

Nicaraguan Property Disputes

1. Introduction

The difficulty in solving multiple claims to property and establishing a secure legal framework to guarantee property rights has generated political conflict, slowed investment and foreign aid, and impeded economic recovery in Nicaragua since 1990. Owners whose land was confiscated or expropriated since 1979 are now demanding the return or compensation for the equivalent of two-thirds of all the property acquired by the State for the agrarian reform, and twelve percent of the land mass of Nicaragua. Over 5,200 prior owners filed claims for 15,985 pieces of property,⁵ and nearly 112,000 beneficiaries of agrarian and urban reforms are being reviewed for eligibility to receive legal title. By 1992, roughly 40% of the households of the country found themselves in conflict or potential conflict over land-tenure due to overlapping claims by different people on the same piece of property.⁶ Although most Nicaraguans agree that the property issue is the key to spurring economic recovery, a formula for addressing it has been elusive.

During the Sandinista (FSLN) regime (1979-90), property was expropriated or confiscated for agrarian and urban reform, and abandoned property was taken by the state. As in other Latin American countries, however, ownership was not always properly transferred to the state at the time of expropriation, and persons receiving land under the reforms were often granted tenure rights without full ownership rights. Therefore, when the FSLN lost the February 1990 elections to the opposition UNO coalition, the FSLN-dominated National Assembly hurriedly used its last months in office to pass a series of laws to give ownership to thousands of beneficiaries of the reforms, as well as to Sandinista officials and others who were living in houses taken over by the government. These laws (Laws 85, 86 and 88) and other perceived abuses became known as the "pinata" by those who opposed the frantic effort to legalize the transfers of property before the inauguration of Violeta Chamorro in April 1990. Since that time, they have generated enormous controversy in Nicaragua, and an administrative nightmare as the government has attempted to sort out multiple claims to property.

In the first two years of the Chamorro administration, property disputes generated violent confrontations as prior owners attempted to evict peasants and urban dwellers who held only provisional titles from previous agrarian and urban reform efforts, or none at all.

⁵These claims include land and houses, as well as vehicles, machinery, factories, stocks and certificates of deposit. The vast majority of claims are for land and houses (12,415) which are the cases discussed in this report.

⁶David Stanfield, "Analysis of the Current Situation Regarding Land Tenure in Nicaragua," unpublished manuscript, The Land Tenure Center, University of Wisconsin, 21 October 1994.

(Part of the conflict arose from disgruntled ex-combatants who believed they had not received land promised as part of their demobilization.) The disputes also affected the National Assembly when the FSLN walked out of the Assembly during discussion of a controversial property law, approved by UNO legislators in August 1991. That law, which repealed the "pinata" laws, was partially vetoed by President Chamorro, leaving all sides dissatisfied.

The government attempted to resolve the disputes by setting up an administrative process to review claims by both prior owners and current occupants. But competition among the branches of government again added to the confusion. Presidential Decree 11-90 established the National Confiscation Review Commission (CNRC) under the Attorney General's office to determine the legitimate owner of property. By the deadline of 30 December 1990, the CNRC had received claims from 5,288 persons. However, in June 1991, the Supreme Court suspended the decisions of the CNRC with the assertion that dispute resolution was a judicial function, rather than an administrative function. The Court declared the administrative dispute resolution system unconstitutional as it violated constitutional separation of powers. President Chamorro reactivated the CNRC in September 1992 as a vehicle for determining the appropriateness of providing compensation to prior owners. Constitutional problems with the dispute resolution system were cured by allowing appeal to the ordinary judicial system.

The administration also created two new offices: the Office of Territorial Ordering (OOT) to review the assignment of urban and rural properties during the period between the February 25 1990 elections and the April 25 1990 inauguration, and the Office for the Quantification of Indemnizations (OCI) to determine levels of compensation for prior owners whose land was legitimately occupied by others under agrarian and urban reform laws.

With the administrative process in place, conflicts over land and property turned from violent confrontations to more peaceful, legal means. By February 1995, the government could claim significant process: 87% of the 117,178 cases submitted to government agencies had been administratively reviewed and issued either approvals or denials of claims (although appeals were still pending). The government estimates completion of the entire review process by June 1996. But this review process is only the first step in resolving the larger problem. The titling process for urban properties of approved occupants just began in early 1995, with some 600 titles issued by February 1995, while rural titling had yet to begin. Thirty percent of the claims by prior owners had been approved for compensation, but only fifteen percent had actually received bonds as indemnization⁷. Even more

⁷ Nicaraguan agency statistics refer sometimes to number of cases resolved (which may include more than one property claimed by a single individual), and sometimes to numbers of properties involved. Therefore, it is difficult to make definitive assessments of progress to date.

troublesome, the court system was expecting up to 6,000 cases of denials and appeals to enter into litigation. Why, five years after the Sandinistas transferred power to the UNO government, was property still such a disputed topic in Nicaragua?

