

# THE ROLE OF THE RURAL PROPERTY RIGHTS SYSTEM IN DISPOSSESSION, LAND CONCENTRATION AND WAR: AN EXPLANATION BASED ON CASE STUDIES

by:

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OBSERVATORIO DE RESTITUCIÓN  
Y REGULACIÓN DE DERECHOS  
DE PROPIEDAD AGRARIA



# PERFORMANCE SCHEDULE

- **Thesis**
- **The role of the regulatory system in the assignment of property rights in Colombia and its context**
- **Regulatory Institutional Design**
  - **The information**
  - **A procedure between complicated and more complicated**
  - **Costs**
- **The case studies**
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  - **Islas del Rosario**
  - **Las Franciscas**
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# Thesis

- Both academic and public policy texts frequently start out with the assumption that the mass dispossession that took place in Colombia was the result of a series of illegal acts or of corruption. Did the dispossession take place illegally? We answer this question from an institutional perspective.
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- We show that even though the armed conflict has been a catalyst for dispossession and concentration, the institutional design for the assignment and management of rural assets contains mechanisms that allow and/or facilitate such dispossession.

- *The institutional design for the assignment of rural assets in Colombia contains a strong bias in favor of those who are knowledgeable of the system, those who have access to information and contact with the national and local authorities and the legal operators that process such assignments, as well as the economic resources to put the legal apparatus in motion. The legal route towards dispossession remains open in situations of both low intensity and high intensity conflict.*

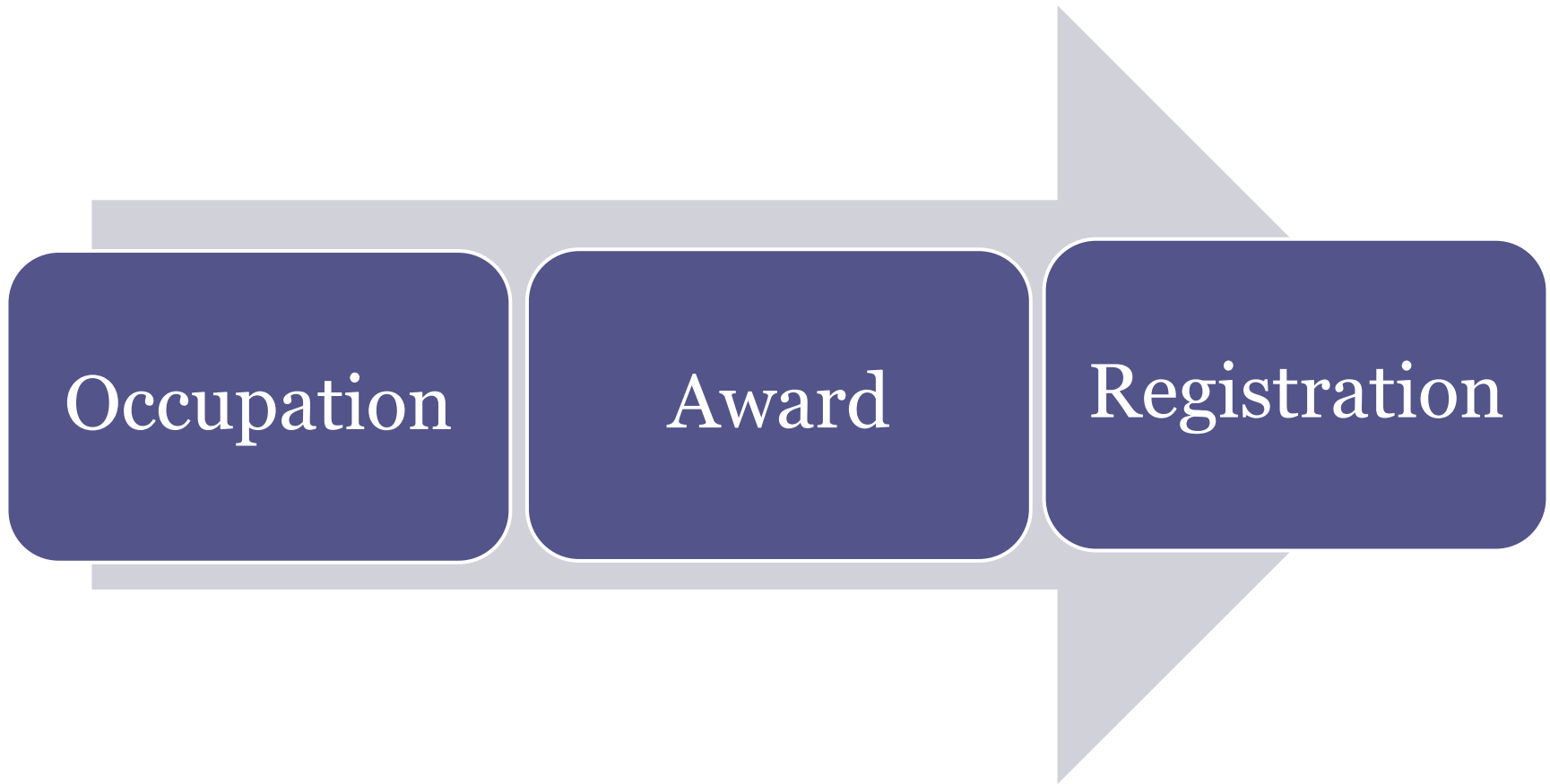
# The role of the regulatory system in the assignment of property rights in Colombia and its context

