsibilities looks like a race between the two institutions; in 1974, the National Planning Department's basic law repealed the Ministry's Urban and Regional powers, and in 1976, the Ministry's basic law repealed most of the Department's.

2.2. DEPARTMENTAL URBAN PLANNING

As with national urban planning, the Constitution does not refer
specifically to urban planning at the Departmental level. Urban planning thus comes under the general heading of Departmental social and economic development plans and programs. The Governor has the exclusive authority to submit a plan or program to the Departmental Assembly, which is responsible for its enactment. Such action, though subject to as yet unissued rules set down by the Congress in order to coordinate such plans and programs with as yet unissued national and regional plans. (7) Several Bills establishing these rules have been introduced in Congress, but none has passed. Nevertheless, every Department has a planning office, and a few have urban development plans, which will be valid until Congress enacts such Bills. (8)

Departmental urban planning has further been hampered by the fact that Mayors and City Councils consider that such planning lies within their exclusive domain, under an incorrect interpretation of home rule even though the Constitutional Amendment of 1968 empowered Departmental Assemblies to issue their own economic and social development plans and programs, as well as to exert administrative tutorship over Municipalities in order to plan and coordinate local and regional development, under the rules set down by Congress. (9)

It could very well be that the absence of such Congressional rules and the recently introduced administrative tutorship over municipalities account for the marginal Departmental Urban Planning activity

2.3. REGIONAL URBAN PLANNING

Article 7 of the Constitution provides for planning and economic development territorial subdivisions which may or may not coincide
with the traditional Departmental divisions. Even though regional planning authorities could be created Constitutionally, Congress has not enacted a law providing for them yet.

Regional planning institutions such as SIPUR (Sistema Integrado de Planificación Urbano y Regional) are not Article 7 planning agencies. SIPUR is an outgrowth of a private association of the Northern coast Governors. Even though the association and SIPUR exert no governmental authority and thus cannot issue an enforceable plan, they are useful as pressure groups in obtaining public spending concessions from the National Government.

Regional planning authority is sometimes exerted by the "independent regional corporations" (Corporaciones Autónomas Regionales), which were created by Congress mainly for the preservation of natural resources. Their basic laws sometimes empower them to issue land use plans within their jurisdictions. Many corporations' jurisdictions include major and intermediate cities' suburban and pre-urban areas, so that their land use authority is becoming increasingly important.

2.4. METROPOLITAN URBAN PLANNING

Although no metropolitan area governments exist yet in any of Colombia's cities, recently issued Decree-Law 3104 of 1979 laid down their basic powers and the detailed procedure for their organization. As required by Article 198 of the Constitution, metropolitan areas are to be created for the better administration and provision of public services of two or more Municipalities located within the same
Department. They are to be created by Departmental Assemblies, at the Governor's initiative, with the advice of the interested Municipalities.

The following is a list of metropolitan area governments' planning responsibilities:

a. To formulate and issue the Integral Development Plan for the area, as well as the Sectorial Investment Program, and to define the instruments necessary for its execution and observance, pursuant to the national and departmental policies and strategies;

b. To establish and order the plans and programs which shall be executed by Municipalities and other public agencies pursuant to the Integral Development Plan;

c. To establish the road plan and the public services master plan for the area. (11)

Metropolitan planning, it appears, will preempt municipal planning, but shall be subject to both national and departmental planning. Since no metropolitan areas exist yet, it is too soon to pass judgement on their actual planning effectiveness. Land use control authority of metropolitan areas will be taken up in section 3.

2.5. MUNICIPAL URBAN PLANNING

Again, under the general heading of planning, Article 189 of the Constitution establishes that Congress shall lay down the rules under which Municipalities shall issue their economic and social development
plans and programs. Congress has not yet issued such general rules, but it has ordered Municipalities to issue plans, under the authority of Article 197 of the Constitution which allows Congress to add responsibilities to Municipalities. The Constitutional listing of Mayors' and Councils' responsibilities does not include any on planning, so that Congress may validly expand such a listing with the inclusion of urban planning responsibilities.

Law 88 of 1947 and 61 of 1978 may be considered additional responsibilities on Municipalities, ordered by Congress. Both refer to urban development plans, but neither can be considered an exclusive delegation by Congress which would bar Departments and regional planning authorities from preempting such a responsibility when Congress issues its general planning law and when Departmental Assemblies issue theirs. It is within this context that the above-mentioned laws, which we will take up in detail in the next section, do not constitute home rule clauses for municipalities.

In conclusion, this section shows that, formally, the Colombian planning process is geographically and functionally centralized but that, due to the fact that there is no general national plan issued by Congress, planning is the responsibility of the Executive Branch of Government. The National Executive role is especially important in determining whether there will be enough funds, both private and public, for the implementation of a local development plan. Within the Executive Branch, though, there seems to be an undesirable duality in urban policy making, between the Ministry of Development and the National Planning Department.
Additionally, specific urban development plans are issued by Municipalities, under direct Congressional authority.

Our next section will take us out of the general Constitutional framework into a more detailed presentation of the specific institutions involved in land use planning and control.
FOOTNOTES TO SECTION 2

(1) Article 32 of the Constitution.

(2) Section 4 of Article 76 of the Constitution.

(3) Articles 79 and 80 (former text) of the Constitution.


(7) Section 2, Article 187 of the Constitution.

(8) See, for example, Ordinance 8 of 1973, issued by the Cundinamarca Departmental Assembly.

(9) Article 182 of the Constitution.

(10) See, for example, Law 3 of 1961, which created the Bogotá River Basin Corporation (CAR).

(11) Decree - Law 3104 of 1979, Article 6 (1)
3 - LAND USE CONTROL AUTHORITIES

This section will refer to the authorities which control the uses of land in compliance with a plan, not necessarily one issued by Congress. Most of the authorities listed here engage in their own planning too, mainly because there is no general urban plan to follow. The following list of authorities descends from the national level to the local level.

3.1. NATIONAL DECENTRALIZED:

a. The Civil Aeronautics Department has the authority to issue building licences in areas around the country's airports. (1) Since most urban areas in Colombia have ended up engulfing their airports (Barranquilla, Medellín, Bucaramanga and Bogotá), the CAD's urban jurisdiction is important. (2) In some airports such as Bogotá's, the CAD's jurisdiction extends over a circle with a six kilometer radius, which includes a significant part of the city's central district.

b. The National Environmental Protection Agency, Colombia's environmental protection agency, INDERENA, has the authority to establish zoning policies and regulations in order to protect the environment and natural resources. (3) Departments
and municipalities were authorized by the law to issue their own zoning regulations, subordinated to INDERENA's. (4) There was some doubt as to whether INDERENA's authority impinged upon municipalities' home rule powers, so the Government asked for an advisory opinion from the Supreme Administrative Tribunal. The latter issued its opinion on July 12, 1978, and stated that INDERENA's authority was established in the public and social interest, and the national interest had to prevail in order to better protect the environment. Therefore, home rule provisions are subordinated in the national interest. (5).

As will be seen in Section 7, urban land is a renewable natural resource, belonging to the Nation, which private individuals may use according to the conditions set down in a license issued by INDERENA. Although this new definition of rights in property is not yet well understood, and INDERENA has not applied it, its land use control potential is extraordinary.

3.2. NATIONAL DECENTRALIZED WITH A LIMITED REGIONAL JURISDICTION:

Independent Regional Corporations such as the Sabana de Bogotá and Ubaté Valley one (CAR), fit into this category. CAR is not a regional agency as such, since it was created by the National Government and is under its direct control. Its jurisdiction and impact are regional, though. CAR was created to protect the Bogotá River water
basin, but it was also granted land use control duties which it has only recently tried to exercise much the same way a metropolitan land use control agency would, to contain urban growth and protect the rich agricultural lands surrounding Bogotá. CAR is empowered to "determine the best use of lands, designating the areas which should be used for urban, agricultural or industrial developments, for reforestation, for mining operations or water conservation reserves. Accordingly, it will coordinate the master plans of the municipalities and of Bogotá, and will issue a master plan for the area within its jurisdiction". (6)

In 1976, CAR took a first step by defining the elements of its regional master plan. They are:

- Population
- Employment and income
- Resources
- Housing
- Commerce and Industry
- Transportation
- Public Services (infrastructure)
- Education
- Health
- Other Social and Communal services
- Rest and Recreation
- Conservation of urban and rural scenery
- Exploitation and use of mining and agricultural land
- Preservation and conservation of natural resources
- Environmental protection. (7)
3.3. CENTRALIZED DEPARTMENTAL

Not all Departments have land use control regulations and agencies. Cundinamarca is, perhaps, the Department whose land use scheme is most elaborate. Bogotá is geographically a part of this Department, and the city's growth trend extends into it. Given that Bogotá is adjacent to Cundinamarca, and that it is a half hour ride from the center of town, it would seem advisable to coordinate land use planning and policies in the general area, which is something CAR could do.

