

**The London School of Economics and Political
Science**

*ILL FARES THE LAND: THE LEGAL CONSEQUENCES
OF LAND CONFISCATIONS BY THE SANDINISTA
GOVERNMENT OF NICARAGUA 1979-1990*

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Declaration

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Abstract

This thesis analyzes the consequences of property confiscations and redistribution under the Sandinista (FSLN) government in Nicaragua of the 1980s. It covers the period from the overthrow of Anastasio Somoza Debayle in 1979 to the February 1990 FSLN electoral defeat and the following two months of the *Piñata*, when the outgoing Sandinista government quickly formalized possession of property by new owners, both formerly landless peasants and the elite. It also examines subsequent efforts to resolve outstanding property claims, with the focus on the Chamorro and later presidential administrations to 2007, when Sandinista leader Daniel Ortega and the FSLN returned to power. The main argument is that Sandinista leaders, largely from the same families that have dominated Nicaragua since the Colonial period, followed Nicaraguan traditions of using influence to distort the legal and political system to gain title to valuable properties.

In contrast to partisan arguments in favor of one regime or another, here the methods of property transfer are analyzed by investigating in detail documentary evidence of illustrative cases that show the steps and individuals involved in these transactions, as well as more generally surveying other cases and the overall situation with property. The argument is tested by examining how the selected claimants' properties were taken and who obtained them. The results indicate that Sandinista elites did obtain properties for their personal benefit, often in violation of their own legislation, but that this was largely consistent with the practice of other, non-Sandinista governments. After their electoral defeat, ongoing Sandinista influence in the organs of government influenced the restitution process, with claimants typically settling for compensation at a fraction of the market value, with the Nicaraguan state and people bearing the cost of paying for compensation bonds over the coming decades. Political influence undermined the restitution mechanism.

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Figure 1: Map of Nicaragua¹



Source: United Nations

¹ United Nations, “Nicaragua,” http://www.vmapas.com/Americas/Nicaragua/Nicaragua_Regions_Map.jpg/maps-en.html (accessed June 11, 2011).

CHAPTER 1: INTRODUCTION AND OVERVIEW OF THE PROBLEM

Ill fares the land, to hastening ills a prey,
Where wealth accumulates, and men decay.²

Shifting global realities, where countries enter into competition as attractive investment climates, challenge many nations with a history of expropriations. Unresolved claims by private persons seeking property seized under a larger government policy create an often-accurate image of a nation that disrespects the rule of law, an unattractive and unwelcome place to invest. Fears of arbitrary government action, concerns about adequacy of compensation, and general doubts about the fairness of local courts and administration discourage foreign enterprises, as well as local residents, from investing productive assets in any such country. Nicaragua stands out as a nation that, although it seeks full integration into the modern globalized economy, suffers the lingering effects of confiscations instituted by its leftist, communist-affiliated Sandinista government in the 1980s, where corruption allows the illicit accumulation of wealth and real property that undermines confidence of its citizens and foreigners alike. This study will examine Nicaragua as one example of the process of confiscation and efforts to resolve outstanding issues arising from those confiscations.

This study explores the legal, political, and social consequences of Sandinista era land expropriations and redistributions. It refers to historical and legal antecedents and the political and social context of the confiscations and distributions. However, the main focus will be discussion of their legal bases and of the legal and political consequences of efforts to clear up the resulting ownership uncertainty, with concentration on a narrow set of cases involving U.S. citizen claimants with whose claims I became familiar during my time serving as a diplomat at the U.S. Embassy in Nicaragua.

² Oliver Goldsmith, "The Deserted Village, A Poem," <http://www.poemhunter.com/poem/the-deserted-village-a-poem/> (accessed August 31, 2011).

1.1. Context

In 1979, the Nicaraguan regime of Anastasio Somoza was overthrown by the leftist Sandinistas, with broad support from other sectors of society. The Sandinista-dominated, Marxist-oriented *Junta* of National Reconstruction, and later the Sandinista-controlled National Assembly, began the confiscation of much of Nicaragua's lands, companies, and financial assets. The landless poor gained possession of many properties by redistribution, often through cooperative farms, under the banner of correcting the abuses of the Somoza era and centuries of unfair treatment of the poor by the elites. Much land was seized extra-legally both by peasants and by organs and officials of the new revolutionary government. Thus, many properties were confiscated on dubious grounds, even by the legal standards of the new government. Many properties, whether legally confiscated (presuming one accepts the Revolutionary decrees as legal) or extra-legally, found their way into the hands of the new Sandinista elite, a large part of which was related to the old elite.

From the earliest European settlement of Nicaragua, the system imposed by those in power has served to ensure their economic (primarily land-based) preeminence. The colonial period was characterized by laws ensuring the property rights of *Criollos*, (those of Spanish blood born in the New World), with indigenous peoples treated as chattel. Continuing through independence to the 20th Century, the pattern of concentrated land-ownership by a small part of the population continued. Under the Somoza dictatorship, land and capital ownership became even more concentrated, as the ruling family and its supporters used their positions to accumulate vast wealth. Much of the arable land was confiscated, taken from tens of thousands of the old elite. The new regime oversaw the possession of most of this land by peasant beneficiaries numbering in the hundreds of thousands. The many parties involved in the process of taking this property used a myriad of methods. Various means for conveying title or possession of this property to others was also used, which is the other side of the equation of transfer from original owners to final possessors. The variations on both ends of the process will be

described in depth.

Of course, the checkered role of the United States in Latin America in general and in Nicaragua in particular plays a singular role in the issues discussed in this study. The United States has intervened in Nicaragua perhaps more than in any other country, usually for purely commercial reasons though later in the context of the Cold War. Such interventions regularly included active military involvement by U.S. troops. It is particularly important to highlight United States' involvement in establishing the National Guard and encouraging appointment of U.S.-educated Anastasio Somoza as its head, followed by his bloody seizure of power in 1934. The United States' nearly half century of support for the Somoza family's oppressive regime contributed in many ways to the 1979 Revolution, which enjoyed broad popular support.

The Sandinista National Liberal Front (*Frente Sandinista de Liberación Nacional* or FSLN) arose largely in response to the economic and human rights abuses of the Somoza regime. However, much of the leadership of the FSLN came from the same families that had so long dominated the country. Upon seizing power in 1979, the Sandinista leadership implemented a series of confiscatory measures, initially limited to members of the Somoza regime but quickly expanding beyond, including anyone who left the country for more than six months and account holders and shareholders of the nationalized sectors, including banking, electrical power, and insurance. The legal and factual bases for most of the confiscations were questionable.

Significant amounts of rural land were distributed to the rural poor. However, prime properties and assets were taken over by the highest-ranking Sandinista officials, by legal or extralegal means. As will be seen, documents, accounts of those whose property was taken, and accounts of disillusioned Sandinistas provide ample evidence, beyond actual occupancy, that better properties found their way into the hands of the new (Sandinista) elite.

With the election of Ronald Reagan, U.S. relations with the Sandinistas, which had been touchy but tolerable under Billy Carter, devolved into outright hostility. At the same time the Sandinistas' built a close relationship with Cuba and the Soviet Union and undertook a large military buildup, the United States built and supported an anti-Sandinista insurgency.

In 1990, the Sandinista government permitted an election that a coalition led by Violeta Barrios de Chamorro (Chamorro³) unexpectedly won. While the Sandinista government immediately acknowledged defeat in an election that the international community adjudged fair, officials of that government remained in office for two months before the new president and National Assembly members took up their positions. In these two months, between the February election and the April swearing in of the new president and assembly deputies, the Sandinista leadership attempted to legalize quickly the *de facto* property transfers that had occurred in the previous decade. In these two months, the outgoing Sandinista-dominated National Assembly hurriedly passed legislation for this purpose. In what is known in Nicaragua and beyond as the “*Piñata*”, after a children’s game that involves breaking a paper maché animal and scrambling to grab as many sweets as possible, the outgoing Sandinista-dominated National Assembly passed laws that gave legal possession of property to those occupying them. The Sandinista leadership and their followers rapidly produced legal documents and filed them in the property registries to establish a documentary trail to establish

³ Note on Spanish names: Latin Americans usually have two surnames, the first (patronymic) and a second (matronymic), and it is not uncommon to have two given names; this often adds up to a string of four names (e.g. Pedro Joaquín Chamorro Cardenal), with the first two being first names. Chamorro is his father’s and grandfather’s patronymic surname and, in Nicaragua, can be traced back centuries to the earliest conquistadors in some cases. Cardenal, the matronymic, is the mother’s father’s patronymic. The two surnames make it easier for people to identify the lineage of people they meet, at least through their fathers and their mothers’ fathers. In another example, the legitimate sons of Anastasio Somoza García carry the last names Somoza Debayle, attaching their mother’s patronymic to their father’s patronymic, with the father’s matronymic dropped. Married women commonly drop their matronymic and replace it with “de” (of) plus their husbands’ patronymic or are known just by their husbands’ patronymic. For example, the President elected in 1990 can be identified as Violeta Chamorro, Violeta Barrios de Chamorro, or Violeta Barrios. The first seems to be most common in English language works and is the name I will use later. In references to well-known historical figures, I will typically drop the matronymic after first use, and use the common English language reference, such as Anastasio Somoza.

their legal position as owners of the property. Many of the documents and processes used were legally dubious and many documents were fraudulently produced, as will be discussed below. Thus, in these two months, *de facto* property transfers of the previous decade were legalized.

As a result of this legal scramble, the new Chamorro administration faced a complex legal and *de facto* web of claims by past and present owners and occupants. Much of her support had come from those sectors most affected by the economic policies of the Sandinistas, included those who had had property confiscated. Many of these had lived abroad, typically in the United States or Costa Rica, and the returnees joined those who had remained to pressure the new administration to return their properties. At the same time, Chamorro sought to placate the defeated Sandinistas, who at the time of their electoral defeat maintained control of the military, police, bureaucracy, and judiciary. Her goal was to prevent a renewed outbreak of a civil war after years of a counter-revolutionary guerrilla movement. She sought to keep the peace, while introducing democratic institutions, and thus walked a delicate line between the parties that had supported her re-election and the defeated Sandinistas.

These issues would need to be resolved in order for ownership of specific properties to be clear, giving ownership security to identifiable owners. Clear title gives legal certainty that encourages regular use, development, or transfer of real property. The new Chamorro administration and its non-Sandinista successors had mixed successes in resolving the property question and now, with the return of the Sandinistas to power, the prospects for further resolutions are unclear.

Because Sandinistas dominated the army, the police, and the civil service, the new Chamorro administration was limited in its ability to reverse the property distributions. Similarly, the fact that properties had been placed in the hands of large numbers of poor presented a political and social challenge to efforts to undo land reform. Since 1990, post-Sandinista administrations have expended considerable effort to try to provide compensation to the original property owners,

while largely respecting the rights of the new owners. As a result of Sandinista efforts to sabotage reforms, Nicaragua's pervasive corruption, and an inoperative legal system, subsequent efforts to establish property ownership security in the years after the FSLN's 1990 electoral defeat have been ineffective. The administrative claims process, described in greater detail below, has led to widespread complaints about adequacy of compensation, unfairness, slow procedure, arbitrary denials, and long delays. Sandinista domination of the judiciary, Nicaragua's inefficient court system, and long-standing legal deficiencies have impeded efforts to return properties confiscated in violation of the Sandinistas' own laws. In contrast to the administrative process, the judicial system does, in theory, provide for expedited trials to return properties to the original owner in the case of abuses. It also invites the theoretical possibility of compensation paid to the old owners by mandating payment (in bonds) based on "replacement value" rather than cadastral value (the value assessed for tax purposes). These systems, inconsistently applied, have failed to satisfy claimants and generated much criticism. Daniel Ortega's return to the presidency in 2007 after 17 years, signaled an end to Liberal Party attempts to resolve the issue.

During several Liberal (non-Sandinista) administrations up to the Bolaños Administration, there were chronic financial limitations and frequent problems with corruption (especially under Bolaños' predecessor Arnoldo Aleman). After elections in 2006 Sandinista leader Daniel Ortega returned to the presidency. Though the status of property restitution issues has evolved since, that is the natural point for concluding this analysis.

Nicaragua's methods of resolving overlapping claims to properties have been plagued by problems. While the vastness and variety of the confiscations make analysis challenging, there are enough detailed cases available and describable types of land transactions to enable one to identify key characteristics and problems. After analyzing closely what steps were taken in Nicaragua, both successes and failures, and looking at the broader international context, some conclusions can be drawn that may be useful for other countries that face the

prospect of moving from regimes that confiscated private property to new governments that seek to emphasize rule of law and respect for private property. Part of this evolution will undoubtedly require some means of resolving earlier confiscations in much the same way that Nicaragua and Central and Eastern European countries have done, each with different levels of success.

1.2. Approach

Some explanation of my structural approach is necessary, as there are a number of ways one could address the various issues raised by the property confiscations under Nicaragua's Sandinista government in the 1979-1990 period, and its aftermath. With land in Nicaragua, both larger historical processes and specific legal issues are interconnected in a way that requires close examination of each.

My analysis represents an integration of modern history and legal development, but I have chosen to survey first the general historical milieu of Nicaragua in an overview historical chapter in order to establish a context in which to look at the legal issues involved. Inherent in such an approach is a degree of overlap and repetition that I have attempted to minimize, but I think that this study will demonstrate the fruitfulness of this approach. Thus, after first surveying Nicaragua's history to 2006 to give a general framework, I will in the third chapter trace Nicaragua's legal evolution to that time, examine the decrees and legislation of the Sandinista Government (focusing on property law) from 1979 to its departure from office after their 1990 electoral defeat and outline subsequent efforts by non-Sandinista administrations to regularize and reconcile various contradictory provisions.

Next, I will use specific cases, drawn from a very limited sample of property claims by a handful of U.S. citizen claimants, to illustrate various methods by which confiscations, re-assignment, and possible reclaiming of properties were carried out. These examples are useful both to understanding the process as well as to showing the variety of situations that could and did arise out of Sandinista

land policies and their correct or incorrect application.

Many have made suppositions, based on abundant anecdotal evidence from hundreds of those who lost property, about the process. These have been widely re-reported, but there is little in the way of detailed analysis of the procedural steps used to take the property and give it to others. My approach is to tell the stories of specific cases, admittedly a limited sample, and try to reconcile those individual accounts with the overall legal framework of Nicaragua. I will also discuss in some depth the corruption and illicit land acquisitions throughout Nicaraguan history; such discussion is primarily designed to place Sandinista land policy and laws in their historical and cultural context.

This paper does not purport to be a comprehensive description of land seizures in other eras but, instead, is designed to show how Sandinista policies were carried out - including discrepancies and improprieties that may have occurred - and the ongoing legal legacy of those policies. There are other things that this study is not designed to be. It is not designed to assess the overall role of U.S. foreign policy, including interventionism in Central America, nor the political role of other outsiders, such as Cuba and the Soviet Union. This paper is not designed to judge political movements in Nicaragua, except to the extent that they have affected clarity of title and rule of law and have influenced policy-makers in Nicaragua.

However, reference to U.S. involvement is necessary to explain certain events and policies within Nicaragua. In particular, the role of the United States in pushing for resolution of outstanding claims has played a major part in Nicaragua's internal approach to property. Some discussion of Anglo-American theories regarding property is necessary to understand the context in which U.S. policy-makers have approached confiscation and restitution issues in Nicaragua with the perspective and diligence that they have.

Discussion of Eastern and Central European confiscations and restitution is included in Chapter 8. It follows discussion of American, international, and Latin

American approaches to property rights, and serves as a final look at the greater global approach to property rights. It also serves as a useful comparative example of how other countries have addressed confiscations that occurred in their communist pasts, building on the contrast with the earlier, and complete, confiscations in the Soviet Union briefly described in Chapter 3. Primarily, discussion of how other countries have addressed their communist pasts, as far as property is concerned, is useful in setting forth the lessons of Nicaraguan confiscations that appear in the conclusion in Chapter 9. These lessons are not aimed at any one country, as there are a number of countries in the world that have had confiscatory regimes that have not evolved to a point where there is an interest in resolving outstanding claims (Cuba or China, for example) or are still in the process of engaging in confiscations (Venezuela or Zimbabwe, for example). That said, however, the lessons of Nicaragua might be most instructive for any post-communist government that seeks to integrate more fully into the global economic system. In particular, the country that might most benefit from lessons learned in Nicaragua might be an evolving Cuba, by virtue of shared language, as well as common traits of culture, political history, and legal tradition.

My conclusion, therefore, draws together the lessons of Nicaragua, focusing on the weaknesses of the system. This is because I conclude that the resolution mechanism was unsatisfactorily devised and implemented, with continuing influence in government by those who opposed restitution and with the overall plague of corruption that undermined all legal activities in Nicaragua.

1.3. Methodology and Sources

There is a dearth of comprehensive legal studies or legal histories of the Sandinista era property confiscations and subsequent efforts to address their consequences. The lack of full-scale analysis has led me to use an approach that combines descriptive legal analysis with examination of select case studies.

As my set of case studies, I have used the detailed examples to which I was able to

get access, claims of select U.S. citizen claimants that were willing to authorize me to cite their cases. This presents the difficulty of being a fairly small subset of the much larger pool of both U.S. citizen claimants and the even larger pool of all property claimants. Thus, this group, while providing empirical evidence, is not necessarily representative of the much larger group of those whose property was taken by the Sandinista era government. I determined that using specific cases for which I had detailed information was the best means for analyzing the processes used more generally. The only such cases to which I had access were those of U.S. citizen claimants with whom I had become acquainted while working on property claims during my time in the U.S. Embassy in Managua in 2000-2002.