The answer is a mixture of political polarization, scarce economic and administrative resources, and the ravages of eight years of civil war. Resolving the problem will require resolving both fundamental philosophical debates over whose rights to property should take precedence, as well as administrative and legal impediments to sorting out multiple claims to individual pieces of property and modernizing the titling system. The issues include whether to return property or compensate former owners; whether current occupants of land and houses should pay for their property, and how much; how the government can raise revenues to finance the bonds used to compensate former owners; how to sort out the multiple title claims on individual pieces of property and provide greater legal security to occupants in the interim; and how to develop a capacity to survey, map and inscribe properties in registries of which one-fourth were destroyed during the civil war.

In addition, there is the complicating factor that property claims include claims by U.S. citizens, many of them naturalized Nicaraguan citizens. At the time of President Chamorro's inauguration, less than twenty citizens had filed property claims with the U.S. government; today the State Department has over 600 persons with 1,631 claims on file.⁸ (Only 501, or 31%, of those properties were owned by U.S. citizens at the time of expropriation or confiscation; the remainder were owned by Nicaraguans who subsequently became naturalized U.S. citizens).⁹

Although Nicaragua has recently resolved the seven high-profile cases of U.S. citizens claims involving high-level government officials' property, as well as 372 other U.S. citizen claims, the 1994 Helms-Gonzalez amendment (Section 527) to the Foreign Assistance Act requires that the US cut off bilateral aid and vote against loans by multilateral financial institutions and development banks unless the President certifies that a country has procedures in place to return or to promptly and adequately compensate confiscated property of U.S. citizens. In July 1994, the U.S. government did not argue that an adequate procedure for prompt resolution of property cases was in place in Nicaragua; instead President Clinton used a provision in the law to waive these restrictions for one year for

⁸Only 506 of those individuals submitted 1,487 claims with the CNCR by the December 1990 deadline, however, and are thus eligible for the administrative claims procedure. The remainder must press their claims through the court system.

⁹ Although international law stipulates that a government may espouse only those properties owned by persons who were citizens at the time of expropriation/confiscation, the United States chose not to use the espousal principle, but instead to support all of those claims of newly-naturalized citizens even after the confiscation.

Nicaragua based on national interest considerations. Certification will again be due in July 1995.

A functioning system for resolving the complex property disputes will include:¹⁰

- a legal framework governing property rights and the distribution, use and management of conflicted lands,
- a cadastre, titling and registration system for tracking property ownership and its transfer,
- a system for legally administering conflicted lands previously confiscated, expropriated or purchased, resulting in either the return of the land to the prior owner or the finalization of land transfer to the state and adequate compensation of prior land owners when justified,
- administrative and judicial structures for resolving individual cases, and
- alternative dispute resolution systems for promoting more efficient and effective dispute management where appropriate.

The Nicaraguan government and international agencies are working to make progress in many of the elements described above. The December 1994 expert team was asked to assess the progress made in resolving property disputes, and to recommend alternative systems for resolving disputes. This report addresses these concerns in the following manner:

- Section 2 describes the nature of the property disputes -- their causes and sources of possible resolution;

¹⁰For more detailed analysis and recommendations of some of these elements, including bonds, property legislation, titling problems, and scope of the land problem in Nicaragua, see the following reports prepared for the Swedish International Development Authority (ASDI) study of land tenure and rural property in Nicaragua: David Stanfield, "An Analysis of the Current Situation Regarding Land Tenure and Rural Property in Nicaragua," October 1994; Mireya Molina, "Situacion actual de la Propiedad y Posesion sobre la Tierra en nicaragua," September 1994; and Ricardo Guevara, "El Sistema de Bonos en Nicaragua," September 1994. See also, John Strasma and Javier Molina, "Accelerating the Resolution of Property Cases in Nicaragua, 1994," May 1994, Land-Tenure Center, University of Wisconsin.

- Section 3 analyzes the existing administrative and legal structures, including progress to date, and existing capacity for implementing alternative dispute resolution systems;
- Section 4 discusses the political context of property dispute resolution;
- Section 5 assesses proposed legislative and judicial reforms aimed at resolving property disputes;
- Section 6 recommends development of an alternative dispute resolution system;
- Section 7 discusses implementation concerns; and
- Section 8 identifies the steps necessary to resolve property problems in Nicaragua in the short and long-term.