In 1973, the Department of Cundinamarca's Assembly issued a land use ordinance requiring a subdivision license to be issued according to a zoning plan which defines land use and limitations. Every development must meet lot size requirements, occupation and construction indices, road specifications and public use lot reservations. Oddly, and perhaps illegally, the ordinance empowered the Secretary of Public Works to define the urban perimeter of the Municipalities in Cundinamarca, in spite of the fact that, as we shall see in this section, Law 88 of 1947 orders Municipalities to set their own urban perimeters.(8)

3.4. METROPOLITAN

a. Although the Constitution provides for the existence of metropolitan areas, it requires that Congress issue a law implementing and developing the concept. The Constitution did however, specify that metropolitan areas are to be formed by municipalities within the same department, "for the better administration or provision of public services". (9) The requirement that the Municipalities
belong to the same Department poses special difficulties for urban centers such as Barranquilla, the Pereira-Manizales-Armenia area, and quite possibly Bogotá, whose growth trends extend into other Departments. A special implementing law for Bogotá was passed in 1968, but the metropolitan area has not been created, apparently because of the Constitutional restriction. (10)

After several attempts to issue a law implementing the concept of metropolitan areas, the President, under a delegation of power from Congress, issued Decree-Law 3104 of 1979, which contains the basic provisions Municipalities must adhere to in the creation of metropolitan areas. Specifically, the Metropolitan Boards may "regulate the uses of rural and urban land as well as establish normative and control instruments and mechanisms". (11).

b. The Constitution also provides for the creation of municipal associations or federations "for the provision of public services" (12). An implementing law was passed in 1975 and several associations have been created. The law empowered the Board of Associations to "coordinate, through master zoning plans, the urban development of the associated Municipalities". (13)

3.5. MUNICIPAL

a. General

Building license requirements have existed for a long time now (14). More recently, a National Police Code was issued which established penalties for license violations and thereby pre-
emptied local police codes which were in existence for at least 150 years. The need to establish an urban perimeter to set growth limits appeared in 1936. An act of Congress empowered municipalities to establish their urban perimeters. (15) The fixing of urban perimeters became important when in 1936, a law established the presumption that uncultivated rural parcels belonged to the Government. Rural parcels are those located without the urban perimeter. If the perimeter has not been fixed, all parcels located more than 100 meters from the farthest building to the urban core are considered rural. (16)

The issue of the urban perimeter has come up again with regard to the protection of agricultural suburban land. In 1977, the Executive introduced a Bill in Congress, providing for the creation of suburban belts around cities with populations in excess of 600,000. (17) Existing urban perimeters would be frozen and any change would require the favorable opinion of the National Planning Department and of the Geographical Institute. These two agencies could not issue a favorable opinion if the extension of the perimeter included prime agricultural land as classified. If, as it was to be expected, Municipalities did not set their perimeters, or did not exclude prime agricultural land from them, the National Planning Department would establish a provisional one. An interesting feature of the Bill established the right of first refusal in favor of ICT, the National Housing Agency, whenever a parcel which had been incorporated into the perimeter were put up
for sale. The parcel would sell for its assessed amount at its suburban or agricultural use. This feature would provide ICT with a substantial amount of land at a relatively low cost. Needless to say, the Bill was not passed.

In 1948, a law was passed requiring Municipalities whose annual budget was equal to or greater than $200,000 to issue a "regulating plan which should indicate the way the future development of the city should be continued. The plan should not only include the repairs and improvements to be made to existing built-up parts of the city, taking possible development into account; it should also determine new residential areas which should be built, as well as the location of public buildings, recreational and sports sites, temples, plazas and park areas, schools and other buildings required by the city". (18) In 1978 the Banking Superintendency surveyed all 900 municipalities in Colombia and found that, currently 7, less than 2% had complied with the legal framework of issuing an updated "regulating plan"... There is no law available now that would preempt municipal authority in favor of a regional or departmental authority when a Municipality had failed to issue its "regulating plan". Recently, a Senator introduced a Bill that would have provided a form of preemption, based on the Constitutional provision that Departments are the administrative tutors or guardians of the Municipalities. The Bill did not pass.(19)

In 1979, the opportunity to establish a mechanism to insure that major and intermediate cities would issue a Master or at least a
Zoning Plan was passed up. Law 61 of 1978, known improperly as the Urban Reform Law, granted the President legislative powers to implement Article 3, which states:

"In order to achieve optimum conditions for the development of cities and of their areas of influence in their physical, economic, social and administrative aspects, every urban nucleus having more than 20,000 inhabitants shall formulate its Integral Development Plan, to be based on the modern techniques of urban planning and urban-regional coordination."

Although urban nuclei having more than 20,000 inhabitants do not exist as territorial divisions of power, we presume Article 3 refers to Municipalities whose urban areas have more than 20,000 inhabitants. Furthermore, Article 3 does not define what an Integral Development Plan is, so we suppose the President will issue a regulatory decree that will fill the void, hoping the Court will not strike it down as unconstitutional, as his legislative delegation of power has lapsed. Law 88 of 1947, when referring to regulatory plans, was much more specific and detailed than Law 61 of 1978. The law that provided for Bogotá's Master plan is even more specific and defines each one of the elements of the plan, as we shall see later in this section.

Law 61 of 1978 did not repeal Article 8 of Law 88 of 1947, so that for Municipalities, there will be two kinds of plans:

a. For those having and annual budget of more than $200,000, but less than 20,000 inhabitants in their urban areas, Article 8 of Law 88 of 1947 will apply. Today, one would imagine that most, if not all Municipalities have an annual budget that exceeds $200,000.
b. for those having more than 20,000 inhabitants in their urban areas, Law 61 of 1978 will apply. These, will issue an as yet undefined Integral Development Plan, while the others will issue a well-defined Regulatory Plan.

b. Bogotá

The Constitution grants Bogotá a status of its own as a Special District. The city's authorities can be organized differently from the general municipal organization established in several laws.(20)

Legislative Decree 3133 of 1968 empowers Bogotá's Council to:

1) Issue the District's police, fiscal, traffic, building and administration codes;

2) Issue, at the Mayor's initiative, urbanistic regulations and administrative restrictions for the different District zones, including the authority to prohibit land subdivision and development in certain District areas.(21)

The same Decree defines Bogotá's master plan in the following terms: "The city's master plan is made up of a set of rules reflecting the District's policy of creating and maintaining the social, economic, and physical conditions necessary for its normal operation and the development of the community."(22)

The city's master plan is made up of the following elements:

1. A zoning plan or a regulation of the use of land within the District, to be applied to private, official and semi-official activities;
2. The sectorization or subdivision of the District's territory into circuits, sectors, barrios, rural and urban lands, in order to further political and administrative purposes;

3. The road plan, park plan and public use land plan;

4. Land subdivision and regulation of land development;

5. Urban renewal plans;

6. Low income housing plans;

7. Public services infrastructure programs;

8. Educational, health, supply and recreation programs.(23)

Since 1968, Bogotá's City Council has issued ordinances which are called master plans but really amount to zoning plans. Road plans, subdivision regulations and urban renewal plans have been issued from time to time under separate ordinances. Low income housing plans, in particular, have not been dealt with in any ordinance, although there have been limited low income housing projects, carried out by the Caja de la Vivienda Popular. The issuing of separate elements of a master plan at different times, and under different administrations would seem to be contrary to sound planning principles.

In conclusion, there are too many land use control authorities in Colombia, often having overlapping jurisdictions, and too little effective control probably as a result of this, and also as a result
of a very weak zoning violation penalty regulation. Additionally, there does not seem to be a coordinated policy on land use control among the different agencies involved, and there does not seem to be any interest at the National Central Government to establish a clear policy. Even legislative attempts to establish a unifying thread, as evidenced by Law 61 of 1978, have resulted in more confusion. It may be that the lack of clarity in the Constitutional foundation for the power to zone accounts for such confusion, too. In the next section we will consider this issue as well as the problem of zoning violation penalties.
FOOTNOTES TO SECTION 3

(1) Commercial Code, Article 1824

(2) Lack of coordination with Bogotá's local planning authorities seems to be the rule, though. For example, a garbage dump was recently near the airport by local authorities without consulting the CAD, resulting in an increase in air navigation risk due to the flying fowl attracted by the dump.


(4) Ibid., Article 30


(6) Law 3 of 1961, Article 4 (9); All local plans, including Bogotá's, are subordinated to the regional master plan. In spite of this subordination, CAR was unable to stop the construction of a hippodrome in the adjacent Municipality of Chía, a license for which had been turned down by the Bogotá authorities. The hippodrome has caused severe traffic problems on Bogotá's main access highway, and will surely start an undesirable growth trend in the direction of Chía.