There are many descriptions in open Nicaraguan sources such as newspapers of specific claims, but none of them present a more complete legal record than those of the U.S. Embassy claimant files, which consist of claimants' personal accounts and copies of legal, government, and other documents that illustrate in detail the specific transactions related to the property. However, such information, obtained through my employment, is protected private information. Therefore, within the already limited pool of U.S. claimants (a subset of the larger property claimant pool), I could only use information from claimants who authorized me to use information from their files. Because of this restriction, I endeavored to use my great knowledge of the larger universe of American claimants (there were nearly 800 outstanding U.S. claims when I left Nicaragua in 2002) to select a digestible number of cases to serve as the best examples of the larger pool of confiscations. This is an admittedly subjective exercise and I acknowledge that moving from advocate of U.S. claimants to neutral analyst of the claims process may present questions of objectivity to readers of this work, and full disclosure of my work there is necessary in the spirit of intellectual openness.⁴

The genesis of this thesis was this very time when I served as Property Officer in

⁴ I acknowledge it was emotionally easier to press the claims of some claimants more than others, based on my own perception of the justice of their claims but, as a lawyer or advocate who works for others must do, I argued in support of all the U.S. claims before the Nicaraguan government.

the U.S. Embassy in Managua from 2000-2002.⁵ Two Nicaraguan attorneys and I worked to assist U.S. citizens in their claims for property seized between 1979 and 1990. In those two years, my team assisted in getting nearly 350 American citizen claims, out of approximately one thousand outstanding U.S. claims, settled. In many cases, the claimants were sympathetic cases, in some not, but my efforts were largely motivated by the idea that resolution of outstanding property claims was important for the economic and legal development of a country for which uncertain property ownership was a major burden. Settling of property claims, however imperfectly, and moving beyond injustices of the past (by whatever players), it seemed to me, would be paramount to reconciliation and development in Nicaragua, a country that has experienced dictatorship, revolution, and civil war in my lifetime. The property debate in Nicaragua, though, has been characterized by generalities and anecdote upon anecdote, with limited objective and detailed analysis of what exactly happened and how it happened procedurally. In moving from advocate of one side to analyst, I may carry some preconceptions with me that I cannot fully shed. Still, I have sought to objectively deal with the selected cases with which I have traced the steps of what occurred and, by doing so, reveal something about the overall process.

I acknowledge there could be limitations with using a restricted sample of U.S. claimant cases pulled from the U.S. Embassy in Managua; this is a spotty collection from the sizable yet fractional subset of property claimants who are American citizens. Most of the dispossessed were not U.S. citizens either at the time of or subsequent to the seizure of their property. Still, U.S. Embassy files provide the names of hundreds of known Sandinista leaders who obtained possession of confiscated property. However, from a statistical standpoint, this data set may not be used to extrapolate with precision the greater world of

⁵ It may have been earlier when I remember, as a young university student, my disenchantment by seeing a photo Junta leader Daniel Ortega with fashionable and expensive glasses. Still, a couple of years later, in 1984, when I was in law school, I participated in a demonstration against the U.S. mining of Nicaragua's harbors. It turned out that one of my law professors, Fred Morrison, was arguing the U.S. side of the International Court of Justice case involving the United States' mining of Nicaraguan harbors, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*

claimants and occupants for a variety of reasons. First, claimants who were Americans at the time of seizure or who became American citizens are unlikely to be completely representative of the overall population affected by confiscations; I would assume that they are, on average, wealthier than the average person whose property was confiscated, for example. For this reason, their properties were likely to be larger and more valuable than the average. Second, their nationality and connections were likely to have influenced the grounds of confiscation and the degree, though it is hard to consider in what way. Perhaps they were more likely to get compensation or perhaps they were more likely to be targeted for confiscation; either is pure speculation at this point. Third, the value of their urban dwellings could have made it more likely that high-ranking individuals in the revolutionary government would seek their properties. Finally, the sample is just not a large enough percentage to serve as a representative sample of the whole of the universe of confiscated individuals. Still, this study is not intended as a statistical analysis.

In any event, U.S. claimant cases are the only source available to me for the detailed analysis of the specific legal steps used in expropriations and redistributions because the Nicaraguan government does not currently make available to the public the records of the thousands of claims (from files which many of U.S. claimants' documents came). The only practical way that I could access individual cases was to obtain permission from claimants known to me, those with claims on file with the U.S. Embassy, whom I had come to know through my work there; the individual cases I cite in detail all involved claimants who granted me explicit permission, in writing, to cite their cases. Even among this group, some of those I had approach refused to grant me permission and I was unable to cite their cases in this work. Nonetheless, in those cases where claimants gave me permission, it was important to take advantage of this information, the only of its kind and quantity, to fully explore the processes involved. I am informed by the many other cases to which I was exposed and I think that I have chosen cases that exemplify the larger data set, at least of American citizen claims, and that do a good job of representing issues that recur in other cases that I may not explicitly reference.

Many examples I cite come from publicly available sources. Particularly rich, though, are these individual American citizen cases, which include both information provided by the claimants themselves and official documents from courts, public registries, and other government offices. The details these files provide are key to the focused analysis that is best depicted by concentrating on the series of actions or transactions governing specific properties. Unfortunately, in one case in particular, a claimant family with an especially detailed and well-documented claim for a housing development – claims which they had settled - felt sufficiently uncomfortable with those now in power that they did not wish their case cited; they were fearful of the possible consequences.

Access to such information was an advantage that my work had indirectly brought me, by virtue of my acquaintance with claimants. On the other hand, my profession as a U.S. diplomat has presented two research barriers. First, I am barred by security rules from accessing certain online resources, including Wikileaks, which might have provided useful information. This is true even when I am working from a personal computer. The second barrier was that I am forbidden to disclose information that has been labeled as classified by the United States government, information to which I often have access by virtue of my position. The first barrier limits my research freedom and the second precludes me in some cases from disclosing facts that I know to be true. However, in some cases, I am able to instead rely on unclassified sources for many – though not all – of the same facts.

There are thousands of claimants and each has his or her own story. Landless peasants who benefitted from properties have their own stories. I recognize that my case studies represent a very narrow slice of the full story, but do serve to provide a documentary and human face to the larger numbers and broader processes that have affected so many. I feel comfortable that the case studies demonstrate some of the special features of the recent history of Nicaraguan property and serve as examples for better understanding the process.

The utility of these individual cases is supported by the fact that the processes outlined in them are supported by other resources. Newspaper articles, academic discussions, and reports by apparently impartial international sources outline the same kinds of transactions, though all in very general terms. Lack of a full-scale analysis of the legal (and illegal) steps involved led me to an approach that focused on these cases. The dearth of such literature is why a detailed use of primary sources that demonstrate the process will make a unique contribution to an area that has not, to date, been dealt with in depth.

Still, there is a benefit to referring to a variety of other sources to illustrate the past and present situation with land ownership in Nicaragua, including U.S. government publications, Nicaraguan Government publications and statistics, outside analyses, and personal accounts of what happened. With very limited academic discussion of the issues, these sources produce vital information upon which to base my own conclusions.

U.S. government publications on the subject were largely generated during the 1980s, when the Reagan administration highlighted communist influence in Central America and, especially, in Nicaragua. Such publications, normally published by the State Department, are helpful for some information, such as biographies of Sandinista leaders, but present a distinct policy view that is invariably hostile to the Sandinista leadership.⁶ Similarly, reports of the Republican staff of the U.S. Senate Foreign Relations in the 1990s reflect some of the same ideological fervor of the previous decade's executive branch publications.⁷ For basic statements of fact, these are helpful, such as when they list

⁶ See the United States Department of State, *Crackdown on Freedom in Nicaragua and Profiles of Internal Opposition Leaders* (Washington: U.S. Government Printing Office, 1986), *Human Rights in Nicaragua under the Sandinistas: From Revolution to Repression* (Washington: U.S. Government Printing Office, 1986), *Nicaraguan Biographies: A Resource Book. Special Report, Revised edition*, (Washington: U.S. Government Printing Office, 1988), and *The 72-Hour Document: the Sandinista Blueprint for Constructing Communism in Nicaragua* (Washington: U.S. Government Printing Office, 1986).

⁷ See Republican Staff of the United States Senate, *Confiscated Property of American Citizens Overseas: Cases in Honduras, Costa Rica, and Nicaragua- A Republican Staff Report to the*

which Sandinista leaders live in which confiscated properties. More recent executive branch publications present a somewhat more nuanced view, but it is clear that there has long been strong support for administrations that have articulated a more openly pro-private sector agenda. Particularly helpful are various editions of the State Department's *Nicaragua: a Country Study*.⁸

I refer extensively to commentary by Nicaraguans, even though they have tended toward pro- or anti-Sandinista polemics. Chapter 3 (Section 3.7) discusses the two points of view in some detail, quoting extensively the leading proponents of each side, Wheelock and Herdocia.⁹ Wheelock usefully provides extensive facts and figures about the extent of confiscations and redistributions.

The most objective sources are outside organizations that are not affiliated with any side in the debate, most notably the Carter Center, UNDP, the World Bank, and the Land Tenure Center of the University of Wisconsin. I rely on these sources for data on the scope and processes regarding confiscations, reallocations, and claims.

Though noted last, Nicaraguan government sources are perhaps most vital to my analysis, even more so than the claimant documents. Of greatest importance are Nicaraguan legislative materials, including the *Gaceta Oficial*, the Official Gaceta, in which are published all laws and decrees. This and the various constitutions document the evolving legal regime necessary for interpreting the meaning and legality of specific examples. The offices involved in processing claims and preparing titles have also provided useful and largely accurate information.

Committee on Foreign Relations of the United States Senate (Washington: U.S. Government Printing Office, 1994) and *Nicaragua Today - A Republican Staff Report to the Committee on Foreign Relations of the United States Senate*, (Washington: U.S. Government Printing Office, 1992).

⁸ See Tim Merrill, ed., *Nicaragua: A Country Study* (Washington: U.S. Government Printing Office, 1993), at <http://countrystudies.us/nicaragua/47.htm> (accessed July 1, 2011) and James D. Rudolph, ed., *Nicaragua: A Country Study* (Washington: U.S. Government Printing Office, 1981).

⁹ See Jaime Wheelock Román, *La Verdad Sobre La Piñata: Los Cambios En La Propiedad Agraria Julio 1979 - Abril 1990* (Caracas: IPADE, 1992), Jaime Wheelock Román, "Changes in Agrarian Property in Nicaragua," *Capital University Law Review* 22.4 (1993): 853, and Oscar Herdocia Lacayo, "The Current State of Nicaraguan Property Law," *Capital University Law Review* 22.4 (1993): 845.

Indirectly, correspondence and other documents related to individual cases have become available by means of the individual claims files I cite. As will be shown, such documents are less reliable, especially those signed by individuals involved in the *Piñata* awards of property.

1.4. Objectives

This work examines the process of land redistribution as it occurred in Nicaragua, using the specific examples described above to illustrate the nature of the problem. It will provide a detailed examination of the Nicaraguan context, with briefer looks at other approaches to resolving similar problems and the broader legal, economic, and philosophical issues raised by private, state, and collective property ownership. One goal is to determine what lessons could be drawn for other nations, where some future government will likely have to deal with the same issues of moving to a post-Communist future.

Another goal is to fully air issues that continue to face Nicaragua. These include the degree to which Somoza-era property owners should be compensated, the degree to which beneficiaries (many illegal beneficiaries) of land “reform” could be induced to accept less than they currently possess, whether abuses of the elite and influential (of whatever party) can be restrained, and whether the legal system can ever be reformed to the degree necessary to establish clear property rights for future generations. Such clarity of property rights is an important factor in economic development; revealing these aspects can be instructive for Nicaragua itself, as well as for other countries.

More specifically, this study will demonstrate the ways in which Nicaragua’s Sandinista (FSLN: Frente Sandinista de Liberación Nacional) government’s attempt to confiscate the ill-gotten assets of the predecessor Somoza regime and its elites was flawed and largely undermined by Nicaragua’s long tradition of corruption, which were shared by large segments of the FSLN leadership. My research has confirmed what many, admittedly partisan, critics of the Sandinistas

(including their own disenchanted members) have alleged: that, while achieving considerable land redistribution, the party elites availed themselves of the opportunity to enrich themselves and their supporters more than their own laws would have allowed. This study also aims specifically to identify some of the bigger problems in the Nicaraguan process. It examines how the failure of successive Nicaraguan governments to solve the property dilemma is connected with lack of respect for the rule of law and how lack of clear title undermines the progressive development of Nicaraguan society, with the goal of emphasizing the benefits of both rule of law and owner security. In particular, this study will show how the elite of the Sandinista leadership used the Nicaraguan legal system for personal benefit, in the context of the more general problems that have arisen in the aftermath of Sandinista land policies. This topic, thus far only the subject of political essays or limited legal or economic analysis, is important because, in many ways, it may be a harbinger of what may develop in other developing countries that may have to deal with the legacy of confiscatory regimes in a climate of corruption and continuing influence of the outgoing leadership.

CHAPTER 2: A BRIEF HISTORY OF NICARAGUA

Nicaragua's legal evolution is very much related to its history and must be read in a historical context. Conquest, domination of the weak by the powerful, and foreign interference are very elemental features of the Nicaragua political landscape. A general outline the history of Nicaragua, thus, helps to create a framework in which the legal evolution, discussed in greater detail in Chapter 3, and more recent political developments can be explained.

2.1. Pre-Colombian Period

At the moment of contact with the Spanish, two indigenous ethnic groups lived in the region that would become Nicaragua.¹⁰ One group, perhaps of greater importance in later history, settled in the central and western parts of the region, was made up primarily of a population with Aztec and Mayan characteristics that had migrated from the area of Mexico. Another group lived in the lowlands of the eastern, Caribbean, coast, related to the Indian groups of northern South America.¹¹

2.2. Colonial History

Although Columbus had sailed along Nicaragua's Caribbean coast in 1502, the first genuine movement of Spaniards into the area of what would be Nicaragua occurred in 1522, with Gil González Dávila's (González) military expedition from Panama along the Pacific coast of Central American. His expedition was greeted with hospitality by Chief Nicarao, the chief of an Indian tribe of the same name living in the area of Lake Nicaragua; Nicaragua is named after them. Thousands of the tribe were baptized. When González subsequently encountered fiercely

¹⁰ The definitive book on survival of indigenous groups in Nicaragua is Linda A. Newson, *Indian Survival in Nicaragua Colonial*, 1st ed. (Norman, Oklahoma: University of Oklahoma Press, 1987).

¹¹ James D. Rudolph, ed. *Nicaragua: A Country Study* (Washington: United States Government, 1981), 4.

resistant tribes, he departed the area, carrying gold and other valuable gifts he had been given by Nicarao.

In 1523, Panama's governor, Pedro Arias Dávila (also known as Pedrarias), in competition with González, appointed Francisco Hernández de Córdoba to lead the conquest of Nicaragua.¹² The next year, in 1524, Hernández de Córdoba's expedition moved up along the Pacific Coast, crossed the isthmus to Lake Nicaragua and founded Granada on its north shore. He then moved on to Lake Managua (Xolotlan) to found León on its northwest shore (later relocated), not far from the Pacific coast, to establish Córdoba's settlement rights over those of González (which had been the earliest permanent Spanish settlements in Nicaragua). Córdoba soon defeated the indigenous inhabitants and named the region "Nicaragua" after a tribe or the tribal chief. Thus, founded by Córdoba to mark his claim, León and Granada would evolve into the two main centers of Nicaragua until the establishment of the capital in Managua in the 19th Century.¹³ From León, Hernández de Córdoba sent expeditions to explore the territory. During the conflict between Córdoba and González, Pedrarias accused Córdoba of mismanagement and had him executed in 1526. In the meantime, González ended up in Spain, never to return to Nicaragua. In 1528 the Spanish throne made Pedrarias governor of Nicaragua, where he remained until his death in 1531.¹⁴

Spain showed little interest in Nicaragua throughout this period, focusing more on exploiting the wealth of Peru and Mexico. Indeed, by 1531, many Spaniards who had settled in Nicaragua had departed to join Francisco Pizarro's campaign of conquest of the wealthy, Peru-based Inca Empire. In addition to the deaths from new diseases brought by the Spaniards, native Nicaraguan population centers were depleted because the Spaniards enslaved the inhabitants and sold them to those running the Peruvian mines. One estimate is that between 1528 and 1540 approximately 200,000 Nicaraguan natives were exported as slaves to South

¹² Rudolph, ed. *Nicaragua*, 4.

¹³ Rudolph, ed. *Nicaragua*, 4.

¹⁴ Rudolph, ed. *Nicaragua*, 4.

America.¹⁵ Though the Spanish had focused on the western and central regions of the future country, many of their early settlements disappeared. By the end of the 16th Century, Nicaragua consisted of just León, west of Lake Managua (then named Lake León), and Granada, on Lake Nicaragua. The latter's convenient location on the lake, and the indirect link to the Caribbean via the mostly-navigable San Juan River (discovered in 1539), did not prevent León from becoming the administrative center. León prospered from grains and cattle while Granada flourished as merchant ranchers traded with the Caribbean to the east.¹⁶ Ranchers, who had received large land grants from the Spanish Crown starting in the 17th Century, exerted influence throughout the coast of Lake Nicaragua by virtue of family ties and land ownership.¹⁷

The region later known as Nicaragua was made part of the Captaincy-General, or Audiencia, of Guatemala, which ran from southern Mexico to Panama, essentially including all of Central America.