2. The Problem of Property Disputes in Nicaragua

Land tenure and property ownership disputes in Nicaragua have unique characteristics. In this section, we examine these characteristics as a basis for designing a dispute resolution system. The report discusses rural and urban land tenure disputes separately, as they pose somewhat different challenges for their resolution and operate under distinct laws and institutions.

2.1. Rural Lands.¹¹ During the Sandinista regime, the government acquired approximately 2.8 million manzanas¹² (or 4.9 million acres) from previously private land owners. These acquisitions were accomplished through confiscation of lands held by the Somoza family and their close associates¹³, expropriation of abandoned farms or as a result of agrarian

¹¹Unless otherwise noted, data in this section comes from Molina (1994) and Stanfield (1994).

¹²A manzana is a measure of area equivalent to 1.75 acres.

¹³Confiscations were authorized under decrees 3, 38 and 329 in July and August of 1979. These decrees confiscated approximately 2,000 properties constituting 1.4 million manzanas. Properties here refers to farming units, not separately registered ownership units.

reform¹⁴, purchases¹⁵ and by other means.¹⁶ These acquisitions constitute slightly over one-sixth of the entire land area of Nicaragua.

Of the 5,900 properties acquired, about 70 percent were never formalized as property of the State. Even when titles were transferred, the conditions of transfer (e.g. sales price or exchange of property) were frequently not recorded, leaving prior owners to claim that transfers occurred as a result of coercion and without adequate compensation. Further complicating the tracing of property claims is the fact that many Property Registries were partially or wholly destroyed by fire or other disasters during the civil war of the 1980s. Inscription of a title with the appropriate Property Registry is the last step after surveys and mapping to complete legal ownership.

Upon acquisition, the state allocated properties to beneficiaries of agrarian reform. The Agrarian Reform Institute (INRA) distributed these properties under a number of different titling programs, including formal collectives, informal collectives, state enterprises and individuals¹⁷. In all, 43,000 families benefitted from cooperative-assigned land, 53,000 families benefitted from individual-assigned land, and an unknown number of families benefitted from land assigned to state enterprises.¹⁸ Most of these beneficiaries of agrarian reform, however, received only provisional titles during the Sandinista regime, which did not provide full property rights. Instead, agrarian reform law allowed for the transfer or subdivision of property only with the authorization of INRA.

Between the elections of February 1990 and the inauguration of the new government in April 1990, the National Assembly passed Laws 85, 86 and 88 dealing with property transfers (Laws 85 and 85 are discussed in the next section). Law 88 provided definitive

¹⁴Decrees 760 (Abandonment Law) and 782 (Agrarian Reform Law) allowed for the expropriation of abandoned or poorly managed farm properties. These decrees were authorized in 1981 and led to expropriation of 1,450 properties totaling 838,000 manzanas.

¹⁵Government purchases of 1,050 properties totaled 196,000 manzanas. These purchases include properties acquired through foreclosures on mortgages made by the State bank, as well as purchases made under what the prior owner now claims to be duress.

¹⁶Including approximately 500 properties (300,000 manzanas) through de facto occupation without support of law and 860 properties (89,000 manzanas) through means such as confiscation of property held by people convicted of rebelling against the government.

¹⁷Land problems of indigenous communities, concentrated on the Atlantic Coast, must be assessed separately since they were not distributed titles from the INRA. Instead, they claim the validity of their ownership from colonial times.

¹⁸David Stanfield and Steve Hendrix, "Ownership Insecurity in Nicaragua," Capital University Law Review, 22:4 (Fall 1993): 945 and 947.

titles to those beneficiaries of agrarian reform with rural properties who had up to that date received only provisional titles. In addition, the law provided for full property rights to holders of those titles.

The law, however, did little to stop the re-emergence of claims from prior owners of the land in question. Claims placed by prior owners to the CNRC indicate the degree of dissension over disposition of the land taken for agrarian reform. Prior owners have presented the CNRC with claims for 7,185 properties constituting 12 percent of the land mass of Nicaragua and 66 percent of property acquired by the State for the agrarian reform.¹⁹ The potential disruptiveness of these claims is accentuated by the geographic distribution of the claims. As shown in Figure 1, 72 percent of all claims are for properties located in districts that lie along the Pacific Ocean or in the central area of the country. Table 1 shows that 49 percent of the land in these districts is claimed by a prior owner under the CNRC process. The Pacific coastal districts are also the location of most urban centers, and as such are the locus of conflict over urban property as well.

During 1990 and 1991, the CNRC ordered the return of 2,200 properties, frequently without determining the circumstances of any existing occupation of the land. Efforts to evict current occupiers from the land led to considerable conflict until the decree was declared unconstitutional in 1991. Currently, government officials and members of the Supreme Court expect approximately 40 percent of the claims to be pursued in court or through an alternative dispute resolution process.