(9) Article 198, Paragraph 2.
(10) Decree-Law 3133 of 1968, Article 82.

(11) Decree-Law 3104 of 1979, Article 6(c)

(12) Article 198

(13) Law 1 of 1975, Article 8(f)

(14) The most recent one is in Law 88 of 1947, Article 3

(15) Law 195 of 1936, Article

(16) Law 200 of 1936.


(18) Law 88 of 1947, Article 8.

(19) Proyecto de Ley Números 65 y 67 de 1978; Anales del Congreso Año XXI, Número 86, presented by Senator Roberto Arenas Bonilla, a former head of the National Planning Department.

(20) See Article 199 of the Constitution.

(21) Décreé - Law 3133 of 1968, Article 13, Sections 16 and 17.

(22) Ibid., Article 33.

(23) Ibid.
4. ZONING

Generally, zoning can be understood to mean an exercise of governmental authority, usually called the police power, whereby individual property rights are restricted in the interest of the common good, safety, health or public order, without compensation. Zoning has been, for a long time, a key instrument in regulating urban growth.

At times, individuals suffer severe uncompensated patrimonial blows as a result of this power to zone. Careful consideration then, must be given to the Constitutional authority under which the Government zones.

4.1. THE SOURCES OF ZONING POWER

When referring to the sources of zoning power, it must be understood that an attempt will be made to locate the power to zone within the scope of one or several Constitutional articles, such as:

4.1.1. Article 198, which refers to associations of municipalities for the purpose of providing more efficient public services. Law 1 of 1975, which implemented Article 198, assigns the coordination of urban growth to these associations through the use of a master zoning plan. The logical inference, then, is that Congress considers zoning a public
service. To opine differently would render the law unconstitutional.

4.1.2. Article 197, Section 1 which defines the functions of Municipal Councils, and empowers them, among other functions, to provide for the administration of the Municipality, defined as everything related to the duties of municipal employees and to the management of its interests. (1) If we accept that the zoning of its territory is within the legitimate and exclusive interest of Municipalities, the power to administrate or manage is a valid Constitutional source for the power to zone.

4.1.3. Article 30, which establishes that property is a social function which implies obligations. Law 195 of 1936 develops the social function concept, albeit incompletely, in the urban field. The law enabled Bogotá's Council to define the obligations of individual urban land or homeowners and of land development companies. The law did not provide for the extinction of property rights when the obligations were not met or were not complied with, as did Law 200 of 1936 in the rural field. It also did not lay down the basic guidelines Bogotá's Council should follow in the definition of social function obligations. The latter could render the law unconstitutional, as it is the Congress who should dictate policy on such a sensitive issue.

In 1970, the Supreme Administrative Tribunal, acting as a consultative body to the Executive, established that the right to use and dispose of property is limited by the laws that develop the Constitutional text whereby property rights can be regulated in the public
interest, given that property is defined as a social function. (2) The tribunal may or may not have been aware of the far-reaching consequences of deriving the power to zone from the Constitutional text which defines property as a social function. (3) More on this issue in Section 7.

4.1.4. Article 32, which establishes that "the Government shall intervene, by mandate of the law, in the production, distribution, utilization and consumption of public and private goods and services, so as to rationalize and plan the economy and to achieve overall development". This article has been used to uphold rent control schemes, and could validly be used to issue zoning regulations, as zoning restricts the "utilization" of a "private good" called land, or property in general.

4.1.5. Article 120, which defines the powers and duties of the President. The duties include the authority to exercise the police power, under the authority of the law. Zoning is an exercise of the police power of the Government. The police power concept has been developed to limit individual liberties, traditionally in the safety, health and public peace and order areas. Individual rights such as the right to strike, the right to be free from search and seizure, the right to own property, the right to practice professionally and the right of free speech have also come under the police power.

Functionally, Congress has primary responsibility to establish limits on individual liberties through the police power. Once the Legislative Branch of Government has set those limits, the Executive
Branch has the responsibility to enforce them. Exceptionally, the Constitution empowers the Executive directly to limit these liberties, in the interest of security, health and public order. (4)

Examples of this type of zoning can be found in the Civil Aeronautics Department's, the Environmental Protection Agency's and the Autonomous Regional Corporation of Bogotá's by-laws, mentioned in Section 3. It must be remembered that these government agencies are all part of the Executive Branch of Government, under the direct tutorship of the President. (5)

4.1.6. Article 198, Paragraph 2, which provides for the creation of metropolitan areas "in order to better administrate and provide for the public services of two or more Municipalities within the same Department". Constitutionally, then, metropolitan areas focus on administration and on provision of public services, so that if the Metropolitan Areas' Basic law authorizes them to zone which it does, we may conclude that the power to zone is derived from the power to administrate and/or constitutes the provision of a public service. (6) If we do not accept the conclusion, the law has to be unconstitutional.

4.1.7. Summary

To summarize this subsection, the power to zone has several Constitutional foundations:

a. As the provision of a public service. This interpretation would be somewhat difficult to explain to a landowner who had suffered an economic blow as a result of a restriction on the profitable use
of his property; one would think it would not hold up in Court.

b. As an exercise of the power to administrate or manage a Municipality. Since a law has defined Municipal Administration as the management of those matters which are of interest to the Municipality, another law may state that zoning is hereafter a matter of national interest and assign such a responsibility to a national agency.

c. As the establishment of social function obligations. This interpretation would open the way for the extinguishment of property rights as a penalty for zoning violations.

d. As an exercise of the police power. If this were the case, Municipal Councils, including Bogotá's, would be barred from zoning. The Supreme Court has stated that Municipal Councils do not have the Constitutional authority to restrict individual rights, among which are property rights.(7).

e. As an intervention in the economy, the purpose of which would be to rationalize and plan the economy and to achieve overall development.

4.2. ZONING LITIGATION

"Zoning controls uses, and it is the uses of land that primarily creates values worth litigation". (8).

Zoning litigation is very common in the United States; a complete body of judge-made law has arisen as a result of the interests at stake.
In spite of the fact that the Colombian legal system affords property-owners judicial review of administrative action so they can obtain relief from the courts, only five cases have occurred in the last ten years in Bogotá. This surprisingly low litigation index suggests that property owners are seeking and obtaining relief in other ways. Outright non-compliance with zoning regulations seems to be the leading reason. Ridiculously low fines contribute enormously to non-compliance. Corruption appears to be the second most important explanation; building and development permits can be had—for a price—anywhere in the city, even in areas that have been classified as "forest reserves". The zoning board's largess also appears to provide large scale relief.

To make matters worse for compliance, Bogotá's Zoning Plan is under judicial attack. A suit was filed against it in 1975 before the Administrative Tribunal of the Department of Cundinamarca, because of alleged procedural violations when it was issued. The Tribunal struck the whole Zoning Plan down but its decision was appealed to the Supreme Administrative Tribunal. The latter's decision has now been pending for over a year. In spite of the fact that the plan is legally in effect until the appeal is decided, the city's planning and licensing authorities were reluctant to apply it and have created a great deal of confusion because of the selective application of previous Zoning Plans which they contend are in effect. In late 1979, a new Zoning Plan was issued by the Council, which ended the above-mentioned legal discussions.

4.3. ZONING VIOLATIONS AND FINES

The following were Bogotá's main zoning violations and fines under Decree 159 of 1974, until December, 1979:
1. For the execution of infrastructure works without a license:
   a. A fine of up to $300,000 and an order to cease work;
   b. Demolition; only if a license for the work would be rejected as not permitted by zoning regulations.

2. For building without a license: or not according to the license conditions:
   a. A fine of up to $300,000 and an order to cease building.
   b. A fine of up to $3,000 a day until the building is demolished or until it is rebuilt according to the license.

3. For architects, engineers, builders and job foremen who don't have a license:
   a. A fine of up to $300,000;
   b. Suspension or revocation of his professional license;

4. For the sale of lots without a license:
   a. A fine up to $300,000 for each lot sold.

5. For advertising the sale or rental of real property that does not have a building or development permit:
   a. Confiscation of advertisement.
   b. A fine of up to $5,000 for each violation.
6. For the violation of regulations in general:
   a. A fine of up to $300,000

These misdemeanors were punishable only by fine, not by imprisonment. Nevertheless, unpaid fines led to the arrest of the violator for up to 600 days, at $500 a day.

Since 1974, when these penalties were issued, no one has been fined, apparently because Bogotá authorities have felt that they are unconstitutional, and constitute an invalid exercise of the police power. They are correct, since Bogotá's Council does not have the residual police power authority that Departmental Assemblies have, and, also, the National Police Code has preempted the zoning violation penalties area.