One defining conflict during the colonial period was between the Spanish and their British, French, and Dutch commercial rivals.¹⁸ Another was an internal one, wherein rich landowners (largely descendants of the original Conquistadors and closely linked with the Catholic Church) and liberals (largely anti-clerical) had opposing views concerning free trade. The former gained wealth from mining and agriculture and benefited greatly from trade monopolies.

It was no internal evolution that led to independence. Instead, Napoleon's invasion of Spain and the resulting weakness of Spanish authority in the America's was the immediate impetus that brought all of Spain's American possessions to independence in the first decades of the 19th Century. There had been, though,

¹⁵ Rudolph, ed. *Nicaragua*, 4.

¹⁶ Knut Walter, *The Regime of Anastacio Somoza* (Chapel Hill, University of North Carolina Press, 1993), 8. Tim Merrill, ed., *Nicaragua: A Country Study* (Washington, U.S. Government, 1993), 88.

¹⁷ Walter, *The Regime of Anastacio Somoza*, 4.

¹⁸ See Troy S. Floyd, *The Anglo-Spanish Struggle for Mosquitia* (University of New Mexico Press, 1st edition, 1967).

long-standing tensions between Spanish-born *Peninsulares* and America-born but pure Spanish-descended *Criollos*. The latter, by virtue of their birth in the New World, were treated less favorably than those born in Spain and the Bourbon Reforms had put the colonies under a tighter yoke (similar to, though not the same as, the tightening British approach to their American colonies, the American backlash to which led to the American War for Independence). Yet it was Napoleon's invasion that made ambitious *Criollos* see their chance for independence.

The two cities' locations on separate trade routes meant there was little conflict between the cities during the Colonial Period, but during the post-independence period starting in 1821, the cities of Granada and León vied for pre-eminence in Nicaragua, initially within the United Provinces of Central America.

2.3. Independence and History to Early 20th Century

There were several steps in Nicaragua's transition from Spanish colony to independent nation, spreading over several decades of the 19th Century.

Mexico, Federation, and Early Years of Independence

In 1821, Mexico successfully won independence from Spain. Though Nicaraguans were divided about whether they should be part of Mexico (Granada preferred independence and Leon preferred union), Mexican control, under Agustín Iturbide, was quickly established.¹⁹ When Iturbide abdicated and the Mexican Empire collapsed in 1823, Central America formed a federation, the United Provinces of Central America, including Nicaragua as one of the five provinces. However, the elite of each province, or country, sought increasing power within their own sphere and disliked the idea of sharing it with others, leading to the breakup of this federation. Upon the federation's collapse, Nicaragua became a fully independent republic in 1838.

¹⁹ Rudolph, *Nicaragua*, 8.

While the locations of León and Granada on separate trade routes meant little conflict between the cities during the Colonial Period, during the post-independence period starting in 1821 the cities of Granada and León vied for pre-eminence in Nicaragua, initially within the United Provinces of Central America. From the first, Nicaraguan politics was characterized (as in many Latin American countries) by the struggle for control between Liberals and Conservatives, with León being the center for the former and Granada for the latter. Until the establishment of Managua as national capital, these cities alternated as capitals depending on which party was dominant. Indeed, Nicaragua's post-independence political history, into the 20th Century (as in other countries of Latin America) was characterized by the alternation of power between liberals (sometimes called republicans, "*fiebres*", or "anarchists") and conservatives (sometimes called legitimists, imperialists, "*serviles*", or "aristocrats"). The Liberals and Conservatives divided on questions of the church and economic interests. The Liberals tended to be less pro-Church and more in favor of developing coffee, which would play a role in concentrating land needed for such plantations.²⁰ These two sides remained the key divide until the 1979 Revolution²¹ transferred the divide to one of leftist Sandinistas on one side and the pro-market forces on the other.

After a period of government by "directors" or "heads of state", Fruto Chamorro became the first president of Nicaragua in 1853. He was succeeded by Conservative Juan José Estrada in 1855.

Foreign Influence, William Walker, and Filibusters

The new nation was weak and unstable. The two foreign powers with influence in

²⁰ See Arturo J. Cruz, Jr., *Nicaragua's Conservative Republic, 1858–93* (New York: Palgrave with St. Antony's Oxford, 2002).

²¹ All subsequent in text references to the 1979 Sandinista Revolution will be referred to as the Revolution (with a capitalized letter R). The capitalized adjectival form will be used in reference to legal decrees.

the area, Britain and the United States, from the beginning sought to take advantage of this.

Beginning as early as the 17th Century, the British had asserted control over the Caribbean coast of Central America. This coast was dubbed the Mosquito Coast, from the term '*miskito*' or mixed, as the population was largely formed from the mix of indigenous Caribbean Indians and formerly enslaved Blacks. By the mid-19th Century, the British protectorate along the Mosquito Coast was formal and well-established. Greytown, at the mouth of the navigable San Juan River, the beginning of the passage across Nicaragua, had long been under British control.

In contrast to its neighbors, Nicaragua came to be of special interest to the United States for several reasons. As the principal transit route between the Atlantic and Pacific (before the transcontinental railroads linked the Eastern and Western United States) it was the way for settlers, opportunists, and goods to get to California from the American East and South. Panama, though narrower, was swampy and Nicaragua was more easily traversed from the Caribbean by the Rio San Juan and Lake Nicaragua. Cornelius Vanderbilt's American Atlantic and Pacific Ship Canal Company had been given the rights to a passage up the San Juan River, across Lake Nicaragua, and on a carriage road for the few remaining miles to the Pacific, connecting his ships sailing from New York and New Orleans with those from San Francisco.

Before the construction of a railroad linking California and the U.S. West Coast to the more populous East, this was a busy route, with up to 10,000 people traveling it each year and assuring the rapid growth of Greytown. Its harbor facilities were costly to the British, who established a harbor fee. Cornelius Vanderbilt refused to pay and, late in 1851, a British warship fired on the *Prometheus*, a ship owned by Vanderbilt.

The incident aroused a furor in the United States and, although the British apologized, this was a reminder that the Monroe Doctrine had been ignored. The

Monroe doctrine had been advanced in 1823 by President James Monroe as an official pronouncement that meant that the United States would essentially become the protector of other nations in the Western Hemisphere, excluding European influence.²² This doctrine would come to be used, as we shall see, to justify unprecedented U.S. intervention in the region, typically in service of U.S. commercial interests. This doctrine echoed in the strident claims of Manifest Destiny that reverberated after the Mexican-American War ended in 1848 with a convincing American victory that gained California and New Mexico for the United States.

Thus, the Californian adventurer William Walker became a newspaper hero when, in June 1855, he invaded Nicaragua with a group of Americans called “filibusters.” He had been invited by the Liberals, who hoped to use him in their struggle against the then-dominant Conservatives, led by President Estrada; such invitations to outsiders, usually from neighboring Central American counties, were common. Walker and his mercenaries seized the Conservative capital of Granada on October 13, 1855. Patricio Rivas became the new president and Walker was named Commander-in-Chief of the Army, but it was Walker who was effectively in control of the country. By the end of the year, Walker had two thousand Americans, eager for adventure, in his army; the next year he was elected president.²³ Southerner Walker was no reformer. He hoped to turn Nicaragua into a slave colony to be annexed by the United States. Still, the United States received his ambassador. If he had impressed President Pierce, he had angered the real American power by revoking Vanderbilt’s charter, awarding it to two of his partners who had been struggling with Vanderbilt for control. Vanderbilt sent his

²² The core of Monroe Doctrine comes from part of President Monroe’s December 2, 1823 address to Congress: “[T]he occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European power.” *Journal of the Senate of the United States of America*, Volume 13, 11 at reproduced in “A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774 – 1875,” <http://memory.loc.gov/cgi-bin/ampage?collId=llsj&fileName=013/llsj013.db&recNum=9>. Accessed August 17, 2012.

²³ Craig L. Dozier, *Nicaragua's Mosquito Shore: The Year of British and American Presence* (Mobile: University of Alabama Press, 1985), 86.

agents to lead the Costa Rican army in an invasion. The Central American armies, support by Vanderbilt, joined forces, defeated Walker and drove him from Nicaragua in 1857, when his army melted away. Walker was rescued by an American warship.

Soon Walker returned but was arrested by the U.S. Navy and transported to the United States. In 1860, he returned to Central America to support Anglo-Hondurans, but the Royal Navy captured him and turned him over the Honduran government, which executed him by firing squad

Zelaya and the Shadow of the United States

In Nicaragua, Walker's overthrow initiated three decades of Conservative political dominance that was only broken when José Santos Zelaya led a revolt in 1893, bringing his Liberal faction to power. Through the late 19th Century, the country became dependent on coffee exports; coffee interests were allied with the Liberals. Conservatives, on the other hand, were closer to the Catholic Church and to an older order that included some paternalistic protection for peasants. The coffee growers became influential and their support and wealth were essential to Zelaya's seizure of power.²⁴

Supported by the coffee growers, Zelaya did much to build modern Nicaragua, pushing the British to cede the Atlantic Coast finally and permanently into Nicaragua in 1894. He also presided over legal reforms, improved public education, improved ports, and constructed railroads. While his methods were not always democratic, his administration was relatively easy on opponents by the standards of the time and region.²⁵

In the end, however, arguments with the United States over trade concessions to Americans in Nicaragua worsened already strained relations over differences

²⁴ Walter, *The Regime of Anastacio Somoza*, 8.

²⁵ Rudolph, *Nicaragua*, 15-16.

arising out of the proposed construction of an inter-oceanic canal across Nicaragua. The Monroe Doctrine had meanwhile evolved late in the 19th Century into the Big Brother policy, created by Secretary of State James Blaine, who served on and off from 1881 to 1892, who articulated the clear goal of making the United States the leader of the region, dominating Latin American nations and pressing for open markets for U.S. commercial interests. Under Blaine's leadership, the First Conference of American States was held in Washington in 1889-1890. This conference led to the creation, by the 18 countries in attendance, of the International Union of American Republics (legal precursor to the Organization of American States) and its permanent secretariat (which evolved into the OAS's General Secretariat) based, significantly, in Washington.

Elsewhere in the hemisphere, political pressure in the United States, from Yellow journalists and Assistant Secretary of the Navy Theodore Roosevelt, for a more active leadership role in the Americas led to the Spanish-American War of 1898. This war led to a shattering of Spanish influence in Latin America, with the United States gaining direct control of Puerto Rico (retained to this day, with eventual status still debated) and the United States assuming an imposed position of controlling Cuba's slow evolution towards independence.²⁶ There was a definite racial and cultural angle to the expansion of U.S. imperialism into Latin America, with the presumption that White, protestant North America had to bring culture and discipline to the unruly, dark inhabitants to their south.

Theodore Roosevelt, then President, in 1903, reversed the U.S. policy seeking construction of an Atlantic-Pacific canal through Nicaragua and got the United States to acquire the rights of the French Panama Canal, and began negotiating

²⁶ As a result of its victory in the Spanish-American war, the United States also added Guam and the Philippines to its growing colonial empire. Full control of the Philippines took a few years and came after an extremely brutal war against Philippine nationalist insurgents, originally U.S. allies. Some estimate this resulted in the death of over one million Filipino non-combatants, in what was then an extremely controversial action, the four year Philippine-American War involving concentration camps, execution of entire villages, and torture by American forces, which included veterans of the brutal Indian Wars in the American West. Not only in the Philippines, but also in the Americas, there was a clear racial component to American views of their superiority.

with Colombia, of which Panama was part. When the Colombian Senate did not ratify the resulting treaty, Roosevelt encouraged a Panamanian rebellion and declaration of independence, which a U.S. warship helped ensure. In return, the new Panamanian government ceded control of the Panama Canal Zone to the U.S. in 1904. In the same year, President Roosevelt pronounced the Roosevelt Corollary to the Monroe Doctrine, proclaiming that the United States had the right to directly intervene in Latin American countries' affairs.

In this spirit, in Nicaragua the U.S. Government encouraged and supported a Conservative armed rebellion against Zelaya, and backed it by military intervention to protect American lives and property. Zelaya resigned in 1910. The Conservatives, though, were unable to maintain stability in the face of nationalists who opposed the U.S. presence. In 1912, U.S. Marines entered Nicaragua, ensuring the survival of the administration of President Adolfo Díaz.

American Occupation and Sandino's Guerrilla Movement

While the United States had briefly occupied Bluefields, Corinto, San Juan del Sur, and Juan del Norte in the 1890s, it was only with the fall of Zelaya that Nicaragua became a virtual U.S. protectorate, in reaction to increasing instability for the country. From 1912 to 1933, except for some months in 1925, U.S. Marines remained in Nicaragua to protect Americans and American investments even though, initially after suppression of the 1912 insurgency, only about 100 remained to protect the U.S. Legation.

In the 1920s, the country was again split between competing Liberal and Conservative armed factions. U.S. Marines had left briefly in 1925, believing the two factions had come to a power sharing agreement, with a Conservative President (Carlos Solórzano) and a Liberal Vice President (Juan Bautista Sacasa, who had previously been Zelaya Vice President). Solórzano, who had already begun pushing Liberals from his government, was overthrown by fellow Conservative Emiliano Chamorro (who had been president from 1917 to 1921).

Worries about stability prompted the United States to send in U.S. Marines again in 1926. Chamorro was deposed and the Nicaraguan Congress elected former President Díaz to the presidency. Sacasa, who had fled Nicaragua, returned to claim the presidency, leading to armed conflict.

The United States sent (former Secretary of War and future Secretary of State) Henry Stimson, who was able to broker an agreement, the Pact of Espino Negro, between Díaz and Liberal General José María Moncada. This allowed Díaz to finish his term and replaced the opposing armies with a single U.S.-trained National Guard. Sacasa refused to sign and left Nicaragua. Disenchanted Liberal Augusto César Sandino (1894-1934), stationed in the north, was the only Nicaraguan general to reject the pact, taking to the mountainous region of Las Segovias to battle the U.S. Marines for the next five years. Sandino led what many deem a nationalist rebellion against American forces in Nicaragua, but the conflict was characterized by violence committed by both sides against civilians. Only when the U.S. Marines left in 1933 did Sandino's guerrillas lay down their arms as part of an agreement with newly-elected President Sacasa, who had returned and been elected in late 1932. Sandino had agreed to secure the departure of the Americans, who had proved unable to defeat Sandino's guerrilla forces, and amnesty and land in the north for his forces.

Meanwhile, the Americans had assisted in the creation of the paramilitary Nicaraguan-staffed and controlled National Guard, led by General Anastasio Somoza García, whose appointment was pushed onto Sacasa. Somoza's control of the National Guard gave him a tool with unrivaled power. Despite President Sacasa's deal with Sandino, who continued to call for the National Guard to be disbanded, and despite a safe-conduct agreement, the National Guard killed Sandino while he was visiting Managua in 1934. This was on the orders of Somoza and against the wishes of President Sacasa, and was followed by massacres of Sandino's followers and elimination of their northern enclave. Somoza used his control of the National Guard to take control of the country, forcing President Sacasa's resignation in 1936. Somoza won an election as

candidate of the National Liberal Party (PLN) with 99.9 percent of the votes in his favor, taking office in January 1937.

2.4. The Somoza Era and Resistance to the Dictatorship

The Somoza era lasted from 1936 until 1979. Somoza ruled until his assassination in 1956. The regime continued under his son, Luis Somoza Debayle, who ruled until his death in 1967. Luis' brother, Anastasio Somoza Debayle, son of the original dictator, took over. In their over 40 years of rule, Somoza and his sons remained close to the United States, which tolerated years of corruption and human rights abuses, by mouthing support for the U.S. during the Second World War and in the Cold War that followed. While Washington was aware of Somoza's moral limitations, it was happy to have such a faithful ally. It is widely believed that President Roosevelt said, "Somoza may be a son of a bitch, but he is our son of a bitch," though a reputable source cannot be found. Roosevelt's successor administrations continued this support, in the name of anti-communism, up until the Carter Administration, which began turning away from such a dictator as it moved towards a policy more supportive of human rights throughout the developing world.²⁷

The Somoza family's control of the National Guard served as their means for controlling the country. Though hardly a complete dictator in the totalitarian sense, Somoza could be extremely cruel to and manipulative of opponents and others

²⁷ In the context of U.S. concerns about the rise of Soviet influence, the United States supported a variety of governments which it perceived to be sympathetic to U.S. interests. Just as the United States supported the Somozas almost to the end, even with their record of human rights abuses and corruption, the United States acted similarly with other regimes. For example, the CIA worked closely with British intelligence to engineer the 1953 Iranian Coup d'Etat, that converted the Shah, Mohammad-Reza Shah Pahlavi, from a constitutional monarch to an authoritarian dictator, resulting in the imprisonment of the democratically elected Prime Minister Mohammad Mosaddegh, who died 14 years later, still under house arrest. Concerns about Iranian nationalization of British oil companies and possible Soviet access to Iranian oils had led MI6 and the CIA to cooperate in planning and executing the coup, code-named Operation Ajax. The operational lead was Kermit Roosevelt, Jr., the grandson of Theodore Roosevelt, who had played such a role in securing U.S. dominance in Latin America in both Panama and Cuba and had articulated the Roosevelt Corollary to the Monroe Doctrine, justifying U.S. intervention in the internal affairs of Latin American countries.

alike. With the Guard, he could be extremely fickle. Disfavor could turn to preference and he generously doled out favors to his favorites. This favoritism and mercurialism, combined with a system of informants, undermined the professionalism of the Guard.²⁸ Likewise, the overall corruption of the Guard served to isolate it from the Nicaraguan people, further tying its fate to the fate of the family.²⁹ Booth writes, “Should Somoza’s subtler pressures fail to produce conformity or silence, the National Guard provided brute force. It beat up, exiled, imprisoned, tortured, and murdered at the dictator’s behest.”³⁰

Carlos Fonseca Amador was an increasingly radicalized leftist involved in the 1950s in the struggle against Somoza. Fonseca had traveled to the Soviet Union and Castro’s Cuba, joined with others sponsored by the KGB, including Tomás Borge Martínez and Silvio Mayorga, to found the group that would become the Sandinista Front of National Liberation (*Frente Sandinista de Liberación Nacional*, or FSLN) in 1961. The organization was named after Augusto Sandino, whom they identified as a hero in the nationalist struggle against American imperialism. An earlier resistance group formed by Eden Pastora in the late 1950s, and active in armed resistance in southern Nicaragua, had used the Sandino name; Pastora later became a leading military commander of the FSLN. The FSLN, whose leaders often suffered imprisonment and torture, came to be the leading force in the movement to violently overthrow the Somoza family dictatorship.