2.2. Urban Lands. Urban properties -- both homes and raw land -- were also redistributed as part of the Sandinista land reform policies. Current occupiers of these properties include 11,244 occupants of urban homes and 90,260 occupiers on what was previously vacant land, much of it owned by the State. In the latter case, large numbers of families occupied each property.

Law 85, passed in March 1990, issued property rights to Nicaraguans who held any type of tenancy arrangement in houses belonging to the State, including private properties that the State administered as owner, as of 25 February 1990. No individual (family) could occupy more than one house under this law. Law 85 expropriated all private properties administered but not owned by the State, thus paving the way for eventual transfers of titles. Law 86 held similar provisions for the granting of title to occupants of urban land.

¹⁹Stanfield (1994). Claims are based on ownership parcels, not farming units. Hence, the number of properties claimed exceeds the number of properties reportedly acquired by the state.

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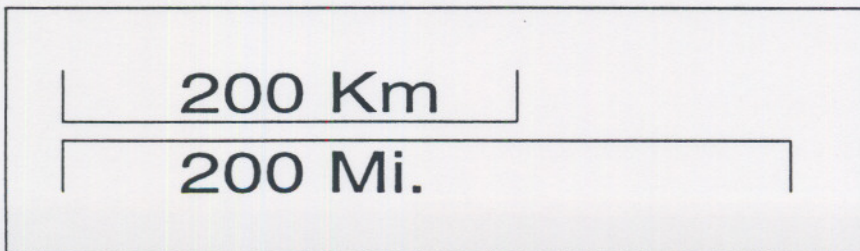
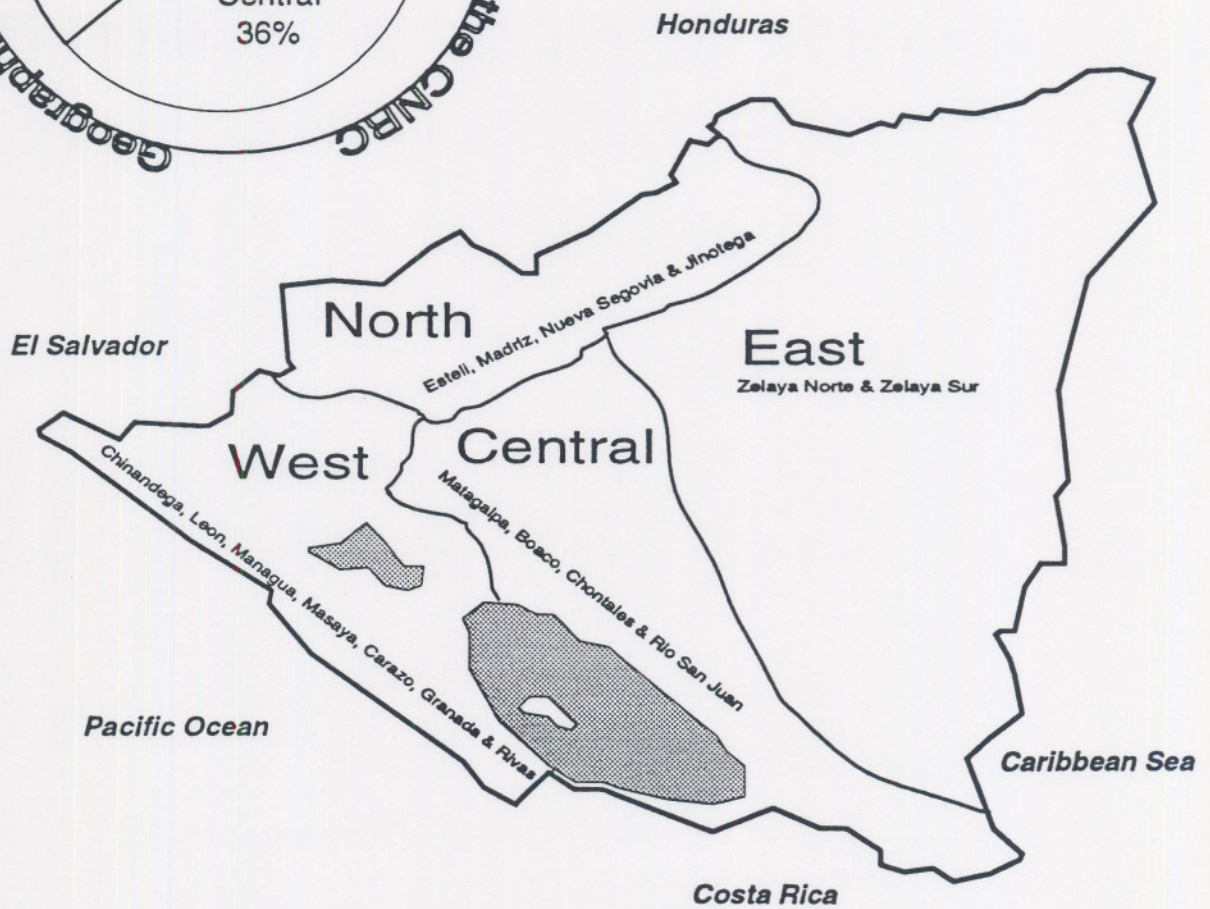
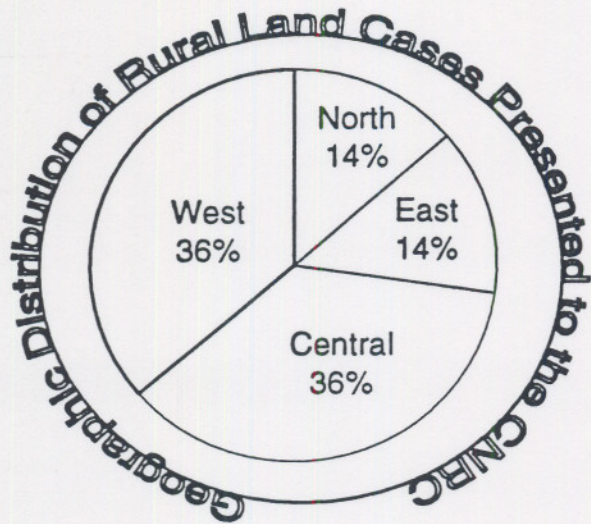