The National Police Code establishes the following violations and penalties:

1. For building without a permit or in violation of the conditions established in the permit.
   a. An order to stop construction (9)

2. Demolition of a building can only be ordered if the building is about to collapse, or if it is necessary to contain a fire or other public disasters. (10)
3. Fines, which have a maximum limit of $1,000, cannot be levied for this type of violations, although they can be imposed on a building superintendent who fails to affix a sign in a visible place establishing the capacity of an elevator, or on citizens who fail to raise the flag on national holidays. (11)

Bogotá's new zoning ordinance does not attempt to reproduce Decree 159 of 1974's penalties listed above. Instead, it relies on two mechanisms: one, the obligation to post a bond in the event of building without a license, and two, the demolition of any structure built without a license or in violation of the conditions therein. (12) As noted previously, demolition cannot be established by the Bogotá City Council as a zoning violation penalty, because the National Police Code preempted the issue. It is still too soon to evaluate the effectiveness of the bond mechanism.

In conclusion, zoning plans and regulations have not been correctly executed due to the fact that fines and penalties for violations are very weak. In spite of local wishes to establish strong penalties, Municipalities are barred, Constitutionally, from defining their own set of penalties, because the National Police Code, which establishes weak ones, has preempted local authority to do so.

4.4. ZONING AND LOW INCOME HOUSING DISCRIMINATION IN BOGOTA

It is a fact that the supply of public services in Bogotá is not enough to meet demand. Therefore, serviceable urban land, limited by the urban perimeter, is very scarce and consequently expensive. If
developers and subdividers have to pay a high price for it, they, in turn will charge a higher one. They will also try to maximize their profits by selling to the higher income groups. As a result of this, landowners, subdividers and developers will bear pressure on the zoning authorities so their property is zoned for middle and high income groups. Official zoning action which results in the espousal of the interests of the latter groups with the exclusion of the interests of the lower income group constitutes socioeconomic discrimination. Physical segregation of the lower income group also occurs, as the urban perimeter separates them from public services and from other groups.

In 1974, The National Housing Agency's manager made the headlines when he stated that low income housing land was totally exhausted. In 1975, the sanitary perimeter was enlarged. By the end of 1977, there wasn't a single hectare left in Bogotá that had been zoned for low income groups according to the Normas Mínimas or Minimum Infrastructure and Public Services Standards category. (13) Bogotá's new zoning plan states still follows the contour of 1975's. (14), with the exception of 56 existing illegal low income developments, which were included as a result of intense pre-election political pressure.

Although Bogotá's Planning Department officials claim to have the authority to zone land within the urban perimeter for Normas Mínimas, they are reluctant to do so, as the areas which would be zoned, at the initiative of the landowner, have a general infrastructure which was designed for more complete public services and better quality roads. The argument, then, seems to be that the approval of Normas Mínimas
applications would result in the subutilization of expensive, high standard general infrastructure. This argument is also apparently coupled to the fear that due to the high quality general infrastructure, developers would charge higher prices for lots, profit enormously and price out the low income groups that the Normas Mínimas were designed to serve. The conclusion seems to be that low income groups would not be able to afford a Normas Mínimas lot within the perimeter today. The same officials also claim that, due to the landowners' pressure, the Department has reluctantly resumed the approval of this type of development within the existing urban perimeter.

The point to be made here is that the general infrastructure within the existing urban perimeter was designed for upper income groups, so that it is not surprising that subdividers and developers would most likely get a high price for the land and price out low income groups. It would seem necessary then, to enlarge the urban perimeter and design the general infrastructure for low income groups.

Low income groups located outside of the urban perimeter within illegal subdivisions do get public services in the long run, mostly as a result of local electoral considerations. Slowly, they become incorporated into the urban perimeter and become fully "legalized". The question to be asked, though, is whether the cost of after-the-fact planning, in terms of sanitary conditions, transportation requirements, and cost of infrastructure, is too high a price to pay.

Although the law has defined low income housing programs as one of the basic elements that must be included in Bogotá's General Develop-
ment Plan, neither the existing Plan nor the previous ones have included such programs. (15) Consequently, they are all illegal.

No legal action has been attempted to correct this discrimination, but it would seem possible to ask the Administrative Tribunal to strike down the Master Plan again and again until low income land and housing are provided for. This remains to be seen.
FOOTNOTES TO SECTION 4

(1) Law 4 of 1913, Article 141.


(3) Although the Colombian Civil Law System does not establish the rule of adherence to previous judicial decisions, Supreme Court rulings have always had considerable weight. The Supreme Administrative Tribunal's consultative opinions also carry considerable weight, but less than that of the Supreme Court's rulings.

(4) E.g. Articles 28 and 121 of the Constitution.

(5) Tutorship or supervision as defined by Decree-Laws 1050, 3130 of 1968 and 130 of 1976.

(6) Section 1(d) of Article 6 of Decree-Law 3104 of 1979 assigns metropolitan areas the power to zone.


(9) National Police Code, Articles 197 and 215.

(10) Ibid., Article 216.

(12) Ordinance 7 of 1979, Articles 218 to 220.


(15) Decree-Law 3133 of 1968, Article 33 Section 6.
The regulation of the sale of subdivided land and the sale of homes must be distinguished from zoning, building license requirements and from subdivision regulations. The latter refer more properly to urban planning and land use, while the former refers to the individual operations or agreements entered into for the purpose of transferring title to property to be used as housing.

In Colombia, land sales control or regulation has been extended progressively, to cover consumer protection, zoning and building license violations, but most importantly, to low income lot developments. Increasingly, a non-judicial authority such as the Superintendencia Bancaria is being perceived by low income groups as providing judicial-type relief for lot sale contract violations, particularly with respect to non-provision of public services.

In 1967, several relatively large middle and upper income developers went bankrupt and prospective home owners lost their money. The issue was brought to the attention of Congress by the Government, and the former issued Law 66 of 1968 which assigned land sales control authority to the National Banking Superintendency.

The law established the need to obtain a sales permit from the
Superintendent when the number of units to be sold (homes or lots) were five or more. (1) The law made it a crime, subject to a 2 to 4 year prison term, to sell without a permit. (2) Fines of up to $50,000 could be imposed for each cease and desist order violated by legal or illegal land subdividers. (3)

An interesting feature of the law establishes that the Superintendent can take physical and legal possession of the developer's assets and liabilities, remove the existing management and run the business until all commitments with home or lot purchasers, as well as with other creditors, are satisfied. (4) This occurs frequently with illegal subdividers, or urbanizadores piratas, and the process by which the Superintendent takes over is commonly called "intervention".

Law 66 of 1968 was modified by Decree Law 2610 of 1979, issued under the authority of the Organic Urban Development Law of 1978. Penalties were increased tenfold, to a maximum of $500,000, and extended to cover violations of regulations issued by local authorities, once a cease and desist order is entered. (5) The latter is an unusual provision, since one would expect local authorities to have exclusive authority to penalize zoning and building permit violations. The assignment of such a responsibility to a national authority, in the absence of stringent local penalties, will most likely result in a decrease of local authority supervision and an overburdening of the Superintendent's work load.

Decree 2610 modified Law 66's typical function as a subdivided land sales control by empowering the Superintendent to enforce
contractual provisions related to architectural and building specifications and condominium by-laws. (6) Strictly, such a power would be within the exclusive domain of the courts in Colombia, and immediately raises Due Process questions which will only be resolved when the Decree is formally challenged before the Supreme Court.

Only about 20% of the existing illegal low income subdivisions have been intervened by the Superintendent, principally due to the fact that the National Housing Agency (Instituto de Crédito Territorial), which is in charge of the administration of "intervened" developments, performs very poorly. It does so partly because the subdivider's recoverable assets are insufficient, and because it, as well as other financial institutions, is unwilling to lend subdivision dwellers any money for home building and provision of basic infrastructure works. As a result of ICT's failure, the Superintendent is reluctant to intervene more illegal subdivisions than is absolutely necessary, and has had to develop alternative courses of action. (7)

Roughly 90% of low income dwelling in Bogotá is provided by the urbanizador pirata, who furnishes and unserviced lot along with legal title problems. The National Housing Agency and Bogotá's local housing agency have been servicing the middle class for years, and only from time to time produce low income developments. Their policies and priorities would seem to be misdirected, as housing for the latter is a much more serious problem.

The Superintendent is not properly equipped to handle Colombia's
low income housing problem. Even more, the Banking Superintendency is probably the wrong institution to try to tackle the problem with. Administratively, the Superintendency exerts police power authority. It is not a lending institution, and it is not a land development agency. The burden on the Superintendency has increased substantially because local police power authorities, notably Bogotá's, look the other way every time an illegal low income subdivision appears, and limit themselves to inform the Superintendency about it. The latter, we must remember, is not a local but a national authority which is not in charge of prosecuting zoning violations directly (8), and not in charge of zoning sufficient serviceable areas for low income developments.