But in the 1960s, the FSLN’s guerrilla actions were generally failures both tactically and in garnering popular support. The group barely survived National Guard attacks in the mid-1960s. Somoza treated members of the small FSLN as or more harshly than any other regime opponents, and many of their leaders suffered extreme tortures at the hands of his security forces.³¹ The strong reaction by the Somoza regime, though, ended up enhancing the FSLN’s popular image by making

²⁸ John A. Booth, *The End and the Beginning: The Nicaraguan Revolution* (Boulder, Colorado: Westview Press, 1982), 56.

²⁹ Booth, *The End and the Beginning*, 57.

³⁰ Booth, *The End and the Beginning*, 60.

³¹ When I was introduced to Sandinista leader Daniel Ortega in July 2002, at a reception in the Embassy, I witnessed the trembling hands that are said to be a vestige of his torture.

it seem a greater threat than it was. With Cuban assistance, by the early 1970s, the FSLN became more successful, this success being enhanced by the Somoza regime's own failings.

Corruption became an art form under the Somoza regime. On his death in the 1950s, the elder Somoza was reportedly the richest man in Latin America. The kleptocracy and the overall brutality of the family's rule eventually turned the middle and business classes against the regime, pushing moderate elements towards support for the leftist Sandinista guerrilla movement. In the end, this unlikely alliance sealed the fate of the regime.

The catalyst for the beginning of the end of the Somoza regime was the powerful December 1972 earthquake, which killed five percent of Managua's 400,000 inhabitants and left most of the survivors homeless. Somoza and his associates are believed to have stolen much of the international assistance that poured in to help in relief and rebuilding, alienating the public even further as they observed that, while most of Managua's structures were unusable and the people homeless, the corrupt regime not only could not properly manage relief and rebuilding, but could benefit itself. The regime's popularity plummeted while the opposition's ranks swelled.

In the wake of the earthquake, the guerrilla movement gained momentum, especially after the 1974 "Christmas Party Raid," which occurred in a home where a party was being given in honor of the U.S. Ambassador. The Ambassador had just departed when FSLN guerrillas stormed the house, taking 40 party-goers, including Somoza officials, hostage. The guerillas negotiated the release of 14 prominent imprisoned Sandinistas, including Daniel Ortega, who were flown to Cuba with the hostage-takers, and the payment of US\$ 1 million. This brought the FSLN, which had seemed of fading importance, world-wide attention and indirectly benefited the movement because Somoza increased oppression, which brought even more sympathy for the FSLN.

In November 1976, FSLN founder and chief ideologue Carlos Fonseca was killed in a National Guard ambush. However, the movement had already learned to cope with its key leaders' death or imprisonment and was able to turn his death into a prestige-enhancing martyrdom.

There are many accounts of the oppressive nature of the regime and the methods used to secure confessions and ensure convictions of regime opponents.³² This harsh rule and the overall corruption led more and more moderates into active opposition. On October 18, 1977, a group of establishment figures called *El Grupo de los Doce* (the Group of Twelve or simply the Twelve, "Los Doce") issued a manifesto from Costa Rica urging inclusion of the Sandinistas in the political process. This group consisted of twelve prominent individuals (three of whom were already secretly Sandinistas) whose statement, following an FSLN offensive, lent world-wide and domestic respectability to the Sandinistas, many of whom were believed to be hard-left communists.

The regime started attacking moderate opponents, such as *La Prensa* editor Pedro Joaquín Chamorro, who was assassinated by the National Guard on January 10, 1978. The unintended result was that the business community and middle class turned further against the regime and sympathy for the guerrilla movement soared. Chamorro's assassination sparked mass demonstrations and strikes. There was growing sympathy from the Catholic Church, which withdrew support for the Somoza regime, and much of the Nicaraguan population. There were, additionally, varying degrees of support from foreign governments, especially direct military assistance from the Soviets and Cubans. Thus, the guerrilla fronts were able to make significant progress against the forces of the Somoza regime.

On August 22, 1978, Eden Pastora (whose *nom de guerre* was Comandante Cero, Commander Zero) led a group of Sandinista guerrillas disguised as National

³² The most famous of such accounts describing his 1956 trial by journalist and victim of the regime, *La Prensa* owner Pedro Joaquín Chamorro Cardenal, *Una Estirpe Sangrienta: Los Somoza* (Buenos Aires: Editorial Triángulo, 1959).

Guardsmen in a take-over of the National Palace during a session of Congress, taking 2,000 hostages. As with the Christmas Party Raid, they negotiated the release of imprisoned Sandinista leaders, including Tomás Borge, who were flown to Cuba. The Sandinistas' ability to take on the symbols of government exposed the Somoza regime as incapable of exerting control. Weeks later, the FSLN led uprisings in five cities, but these were defeated by the National Guard. However, the harshness of the regime's response, thousands were killed, led the Carter Administration to freeze arms shipments to the Somoza government.

2.5. The Victorious Revolution

Through the first half of 1979, the government grew weaker and the guerrillas advanced; the FSLN took over more and more of the country. Finally, on July 19, 1979, FSLN guerrilla units finally took Managua, with power assumed by the of National Reconstruction. Somoza fled, only to be assassinated by Argentine leftists a year later, and the caretakers he left behind were unable to prevent the regime's collapse.

While disparate groups had participated in the Revolution, including the FSLN and its leftist allies as well as of middle class and business groups, the majority of the *Junta* was Sandinistas who, after all, controlled the armed elements, the guerrillas. Although the provisional government was ostensibly representative of all opposition forces and its leadership consisted of the five member *Junta* of National Reconstruction (*Junta de Gobierno de Reconstrucción Nacional*, sometimes JGRN), which initially included two non-Sandinista members, it was obvious from the start that the Sandinista perceived themselves as the victors and leaders of the country. The two non-Sandinista *Junta* members, Violeta Barrios de Chamorro and Alfonso Robelo would soon resign in 1980 in disgust at Sandinista control and policies. The *Junta* ruled by decree. The earliest confiscatory decrees affecting property date from the days immediately after the July 1979 Revolution.

The FSLN moved quickly to set up mass organizations, such as the National Union

of Farmers and Ranchers (UNAG, *Unión Nacional de Agricultores y Ganaderos*), the Sandinista Workers Federation (CST, *Central Sandinista de Trabajadores*), and the Nicaraguan Women's Association (AMNLAE, *Asociación de Mujeres Nicaragüenses Luisa Amanda Espinoza*). Another means of control was the framework of the Sandinista Defense Committees (CDSs, *Comités de Defensa Sandinista*), designed to collect information on those living in their neighborhoods and to allocate projects and rationed goods, roughly akin to similar groups in Cuba. By the year after the Revolution, Sandinista-controlled mass organizations number hundreds of thousands of members.

The new government immediately saw the need to legitimize its actions through a process of legal edicts, or decrees (*decretos*). One of the *Junta*'s first legal acts was suspension of the Somoza-era Constitution of 1974; in its place was adopted the *Estatuto Fundamental* (Fundamental Statute) that served as a quasi-constitution until the enactment of the Constitution of 1987 eight years later.³³ Under this law, discussed elsewhere in greater detail, power was divided among the *Junta*, the Council of State, and the Courts. The court system consisted of the Supreme Court, whose members were appointed by the *Junta*. The Supreme Court, in turn, appointed members of the Courts of Appeal, district courts, and other courts. In its treatment of the judiciary, however, the Fundamental Law revealed that it was not as revolutionary as might be supposed; it specifically left intact the Organic Law of the Courts of Justice of 1894.

Not only did the Fundamental Law guarantee judicial independence, but the same was guaranteed by the American Convention on Human Rights.³⁴ The law and decree notwithstanding, in criminal matters the regime implemented a parallel system of summary tribunals to try former members of the National Guard and, later, members of the U.S.-funded Anti-Sandinista insurgency; these courts were not under the control of the Supreme Court, which opposed their creation.³⁵

³³ July 20, 1979.

³⁴ Decree No. 174, November 23, 1979.

³⁵ Luis G. Solís Rivera and Richard J. Wilson, *Political Transition and the Administration of Justice in Nicaragua* (Miami: Centro para la Administración de Justicia, Florida International

The new *Junta* immediately started issued a series of decrees ordering confiscation of the property of Somoza and his close associates, who are largely recognized to have subverted the government and economic systems for their personal benefit. The stated objective behind these decrees was to take possession of ill-gotten properties, in order to turn them over to the landless poor. However, confiscatory policies soon extended beyond the former ruling clique, to include, for example, anyone who was absent from Nicaragua for over six months or who was deemed to be acting against the Revolution. In addition, in the confusion following the Revolution, properties were often arbitrarily seized by local government or party officials, units of the Sandinista Popular Army (*Ejército Popular Sandinista*), or by groups of peasants (*campesinos*) operating without adherence to the texts of the decree.³⁶

Sandinista statements and actions made it apparent that they envisioned a revolution in Nicaraguan society and its economy. Decision making was centralized in the hands of the FSLN National Directorate.³⁷ The Ministry of the Interior assumed great powers, with extraordinary decrees giving them control of special tribunals, the Sandinista Defense Committees (controlling each neighborhood), and the police.

In a case involving property expropriation, respect for the rule of law and the authority of the Supreme Court, with three non-Sandinista members, was clearly undermined. In 1987, in the “*La Verona*” case, agrarian reform officials had expropriated and redistributed the La Verona farm. In 1986, the Supreme Agrarian Tribunal revoked the expropriation but the administration repeated it. When the Supreme Court ordered the government to return the farm to its legal owners, Minister of Agrarian Reform Jaime Wheelock Roman appeared in court and announced he would not obey the order. The three non-Sandinista judges resigned

University, 1991), 34.

³⁶ This process is discussed in detail below.

³⁷ Solís and Wilson, *Political Transition*, 23.

as a result.³⁸

Appointment of allies as judges and interference in court proceedings by those in power have been consistent features of the Nicaraguan judicial landscape across history.³⁹ Thus, the Sandinista continued a tradition from previous regimes.

Despite Sandinista control of the central government, the armed forces and police, and the judiciary, the degree of control was never as intense as in many other revolutionary societies and there was always some toleration of internal opposition.⁴⁰ Despite nationalization of banks and industry and the expropriation of lands and their subsequent redistribution to peasant cooperatives, the Nicaraguan economy never came close to becoming a completely centrally planned economy in the way that Cuba and the Soviet Union had, with private businesses in Nicaragua surviving throughout the period.

2.6. Challenges of the Sandinista Era

The nation was exhausted from the years of Somoza rule, the earthquake, and from years of conflict. Thus, the *Junta* of National Reconstruction instituted a program of agrarian reform, nationalization of industry, literacy campaigns, and efforts to improve health.

Initially reasonably positive U.S.-*Junta* relations fell apart as the new revolutionary government, the FSLN-dominated leadership, implemented Marxist policies, nationalized many private industries, confiscated private property, and maintained links with Castro's Cuba and leftist guerrilla movements in other Central American countries. The Carter administration had been cautiously supportive of the new government. It had cut off aid to Somoza in 1978 and resumed assistance to the new government. But the new regime's active support for the leftist guerrilla

³⁸ Solís and Wilson, *Political Transition*, 27.

³⁹ Solís and Wilson, *Political Transition*, 27.

⁴⁰ Solís and Wilson, *Political Transition*, 29.

movement in neighboring El Salvador, repression of dissidents, Marxist economic policies, and military links with Cuba led the Carter Administration to reduce assistance. The Reagan Administration finally ended it in 1981.

After the 1980 U.S. election, the administration of Ronald Reagan, who took office in January 1981, became actively hostile to a regime that it saw as a Soviet and Cuban tool to spread Communist revolution throughout Central America. The Reagan Administration (1981-1989) not only cut off aid to the new Nicaraguan government, but began to provide assistance (some legal and some not) to anti-Sandinista guerrillas, a mix of former National Guardsmen and other Somoza supporters plus various others alienated by Sandinista human right abuses, including indigenous groups and even former members of the FSLN guerrilla movement (notably Eden Pastora). These guerrillas were known as counter-revolutionaries, *contra-revolucionarios*, and were dubbed the Contras.

In its zeal to fight the Cold War threat that the Reagan administration presumed Nicaragua to be, it resorted to widely criticized actions to arm and support an insurgency against the Sandinista government, using whatever elements could be coaxed into battling the revolutionary regime. As noted, the Contras included former National Guard elements, whose earlier human rights abuses had been key element in generating widespread popular support for the FSLN guerrillas who were to topple the Somoza government. While some other Contras had played a role in resisting Somoza or even had been Sandinistas disillusioned by the non-democratic tendencies of the new regime, the National Guard membership was the major element among the Contra/Resistance's military arm's northern front, based in Honduras, trained and equipped by the CIA and trainers sent by the anti-communist Argentine government. Initially with approval of the U.S. Congress, tens of millions of dollars flowed to the anti-Sandinista resistance.

The United States' tactics to undermine the Sandinista government included imposition of economic sanctions in 1985, the controversial mining of Nicaraguan harbors, which the World Court ruled was illegal, and attempts to sway domestic

U.S. public opinion.⁴¹ Whatever one thinks of U.S. actions, it is true that the Sandinista People's Army became the largest, by far, in Central America, that Cuban and Marxist influence permeated Nicaragua, that the Sandinista regime did actively support leftist guerrillas in El Salvador, that attempts were made to implement a Marxist economic system, and that human rights abuses equaled, or exceeded, those committed by the Somoza government.⁴²

In 1982, in response to Contra attacks, the Sandinistas imposed a state of emergency that was to last until 1988. Under a "Law for the Maintenance of Order and Public Security," "Anti-Somocista People's Tribunals (*Tribunales Populares Anti-Somocistas*) could order indefinite holding, without trial, of suspected "counter-revolutionaries". The State of Emergency also curtailed or cancelled many civil liberties, including freedom to demonstrate peacefully, freedom of the press, freedom of speech, and the freedom to strike, and the inviolability of the home. The regime suspended all independent news broadcasts and the Sandinista censor ordered private radio stations to include six hours a day of broadcasts from the government station.

2.7. The 1984 Elections, the Contras, and the Deal for the 1990 Elections

In 1984, the first elections following the Revolution were held. The leading opposition candidate, bank executive and former member of *Los Doce*, Arturo Cruz, boycotted the election following U.S. pressure. As a result, Daniel Ortega and the FSLN won 67 percent of the vote.

Meanwhile, the U.S. public's opposition to support for the Contras grew as they seemed unable to garner significant victories or support inside Nicaragua and who

⁴¹ To generate support for the Contra efforts, the Reagan administration had also created the Office of Public Diplomacy for Latin America and the Caribbean, later found to be illegal by the Comptroller General. This office was tasked with pressing administration views to the American public. Its leader, Otto Reich, privately pressed journalists to be more hostile to the Sandinista government and more supportive of the Contras. In one instance, the office spread a false rumor that U.S. reporters were provided with prostitutes in exchange for favorable coverage of the Sandinista government, a rumor repeated publicly by Reich.

⁴² Interview with U.S. Embassy Managua Political Officer David Brooks, spring 2002.

used human rights violations - such as murder, rape, torture, and mutilation - as a deliberate tactic to terrorize their opponents. This and the disclosure that of the secret mining of Nicaragua harbors led the U.S. Congress to cut off all formal U.S. financial support for the insurgency in 1985.

In response, the Reagan Administration created a secret, and illegal, program to raise money, primarily from third countries but also from private sources, to provide secret financial assistance to the Contras, run out of the National Security Council, in violation of U.S. law. Using secret Swiss bank accounts, it created its own supply and training organization without any legally-required accountability. The desire for funding to fight this Cold War action was so intense that the members of the administration resorted to creating an elaborate scheme to take advantage of a plan to secure release of hostages in Lebanon by having Israel provide U.S. missiles and parts to the Islamic Iranian government, which badly needed them to prosecute the Iran-Iraq War with the aging U.S. arms left after the Shah's fall. Building on an agreement to give missiles and parts to replace those Israel supplied to Iran, they built in a profit from the Iranians that was diverted to support the Contras. The plan fell apart in late 1986 when it became public, leading to the downfall of many Reagan Administration officials. There are also allegations that the administration knowingly allowed use of drug money to fund the Contras.

Nonetheless, through the 1980s, the Contras were causing severe difficulties for the Sandinista government. Strident Reagan administration opposition seemed to doom all efforts to negotiate a settlement. Still, when the various schemes to support the Contras fell apart, the group declined in importance, though it left a shadow that likely contributed to Sandinista willingness to hold free elections in 1990.

2.8. Sandinista Electoral Loss, the Piñata, and "Rule from Below"

Because of the pressure presented by the Contra resistance movement and U.S.

economic sanctions, along with domestic non-Sandinista political pressures, the Sandinista government began negotiating with the Contra leadership and an agreement was reached to hold nationwide presidential and national assembly election on February 25, 1990. The elections went forward and, despite Sandinista control of much of the media and the state security apparatus, international observers declared the elections free and fair.