Table 1. Percent of Rural Land Area Claimed by Previous Owners Under the CNRC Process

Districts	Total Land Area (in manzanas)	Total Rural Land Claimed Through CNRC (in manzanas)	Percent of Land Area Claimed in District
North	2,400,000	288,000	12%
East	8,250,000	188,000	2%
Central	3,500,000	774,000	22%
West	2,800,000	767,000	27%
Lake Managua and Lake Nicaragua	1,250,000	0	----
Totals	18,200,000	2,017,000	12%

On the other hand, 1,800 prior owners claimed 5,207 properties. The vast majority of these claims were for urban houses, although claims for occupied land were also made. Efforts by some owners to reclaim occupied land through eviction have led to both direct conflict and the passage of laws creating moratoria on such eviction for specific periods of time.²⁰ Government officials and members of the Supreme Court expect approximately half of the claimed properties to require judicial review or some alternative form of dispute resolution in the event that the prior owner does not accept the bonds offered as compensation or a negative administrative ruling.

3. Current Legal and Administrative Structure for Resolving Property Conflicts

Since 1990, the government has developed an extensive administrative structure for resolving property conflicts. This structure has produced official administrative review (with approvals and denials) of large numbers of claims for both occupants and prior owners. However, it has done little to provide clear and uncontested titles to property occupiers. To date, only about 600 urban properties have been fully titled. The procedures have been only somewhat more successful at resolving claims by prior owners. Although 35 percent have passed through the review process, only about fifteen percent of the properties claimed

²⁰Law 174 suspended evictions for a six month period. Originally passed for a six month period in April of 1994, the law was extended the following October.

have been fully settled through the compensation system to date²¹. Recent improvements in the process led the Office of Indemnity Quantification (OCI) to estimate that 200-300 cases can now be processed per month, allowing completion of the process by July 1996. Relatively few property claims have been resolved through the courts so far.

Although some public officials suggest that many owners are refusing to accept bonds because the value of such bonds is highly uncertain, the OCI estimates that less than ten percent of property owners who have received a resolution in favor of compensation will reject the bonds. Informal soundings with claimants suggest, however, that the current value of bonds would need to rise to 40 percent of face value to be acceptable as compensation. More analysis is needed to determine whether, and how many, claimants are refusing to accept bonds in compensation and appealing instead to the court system.

3.1. System for Resolving Rural Land Disputes. The system for resolving rural property disputes is shown in Figure 2. The legitimacy of current occupants under Law 88 is reviewed by the Rural Land Committee, (Comité de Tierras Rústicas) composed of both the Office of Territorial Ordering (OOT) and the INRA. Unlike urban houses, occupants are not required to file claims for *solvensias* -- an administrative certificate indicating conformance with Law 88 requirements, but currently offering unclear legal protection against eviction. Instead, the Committee identified from INRA records all beneficiaries of agrarian reform who received titles under Law 88 between February 25 1990 and April 25 1990. Once identified, the district level offices determine whether occupants meet the conditions of Law 88. Documentation is needed to show occupancy by 25 February 1990 and to determine the number of families occupying a property, since properties are frequently not delineated clearly by family unit. On-site inspections have proven problematic due to INRA's lack of vehicles and personnel.