The Superintendent has become the most important authority in the charge of the supervision of low income land developments, so it is not surprising to observe that Decree-Law 2610 of 1979 empowered him to issue special regulations for "autoconstruction" programs, which have never been able to comply with the stringent requirements set down for a sales permit. (9) Presumably, such a provision will help him deal more realistically with illegal subdividers, and may provide an alternative to the intervention of a barrio pirata.

Although the Superintendent's recent efforts in the control of illegal subdivision have been substantial, such efforts must be accompanied by a policy change at the National Housing Agency so that the supply of publicly funded lot and housing programs benefit low income groups prioritarily. A subdivided land sales control is a poor substitute for an affirmative low income housing policy.
Public spending alone cannot supply all the serviced lots and homes needed for low income groups, so it becomes necessary to encourage privately funded projects. These face a number of constraints, notably the lack of adequate credit lines and the regulatory intricacies of Law 66 of 1968. Hopefully, the Superintendent will issue a regulation which will relax many of the requirements leading to a sales permit. The illegal status of a low income development depends partially on the existence of such a permit.

A more specific discussion of low income land tenure problems will be found in our next section. Suffice it to say in this section on the Banking Superintendency that it has the authority to reduce the number of legal obstacles encountered by low income development dwellers in their efforts to acquire title to their land, by relaxing sales permit requirements and by issuing orders to illegal subdividers, under the penalty of stiff fines, leading to the improvements of the development and to the legalization of title.
FOOTNOTES TO SECTION 5

(1) See the Paragraph of Article 2 of Law 66 of 1968.

(2) See Article 11 of Law 66 of 1968.

(3) See Article 28 of Law 66 of 1968.

(4) See Article 12 of Law 66 of 1968.


(7) Complex negotiations with illegal subdividers, accompanied with cease and desist orders, fines, the arrest of subdividers for non-payment of fines and arbitration are the main alternatives to "intervention". Article 8 of Decree Law 2610 of 1979 also empowered the Superintendency to assign the administration of an "intervened" development to an agent, private or public, different from Instituto de Crédito Territorial.

(8) Not all zoning violations may be prosecuted by the Superintendencia; only those which occur in a five or more unit subdivision. Furthermore, individual home owners are not prosecutable by the Superintendencia, since Law 66 of 1968 applies only to subdividers.

(9) See Article 42 of Law 66 of 1968.
Land tenure problems are critical for low income urban groups, mainly because capital investments depend on tenure stability. Home building credit has been available in Colombia only when a mortgage can be offered as a payment guarantee or collateral. Even though cesantías, severance payments, can also be used to purchase housing, they are available only to people who have stable labor contracts. A significant part of the low income group belongs to the "informal or secondary economy" where stable labor contracts and cesantías are not the rule. Even when cesantías are available, most employers are reluctant to disburse money for an unserviced lot for which legal title cannot be had.

A. As mentioned before, the major part of low income lots is being offered by the illegal subdivider or urbanizador pirata. Several types of problems appear when the tries to transfer title to the purchaser. Consider the following possibilities:

6.1. The subdivider is sometimes not the owner of the land, has no intention to buy it, and will never transfer title.
Once the purchasers move in, the landowner must attempt a quick police eviction within thirty days. After that, he must go to court. The proceedings usually take two years. In spite of a court ordered eviction, the police find it very difficult to enforce the order, because of passive or active resistance put up by the community which was formed during the two years of court proceedings. Usually, the community protests loudly enough to catch the attention of the City Council, which, in turn, adds up the potential votes and bears pressure on the Police Chief to stop eviction action.

After ten years, lot purchasers can acquire title if they go to court and prove they have been possessing the lot in good faith. If they cannot prove it, which is usually the case, they must wait 20 years to acquire title.

6.2. The subdivider has entered into a preliminary purchase agreement with the landowner.

In this situation, the final agreement and the transfer of title to the subdivider depends on full or substantial payment. The subdivider, who has little capital to start out with, sells lots as fast as he can but rarely gets full cash payment. Installment payments are the rule, extending over a period of 3 to 5 years.

After the purchasers move in, they start demanding the services they are legally entitled to, and withhold installment pay-
ments when the subdivider does not comply or complies partially.

(4) A vicious circle is created whereby the subdivider claims he cannot provide services because purchasers do not pay, and purchasers claim they do not pay because the subdivider has not provided the services. This is usually the point at which the Banking Superintendency intervenes and tries to break the deadlock.

Meanwhile, the subdivider has not been able to round up enough money to enter into a final agreement with the landowner, and thus cannot transfer title to the purchasers. Furthermore, since most purchasers owe him money anyway, he would not transfer title even if he could.

When the Superintendency takes over, the community's total outstanding debt is never enough to pay off the landowner and provide public services. Feeling free of the eviction possibility, the community always prefers that the installment payments be used to pay for public services instead of to pay the landowner.

Until recently, the water and electricity supply companies in Bogotá refused to service lots for which legal title could not be exhibited. The latter of course, led to widespread illegal services connections.

In the two previous situations, lot purchasers will not be able to get mortgage credit for home building or public
services provision, because, according to Colombian law, the only one who can legally mortgage the lot is the person who holds full title to it. (5)

6.3. The subdivider is or becomes the full legal owner of the land he subdivides and sells.

After the purchasers pay for their lots in full, the subdivider will try to transfer title. He, as well as the purchasers, will come across the following problems:

6.3.1. The legal instruments for real estate transactions must be drafted in notarial offices, where the real estate contract is filed. This operation is a necessary preliminary step for the transfer of title, but the transfer itself is not valid until the notarial act has been recorded at the Registrar's Office.

The following documents are required at the Notary's:

a. A draft of the proposed contract of sale or "escritura de compra-venta".

b. Evidence of title by seller

c. Income tax payment certificates of both parties. Most low income people have never filed a tax statement, so it becomes difficult to comply with this requirement. Also, the subdivider himself is usually a tax evader.
d. Property tax payment certificate: this requirement presents problems because both parties are reluctant to pay the tax for the installment payment period. The purchasers claim that the property owner is the one responsible for the payment of the property tax, whereas the owner claims the purchasers should pay, since they have been living on the property for several years. The latter usually prevails, claiming correctly that outstanding property taxes will lead to liens on the property, and he doesn't care if the tax authorities auction his property because he has been paid for it in full by the purchasers. (6) Since the property has not been subdivided legally and recorded, purchasers cannot pay individually. They have to come up with a lump sum which is usually high because it covers 3 to 5 tax periods and interest, which is not always easy to accomplish.

e. Municipal tax payment certificate: This requirement presents problems similar to the above.

f. Registry and annotation tax payment certificates: There is always some discussion as to who pays these.

g. Citizenship papers: Not all Colombians have a cédula de ciudadanía. The Registrar's Office has not been able to keep up with the birth rate.
h. Certificate of military service for males over 18:
This certificate is also hard to get because the military's budget is insufficient to support all males over 18. Therefore, a draft exemption card can be obtained upon the presentation of 10 or 12 documents, and payment of an exemption tax.

6.3.2. Once the escritura has been signed by the parties and by the Notary, the purchaser tries to have it recorded at the Registrar's. Without this last step, the escritura is practically worthless.

A 1972 regulatory decree of the Superintendency's law, Law 66 of 1968, forbids Registrars to record subdivided land sales which have not been authorized by the Banking Superintendent. (7) This is as far as the purchasers will get in trying to have title transferred to them.

Notaries are also subjected to the above prohibition, but it is difficult, if not impossible, for them to conclude that the proposed sale requires the Banking Superintency's permit.

In mid 1978, after enormous difficulties, the Banking Superintendency pushed through another regulatory decree which repealed the former prohibition and made it mandatory for Notaries and Registrars to record sales even if they had not been authorized by the Superintendency. (8) It
also required them to inform the agency so the latter could investigate and penalize the offending party.

B. A separate category of low income urban land tenure problems arises when there is no intention to buy the land from its legitimate owner; when a group of people occupies land without the owner's consent, and even in spite of his opposition. This is commonly known as land "invasion", and constitutes a crime under Colombian law, punishable with a maximum 20 month prison term. If the invaders recur to threats or to violence, the maximum prison term is increased to three years.

As opposed to other Latin American countries, invasions are not common in Colombia, mainly due to the fact that the Police, and even the Army, are called in on the spot and frequently use violence to remove invaders. Another reason may lie in what Professor William A. Doebele describes as "The Hunger for Legitimacy", or the feeling that both "economic and social status ultimately rest" in acquiring legal title to land and in legalizing "pirate" developments.