- Land property rights in Colombia can be seen from two big perspectives: public law and private law.
  - From the perspective of public law, land is part of the nation's assets. The state assigns this land according to the interests, contingencies and needs that arise
  - Civil law considers citizen rights to be natural and subjective. The civil code of 1887, which has for the most part remain unchanged until the present, is essential for private law, as it regulates private relationships between individuals.
- We would also expect several opportunistic agents to take advantage of the regulatory distortions during periods of high intensity conflict, because those who were in the middle of the conflict over land were able to set the rules of the game.

# Regulatory Institutional Design

- How are land property rights regulated in Colombia?
- The government designs a public policy regarding rural property comprised by laws, decrees, ordinances, statutes, which define the way in which rural property ownership is acquired and formalized in the country. The set of rules and practices published by the government comprise the legal structure for the assignment of rural assets.

# Stages of the process of awarding vacant lands

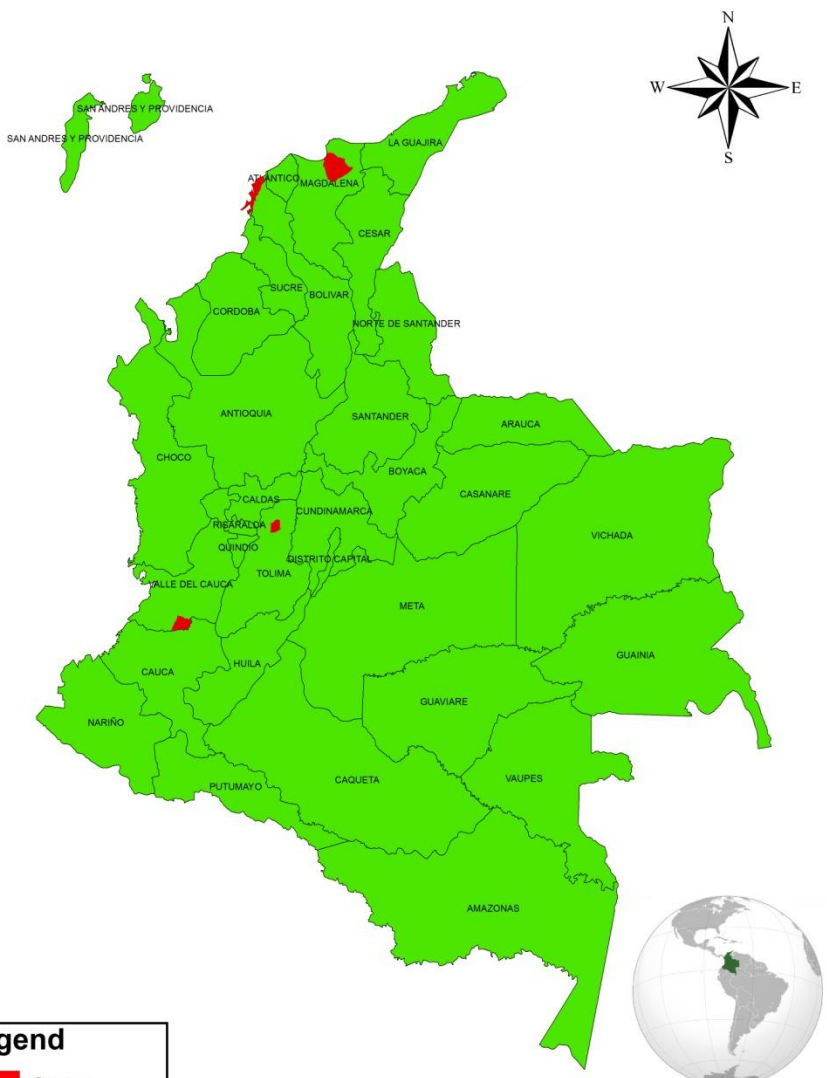


# Three central problems this legal structure has:

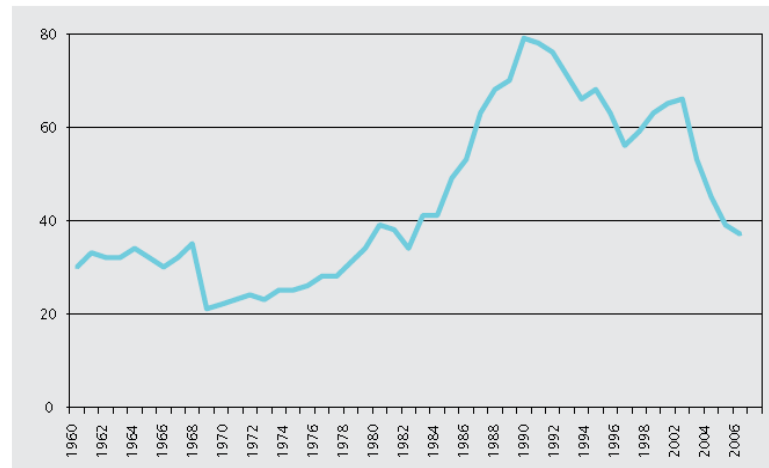
- **The information**, ultimately, knowledge of where the information is, connecting the information and using the information is necessary to be successful in exercising any claim over a rural asset.
- **The process** is defined as the sum of activities and procedures that provide access to ownership. The different procedures established in Colombian law are designed in principle to be simple, efficient and quick, though real life demonstrates otherwise. The procedures are complex, costly and with numerous burdens for the interested party, and also require a substantial investment of time to be successful.
- **Costs** are one of the common features of agrarian procedures. Even though the law establishes that the civil servants are responsible for gathering all the information required for the award of the vacant lands, the interested party is the one who must submit a request, take on the burden and cover the costs of the procedure established in the law.



# Map of the case studies



## Homicide rate per 100,000 inhabitants, 1960-2006



Source: (National Police: CIC-DIJIN., cited by Montes 2008, page 77)

Outcome/Type of Conflict	Low intensity (National Front)	High intensity (1980s/1990s)
Favorable	<u>Community enterprise "La Trinidad"</u>	<u>Islas del Rosario</u>
Unfavorable	<u>Combination of plots in Jamundí</u>	<u>Las Franciscas, Zona Banadera – Magdalena</u>