As Figure 2 shows, the district level INRA offices have reviewed all of the 8,300 individuals, but none of the 2,000 cooperatives. At the time of our December 1994 visit, no individual or cooperative had been explicitly denied. Issuance of *solvensias* were to occur once the cases reach the national level, but this had not commenced as of December 1994. Only 100 had been identified as likely cases of fraud, with about 2000 cases lacking sufficient data to make a determination. Cooperatives will require more extensive assessment, since changes in membership of the cooperatives must be certified by the Ministry of Labor.

Once *solvensias* are issued, considerable problems are expected in the granting of titles. As mentioned above, 70 percent of the titles were not registered to the State, and

²¹ Nicaraguan agency statistics refer sometimes to number of cases resolved (which may include more than one property claimed by a single individual), and sometimes to numbers of properties involved. Therefore, it is difficult to make definitive assessments of progress to date.

cannot therefore be easily transferred. Law 180, approved in July 1994, helps to resolve that problem by transferring ownership to the State when prior owners receive compensation bonds. If prior owners press claims to the courts rather than accept the bonds offered, however, full resolution could take a decade. Even if the title is held by the state, the process of surveying lands to develop consistent cadastral maps and inscribing the titles in the Property Registries could be painstakingly slow. The Ministry of Finance estimates it will take at least three years to properly title legitimate occupants.

Individuals and coops denied *solvencias* (for not meeting eligibility requirements such as occupancy by 25 February 1990 and owning no more than one property) are to be prosecuted by the Attorney General (Procuraduria). As of December 1994, no case had been transferred to the Attorney General under Law 88, but government officials expect up to 3,000 cases to be transferred ultimately. The Attorney General's office has little capacity to handle these cases, especially when combined with urban cases generated under Laws 85 and 86.

The inability of the courts to handle the load was frequently cited as a significant barrier to resolution. The number of cases is a substantial increase over an already full load. Rural beneficiaries of agrarian reform may find legal proceedings difficult, both logistically and in terms of the resources required to effectively represent their interests in court. In addition, the laws do not provide clear guidance to the courts concerning the resolution of cases when both parties have a legitimate claim to ownership of the property.

In addition to submitting claims to the courts, prior owners of rural lands can also submit claims to the CNRC process. As Figure 2 shows, approximately 3,400 prior owners have made such claims for 7,185 properties, equalling 66 percent of all the land originally taken for agrarian reform. The CNRC determines the legitimacy of the claim based on whether the land was originally legally obtained by the State. If the CNCR recognizes the prior owner's claim, it then determines whether the land can be returned or whether compensation is appropriate. If the land is legitimately occupied (i.e., by beneficiaries who meet the legal requirements as determined by INRA inspections), then the claims are forwarded to the OCI, which in conjunction with the tax assessors office, determines appropriate compensation. One complaint we heard was that INRA was not inspecting the properties effectively. As of 28 February 1995 the OCI had emitted 950 resolutions for compensation to prior owners and issued bonds for 542 properties valued at 915 million cordobas (US\$130 million).²² No information was available on the number of claims denied by the CNRC (and open to pursuit in the court system), or the number of properties returned to the prior owner.

²² The remainder of the cases with resolutions were still in process for issuing the bonds. A bottleneck in the notary's office was apparently resolved in February 1995 when the OCI got its own notaries, which should shorten the time to receive bonds.

3.2. System for Resolving Urban Property Disputes. The system for resolving urban property disputes is somewhat more clear cut. The OOT has sole responsibility for determining conformance of occupants to the requirements of Laws 85 and 86. As shown in Figure 3, as of 28 February 1995, the OOT had successfully reviewed all of the 10,229 Law 85 cases (homes) and 90 percent of the 90,264 Law 86 cases (vacant land). About 80 percent of the Law 85 cases were approved to receive a *solvenca*, while about 20 percent were denied for not meeting the criteria to remain in the home. Of those denials, 1100 are appealing through the Ministry of Finance, and 1200 have been remitted to the Attorney General's office, presumably for eviction. For Law 86 cases, 56,000 (about 60 percent) have already been issued *solvencias*. Although no Law 86 applicant has been rejected per se, at least 9,000 have lacked documentation to prove qualification (because of missing birth certificate or lack of proof of occupancy). These cases require further work by the OOT.