Within this same category, we can include a very small group known as the "legal invaders". These invaders will make endless and numerous false depositions before courts and police departments to the effect that they have occupied land peacefully for many years without the owner's opposition. After writing bad checks to friends, a court will order the seizure of their occupancy "rights"
and these same friends end up being appointed depositaries of such "rights". Once a court issues such decrees, the invaders have a legal document which implicitly admits their "right" to occupy the land. Although this is a nonexistent right, it is enough to confuse the Police when a summary eviction is ordered, and will delay proceedings more than thirty days, after which the oftentimes violent Police eviction cannot be executed. The landowner will then have to go to court, and wait several years for a favorable decision, which will then be unenforceable due to the size of the community formed during that time.

6.4. SUMMARY AND CONCLUSION

The Colombian legal land transfer regulations are not well suited for the low income land market. A number of legal obstacles, designed for the upper and middle socioeconomic class, impede the successful transfer of title to urban lots.

In spite of legal title imperfections, tenure stability is achieved through the protection which the legal system affords occupants who can exhibit a preliminary purchase agreement or promesa de venta, an unrecorded escritura de compraventa or other court-issued documents.

It is not surprising, then, that capital investments occur in the low income housing market. The point to be made, though, is that the quality of low income housing could be improved, and its cost would probably be lower if access to the mortgage market could be had. Such access can be obtained if a realistic legal land transfer system were
to be structured. There is no indication, though, that this is about to occur.
FOOTNOTES TO SECTION 6

(1) Article 15, Decree 992 of 1930. The Police must evict occupants within 48 hours (Article 15, Law 57 of 1905)

(2) Civil Code, Article 2529.

(3) Article 1, Law 50 of 1936.

(4) On legal entitlement to infrastructure and public services, see Article 10, Law 66 of 1968.

(5) Civil Code, Article 2439.

(6) Property tax in Colombia, is in personam and not in re. Tax collection courts always embargo land, though, so that the obligation to pay property taxes, in effect, becomes in re because of local judicial practices.

(7) Article 9, Decree 1380 of 1972.

(8) Decree 1644 of 1978.

(9) Penal Code, Article 424. Increased to three years by Article 367 of the new Code, to take effect in January, 1980.

(10) Ibid. Article 425. Decreased to two years by Article 368 of the new Code.

A discussion of Colombia's urban legal framework without a presentation, however brief, of the Constitutional regulation of rights in real property, would not be complete. The Constitution settles important issues such as how property is limited in the public interest, as in the case of zoning regulations, and how it is taken away for public uses, as in the case of expropriation. Real property, of course, is a form of property, so when the Constitution refers to property in general, it is also referring to real property. The Constitution's basic text reads as follows:

Private property and other rights legally acquired in accordance with the civil laws by natural or juridic persons shall be guaranteed, nor may they be disavowed by later laws. When the enforcement of a law passed for reasons of public utility or social interest conflicts with the rights of individuals, private interests must give way to the public or social interests.

Property is a social function which implies obligations.

For reasons of public utility or social interest, as defined by the legislature, property may be expropriated by judicial decree with prior indemnification.

Nevertheless, the legislature, for reasons of equity, may deny indemnification by means of an absolute majority of the members of both Houses. (1)
7.1. The Social Function of Property

The Constitution's basic text on property, vested rights and expropriation is an apparently contradictory text. It first guarantees private property and vested rights but in the same breath establishes that the social or public interest must prevail when it comes into conflict with the private interest. The same text also provides that property has a social function, which implies obligations. It is not surprising that this would be the result, as the final draft of Article 30 was the product of political compromise between the Conservatives and the radical Liberals of 1936.

The social function conception of property belongs to León Duguit and Auguste Comte. According to them, the individualistic conception of property supposes the right to act, to work and to use one's activities everywhere, but no one has to do so. Thus, if an individual prefers to remain inactive, no one may chastise him for it, not even the State. But man, as the owner of capital goods, cannot let them remain unproductive, as the only reason he owns these capital goods is to make them productive in the interest of society. Thus, the State may intervene to force the owner to produce. The State may regulate this production or substitute itself for the owner, in order to organize production.(2)

The Colombian Supreme Court has given us the benefit of its interpretation of Article 30. It stated in the following landmark decision:

"(The 1936 Amendments established) the social function of property in the public benefit, a source of obligations for the owner and the result of the process of socialization"
of the law, established in the mid 19th Century and feverishly advanced after World War I. Between the individualistic conception, a sequel to the Revolution directed to rescue the sacred rights of man... and the collectivist, which denies the possibility of private ownership, the social function of property presents itself as an intermediate system. Under The intermediate system there is a doctrinal current which denies that property is a right and transforms it radically into a function to be executed by the owner, and there is another current which considers property as a personal right but attributes to it an essential function imposed upon it by the interest of the community.

There is no doubt, however, that according to the Drafters of the Amendment, the social function created by the Constitution does not reject personal rights, erecting the function in its place, because the first part of Article 30 guarantees private property...

Neither the Constitution nor the laws define the term 'social function'. Function is any activity which is specific and which is directed toward an end, within the organism it serves. This means that the function converges on all three elements of property rights-usus, fructus, and abusus; and can consequently affect any one of them at any given time. If the expressed functionalism has an objective, which is the social objective, it is evident that the function contained in Article 30 has no other finality except the common good, based on the prevalence of social interests over private interests, under every circumstance.

The Constitutional text... says that the function implies obligations... that they are the product of the new function and cannot make themselves manifest except through precise burdens which only the legislature can define... Law 200 of 1936 imposed on agricultural landowners the burden of exploiting their land efficiently, lest they should lose their property, without compensation, to the State.

The social function, according to this doctrine, affirmed the priority of the collective interest, to the extent that the Constitutional guarantee in favor of property rights is conditioned to the degree in which it responds to the common needs." (3)
The social function conception of property was developed by Congress, although imperfectly, in urban areas, as witnessed by Law 195 of 1936, which empowered Bogotá's City Council to define the obligations of individual property owners and of developers. Even though the word "social" is not included in the law, its legislative history clearly indicates this is an attempt to develop the social function conception of property for urban areas. It was an imperfect development, though, because the law did not specify penalties for the violation of such obligations. In particular, the law did not state that the penalty would be the extinguishment of property rights without compensation. Nevertheless, it is the only example of the social function conception of property in urban areas.

7.2. EXPROPRIATION

In Colombia, expropriation is a unilateral, non-contractual act whereby the State takes property, for social purposes, and compensates any damage sustained by the affected individual. (4) It is also a complex operation involving several steps, designed to afford the utmost protection to private property faced with the possibility of a forced taking. Once it has been completed, it is definitive, even if some legal formalities have been precluded. (5) When this occurs, recover of property is not permitted, but an action for the damages sustained is permissible. (6)

In the first place, the Legislature must define the public utility or social interest motives which justify the taking. No other authority is Constitutionally allowed to define these motives, thereby protecting
the security of private property, which would otherwise be at the mercy of an arbitrary Executive. (7) The Legislature lays down general and impersonal conditions for the taking, as it may never expropriate directly. (8) Its definition or specification of public utility and social interest is not reviewable in any court.

Secondly, the Executive Branch must issue a resolution or decree, in which the individual property to be expropriated is specified. The administrative decree which creates an individual situation or condition with respect to the property whose expropriation it has ordered, is reviewable by an administrative tribunal. (10)

Lastly, the Administration must file a formal expropriation suit in the courts. It is a very short procedure where the defendant's legal maneuvers are extremely limited. Here, the amount of the indemnification is established and a judge will order the transfer of title to the State. (11)

7.2.1. The public utility and social interest standards

When the enforcement of a law, passed for reasons of public utility or social interest, conflicts with the rights of individuals, private interest must give way to the public or social interests.

There is no need to underline the importance of these two concepts "public utility" and "social interest". They provide the basic standard for expropriation of individual rights such as real property rights.

The original 1886 version of Article 30 spoke only of public
utility motives forcing private interest to give way to the public interest. The "social interest" standard was added in 1936 because the Court did not consider that social interest reasons could give rise to an expropriation. There were public utility motives in the expropriation of land in the path of a railroad, but there was no public utility in the expropriation of the railroad company itself. There could be a social interest in expropriating the railroad company, but that was not an admissible standard for expropriation. (12)

The drafters of the 1936 version of Article 30 had thought of the social interest as "those economic problems which have given rise to the complexity of modern life". (13) This, as becomes immediately obvious, is a very vague definition.

An attempt to distinguish the two standards relates to the number of people benefited by the expropriation. Thus, public utility would be present in the widening of a street, and social interest would be present in the construction of a proletarian housing project. (14) There is, of course, more than a numerical difference between the two examples, but we still do not know where to define the limits between the two standards. Therefore, we agree with the opinions which propose a gender-species relationship between public utility and social interest, (15) where the State seeks to establish the common good when it subordinates private interests to the interests of society, of the community. The definitions we have so far encountered are somewhat imprecise, so that some examples of laws applying these standards may help illustrate them.
In 1936, the drafters of the Constitutional Amendment were aware that there were social interest motives which did not imply a public utility. Since 1896, the latter had been thought to include only expropriations for public works, where title to the expropriated property was transferred to the State. As a result of the inclusion of the social interest motive, the State can expropriate from an individual or from some subdivision of the State, even if there is no public utility involved. Also, title to the expropriated property need not remain in the State. The latter can transfer title to other individuals.