**Legend**  
 Cases  
 Departaments

Scale bar  
 0 115 230 460 Miles



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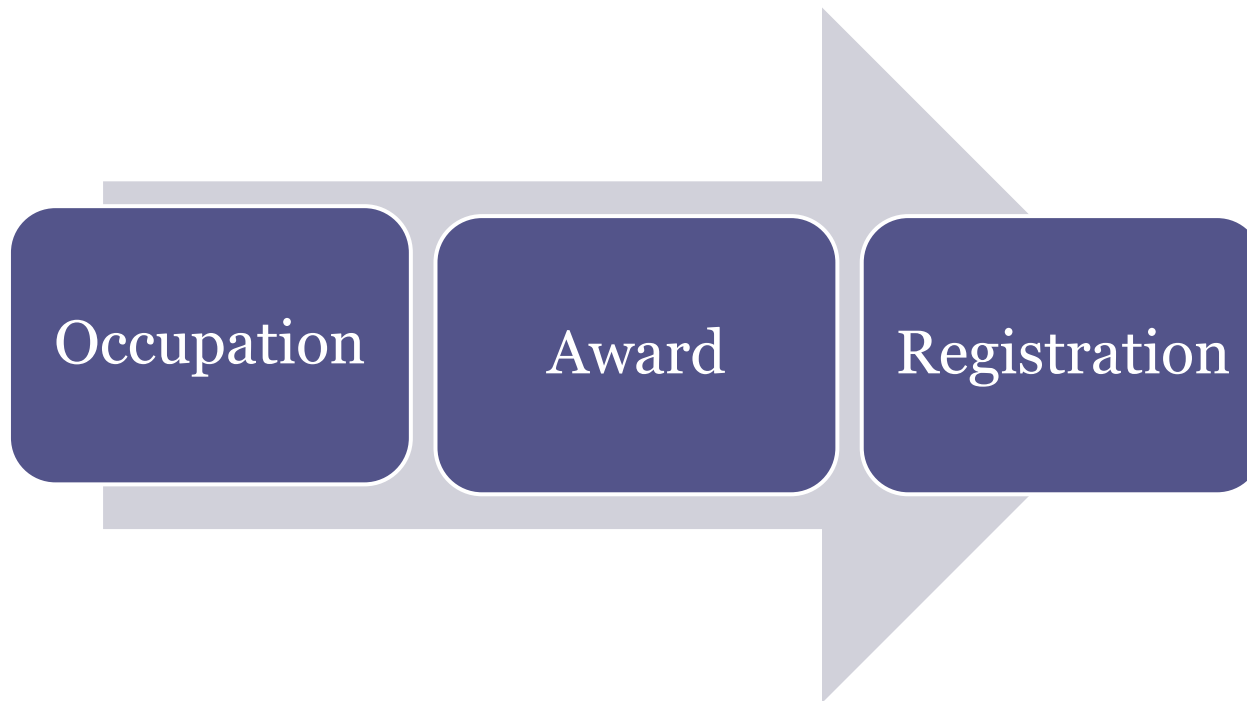
Elaborate by:  
 María Isabel Loaiza Cordero. Young researcher

# Community enterprise “La Trinidad”

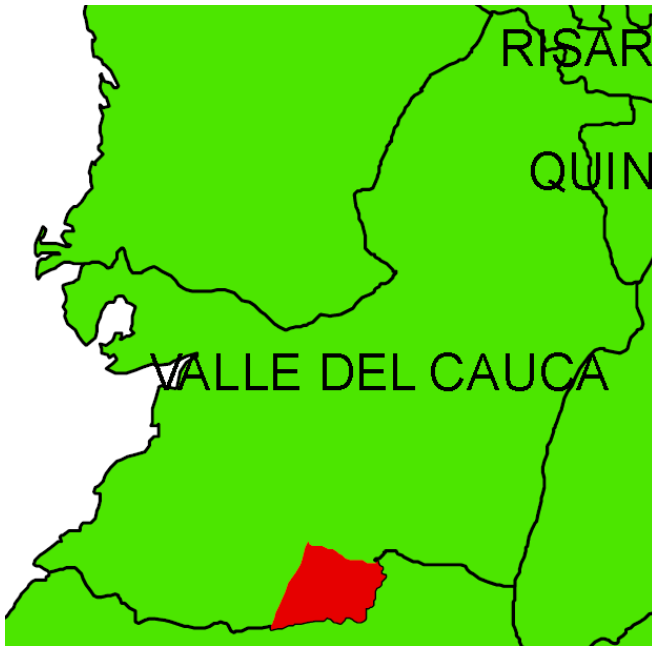


Municipality of Líbano, Tolima

In the process of the award of vacant lands, the case completed the three stages of the process:

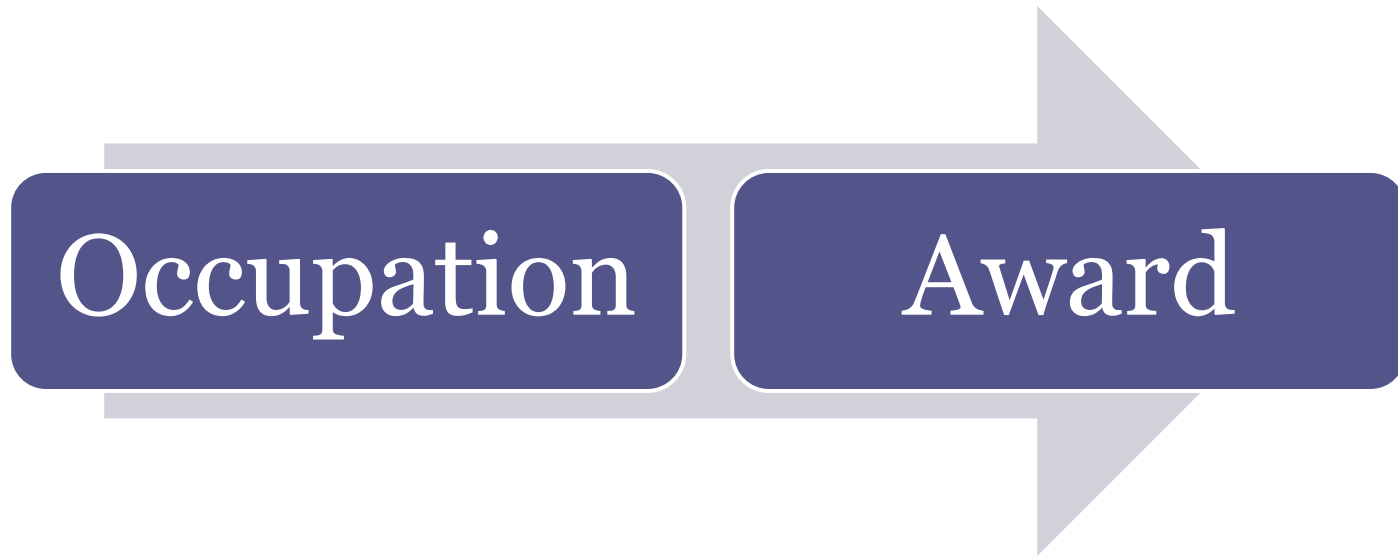


# Combination of plots in Jamundí



Municipality of Jamundí, Valle del Cauca

The Combination process only reached the second stage of the award of INCORA to the peasants:



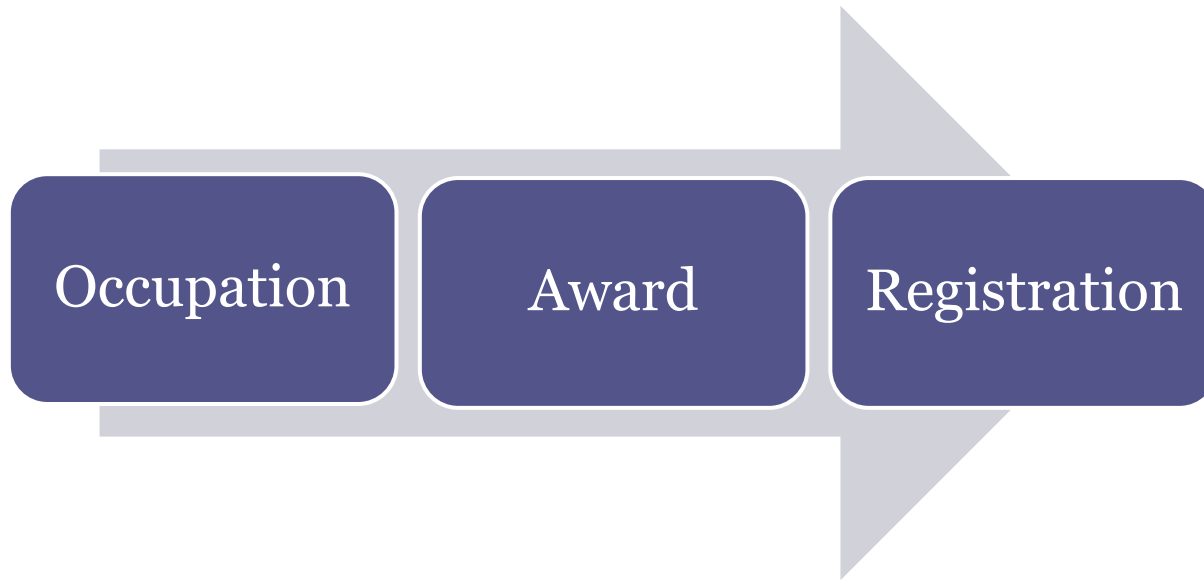


# Islas del Rosario

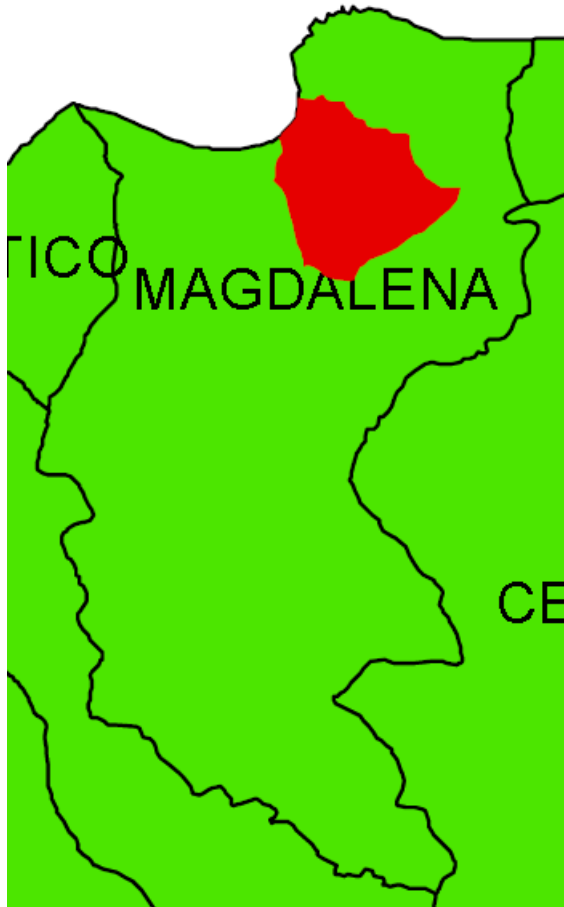


Insular area of Cartagena de Indias, department of Bolívar.

The three stages of the assignment process were fulfilled in this case:



# Las Franciscas



La Francisca N°1 and La Francisca N°2, located in the rural district of Orihueca, Municipality of Ciénaga (today Zona Bananera), Department of Magdalena



In this case, the peasants only reached the first stage:



Occupation

# Conclusions

- The complexity of the regulatory system for the assignment of rural rights is not evident from the simple reading of the laws.
- The information becomes complex because of the difficulty of having access to relevant information as required by the laws, due to the quantity and quality of the information that the citizens must gather in order to understand and be successful in the proceedings.

- The formal equality of citizens before the law becomes then inequality between those who have the capacity to access and use the information, and those who do not.
- The regulations on the assignment of assets are in the national jurisdiction, their application is performed by local officials, which enables the local elites to influence these officials and to privatize the application of the law.
- Based on the evidence of the case studies, in order to successfully achieve an award, in other words for the peasants to become owners of their plots of land, it is necessary to involve an interested third party who is knowledgeable of the system for assigning assets, who has access to the officials and the process, and who can closely follow the entire process.

- The laws establish that the processes should be promoted by the administration, but there are still costs involved that make the process too expensive for the peasants.
- Because ownership is a legal institution in the realm of civil law, the state behaves as a private entity that arbitrates between citizens. It leaves in hands of private parties and local officials the execution of the public policies on the assignment of rural property rights
- Development of a public policy for the distribution of rural assets requires the simplification of the regulatory system, which implies the development and implementation of appropriate rules, rather than a simple deferral to the property laws contained in the civil code.

- The public policies on occupation of the territory have been developed through a typical process of indirect presence, which gives some actors a competitive advantage over others in the territorial claims.
- The legal biases of the system for the assignment of rural assets are divided in three categories: information, process and costs.
- A situation of high intensity conflict generates even worse conditions for the peasants, because the legal institutions allow the agents to use them in combination with coercion to propitiate dispossession.