At the same time, the urban process is complicated by the fact that Law 85 beneficiaries are required to file with the OOT. Over 1,000 occupants failed to file with the OOT, thereby opening themselves up to prosecution and potential eviction. These cases have also been sent to the Attorney General's office.

Although the administrative review procedures have made substantial progress, they leave many questions unresolved, and as a result, there are numerous potential sources of conflict in the urban property cases. First, *solvencias* offer only tenuous legal protection against eviction (see below), and the OTU (Urban Titling Office) has only just begun to issue formal titles needed for credit, loans, and selling and transferring property. Second, the approximately 3,350 cases under Law 85 (OOT denials and non-filers) referred to the Attorney General by the end of December 1994 when the review process was completed are well beyond the capacity of that office or the courts to manage in any efficient manner. Third, to date, the OOT process has not confronted the issue of whether a prior owner still claims the property. If the State does not own clear title, then the case would go to the Attorney General's office. For the OTU to issue titles, then, all conflicting title claims will first have to be resolved.

As with rural property, the CNCR process has proceeded parallel to the OOT process. Approximately 1,800 prior owners applied for administrative remedy with the CNCR. Over 5,200 properties are claimed. This number, while more manageable than the claims made for rural lands, nevertheless represents a sizable problem. As of 28 February 1995, resolutions had been emitted in favor of compensation for 642 properties, and bonds had been issued and accepted for 245 properties worth 200 million cordobas (US\$28.5 million). Again, no information was available on the number of cases denied, or of properties returned. In a separate process, CORNAP -- the administrative agency in charge of privatization of state properties -- has returned 482 state-owned properties to prior owners.

Legal remedies by prior owners against occupants seems to be limited to attempts to regain vacant properties. Eviction orders have proven very difficult to enforce.