A good example of the social interest standard is provided by the Agrarian Reform Law where even highly productive lands can be expropriated in order to eliminate unequal concentration of rural property. The latifundia which are expropriated are later divided and assigned to individual farmers.

7.2.2. Expropriation without indemnification

Perhaps the most interesting aspect of the concept of expropriation under Colombian law is that it can be done without providing an indemnification. Let us recall that Article 30 establishes that the Legislature, for reasons of equity, may deny indemnification by means of an absolute majority vote of the members of both Houses. This majority requirement is stricter than the ordinary legislative requirement (17). Thus, an indemnification, let alone a prior one, is not a sine qua non requisite under the Colombian Constitution. Let us refer to the available historical sources for an interpretation of Article 30.
Constitutional Amendment No. 6 of 1905 did not provide for indemnification for expropriation in "the case of the aperture and construction of communication arteries, where it is presumed that the benefit that accrues to the affected properties is equivalent to the price of the strip of land required for the artery", but the difference will be paid if the strip is more valuable than the accrued benefit. It is very possible that this provision influenced the interpretation of Articles 30. As examples of the type of expropriation under this section of Article 30, the following have been given:

a. When, in order to drain a swamp a strip of land in the swamp is expropriated, the remaining part of the property is benefitted beyond the price of the strip on account of the draining. (19) No compensation is due in this case.

b. When a seaport is built on part of an individual's property he should not be compensated for the expropriated strip because his benefit is greater than his loss. On the contrary, the State should levy a special assessment tax for the extraordinary benefit he has received. (20)

It is our opinion that the last section of Article 30 would have been unnecessary had the examples cited been the right way to interpret it. The third section of Article 30 allows expropriation when there has been prior indemnity. If there has been no loss sustained by the expropriated owner, and in fact there has been a net benefit, there should be no indemnification forthcoming. A Constitutional Amendment
would hardly have been justified to express the concept underlying the cited examples.

In the Constitutional debates that led to the inclusion of the last section of Article 30, Cabinet Minister Echandia stated that equity considerations could prevail in a given expropriation so that the State's expenditure for indemnification could be less than the price of the expropriated property.(21)

The Colombian Supreme Court has had an opportunity to define the meaning of "equity" in the following terms:

"Equity, derived from the Latin: equus-equi, means equality or equivalence, and with regard to expropriations without compensation equity exists when the damages sustained by the individual are somehow compensated by the destination of the expropriated property." (22)

Minister Echandia's statements during the Constitutional debate of Article 30 are perhaps more helpful. He said: "The word "Equity" is not a rhetorical word; it was not included in vain; it is a precise concept in the history of the Law and in the legal technique. Since Roman Law, ex aequo et bono actions, equity actions, have been known, as opposed to strictly legal actions. Every jurist knows very well what it means to say that equity considerations can exclude indemnification in an expropriation".(23) "Equity, in this sense, does not correspond to the common law technique notion of a system of jurisprudence. Rather, it embodies the concepts of "justice and fairness according to what is just and good; according to conscience; justice,
as ascertained by natural reason or ethical insight, but independent of the formulated body of law." (24)

7.2.3. The issue of prior indemnification

The issue of prior indemnity addresses itself to the question of whether anything but cash payments will satisfy the Constitutional requirement of prior indemnification when the government expropriates. Can payment in bonds be considered prior indemnification? Can installment payments be considered prior indemnification?

The Colombian Supreme Court settled the issue in its decision on the Constitutionality of the Agrarian Reform Law, which prescribed the following compensation for expropriation:

a. For uncultivated lands, payment shall be made in bonds.

b. For inadequately exploited land, payment shall be made in cash. Twenty percent of the price shall be paid at the time of the operation, and the balance shall be paid in eight annual installments. A four percent interest rate is paid.

c. For adequately exploited land, payment shall be made in cash, 20% at the time of the operation and the balance to be paid in five annual installments. A six per cent interest rate is paid.(24)

Article 30 of the Constitution does not require cash payment; it only requires the indemnification to be prior to the expropriation.
Prior indemnity was defined as, "the definition and recognition of the property owner's right, before the expropriation, so that there will not be arbitrary expropriations on the one hand, and on the other, so that the owner can count from that moment on with commercial goods or values, saleable and certain, equivalent to the damages caused". (26)

Applying the previous test, the Court found that:

a. Bonds are commercial and negotiable goods,

b. Each installment payment is a negotiable obligation which has been guaranteed by the State.(27)

Consequently, payment of indemnification can be made in long term low interest bonds and by installments coupled with an interest on the balance.

7.2.4. Expropriation and low income housing

One would think that social interest motives, a permissible standard for expropriation, would be fully taken advantage of in the case of low income housing; in particular to solve the numerous legal title and general "legalization" problems we have discussed. Congress did issue a law providing for this type of expropriation, but little use has been made of it.

Law No. 1 of 1943 stated that public utility and social interest reasons or motives were present in the rehabilitation (which includes legal title problems), reconstruction, and modernization of barrios.
The law assigned Municipalities the responsibility to expropriate, but they have used this authority rarely, and curiously, to protect landowners' interests.

In 1970, the District's Council ordered the expropriation of a squatter or invasion settlement in Fontibón, which is part of Bogotá. No purchase agreement nor payment existed between the squatters and the landowner, so the latter suffered a monetary blow. The only way to recuperate his lost asset was to get the Council to expropriate his land, worth $40 million pesos, and compensate him for it. The Council did expropriate, but the suit was not filed in Court until 1977 because the District had not made budget appropriations to pay the compensation. If the Court had issued an expropriation and compensation decree, the landowner could have garnished the District's bank accounts until he was paid. This explains the delay in initiating court proceedings. Since the District did delay proceedings for seven years, the landowner sued the District for not expropriating him soon enough. That prompted the District to start the Court proceedings, although it has only appropriated 2 million pesos for compensation.

The only other known case is the Bosque Calderón case, allegedly involving 15,000 people. The Council ordered the expropriation in 1978, when 300 people protested that they were about to be evicted. District authorities have not yet filed an expropriation suit in Court.

7.4. Definition of real property rights

So far we have discussed the Constitutional regulations pertain-
ing to the limitation, expropriation and extinguishment of property rights, but the Constitution does not define the content of those rights in property, so it is a task left to Congress. Thus, property is "a real right in a corporal thing, to use and dispose of it arbitrarily, provided such use and arbitrary disposal are not contrary to law or to another's right."

In 1974, the President, using extraordinary powers delegated by Congress, issued the Natural Resources Code, which modified the Civil Code's definition of property in a way which is still not well understood, but which could be of far-reaching consequences. The new Code establishes that all renewable natural resources belong to the Nation, without prejudice to individual property rights, which must be exercised as a social function. Land, soil, subsoil and airspace are listed among the renewable natural resources, which may only be used temporarily by individuals upon issuance of a license. This means that the content of rights in property was reduced, following the Civil Code's definition, to the "arbitrary disposal" (sale) of property, since its use now belongs to the Nation. When the new Code protects individual property rights, does it refer only to existing ones at the time the Code was issued? Would this mean I can sell full rights to my property but the buyer purchases only the right to sell, and not the right to use it? These fundamental issues have not been settled by any court, and we do not know of any attempt to implement the new Code.

If the Constitution protects private property, but does not define
the content of rights in property, one would think the law could either shrink or expand such a definition. It is, of course, a question of the interpretation of the new Code, but we believe that the foundation for the nationalization and absolute control of land use has been laid.

7.5. SUMMARY

The preceding rather lengthy discussion of the Constitutional and legal regulation of real property rights in Colombia intends to show that there are several important instruments which could be used to increase the inexpensive supply of land for low income housing. These instruments are:

a. Expropriation with limited compensation;

b. Expropriation without compensation;

c. The extinguishment of rights in property, without compensation, in the case of violation of the social function of property, as defined by Congress; and

d. The redefinition of the content of rights in property.

None of the above instruments has been fully implemented, not even expropriation with full compensation, which has been used, ironically, to protect urban landowners' interest. Recourse to these instruments depends, of course, on the willingness of the political and economic system, which has periodically debated on the need for
Urban Reform in Colombia.

Our next section then, will refer to Urban Reform in Colombia, and the extent to which Law 61 of 1978, known commonly as The Urban Reform Law, addresses and solves key land tenure issues.
FOOTNOTES TO SECTION 7


(6) Ibid., p. 55.


In general, there are two remedies available to the affected party, consisting of an appeal to a superior, and limited review before a tribunal.