This resulted in the surprise victory of the combined anti-Sandinista opposition, the National Opposition Union (UNO, *Unión Nacional Opositora*) a shaky grouping of 14 parties, and its presidential candidate Violeta Barrios de Chamorro, who, as widow of martyred journalist Pedro Chamorro, had served as one-time member of the original post-revolutionary *Junta* of National Reconstruction. Chamorro's credibility was enhanced by the assassination of her husband (though a prominent member of the old elite, he had spoken against the human rights abuses of Somoza), and by her resignation from the *Junta* because of Sandinista domination of the government and security forces and their growing Marxism and human rights violations. Reasons for the UNO and Violeta Chamorro's victory included a secret vote that was determined to be free of coercion, the presence of international observers, the dire economic situation, UNO's anti-conscription platform, and the overall deterioration of the Sandinistas' popularity due to economic problems, their high-handedness, and human rights abuses.⁴³ Chamorro received 54.7 percent of the votes and Daniel Ortega got 40.8 percent of the vote, in elections widely hailed as free and fair. The UNO coalition won a majority of National Assembly seats.

However, two days after his defeat, in a Radio Sandino broadcast, Ortega announced that the Sandinistas would "rule from below."⁴⁴ Furthermore, in the two month period between the February 1990 electoral victory of the UNO coalition and Violeta Chamorro and their April assumption of duties, the government continued to be run by Sandinista officials and the Sandinista-dominated

⁴³ Solís and Wilson, *Political Transition*, 34.

⁴⁴ Republican Staff of the U.S. Senate Committee on Foreign Relations, *Nicaragua Today: A Republican Staff Report to the Committee on Foreign Relations of the United States Senate* (Washington: U.S. Government Printing Office, 1992), 1.

legislature.

In this brief two month window, the Sandinista-controlled assembly and President Ortega implemented a series of laws to formalize many of the property transfers and occupations that had resulted from the decade of Sandinista rule. This effort, known as the *Piñata* (after the treat-grabbing children's game) legitimized Sandinista leaders' own possession of confiscated properties, typically already in their hands, often involving quite ample dwellings of the old elite, giving rise to many of the legal problems that are the focus of this work.

Still, the newly elected officials took their positions. This was the first peaceful, democratic transfer of power in Nicaraguan history.⁴⁵

2.9. The Chamorro Administration

The first years of the Chamorro administration were characterized by a delicate balancing act. The Sandinistas were willing to concede electoral defeat (probably because of concern of direct U.S. intervention on the side of Chamorro, the internationally recognized victor), but also conditioned this concession on having their people remain in their positions in government (including the judiciary and the army). So, with Sandinista control remaining in the bureaucracy and Army, Chamorro's room for maneuver was limited.

FSLN influence in the administration continued. First, the military, police, and civil servants were overwhelmingly FSLN supporters and they remained in their positions. Initially, all judges, virtually all FSLN stalwarts, remained. Furthermore, the FSLN had other means to pressure the government, including its ability to organize the masses. On May 8, 1990, the FSLN-controlled unions, in conjunction with the Confederation of State Employees (CTE), launched a nationwide strike to protest the new government's planned economic reforms which

⁴⁵ The Carter Center, *Nicaragua Property Disputes* (Atlanta, Georgia: The Carter Center, Emory University, 1995), 1.

included price increases, changes in agrarian policies, and proposed reduction of government bureaucracy.⁴⁶

Chamorro's ability to govern was further undermined by the need to exert energy to hold together the disparate UNO coalition, representing many different factions. Her son-in-law, Antonio Lacayo Oyanguren, essentially serving as chief of staff, handled most of the daily business of governing. Lacayo long had close business links with leading Sandinistas. He also gained a reputation for corruption.⁴⁷

Chamorro held a tenuous position between the FSLN and the conservative UNO coalition.

Almost from the day it took power, the Chamorro government was a stepchild. All groups recognized the necessity of a relationship with the Chamorro government, but even though Violeta Barrios de Chamorro personified the Nicaraguan people's desire for peace, neither the UNO nor the FSLN recognized the government as the legitimate representative of its political, social, and economic aspirations for Nicaragua. The strong constitutional powers of the executive branch theoretically should have given the president adequate control over the political and economic systems, but the transition agreements left the Sandinistas with control over the military and the police, thus curtailing the executive branch's power of coercion. The Sandinistas also continued to control the strongest labor unions, which became a powerful political bloc on the issue of economic reforms. Although increasingly divided, the Sandinistas provided, as Daniel Ortega had warned in his concession speech, a critical opposition that limited the government's range of action.

The president was further weakened by her estrangement from the political and economic coalition that had supported her during the election. Distrust initially was sparked by the transition agreements, which much of the UNO viewed as too accommodating to a political movement that had lost an election and would lose further support when no longer in power. The political parties composing the UNO coalition were quick to establish their own bases of support within the legislature and the municipalities. Although few of the parties reached for grassroots support, whatever was developed was done so by legislators and municipal officials to enhance their personal power bases or for their own parties, not for the central government or the UNO coalition. From the beginning of the Chamorro

⁴⁶ Solís and Wilson, *Political Transition*, 34-35.

⁴⁷ Republican Staff, *Nicaragua Today*, 97-102.

administration, UNO leaders were critical of the tight family networks that controlled the executive branch they began to accuse the president of nepotism and criticize the government for using its prerogatives for private gain.⁴⁸

In the first years of Chamorro's administration, there was great hope among many of those affected that the confiscations would be reversed and properties returned. Such hopes, however, overlooked both the residual power of the Sandinistas and, more importantly, the political and social impossibilities of forcing large numbers of *campesinos* from the lands they had inhabited and worked for over a decade. Members of the resistance, who had been lured to the negotiating table with promises of land for disarmed combatants, clamored for their share. Former members of the Sandinista People's Army, which was to be greatly reduced in size as part of the peace agreement (from being by far the largest standing army in Central America), were also promised land. In fact, these groups of ex-combatants from both sides found common ground in demanding the land promised them, at times engaging in armed uprisings to press their rights.

Chamorro's inability to restart the economy and gain promised U.S. support, led to increased reliance on Sandinista support, bringing U.S. threats to further withhold aid. Given the powerful factors limiting Chamorro, the nearly seven years of her government could be said to have been successful in moving the country as a whole towards a non-revolutionary civil society. Democratic institutions were consolidated, national conciliation was advanced, the economy was stabilized, many state-owned enterprises were privatized, human rights abuses were curtailed, and, most importantly, a new civil war was averted. In February 1995, Daniel Ortega's brother Humberto, head of the Sandinista People's Army, was replaced by General Joaquín Cuadra, pursuant to a new military code. Cuadra, though a Sandinista, sought greater professionalism in the rechristened Army of Nicaragua. Likewise, in 1996, a new law gave civilian control over the police and professionalized them. However, the most pressing domestic issue, land reform,

⁴⁸ Tim Merrill, ed., *Nicaragua: A Country Study* (Washington: General Printing Office for the Library of Congress, 1993), at <http://countrystudies.us/nicaragua/47.htm> (accessed July 1, 2011).

presented a seemingly intractable problem. It was not possible to meet the demands from various sectors with a stake in the property question; the amount of land was finite and Nicaragua, always a poor country, was especially impoverished after two decades of disorder stemming from a string of disruptions: earthquake, civil war, Marxist rule, and political conflict.

Politically, the country remained in flux. UNO, a cumbersome coalition unified by little more than anti-Sandinista sentiment, fell apart. Yet, on the other side, a faction of Sandinistas alienated by the *Piñata* and heavy-handedness of the FSLN leadership, broke from the traditionally disciplined Sandinistas. This moderate faction, the Movement for Sandinista Renewal (MRS, *Movimiento de Renovación Sandinista*), was headed by Sergio Ramírez, writer, former member of *Los Doce* and Vice President to Ortega from 1985 to 1990. Despite this split and allegations of sexual abuse by his stepdaughter, Ortega remained as head of the main Sandinistas.

2.10. The Alemán Administration

Ortega again ran for president in the October 20, 1996 elections, referring to himself as a centrist and expressing regret for the excesses of the Sandinista government. But the former mayor of Managua, the center-right Liberal Alliance candidate Arnold Alemán, won the election, judged as free and fair by international observers, and was sworn in as president on January 10, 1997. Alemán, who had spent time imprisoned by the Sandinistas, had forged the Liberal Alliance out of the PLC (*Partido Liberal Conservador*), the *Partido Neoliberal* (PALI), *Partido Liberal Independiente de Unidad Nacional* (PLIUN), and the *Partido Liberal Nacionalista* (PLN).

A major challenge to Alemán and the country came in November 1998 when Hurricane Mitch rolled through Central America and heavy rains caused the deaths of nearly four thousand Nicaraguans; rendered hundreds of thousands, perhaps over a million, homeless; destroyed schools, hospitals, water, sewage, and

electrical facilities; washed away roads and communications; destroyed crops, killing livestock; and even washing Contra war landmines to new locations.⁴⁹

Despite the challenge of rebuilding after Mitch, Alemán successfully promoted the country's economic recovery, reducing inflation, increasing GDP, increasing foreign investment, rebuilding roads that had deteriorated during the 1980s, and launching a program to build schools.

However, Alemán allegedly forged a cynical alliance with the Sandinistas to rule the country, by giving jobs and other privileges to Sandinista leaders. Furthermore, corruption under his administration was rampant. His successor's administration exposed a scheme involving Alemán and his family to steal millions from the government and he ended up convicted and imprisoned after leaving the presidency. Not only have foreign governments frozen his bank accounts and, in the case of the U.S., banned him from entry, but Transparency International ranked him as the world's ninth most corrupt leader in history for stealing about US\$100 million.⁵⁰

2.11. The Bolaños Administration

In the 2000 mayoral elections the Sandinistas won control of the largest cities in Nicaragua, with popular FSLN member Herty Lewites easily winning Managua. Nonetheless, in the next year, Alemán's Vice President, Enrique Bolaños Geyer, succeeded him as president, winning the 2001 elections against a reorganized Sandinista-led alliance called Convergencia (or Convergence), which had sold itself as a gentler, more democratic and market-friendly, center-left grouping.

Bolaños, who beat Ortega by 14 percentage points, had vowed economic improvements, more jobs, and support for the U.S.-led war on terrorism, and, most

⁴⁹ Alexa Smith, "Call-In Day Set to Push For Landmine Ban," *World Faith News* (November 23, 1998), <http://www.wfn.org/1998/11/msg00207.html> (accessed October 10, 2010).

⁵⁰ Transparency International, *Global Corruption Report* (2004).

significantly, to fight corruption. A U.S. educated business owner and long-time anti-Sandinista leader, Bolaños had been jailed by the Sandinista government in the 1980s. The U.S. government and business people had hoped that Bolaños, with a reputation as a man of honesty and character, would be able to improve the economy and lesson the endemic corruption in Nicaragua, characterized by both his PLC predecessor Alemán and the Sandinistas, who were simply following in the centuries-old Nicaraguan tradition of corruption and influence-peddling.

These hopes proved unfounded as the elite members of both the PLC and FSLN saw common ground in resisting any actions that might undermine the basis for their own wealth. Bolaños' administration was challenged from the start by Alemán's partisans when he went after Alemán and his cronies for corruption. Bolaños did succeed in lifting Alemán's immunity⁵¹ and Alemán was convicted of corruption, embezzlement, and money laundering and sentenced to twenty years imprisonment in 2003. This earned Bolaños the enmity of Alemán's loyalists, who were also suspected of profiting from public funds during Alemán's presidency and many of whom benefited from absolute immunity by virtue of their parliamentary and electoral positions. PLC Alemán supporters in the National Assembly allied with the Sandinistas (many of whom also were concerned about the new crackdown on corruption) to strip Bolaños and his ministers of their powers, in what became known as "*El Pacto*" (the Pact), pushing for his resignation or impeachment. Other Central American presidents, the U.S., the OAS, and the EU together opposed this "slow motion coup" and implementation of the constitutional provisions that would have undermined Bolaños' presidential powers was delayed.

Beyond exposing corruption, the biggest success of the Bolaños administration was getting the World Bank to write off 80 percent of Nicaragua's debt, totally about US\$ 3,000 million, nearly half of its foreign debt of US\$ 6,500 million.⁵²

⁵¹ In Nicaragua, former presidents retain a seat in the assembly, thereby gaining immunity from all criminal prosecutions.

⁵² Allbusiness.com, "World Bank Forgives 80 Percent of Debt," <http://www.allbusiness.com/caribbean/750948-1.html> (accessed September 4, 2011).

2.12. *The Pact and Ortega's Return*

In 2001, as in 1996, Ortega had been unsuccessful in his run for the presidency. However, following Bolaños' election as president in 2001, the FSLN entered into the Pact ("*El Pacto*") with the other leading party, the PLC, to constrain the rise of reformist parties on both the left and the right, represented by the Movement for Sandinista Renewal (MRS) and the Nicaraguan Liberal Alliance (ALN). One achievement of the Pact was to lower the percentage necessary to win an election in a first round from 45 percent to 35 percent of the total votes.

In moves widely perceived as politically-motivated in nature, Ortega and his common-law-wife converted to Catholicism, with a church wedding, and Ortega dropped his previously pro-choice agenda in favor of a platform protecting unborn fetuses.⁵³

The 2006 Elections and Political Evolution of the Sandinista Leadership

On November 5, 2006, both presidential and parliamentary elections were held. Finally, after three unsuccessful candidacies (1990, 1996, and 2001), Daniel Ortega was successful in winning the presidency, although with only 38 percent of the vote, over Eduardo Montealegre, candidate a movement of Liberal reformers disavowing the corruption of the Alemán presidency, and Alemán's PLC's candidate José Rizo. The Reformist Sandinista, Edmundo Jarquín, received single digits. Interestingly, Ortega had chosen as his vice presidential candidate Jaime Morales, who had been leader of the Contras that had battled the Sandinista government in the 1980s and whose confiscated house Daniel Ortega now owns and lives in (more on this later), illustrating the fluid nature of enmities and alliances in Nicaragua.

⁵³ Roger Burbach, "Et Tu, Daniel? The Betrayal of the Sandinista Revolution." *Counterpunch* February 27-March 1, 2009. As will be seen in Chapter 6, Sandinista leaders include many descendants of old elite families. Some of these are now critics of the FSLN, including Ernesto Cardenal, Gioconda Belli, and Carlos Fernando Chamorro.

Despite running as a more centrist version of his old self, Ortega received prominent congratulations from Venezuelan leader Hugo Chávez and Cuban dictator Fidel Castro. Still, in opposition, the Sandinistas had become more tolerant of business. Indeed, many of them ran businesses. Even while in power, the party had been forced by practical necessity and popular resistance to back off of its strongest Marxist goals, so this evolution represented a natural political development. Still, Daniel Ortega's regaining of the Presidency is the natural point at which to break off my analysis, with strong evidence that further resolutions of property claims are declining and that there will be a slight undoing some of the claims settlements by his predecessor administrations.

CHAPTER 3: THE EVOLUTION OF THE LEGAL ENVIRONMENT IN NICARAGUA

For any discussion as to the long-term consequences of Sandinista land policy, it is important to place the Sandinista legal regime in its historical context. Important questions include: (1) the degree to which the Sandinista legal regime was revolutionary or evolutionary, (2) to what extent Sandinista decrees were based in existing legal practice, (3) how those decrees have retained validity and been integrated into the current Nicaraguan legal system, and (4) whether the process was so full of anomalies as to render any attempt to analyze them as a proper legal regime impossible. Was the process revolutionary or did the Sandinista Revolution consist largely of relatively modest modifications to existing norms? To address these questions, it is necessary to look at the development of Nicaraguan property law up to the eve of the Revolution, examine the Revolutionary decrees, and then look at current attempts to deal with the aftermath of Sandinista policies.

3.1. Overview of the Legal System

Nicaraguan legal practice largely followed the Spanish American colonial and civil law norms. I will argue that, while the Sandinistas claimed a revolutionary new regime, especially in their internal theoretical pronouncements, most preexisting concepts continued unchanged, notably the Civil Code and the role of the notary in all legal transactions. The consensus in Nicaragua was that, unless clearly overruled by decrees of the Revolutionary *Junta*, existing laws and practices were implicitly considered to remain valid.

Following the 1987 Constitution that replaced the *Junta* with a president and national assembly, initially still dominated by the FSLN until the election of 1990, regular laws replaced the method of legislating through decree. And, through the

defeat of the Sandinistas in 1990 until the present, a legal system essentially the same as the pre-revolutionary system has returned, leaving the main question one of how to deal with contradictory laws and decrees concerning expropriations and land allocations and with determining the legitimacy and legality of actions taken under one or more decrees or laws. Discussion of specific legal issues is below. Not an easy task, it is one with which several administrations have grappled, with limited success.

This discussion will look at the written law and formal practice of the series of Nicaraguan governments. However, an equally important aspect to any discussion of the revolutionary nature of the Sandinista legal regime is how respect or, more commonly in the Nicaraguan context, the lack of respect for law and the legal system affect the practical application of the laws and the utility of the legal system.

As will be shown, disrespect for or abuse of the law is a perpetual character of the Nicaraguan landscape. In my opinion, disrespect by the ruling elite for law and legal process is a major component of the undemocratic political control which has typified most of Nicaraguan history. A partial exception has been the period of weak, though largely democratic, government since the Sandinista electoral defeat of 1990; still, this latest period was marked as a time when members of both the Sandinista elite and other opportunists took advantage of the absence of an effective process to resolve property disputes in order to take control of properties. The one extra-legal counter-balance to elite land seizures has been land invasions by the poor, onto both urban and rural lots where they rapidly established shacks and, later, more permanent structures, creating their own reality on the ground, a reality that has largely been irreversible because of the political consequences and simple resource demands of trying to displace large numbers of people. And during and after the Sandinista government, FSLN militants used such mass actions, leveraging the chaos resulting from such invasions, both to advance their own land-seeking agendas and, arguably, at times to divert attention from other activities.