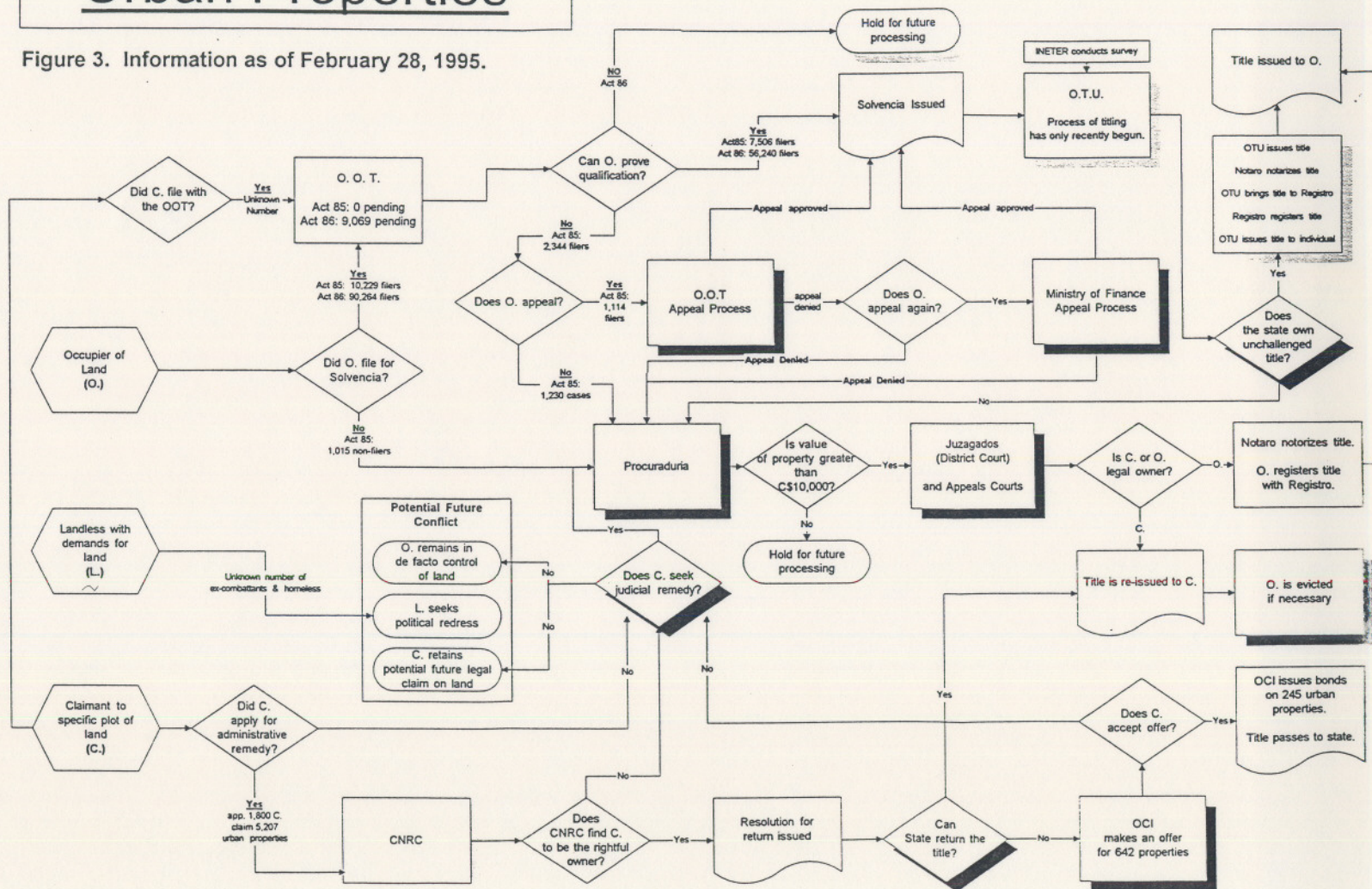
Urban Properties

Figure 3. Information as of February 28, 1995.

Resolving Urban Property Disputes: The process for resolving urban land disputes works from primarily two perspectives, that of the occupier of the land (O) and that of the claimant (C).

Occupier - The process begins with the filing for solvencia with the OOT by Law 85 beneficiaries, which is required by the law. Several steps follow: 1a) if the occupier has not filed, their case is referred to the Attorney General's office for prosecution; 1b) if the occupier has filed, they are reviewed by the OOT in order to determine if they meet the necessary requirements; 2a) if no, the occupier can appeal, or have their case go to the Attorney General's office for prosecution (for Law 85), or their case is held for future processing (Law 86); 2b) if yes, a solvencia is issued; 3) if solvencia is issued, the OTU determines whether the state owns land; 4a) if no, the matter is referred to the courts; 4b) if yes, a title is issued.

Claimant - The claimant has three options: deciding the case in the courts, filing for review with the OOT, filing for review with the CNRC. The judicial process involves primarily the Attorney General's office, district and appeal courts. The OOT process was described above. The CNRC process involves several steps: 1) The CNRC decides if the claimant is the rightful owner; 2a) if no, the case can be tried in the courts; 2b) if yes, the claimant is issued a resolution for the return of the property; 3) the CNRC determines if the state can return the title; 4a) if yes, a title is issued; 4b) if no, the OCI makes an offer for the value of the property to the claimant; 5a) if the claimant accepts the compensation, the OCI issues a bond worth the value of the property; 5b) if the claimant refuses compensation, the case can be appealed to the courts.



3.3. Barriers to Effective Conflict Resolution. A number of significant barriers to resolving property disputes exist in Nicaragua. We discuss below both structural barriers and administrative/legal barriers.

3.3.1. Structural Barriers. The design of a dispute resolution system must overcome numerous difficulties associated with the cultural, political and legal context of property disputes in Nicaragua. These include:

- *Perceived legitimacy and legality of various claims:* A fundamental philosophical tension exists between proponents of land reform and strict proponents of property rights. Further, the existing legal basis for claims to ownership are problematic, since civil code and reform laws provide for multiple claims to the same property. Theoretically, claims by current occupants and prior owners could both be approved by the parallel administrative and judicial systems. The CNCR should take into account the status of current occupancy when deciding whether to return the property or to compensate the owner, but it is dependent on other agencies to verify current occupancy. Anecdotal evidence was provided to the team of cases in which both priors and currents were actually awarded the same property.
- *Lack of documents impedes objective assessment of property claims:* Poor record-keeping under the Sandinista regime accentuated an already problematic ownership record system. Properties were frequently confiscated or expropriated without exchanging titles and without recording compensation when such compensation was provided. The conditions under which properties were purchased were not recorded. Cadastral records are weak and large portions of some registries are missing. For poor beneficiaries of land reform, even simple records, such as a birth certificate to prove citizenship in Nicaragua or an electric bill to prove occupation of property on 25 February 1990, are difficult to provide.
- *Unequal distribution of resources among claimants and occupants:* The vast majority of beneficiaries of land reform (current occupants) have significantly fewer resources than prior owners. Resources more readily available to prior owners generally include education, money, professional (legal) advice and representation, and greater familiarity with the legal system. Beneficiaries will likely be at considerable disadvantage in representing their interests in any dispute resolution system. A relatively small number of beneficiaries, typically associated with the larger (and more controversial) properties, may have the same access to resources as do the prior owners.
- *Absence of trust in existing institutions:* Nicaraguan society is highly polarized. Virtually every political, civic and administrative institution is perceived as captured by either the FSLN or by more conservative elites. This is particularly true of national and district level institutions.