Corte Suprema de Justicia. Decision of July 22, 1931, Gaceta Judicial No. 188, P.211.


Ibid.


Law 135 of 1961, Articles 1 and 54.

Articles 82 and 83 of the Constitution, amended in 1979, in general permit the enactment of a law with a majority of one sixth of all members of Congress.

Author's translation. This Amendment was repealed in 1910.

(20) Tascon, op. cit., p. 91.

(21) Ibid., p. 90.


(27) Ibid., pp. 169-170.

(28) Civil Code, Article 669.


(30) Ibid, Article 43.

(31) Ibid., Article 3.

(32) Ibid., Article 54.
At least ten urban reform Bills have been introduced in Congress since 1960. The first one was introduced in that year by former President Alfons López Michelsen (1974-1978), and the last by Senator Roberto Arenas Bonilla, in 1978. The Bill which was finally enacted into law was introduced in 1975 by Senator Mariano Ospina Hernández, which suffered major changes until it was passed in late 1978. (1) Its final text was the product of interparty political compromise, but it had been dormant in a House Committee until Senator Arenas introduced a more progressive proposal in 1978, which many considered too radical. As soon as this Bill was introduced, and perhaps fearing it might pass, a well orchestrated lobbying effort of the Executive and of the concerned private sector groups bore enough pressure on Congress to approve the dormant Bill in late 1978. It is commonly, and improperly known as the "urban reform law", since its content has little to do with urban reform. Its own name, though is the "Urban Development Organic Law".

There is no clear definition of what urban reform is, yet there are some characteristic elements such as:

a) Low income housing programs,
b) Expropriation with limited compensation mechanisms, or extinguishment of private property;

c) Tax schemes affecting upper income groups for the purpose of financing low income housing programs,

d) The redefinition of landlord-tenant relationships, and

e) The creation of specialized agencies in charge of policy formulation and interagency coordination.

Senator Arenas's proposal, the most recent one, also included provisions on regional, municipal and national urban planning, urban renewal, community development projects and new towns.

The Urban Development Organic Law Number 61 of 1978, contains three distinct chapters: one on the general purposes of the law, one on the operational instruments, and one on the conditions of the delegation of legislative power to the President. The law itself is not self-executing except for one or two provisions, so that the President must issue Decree-Laws to implement it. The main provisions of the law are contained in the chapter on operational instruments which are:

a. Every urban nucleus having a population of more than 20,000, must formulate its Integral Development Plan, to be based on the modern techniques of urban planning and urban-regional coordination.(2)

b. Municipal relationships which give rise to metropolitan area
characteristics shall be defined. The procedures for the organization and administration of such areas shall be defined.(3)

c. The intervention of the Government in the production and distribution of building materials, in housing investments, and in the sale and rental of social interest housing units shall be rationalized in order to promote concerted urban development between the public and private sectors. (4)

d. The administrative regulations of Bogotá, Medellín, Cali, Barranquilla and Bucaramanga shall be updated, and planning and budget programming systems will be incorporated into these regulations.(5)

e. Industrial decentralization shall be stimulated, based on the production possibilities which result from regional plans and studies.(6)

f. A secondary mortgage market shall be created in order to increase financial resources for the planned urban development of the country. (7)

g. In order to guarantee the execution of local and regional Integral Development Plans, public land use controls shall be made effective. (8)

h. No new taxes, contributions nor fees shall be established. Existing ones shall not be increased, either. (9)
i. Public utility and social interest motives are present in the execution of urban development plans, and in the creation of land reserves for the future growth of cities or for the protection of the ecological system. Consequently, the necessary parcels of land may be expropriated. (10)

j. In case of expropriation, compensation will be paid according to land use plans issued by Municipalities, and in no case shall such compensation be lower than that currently being paid in the agricultural sector. (11)

k. The necessary measures will be taken in order to strengthen the mechanisms of control over land developers, builders, realtors and rental agencies. (12)

In February 1979, two people filed suit in the Supreme Court against Law 61 of 1978, claiming most of its provisions were unconstitutional. In August, 1979, the Court struck down provisions c (supra), d, e, g, and the part of j that refers to land use plans, on the ground that they were unconstitutionally vague. (13) Vagueness is not a surprising result of political compromise over a controversial issue.

Before the President's Congressional delegation of power lapsed in early 1980, he issued only two Decree-Laws which we have already referred to: namely, Decree 2610 of 1979, which concerns the Banking Superintendency's powers, and Decree 3104 of 1979, which refers to the conditions for the creation of metropolitan areas.
The Court struck a severe blow to an already weak urban reform law, and even if the President stated publicly that he would introduce new legislation in Congress, it seems that the whole issue of urban reform has unfortunately come to a rest after 20 years.
FOOTNOTES TO SECTION 8


(2) Law 61 of 1978, Article 3

(3) Ibid., Article 3, Paragraph Two

(4) Ibid., Article 5

(5) Ibid., Article 6

(6) Ibid., Article 7

(7) Ibid., Article 8

(8) Ibid., Article 4

(9) Ibid., Article 10 Section a

(10) Ibid., Article 11

(11) Ibid., Article 10 Section b

(12) Ibid. Article 10 Section d

(13) Corte Suprema de Justicia, Sentencia de Agosto 14 de 1979, Magistrado ponente: Luis Carlos Sáchica.
9.1. The Colombian Constitutional foundations for urban planning call for a centralized planning system, originating in a General Development Plan, coupled with the assignation of residual planning authority granted to each successive lower tier of territorial government. In the absence of such a General Plan, a rough form of urban planning is done by the Executive Branch of government, through the control of the flow of credit for specific projects in different cities. Even so, the policy formulation lines of authority are not clear, as responsibility for policy is shared between two powerful institutions, the Ministry of Development and the National Planning Department. Also, as a result of the absence of a General Plan, urban planning is done by different agencies at the national decentralized level, and at the regional, Departmental, Municipal, and soon, Metropolitan levels. Here, too, lines of authority are not clear, so that planning jurisdictions often overlap.

The point to be made here is that the urban planning system was not designed to operate without the central unifying authority of the General Plan. It should then come as no surprise that planning efforts overlap, are inconsistent with one another in the same jurisdiction, and pursue different policy objectives.
9.2. There are too many land use control authorities in Colombia, and too little effective control, as a result of:

a. Uncoordinated planning efforts;

b. Overlapping jurisdictions of such authorities;

c. A very weak zoning violation penalty regulation; and

d. Lack of clarity regarding the Constitutional origin of the power to zone.

9.3. The opportunity to issue an effective land use control system was passed up by the Executive, who could have used legislative authority delegated to him in 1979 for that purpose. This authority was used to center land use control in the Banking Superintendency, which is not the right kind of institution for the job. It is a financial regulatory and supervisory agency, without branch offices in every major Municipality staffed with enough vigilant public servants who will take notice of zoning violations.

9.4. Low income urban groups face a very obvious inequitable income distribution problem. Additionally, they face the following problems:

a. The National Housing Agency does not build homes they can afford, and only recently has tried to start a significant site and services program.

b. The low income housing market is cornered by illegal subdividers, who do not and often cannot provide public services. The social
cost of unsanitary living conditions is substantial. As a result of illegal subdivisions sprouting almost everywhere along the periphery of major cities, planning efforts seem useless. Added transportation costs, increased commuting time to and from peripheral subdivisions, and costly infrastructure for the provision of public services for land which should remain undeveloped point up to the irrefutable fact that Colombia's low income urban population is being housed at an unnecessarily high cost.

Most low income lot purchasers are aware of all these problems but theirs is Hobson's choice.

c. Urban planning authorities engage in systematic low income housing segregation by refusing to zone enough serviceable land where infrastructure and public services specifications are lowered to an affordable level.

d. The legal land transfer system is designed for compliance by the upper income levels, so that as a rule, the low income group rarely has full and legal title to its land. Although capital investments do occur, because the legal system provides occupants limited protection, the quality of the housing stock could be improved if access to the mortgage market could be had.

9.5. Serviceable urban land for low income housing must be made available at an affordable price. The Colombian Constitutional framework provides the following alternatives:

a. Expropriation with limited compensation;
b. Expropriation without compensation;

c. The extinguishment of rights in real property as a result of the violation of the social function obligations landowners must abide by.

d. The redefinition of rights in real property in such a way that it would be clear that the State owned the right to use real property. The State would then lease urban land to low income groups at low rates.

In spite of the fact that all of these instruments are at hand, none has been fully implemented, with the exception of expropriation with full compensation, which has been distorted in order to benefit urban landowners.

9.6. After giving careful consideration to Colombia's urban legal framework, with particular reference to the low income housing problem, we may conclude that all the necessary legal instruments for its substantial amelioration, if not outright solution exists. What is lacking though, is the political decision to implement these legal instruments, but judging from the Urban Reform experience in Colombia this will not occur in the foreseeable future.