3.2. A Brief History of Land, Law, and Corruption in Nicaragua

In colonial times, Spanish settlers simply took what they wanted, enslaved the indigenous peoples, and established the facts on the ground whereby they controlled large territories. In doing so, they frequently disregarded both Royal decrees and the moral arguments of those members of the Catholic clergy who were sympathetic with the plight and rights of the Indians.

Just as the United States' legal system emerged out of the English system, Nicaragua's legal system came out of the Spanish Colonial legal system. Though its system has been greatly influenced by the later borrowing of civil codes, with their ultimate origin in Napoleonic France, the basic procedures and assumptions remain those of the parent Spanish system.

The Colonial Legal Regime and Economy

Colonial law was a fairly mixed system and contained elements dating back to a mixed Roman and Visigothic code from the year 654 (*Fuero Juzgo*), indigenous medieval Spanish laws (*Fuero Real* of 1255), mixed Roman-influence Spanish medieval compilations (*Las Siete Partidas* of 1265), and court decisions (*Leyes de Estilo* of 1310); later, somewhat more modern compilations came into play (*Recopilación de las Leyes de los Reinos de las Indias* of 1680) that established that Spanish law should govern throughout the Americas where there was not specific legislation for the colonies.⁵⁴ In other words, the legal system was a mess. As Golbert notes,

The absence of effective local governments and administration in Latin America, coupled with the extremely complex mass of detailed regulations that characterized Hispanic American colonial law, led readily to excuses

⁵⁴ Albert S. Golbert and Yenny Nun. *Latin American Laws and Institutions* (New York: Praeger, 1982), 42.

for noncompliance. Not vested with any power of interpretation, colonial officials often questioned the applicability of new legislation, informing the Spanish authorities of the reasons for delay. Thus, a law might not go into effect until several years after its promulgation.⁵⁵

Following Peninsular practice, the King gave royal land grants to individuals who also received considerable responsibilities and rights for the Indians in the territory granted, with the right to use the land's resources and to tax the Indians.⁵⁶ These lands were the precursors to the large plantations.

The actual method of registering properties that was to evolve into the modern Nicaragua system (discussed below) was introduced in the late colonial period. The *Cedulas Reales* (Royal Decrees) of May 9, 1778 and April 16, 1783 established a mortgage registration system that used folios to record land transactions.⁵⁷

Colonial Abuses

From the beginning of the conquest of Central America, economic behavior was characterized by widespread greed and disregard for authority. In the initial stages of the Spanish conquest, the focus of the first Spanish invaders was for the quick accumulation of wealth that could be of use in rapid social and economic advancement back in Spain; “the conquest of Central America and the two decades after it bear more resemblance to a large raid than to an occupation.”⁵⁸ Initially, the Indian population they encountered there was plentiful and useful both to profit-making (gold, agriculture) as well as export to the now depopulated (by disease

⁵⁵ Golbert and Nun, *Latin American Laws and Institutions*, 42.

⁵⁶ Gartrell Bryce., *Land Tenure and Cadastral Issues in Nicaragua* (Orono, Main: University of Maine, 1997) ,
<http://www.spatial.maine.edu/~onsrud/Landtenure/CountryReport/Nicaragua.html> (accessed September 27, 2011, 10).

⁵⁷ Brian Trackman, William Fisher, and Luis Salas, *The Reform of Property Registration Systems in Nicaragua: A Status Report* (Development Discussion Paper No. 276, October 1999), 1.

⁵⁸ Murdo MacLeod, *Spanish Central America: A Socioeconomic History, 1520-1720* (Berkeley: University of California Press, 1973), 38.

and forced labor) Caribbean Islands and the newly discovered Peru.⁵⁹ As early as 1529, Governor Pedrarias Dávila was openly reporting to the King of Spain about the export of Indian slaves from Nicaragua to Panama and Peru; such exports were largely in violation of the royal regulations permitting only enslavement of Indians captured in war.⁶⁰ Nicaragua's Indian population dropped from 600,000 taxpayers in 1520 to about 6,000 in 1570, perhaps a third of the loss due to slaving, the rest due to disease, revolts, starvation, and overwork.⁶¹ Eventually, lack of population and firmer royal control ended the slave trade and many slaves were freed over the objection of the local Creoles and Spaniards.⁶²

Corruption of officials involved in monitoring tribute imposed on the Indians was rampant and terrorized Indians were disinclined to report abuses to honest officials.⁶³ Thus, from very early on, personal interest by the conquistadors and early settlers led to an almost complete disregard of Spanish legislation, in addition to this widespread corruption.⁶⁴ This created a general atmosphere of lawlessness that, we shall see, still lingers in the Nicaraguan elite. The early colonial disregard for law made the average Spanish settler very uncertain of his rights to *encomienda* (authority over Indian payers of tribute in the form of products or labor) and land; “[t]he picture that emerges is one of the granting, voiding, and re-granting of *encomiendas*, land titles, and other privileges”.⁶⁵ Later, largely in response to hunger for land resulting from the indigo boom, a first great period of land grabbing and titling occurred in 1590-1630, which often involved illegal seizures of Indian land.⁶⁶ Thus, during the colonial period, the powerful learned that the legal system could be ignored or misused for personal benefit.

The Legal System Following Independence and the Codification Movement

⁵⁹ MacLeod, *Spanish Central America*, 47-63.

⁶⁰ MacLeod, *Spanish Central America*, 43.

⁶¹ MacLeod, *Spanish Central America*, 52.

⁶² MacLeod, *Spanish Central America*, 55.

⁶³ MacLeod, *Spanish Central America*, 351.

⁶⁴ MacLeod, *Spanish Central America*, 55.

⁶⁵ MacLeod, *Spanish Central America*, 104.

⁶⁶ MacLeod, *Spanish Central America*, 178.

Following independence from Spain in the 1820s and the eventual break-up of the Central America states into separate independent nations, Nicaragua borrowed legal concepts from other Latin American nations and from Napoleon-influenced Spain. One of the basic accoutrements of national independence adopted by all Latin American nations was the written constitution. A staple of the constitutional system is the supremacy of the constitution over other legislation. In case of conflict the Supreme Court was bestowed with the power to determine the constitutionality of all legal acts.⁶⁷

Codes, divided by subject matter (criminal, civil, labor, etc.), have been enormously important to Latin America and, in Latin practice, as in any civil law or Napoleonic system, judges basing their decisions primarily on the code provision.⁶⁸ The first Civil Code in Nicaragua was that of 1867, which included an article that established department-based registries (*Registro Conservador*) to record ownership, mortgages, and other ownership in real property.⁶⁹

The most important step in the regularization of the Nicaraguan system, particularly for this discussion, was the adoption in 1904 of the current Civil Code under the administration of President Jose Santos Zelaya.⁷⁰ This code remains in force to the present, though subject to minimal amendments and to other, subsequently-passed law.⁷¹ This code today remains important to property law.

The 1904 Civil Code also authorized a new registry system, in which the *Registro Conservador* was replaced by the *Registro de la Propiedad Inmueble y Mercantil* (Registry of Immovable and Mercantile Property). This new registry included three different registry books: one for property ownership, one for mortgage, liens, and other financial interests, and one for limitations, prohibitions, and legal rulings

⁶⁷ Golbert and Nun. *Latin American Laws and Institutions*, 4.

⁶⁸ Golbert and Nun. *Latin American Laws and Institutions*, 6.

⁶⁹ Trackman, Fisher, and Salas, *The Reform of Property Registration Systems in Nicaragua*, 3.

⁷⁰ M. Ortiz, *Código Civil de la República de Nicaragua*. 8th ed, Vol. I. (Managua, Nicaragua: Editorial Jurídica, S.A., 2005).

⁷¹ Email from Leónidas Henríquez dated January 31, 2005.

affecting a property.⁷²

An equally significant and related development was the 1904 adoption of the current system used for notaries. In the Latin American system in general, including Nicaragua, notaries hold a fundamental place in all legal transactions. Understanding the role of the notary is important because this role is fundamental to legal processes in Nicaragua (as elsewhere in Latin America). This role has remained constant from before 1978 until today and, as will be shown later, notarial impropriety is alleged to have played a major part in illegal property transfers in Nicaragua. In summary, each notary has his or her own protocolo (protocol) which consists of a series of volumes, normally separated by year, of consecutively-numbered sheets of special legal papers that are placed chronologically by date of execution. These protocols are cited in other documents to establish that a legal transaction has taken place. For that reasons, a questionable entry into the protocol brings into question that transaction and any subsequent transaction based on it. The role of the notary is such that a notary's involvement is key to both fraudulent and legitimate transactions and the notary has significant powers to facilitate fraudulent transactions.⁷³

In addition to the codes, there is regular legislation passed through the legislature and approved by the executive and decrees that the executive (president, ministers, governors, mayors) has been empowered to issue, which are unilateral declarations, within the scope of their powers, with the force of law.⁷⁴ Jurisprudence, juridical custom, and stare decisis are largely unknown in Latin American legal traditions.⁷⁵

Corruption in the 19th Century

⁷² Trackman, Fisher, and Salas, *The Reform of Property Registration Systems in Nicaragua*, 4.

⁷³ The notarial function will be examined in detail in Chapter 4, and specific transactions where a notary played an important role will be dissected in Chapter 7.

⁷⁴ Golbert and Nun. *Latin American Laws and Institutions*, 10.

⁷⁵ Golbert and Nun. *Latin American Laws and Institutions*, 12.

After independence and the regularization of the Republic's legal regime, arbitrary abuses and elite control of the legal system continued. After the defeat of William Walker, the Leon and Granada oligarchs joined together to share control of the country, formulating the Constitution of 1858, which limited voting rights to property owners and legalizing informal private armies. When the 30 years of Conservative party rule was replaced by the Liberal government of Zelaya, the Constitution of 1893 was quickly adopted.

Throughout the century, the elites continued to use the legal system to ensure their economic dominance, including of land. From the middle of the 19th Century, large coffee and fruit plantations started extending over the most productive lands and the owners pushed small landholders off of their lands. The government took Indian lands for privatization, using taxation, auctions, and confiscation, encouraging European and American immigrants to bring capital to set up large coffee plantations.⁷⁶ Zelaya implemented strict vagrancy laws largely to address the need for labor on coffee farms.⁷⁷ Long neglected grants suddenly became valuable; those working the land became labor for the large estates.⁷⁸

3.3. Legal and De Facto Situation under the Somozas

Despite a series of constitutions implemented by the Somozas, the basic legal system (Civil Code, notaries, and property registration system) remained unchanged. As early as 1939, Anastacio Somoza adopted a new constitution, which not unusually recognized the inviolability of private property yet subjected it to the interests of society at large ("*función social*"), giving the government certain controls over it, such as taxation, ability to restrict sale, and even expropriation.⁷⁹ It also decreed that unused *latifundia* land would be redistributed to promote an

⁷⁶ Craig S. Revels, *Coffee in Nicaragua: Introduction and Expansion in the Nineteenth Century*, 6, <http://sites.maxwell.syr.edu/clag/yearbook2000/revels.pdf> (accessed September 24, 2011).

⁷⁷ Revels, *Coffee in Nicaragua*, 7.

⁷⁸ Bryce, *Land Tenure and Cadastral Issues in Nicaragua*, 10.

⁷⁹ Knut Walter, *The Regime of Anastacio Somoza* (Chapel Hill: University of North Carolina Press, 1993), 93.

increase in the number of small and medium agricultural properties.⁸⁰

The last pre-revolutionary constitution of Nicaragua was promulgated in 1974.⁸¹ The structure of the government, on paper, was quite standard. There was an executive branch headed by the President, a legislative branch consisting of a Congress of two chambers (Chamber of Deputies and Senate), and a judicial branch consisting of the Supreme Court of Justice, the courts of appeals, the Superior Labor Tribunal, and other courts.

Disrespect for the Rule of Law and Abuse of the System under the Somozas

Though the basic legal system remained intact, the Somoza era was best characterized by massive abuse of military (National Guard) and political power for the personal economic benefit of the ruling clique, later cited by the Sandinistas to justify their own land confiscations and redistribution.⁸² The Sandinistas were largely right, though hypocritical, when they criticized the abuses of the Somoza era. In that period, the elite who profited extended far beyond the regime participants themselves. As one commentator has written, “To discount the [Somoza] regime as just another Latin American military dictatorship bent on familial enrichment through the corruption of the state’s power misses a central point: that the figure of the dictator and his coterie were but the public face of a much wider and deeper network of economic and political domination.”⁸³ This is what Walter referred to as “that combination of public and private institutions and economic interests that together constituted the pre-revolutionary state.”⁸⁴

Examples are plentiful. The Second World War also provided Somoza new opportunities for enrichment. He moved quickly to seize the assets of German nationals residing in Nicaragua, who were heavily involved in running coffee

⁸⁰ Walter, *The Regime of Anastacio Somoza*, 93.

⁸¹ *Estatuto Fundamental de la República de Nicaragua*, la Gaceta, April 24, 1974.

⁸² See Jaime Wheelock Román, *La Verdad Sobre La Piñata: Los Cambios En La Propiedad Agraria Julio 1979 - Abril 1990* (Caracas: IPADE, 1992).

⁸³ Walter, *The Regime of Anastacio Somoza*, xiii.

⁸⁴ Walter, *The Regime of Anastacio Somoza*, xiv.

plantations. Within two weeks after Pearl Harbor (and Nicaragua's declaration of war on Germany, Italy, and Japan), the regime froze all bank accounts and seized coffee harvests and title to coffee plantations and other businesses of Germans, Italians, and Japanese (which meant Germans) in Nicaragua, though at first they were allowed to continue operating their businesses.⁸⁵ Within two years, these properties were outright expropriated and auctioned off, with the proceeds deposited in frozen accounts at the Banco Nacional.⁸⁶ Somoza was able to use these auctions to cheaply purchase properties of German and Italian investors.⁸⁷ “[E]specially the coffee farms of the Matagalpa region, ended up in the hands of Somoza and his coterie.”⁸⁸ By 1944, fliers identified Somoza as owning businesses concerned with railroads, ships, sugar, cotton, cattle, wood, gold mines, electric utilities, illegal gambling, alcohol, and prostitution and citing his methods as including jail, murder, torture, bribery, and deportation.⁸⁹

Somoza's official position as head of government and his private position as business executive overlapped, and he ran his businesses out of his government office.⁹⁰ This advantage gave him great possibilities to use his official position to personally profit:

A comprehensive study of the growth of his businesses is not possible at the moment, but there is sufficient evidence to determine to some extent how he prospered. Somoza's control of the credit system was fundamental, as was the information he possessed concerning government spending. That is, he was able both to speculate without much risk and to involve himself in productive investment. An example of the former involved the construction of a new airport for Managua. Somoza first bought up the land on which the airport would be built, then declared the government's decision to build the airport, then had the *Banco Nacional* purchase the land from him, and

⁸⁵ Walter, *The Regime of Anastacio Somoza*, 108, citing the Decrees of December 18, 1941, *Decreto ejecutivo de bloqueo de propiedades y valores de nacionales de Alemania, Italia, y Japón* and *Decreto interviniendo fincas de café y comercios de extranjeros* in *La Gaceta/Diario Oficial* 45,275.

⁸⁶ Walter, *The Regime of Anastacio Somoza*, 108, citing *Ley sobre bienes pertenecientes a nacionales de países en guerra con Nicaragua que deben custodiarse* in *La Gaceta/Diario Oficial* of September 8, 1943.

⁸⁷ Shirley Christian, *Nicaragua - Revolution in the Family* (New York: Random House, 1986), 28.

⁸⁸ Walter, *The Regime of Anastacio Somoza*, 109.

⁸⁹ Walter, *The Regime of Anastacio Somoza*, 124.

⁹⁰ Walter, *The Regime of Anastacio Somoza*, 124.

finally authorized the government to buy the land from the *Banco Nacional*. Illustrations of his investment strategy include the construction of a cement plant in 1940, in which Somoza had a 36.6 percent interest, and the operation of the first Nicaraguan insurance company, which was run by a group of his friends and relatives, all of whom occupied posts in the government. But Somoza's greatest wealth came from land, which he most likely was able to acquire through the government credit system under his control. His presence as an important cattle breeder and gentleman farmer is evident as early as 1940, when his prize bulls, stallions, cows and pigs won most first prizes in the national agricultural shows held yearly in Managua.⁹¹

In addition, Somoza controlled the large sugar operation Montelimar, a tannery, a match factory, a cement factory, the National Insurance Company, several cities' electric power companies, urban rental properties, a newspaper (*Novedades*), and textile plants.⁹² Methods by which Somoza was able to accumulate wealth included "salaries, honoraria, and fees from dozens of public institutions and administrative 'rights' in the production of certain public concessions such as mines and timber, not to mention direct bribes."⁹³ One example was the US\$ 3000 per month he received as the only director of the Pacific Railroad, which also transported without charge his cattle and other merchandise, built lines to his sugar plantation, maintained his vehicles and equipment, and built a palace for him in Managua.⁹⁴ He paid employees out of government funds and often used the same source of cash to buy businesses.⁹⁵ Most significantly to the future history of Nicaragua was his ability to control the government-run financial institutions such as the *Banco Nacional*, Mortgage Bank, Popular Credit Fund, which enabled him to oblige these organs to lend money to himself and his friends.⁹⁶ Beneficiaries of these loans would later be accused by Sandinistas, often legitimately in my opinion, of having used monies gained from mortgages to export capital from the country.

Friends of Somoza who benefited from their contacts with him were numerous, allegedly extending even to a U.S. Ambassador, Thomas Whelan, who engaged in

⁹¹ Walter, *The Regime of Anastacio Somoza*, 109-110.

⁹² Booth, *The End and the Beginning*, 68.

⁹³ Booth, *The End and the Beginning*, 61.

⁹⁴ Booth, *The End and the Beginning*, 68.

⁹⁵ Booth, *The End and the Beginning*, 68.

⁹⁶ Booth, *The End and the Beginning*, 67-68.

private business with the Somoza family.⁹⁷ The benefits of his patronage include award of valuable public contracts, tax exemptions, concessions, free utilities, government jobs, ghost jobs with pay for no work, and unpunished bribe taking.⁹⁸ This enabled Somoza to co-opt many potential adversaries, who thus became complicit in and depended on the corrupt system.⁹⁹

While Somoza García was a dictator capable of cruelly treating his adversaries, most would be only jailed briefly or otherwise discouraged from opposition. “What mattered most to him was amassing and enjoying wealth, and Nicaraguans generally allowed him to do so.”¹⁰⁰ The Nicaraguan economy provided just enough profit-making opportunities to satisfy most of the elite who could potentially challenge him.¹⁰¹ Still, even in peacetime, Somoza would seize the property of those who opposed him.¹⁰²

Somoza also squeezed money out of foreign investors in Nicaragua. For example, the foreign-owned gold-mining *Compañía Minas Matagalpa* paid Somoza about US\$ 175,000 per year in the late 1940s so long as the government kept its contract with the company.¹⁰³ Somoza also secured shares of companies without investing any money of his own, in exchange for permitting their operations. Walter gives an example of a 1939 partnership imposed on a businessman who set up a textile factory and flour mill.¹⁰⁴ Similarly, Somoza imposed a 50 percent partnership, again without any investment on his part, with the American owners of the Matagalpa Power Company.¹⁰⁵

In addition to securing profitable enterprises for his own family and close allies, Somoza ensured that the National Guard, key to his retaining control of the

⁹⁷ Booth, *The End and the Beginning*, 60. Quoting from Chamorro Cardenal, *Los Somoza*, 17.

⁹⁸ Booth, *The End and the Beginning*, 61.

⁹⁹ Booth, *The End and the Beginning*, 61.

¹⁰⁰ Christian, *Revolution in the Family*, 28.

¹⁰¹ Walter, *The Regime of Anastacio Somoza*, 110.

¹⁰² Booth, *The End and the Beginning*, 61.

¹⁰³ Walter, *The Regime of Anastacio Somoza*, 110.

¹⁰⁴ Walter, *The Regime of Anastacio Somoza*, 110.

¹⁰⁵ See Chapter 5.

country, was also taken care of. According to Booth, Somoza countenanced widespread corruption to help buy guard loyalty.¹⁰⁶ The immense administrative responsibilities (police, traffic control, auto and driver registration, postal service, tax collection, health and sanitation inspection, customs, and immigration) provided many opportunities for both petty and grand corruption. Nicaraguans had to bribe officials of all sorts merely to have them perform their legal public responsibilities, to obtain licenses and permits, to ensure police “protection,” and to receive a thousand other services.¹⁰⁷ Guard officers and local quasi-judicial officials (*jueces de mesta*) often employed fraud and force to steal land from peasants. Guard officials, reportedly including the Somoza family, operated illegal gambling and prostitution rackets. Corruption thoroughly penetrated the Guard, enriching those on the inside but provoking distrust and disgust among the people of Nicaragua.

Following Somoza García’s assassination in 1956, his son Luís took the presidency and his son Anastasio took command of the National Guard. Anastasio eventually won the presidency in 1967 and before he took office, his brother Luís died of a heart attack, leaving Anastasio alone to control the inherited power. During the rule of the brothers, the family acquired a shipping company, airline, and other assets, increasing the wealth their father left them.¹⁰⁸

The colonial and 19th Century trends toward land concentration continued, reaching their greatest extent just before the Revolution. Sandinista commentators, who present a convincing and probably impossible-to-rebut argument, indicate that in 1978, on the eve of the Revolution, rural property in Nicaragua was highly concentrated in the hands of a few.

There were two thousand properties of more than 500 *manzanas*¹⁰⁹ each,

¹⁰⁶ Booth, *The End and the Beginning*, 57.

¹⁰⁷ I recall a case from a decade ago when the Police were requesting that an individual who had received her property back, subsidize their presence around her property to prevent invasions of her land.

¹⁰⁸ Booth, *The End and the Beginning*, 29.

¹⁰⁹ A *manzana* was a Spanish system of land measurement, with each *manzana* equalling about 0.7 hectares or 1.7 acres. Thus, 500 *manzanas* was about 350 hectares.

which represented half the farmland in the country, and 575 farms occupied 37.5 percent of the area of farmland. At the other end of the scale, 52,000 peasants, more than half of all registered property owners, owned a mere 190,108 *manzanas*, 3.4 percent of land under cultivation. At the same time, tens of thousands of peasants owned no land and found themselves trapped between the latifundist land monopoly on the one hand and rural unemployment on the other. To complete the picture, a large sector of peasant migrants, squatters and medium sized land holders in the interior of the country lived in rural poverty.¹¹⁰

According to Wheelock,

The concentration of land in the hands of the Somoza family had been vast and swift. The Somoza family alone owned twenty percent of the land. In Managua, they owned sixty-eight rural properties and in Region IV, they owned 139 properties. Departments like Rio San Juan were virtually one big family farm consisting of some 120,000 *manzanas* which the Somozas had acquired. Furthermore, military departmental commanders, high ranking officers in the National Guard, and landowners closely linked to the regime used coercion, persecution and all manners of violence to increase their land holdings.¹¹¹

Wheelock was able to cite land concentrations held as late as 1981 by a handful of families: the Lovo and Ramos families owned over 6,000 *manzanas*; the Gasteazoro family owned 32,000; the Midence-Pinell family owned 26,280; the Tesla Alvarado family owned 17,000; Bersabe Poveada owned 10,000; the Nicaragua Sugar States owned 28,500; the Estrada family owned 15,000; the Mendoza family owned 16,000; Olga Prego owned a single estate of 18,335; SAIMSA owned 5200; and the San Jose de los Gomez estate retained its colonial dimensions of 35,000.¹¹²

Related to land concentration was the Sandinista argument that, in many cases, large amounts of land in these concentrated properties was idle, abandoned, rented, or under-utilized. The Sandinistas argued that this was contrary to the public benefit and thus justified government seizure and allocation to the landless, the traditional social function argument that had existed in the Somoza-era

¹¹⁰ Jaime Wheelock Román, "Changes in Agrarian Property in Nicaragua," *Capital University Law Review* 22.4 (1993): 853.

¹¹¹ Wheelock, "Changes in Agrarian Property in Nicaragua," 854.

¹¹² Wheelock, "Changes in Agrarian Property in Nicaragua," 855.

constitution. However, when the largest operations, with integrated agro-industrial facilities, were nationalized, the Sandinistas attempted to keep them together.

The Sandinistas claimed that during the Somoza regime, many properties had been intentionally mortgaged and remortgaged by regime-controlled banks, enabling loaned funds to be converted to dollars and exported from the country by the Somoza family and its supporters, contributing to Nicaragua's foreign commercial debts.¹¹³ Other properties were claimed by the Sandinistas to have been purchased with largely unpaid off bank loans. All banks, especially state institutions such as the *Banco Nacional*, INFONAC (the National Development Institute), and INVI (the Nicaraguan Institute of Housing), dedicated a large part of their assets to serve the interests of the Somoza family itself, along with high ranking officers and other regime supporters.¹¹⁴ Wheelock provides some examples of these uses of financial institutions:

The [*Banco Nacional*] of Nicaragua (BNN) was widely used by the Somoza family to buy agricultural properties, to construct infrastructure projects and to purchase cattle. After 1960, dozens of businesses were created, many simply on paper, for the benefit of the Somoza family, its functionaries and supporters. The last two presidents of INFONAC, Donald Spencer and Noel Pallais, were appointed by Somoza himself in order to buttress his family's move into industry as a result of Nicaragua's inclusion into the Central American Common Market in the sixties. A large proportion of the loans with which these companies were set up were never repaid. Thus INFONAC had a particularly high portfolio of unpaid debts. The debts for which the state became responsible in 1979 totaled 1,811,266,016 *córdobas*, equivalent to \$369 million at 1978 rates. Most of these debts represented debts in foreign currency to institutions like the Bank of America, Manufacturers Hanover Trust, Wells Fargo, and others.¹¹⁵

Thus, on the eve of the Revolution, and largely contributing to it, Nicaragua was a nation characterized by immense concentrations of ill-gotten wealth.

3.4. The Sandinista Revolutionary Legal Regime and Its Aftermath

¹¹³ Wheelock, "Changes in Agrarian Property in Nicaragua," 863.

¹¹⁴ Wheelock, "Changes in Agrarian Property in Nicaragua," 864.

¹¹⁵ Wheelock, "Changes in Agrarian Property in Nicaragua," 864.

The Junta's Assumption of Power and First Decrees

The first legal document issued by the *Junta* was the *Estatuto Fundamental* (Fundamental Statute), which was issued on July 20, 1979, to replace the Constitution of 1974. This would serve as a quasi-constitution until the Sandinista-dominated National Assembly would pass a formal constitution in 1987. The *Estatuto Fundamental* established the legal basis for the rule of the *Junta*, replacing the Somoza administration and legislature with the *Junta* and Council of State (*Consejo de Estado*). The *Estatuto Fundamental* did not constitute a wholesale revocation of existing legislation.

The *Estatuto Fundamental*, on its face, represented a mixture of the revolutionary and the practical. In its most revolutionary aspect, it eliminated the instruments of power of the old regime. In Article 3, the existing Nicaraguan Constitution (of 1974) was declared void. Article 4 dissolved the Chamber of Deputies, the Chamber of Senators, the Supreme Court of Justice, the Appeals Courts, the Superior Labor Tribunal and “other structures of Somocista power.” Article 5 declared especially inapplicable all legal provisions that refer to the “party of the minority,” which meant members of the Somoza regime, whose supporters the Sandinistas regarded as being a minority of the population. By Article 23, the National Guard, Somoza’s main instrument of control, was dissolved along with other security and intelligence services and, by Article 24, it was replaced with the Popular Army (EPS, *Ejército Popular Sandinista*), composed of the victorious guerrilla forces.

As a semi-constitution, it adopted certain human rights guarantees and set up the system of government. Article 6 guaranteed the effect of the Universal Declaration of Human Rights, the International Pact on Economic, Social and Cultural Rights, the UN’s International Pact of Civil and Political Rights, and the Organization of American States’ (OEA) American Declaration of Rights and Responsibilities of Man in the form of the simultaneously dictated *Estatuto sobre Derechos y Garantías de los Nicaragüenses* (Statute on Rights and Guarantees of

Nicaraguans). Article 7 established the equality of all Nicaraguans and Article 8 recognized freedom of conscience and religion.

The system of government established three state powers: the *Junta*, the Council of State, and Tribunals of Justice (Article 9). The *Junta* was to be composed of the five signatories of the *Estatuto Fundamental*: Violeta Barrios de Chamorro, Sergio Ramírez Mercado, Moises Hassan M., Alfonso Robelo Callejas, and Daniel Ortega Saavedra (Article 11). It also established the 33 member Council of State, by allocating a specific number of seats to each of various organizations involved in the anti-Somoza struggle, a majority of which were members of the FSLN or allied organizations, but others of which were member of centrist and business opposition groups. The *Junta* was specifically granted executive powers and was to share legislative powers with the Council of State (Article 10). The *Junta* was to assume responsibility for public administration and was to exercise executive and administrative powers by decrees, orders, and official communications (Article 12).

Laws issued by the *Junta* pending creation of the Council of State were to be valid (Article 31). Subsequently, legislation was implemented in either of two ways: (a) proposed by a simple majority vote of the *Junta* and entering into force if not vetoed within five days by two-thirds of the Council of State (Articles 13, 14, and 15), or (b) proposed by a majority of the Council of State to be approved by a majority vote of the *Junta* (Articles 15 and 17). The Council of State was also charged with producing a draft constitution (Article 18). The Tribunals of Justice were to consist of a Supreme Court, Appeals Courts, and the Superior Labor Tribunal, all to be named by the *Junta*, and District and Local Justices to be named by the Supreme Court (Article 21). Still, the new tribunals and judges were expressly subjected to already-existing laws, so long as not in conflict with or altered by the *Estatuto Fundamental* or other laws or decrees of the Government of National Reconstruction (Article 22).

The *Estatuto Fundamental* was notable for what it did not do. It did not dissolve

the main instruments of government, ministries and all government agencies remained. Except for the 1974 Constitution and specifically voided laws, it left all existing laws in effect, even those passed by the Somoza regime. The Civil Code, public registry system, and notarial roles remained unchanged.

Virtually all of the decrees expropriating properties were issued under the authority of the *Estatuto Fundamental*, before the adoption of the 1987 Constitution. On the same day as the issuance of the *Estatuto Fundamental*, Decree No. 3 was issued, ordering the confiscation of all property of the Somoza family and “Somoza supporters,” just after decrees ordering the extradition of Somoza family members and allies (Decree No. 1) and prohibiting monuments and place names in the memory of Somoza family members or the overthrown administration (Decree No. 2).

Sandinista Views of Rule of Law and Purpose of Laws

Before, during, and after the Revolution, the Sandinista leadership consistently exhibited a belief in a revolutionary transformation of society, though when expedient they refrained from publicizing this belief in the interests of building alliances and broader support for their movement. Long before the successful Revolution, the Sandinista leadership was espousing a classical communistic revolutionary view of their goals.

In the last years of the guerrilla struggle, though successful attempts were made to build sympathy and coalitions among the middle class and business sectors of the country, who themselves had significant grievances against the corrupt and favoritism-oriented regime of the Somozas, less-publicized positions of the FSLN leadership continued to espouse revolutionary dogma. The initial *Junta* decrees, though endorsed by the non-Sandinista members, expropriated massive amounts of land and nationalized specific industries and may be perceived as concrete steps towards a state-controlled economy, though an alternative interpretation of undoing Somoza era corruption for the public good was clearly possible and, no doubt,

hoped for by the revolutionaries' non-communistic allies.

In any event, the position of the FSLN leadership clearly continued along these lines, though often concealed from the public glare. Two months after the new *Junta* was installed, the FSLN leadership met and produced a meeting report entitled *Analysis of the Situation and Tasks of the Sandinista People's Revolution*, better known as *The 72-Hour Document*.¹¹⁶ According to the State Department, the document was intended to be only internally circulated among the FSLN membership, but quickly became publicly known.¹¹⁷ The document clearly speaks in terms of class struggle and depicts the alliance with the "bourgeoisie" as a tactical move not intended to undermine the essentially proletarian nature of the Revolution. The document spells out the perceived threat of the bourgeois private sector to state control of the economy. While early FSLN doctrine was clearly Marxist, the FSLN had muted this ideology in the immediate years before the *Junta's* acquisition of power in 1979; it was an intentional policy designed to encourage alliance with the middle class and business interests who were becoming dissatisfied with the corruption and human rights abuses of the Somoza regime yet who had no interest in a Marxist state in Nicaragua.¹¹⁸ Indeed, "because of the strategy of uniting with a broad coalition of other forces, overt references to socialism and to nationalization of property other than that of Somoza had vanished from the published FSLN program."¹¹⁹ One example of how nationalization was downplayed was the Sandinista call for bank assets to be placed at the service of the people and to be used to develop Nicaragua, rather than a point-blank call for government seizure.¹²⁰ In any event, within months of the new *Junta*, all private banks were nationalized by Decree No. 25.

The Early Decrees

¹¹⁶ The United States Department of State, *The 72-Hour Document: the Sandinista Blueprint for Constructing Communism in Nicaragua* (Washington: 1986).

¹¹⁷ Department of State, *The 72-Hour Document*, 1.

¹¹⁸ Booth, *The End and the Beginning*, 146.

¹¹⁹ Booth, *The End and the Beginning*, 146.

¹²⁰ Booth, *The End and the Beginning*, 146.

Though the means by which properties taken over were many, the formal, “legal” means involved a series of decrees by the Government of National Reconstruction which authorized property seizures, coming in the wake of the Sandinista defeat of the Somoza regime in July 1979. These are still considered to be valid law. Like regularly-legislated laws, they were published in the Gaceta. The Gaceta, like the official gazettes of other civil law countries, is roughly analogous to the United States’ Federal Register, and long pre-dates the Sandinista Revolution and continues to this day to be the official source of law, be it legislation passed by the assembly or presidential or ministerial decrees.

Four decrees issued between 1979 and 1981 permitted the confiscation of vast quantities of properties from different classes of owners:

- Decree No. 3: the Somoza family and former military officers and government officials (July 20, 1979)
- Decree No. 38: persons "allied with Somocismo" (August 8, 1979)
- Decree No. 759: certain private enterprises "working against the national economy" (July 19, 1980)¹²¹
- Decree No. 760: Nicaraguans absent from the country for more than six months. (July 19, 1980)

Title to these confiscated properties was to pass to the Nicaraguan State.

In 1979, the new government also issued separate decrees to nationalize industries, a distinct legal process different from confiscation, all on the grounds of "public utility":

- Decree No. 25: private banks (July 26, 1979)

¹²¹ The companies are limited to those specifically enumerated: Santa Mónica, S.A.; Inversiones Comerciales, S.A. (INCOSA); Corporación Plaza España, S.A.; Construcción Habitacional, S.A.; Sociedad General de Inversiones Urbanas, S.A.; Productora Terrámica, S.A.; Valle Gothel, S.A.; Sociedad General de Turismo, S.A.; Museo y Cultura, S.A.; AMCASA, S.A.; Jabonería Prego, S.A.; Fábrica de Productos Lácteos “La Perfecta”, S.A.; Fábrica de Helados “La Perfecta”, S.A.; Industrial Ganadera de Oriente, S.A. (IGOSA); Industrial Comercial San Martín, S.A.

- Decree No. 107: insurance companies (October 16, 1979)
- Decree No. 137: mining (November 2, 1979)

These were handled differently and, by law, compensation was to be paid. With a few exceptions, the Sandinista Government never did pay compensation, as will be illustrated by the discussion of the Matagalpa Power Company in Chapter 5.

The Sandinistas moved quickly to transfer land to the State. In 1984, Enrique Bolaños, then president of COSEP (*Consejo Superior de Empresas Privadas*, or the Higher Council of Private Enterprise), observed that only 29 percent of land was still privately controlled.¹²²

Later Decrees, the 1987 Constitution, and Subsequent Laws

Agrarian reform was a top priority of the Sandinista government. Even before the successful Revolution and the issuing of decrees by the *Junta*, during the guerrilla war, as Sandinistas took control of areas, they encouraged *campesinos* to take control, or the *campesinos* took it on themselves to invade, lands owned by larger landowners.

From the 1959s to the Revolution, agricultural exports had expanded greatly, with increased production of sugar, coffee, and meat and introduction of cotton, pushing the need for seasonal labor.¹²³

Under Somoza, efforts at land reform occurred in the 1960s, as in many Latin American countries, under the U.S.-sponsored Alliance for Progress. Merlot maintains that the agrarian reform in Nicaragua in the 1960s “had basically zero

¹²² The United States Department of State, *Crackdown on Freedom in Nicaragua and Profiles of Internal Opposition Leaders*, (1986).

¹²³ Envío Team, “The Agrarian Reform Law in Nicaragua,” *Revista Envío*, No. 3 (1981) Universidad Central de Nicaragua, <http://www.envio.org.ni/articulo/3099> (accessed August 22, 2011). Citing Seminar on the Agrarian Reform Law sponsored by the Agrarian Reform Ministry, MID-INRA for its staff. July 31, 1981, and Press Conference given by Comandante Jaime Wheelock, August 3, 1981.

impact” and in fact, the heavy-handedness of Somoza precluded development of rural unions, meaning no national organization existed in 1979 that could speak for small farmers.¹²⁴ There had been localized peasant and farm worker organizations or committees that began coalescing, especially in the 1970s as resistance to Somoza grew.¹²⁵ By 1979, some of these groups had merged into the ATC, the *Asociación de Trabajadores del Campo* (Association of Rural Workers), but active only in the Departments of Carazo, Masaya, Chinandega y Managua.¹²⁶

Immediately on taking power, the *Junta* moved to change agrarian land policies to benefit the rural poor. On July 26, 1979, they created INRA, *Instituto Nicaragüense de Reforma Agraria*, the Nicaragua Institute of Agrarian Reform (Decree No. 26, Transformación del Instituto Agrario Nicaragüense (IAN) y del Instituto de Bienestar Campesino (INBIERNO) en (INRA)). Enríquez identifies three basic stages of Sandinista agrarian reform.¹²⁷ In the first stage, lasting from the July 1979 Revolution to 1981, the new government, the revolutionary government pushed creation of state farms and gave farmers credit. In the second stage, from 1981 to 1984, the government distributed confiscated lands to peasants to form production cooperatives. Finally, the third stage, in the mid-1980s, there was a focus on landless peasants, known as *minifundistas*, whom the Agrarian Reform Law had not benefited.¹²⁸

In the early days of the new government, the lands confiscated from Somoza and his officials became the INRA-administered APP (*Area de Propiedad del Pueblo*, Area of the Property of the People), which was a convenient first stage for agrarian reform because they were large farming operations integrated with agro-industrial

¹²⁴ Michel Merlet, “Nicaragua: Fragility and Limits of the Sandinista Agrarian Reform,” Land Policies and Agrarian Reforms. Proposal Paper. 2007, aGter, sur Marne France, http://www.agter.asso.fr/article271_en.html, (accessed July 2, 2011).

¹²⁵ Asociación de Trabajadores del Campo, *Reseña Historia ATC* (2004), http://www.movimientos.org/cloc/atc-ni/show_text.php3?key=2760, (accessed September 8, 2011).

¹²⁶ Asociación de Trabajadores del Campo, *Reseña Historia AT*.

¹²⁷ Laura J. Enríquez, *Agrarian Reform and Class Consciousness in Nicaragua* (Gainesville: University Press of Florida, 1997), 17.

¹²⁸ Enríquez, 17.

facilities, employing many workers.¹²⁹ The new government wanted to keep these large, ongoing operations together for economic reasons, since the economic was so dependent on their exports.¹³⁰ The APP ended up struggling with the economic challenges and inflation of the 1980s.¹³¹ As a result, *campesino* land invasions were common and hard to control and the ATC started demanding land redistribution.¹³²

Immediately after the Revolution, the new regime encouraged farmers to concentrate in cooperatives and, within six months, there were over 3000 cooperatives in Nicaragua, with the government extending credit to them.¹³³

With the Revolution, the regional organizations that had resisted Somoza's policies transformed in the national ATC (*Asociación de Trabajadores del Campo* - Association of Rural Workers) which became one of the key *Organizaciones de Masas* (Organizations of the Masses, or OMs) that the new regime used to politically mobilize and economically organize sectors towards revolutionary goals.¹³⁴ Other similar organizations included CDS (*Comités de Defensa Sandinista*, Sandinista Defense Committees), AMNLAE (*Asociación de Mujeres Nicaragüenses Luisa Amanda Espinoza*, Luisa Amanda Espinoza Association of Women), *La Juventud Sandinista* (Sandinista Youth) and the CST (*El Central Sandinista de los Trabajadores*, the Central Sandinista Office of Workers) all of which evolved out of preexisting organizations or groups of organizations.

As part of the "Revolutionary Vanguard" the ATC became explicitly a Sandinista organization and followed the instructions of the Sandinista National Directorate.¹³⁵ At the same time, MIDINRA chief Jaime Wheelock explicitly

¹²⁹ Envío Team, "The Agrarian Reform Law."

¹³⁰ Silvia L. Saravia-Matus and Jimmy Saravia-Matus, *Agrarian Reform: Theory & Practice. The Nicaraguan Experience* (Encuentro: 2009/ Año XLI, N° 84), 21-43, 31.

¹³¹ Envío Team, "The Agrarian Reform Law in Nicaragua," *Revista Envío*, No. 3 (1981).

¹³² Envío Team, "The Agrarian Reform Law."

¹³³ Economy Watch, "Nicaraguan Agrarian Reform,"

<http://www.economywatch.com/agrarian/world/nicaragua.html>, (accessed September 23, 2011).

¹³⁴ Asociación de Trabajadores del Campo, *Reseña Historia ATC* (May 5, 2004).

¹³⁵ Ilja A. Luciak, *The Sandinista Legacy: Lessons from a Political Economy in Transition*

included ATC as part of MIDINRA in a speech given in 1979.

Pressure from the ATC to block the return of invaded lands to the “bourgeoisie” led the FSLN to declare that all lands already brought into the state sector remain there, reversing a tendency to allow large producers to reclaim their lands.¹³⁶

On the second anniversary of the Revolution, on July 19, 1981, Daniel Ortega announced to a crowd of a half million the need for an agrarian reform law. Even two years into the Revolution, 1.2 percent of the population owned 47 percent of the land and nearly a third of *campesinos* (peasant farmers) did not own their own land.¹³⁷ Groups of landless peasants were taking over abandoned farms and idle fields while, as of 1981, nearly one-third of Nicaragua’s arable land was idle.¹³⁸

The announced law, Decree No. 782, the Agrarian Reform Law, initiated agrarian reform by setting up agricultural cooperatives along Marxist lines.¹³⁹ The preamble to Law 782 justified agrarian reform by invoking Sandino’s formation of cooperatives, the 1979 Sandinista program, the San José Pact between businessmen and the Sandinistas, and the need for improved organization of production and the elimination of pre-capitalist forms that exploit *campesinos*.

The main goal of confiscation was to more equitably distribute property to landless urban and rural poor by handing idle land (over 2 million *manzanas*) to more than 100,000 rural farmers, in the hopes that they would form cooperatives and keep their labor in the productive zones of the country, while supposedly protecting the rights of productive landowners.¹⁴⁰

Chapter I (Articles 2-7) of Decree No. 782 expropriated the following: idle or underutilized properties of 500 *manzanas* or more on the Pacific Coast and 1000

(Gainesville, University Press of Florida, 1995), 67.

¹³⁶ Luciak, *The Sandinista Legacy*, 68-69.

¹³⁷ Envío Team, “The Agrarian Reform Law.”

¹³⁸ Envío Team, “The Agrarian Reform Law.”

¹³⁹ Decree No. 782, Agrarian Reform Law, of July 19, 1981.

¹⁴⁰ Envío Team, “The Agrarian Reform Law.”

elsewhere (Article 2(a)); lands of the same sizes rented out for profit (Article 2(b)); land used for tenant farms of 50 *manzanas* on the (productive) Pacific Coast departments and of 100 *manzanas* elsewhere (Article 2(c)), and abandoned land (Article 2(d)). The 500 and 1000 *manzana* limits are cumulative for all property owned by the same natural or legal person, even if geographically separated (Article 3) or by spouses or dependent children and siblings (Article (4). Idle land is defined as land uncultivated for the past two years (Article 6(a)). Underutilized lands are farms where under 75 percent of the land area is farmed; where there are fewer than one head of cattle for each two *manzanas* on the Pacific Coast, three head elsewhere; and “those in which the earth, waters, and other natural resources are inadequately exploited” (Article 6(b)). Only the under-utilized holdings of a landlord would be confiscated, not all (Article 7).

Chapter II (Articles 8-11) governs the disposition of the confiscated properties. Article 8 puts the confiscated lands and goods under administration of MIDINRA (*el Ministerio de Desarrollo Agropecuario y Reforma Agraria*, the Ministry of Agricultural and Ranch Development and Agrarian Reform) and includes lands that had already passed to the State by any other means. Article 9 notes “in accordance with the plans and priorities established for the zone in which they are found, land and other property declared affected by Agrarian Reform” in the following priority: 1) poor *campesinos*, tenant farmers and cooperatives already working the land as of the date of the law; 2) *campesinos* with no land or with insufficient or poor land who organize in cooperatives that can receive assignment of the land; 3) individual producers and families, with preference to “veterans of the War of Liberation and families of heroes and martyrs”; and 4) those agrarian reform enterprises formed or being formed. Article 10 notes that the land assigned will be enough to earn income equal to the minimum wage. Article 11 specifies that those receiving title, with the exception of enterprises, will receive free a Title of Agrarian Reform (*Titulo de Reforma Agraria*) from the MIDINRA which cannot be alienated in any manner and can only be transmitted undivided through inheritance.

Chapter III (Articles 12-16) spells out that MIDINRA will be responsible for implementing the confiscations. Article 14 states that owner must be notified of the confiscation in writing with the reasons and the date that the property will be taken (Article 14). If the owner is not present, notice can be given any responsible person on the property or, if there is no one or if receipt is refused, it can be fixed on the door or other visible place (Article 15).

Chapter IV establishes that confiscated properties will be paid for with “Agrarian Reform Bonds”, except for abandoned properties (Article 17), to be determined within 90 days of the taking of the property, using the average of the past three years’ taxable value (Article 19). No such bonds were ever issued. Article 18 indicates that, upon the signing of the resolution (of confiscation) by MIDINRA, the certification will be filed in the competent Public Registry. MIDINRA will assume payment of any debts and mortgages associated with the property (Article 20). Those affected by confiscation with no other source of income will receive a monthly pension no less than C\$ (Córdobas) 1000 (Article 21).

To advise MIDINRA on agrarian reform issues, the law created the National Agrarian Reform Council, composed of the Minister of Agrarian Reform, the heads of UNAG, ATC, PROCAMPO, and the directors of CIERA (*Centro de Investigaciones y Estudios de la Reforma Agraria* - Agrarian Reform Research Center) and CORFIN (*Corporación Financiera de Nicaragua* - The Financial Corporation of Nicaragua) and a representative of the Ministry of Planning (Article 22). There will be an Agrarian Reform Council in each region (Article 23). It seemed that the Council would be involved in expropriation decisions.¹⁴¹

Chapter VII sets up a system to appeal MIDINRA confiscation decisions. Those affected have three days to appeal (Article 29) to the newly-established Agrarian Tribunals (Article 28), composed of three judges named by the *Junta* (Article 27), who issue a non-appealable final decision. The rapid and final appeals process was

¹⁴¹ Envío Team, “The Agrarian Reform Law.”

designed to prevent legal hurdles to establishing the agrarian reform program.¹⁴²

The ATC's members were mostly rural workers on state farms.¹⁴³ The FSLN moved to create an organization for those owning property in 1981, supporting created of UNAG (*Unión Nacional de Agricultores y Ganaderos* - National Union of Farmers and Ranchers), to include owners of medium and small farms.¹⁴⁴ When UNAG was created, the small and medium producers it hoped to bring into the Sandinista system were responsible for producing over half of all Nicaragua's agricultural production.¹⁴⁵

With economic problems coming to a head due to the lingering effects of civil war and revolution, Sandinista economic policies, and the U.S. sponsored Contra war, the Sandinista government responded to pressure from rural groups for control of their own property by increasing land redistribution, including allocation of individual plots, though deeds were usually assigned collectively whether or not those receiving them farmed as individuals, this being the last stage of agrarian reform.¹⁴⁶

In 1986, many property owners who previously avoided agrarian confiscations were affected. That year, by Decree No. 14, "Reform to the Agrarian Reform Law," of January 13, 1986, the Sandinista government took 30 percent of the total land that would eventually be expropriated for agrarian reform purposes.¹⁴⁷ The stated basis for the law was concern for the poor and respect for the views of international organizations, but it was really a reflection of the growing challenges to the government's authority.¹⁴⁸ Despite the scope, it gave more ability to appeal MIDINRA's decisions.

¹⁴² Envio Team, "The Agrarian Reform Law."

¹⁴³ Luciak, *The Sandinista Legacy*, 69.

¹⁴⁴ Merlet, "Nicaragua: Fragility and Limits of the Sandinista Agrarian Reform."

¹⁴⁵ Luciak, *The Sandinista Legacy*, 79.

¹⁴⁶ Merlet, "Nicaragua."

¹⁴⁷ Rose J. Spalding, *Capitalists and Revolution in Nicaragua: Opposition and Accommodation: 1979-1993*, (Chapel Hill: University of North Carolina Press, 1994), 84.

¹⁴⁸ Michael Roche, *Competing Claims: The Struggle for Title in Nicaragua*, 39 *Vand. J. Transnat'l L.* 577, 591 (2006).

Not all land was confiscated. Some was purchased and, in other instances, Sandinistas who came from landholding families donated their property, typically to the APP sector, often because having land required too much work or other complications with their government positions or presented image issues.¹⁴⁹

From 1978 to 1988, large farms went from 36 percent to 19 percent of cultivated lands (two-thirds state farms and one third private). In 1988, cooperatives account for 12 percent of land, and the rest was in the hands of small and middle producers. About 70,000, half of landless peasants, had received land from the government.¹⁵⁰ By the 1990 elections, total acreage of small farms (under 140 ha) had reached 70 percent of all farmland, from 47 percent in 1979, and large farms (over 350 ha) had fallen from 36 percent to 17 percent of the total.¹⁵¹ But titling was slow, with only 55,000 out of 120,000 households in cooperative zones receiving private titles by 1988.¹⁵²

For example, in the eleven years of Sandinista control of Nicaragua, most property remained in private hands.¹⁵³ Despite all the nationalizations and expropriations, during the decade of Sandinista rule, the private sector had continued to provide between 50 and 60 percent of GDP.¹⁵⁴

After Chamorro's election, state farms would be privatized and given to demobilized soldiers of both sides, former owners, private purchasers, and companies organized from state farms' workers, though the net effect was 400,000 hectares leaving the hands of beneficiaries of agrarian reform.¹⁵⁵

¹⁴⁹ Spalding, 84.

¹⁵⁰ Merlet, "Nicaragua."

¹⁵¹ Merlet, "Nicaragua."

¹⁵² Silvia L. Saravia-Matus & Jimmy Saravia-Matus, 35.

¹⁵³ Rikke Broegaard, Rasmus Heltberg, Nicolaj Malchow-Moller, "Property Rights and Land Tenure Security in Nicaragua", paper, July 26, 2002, <http://www.landnetamericas.org/docs/landtenureNicaragua.pdf> (accessed July 1, 2011).

¹⁵⁴ Tim Merrill, ed. *Nicaragua: A Country Study*, 34.

¹⁵⁵ Merlet, "Nicaragua."

The Chaotic Nature of Property Seizures and Assignments

As will be seen below, the revolutionary government chaotically implemented property seizures, with many different entities involved in seizing the lands; this includes the Attorney General's Office, various ministries, the Army, municipal governments, individual government or party officials and their followers, and unofficial groups of poor people. In this confusion, the titles to much of this property were never properly transferred to the state. Some of this land, which technically the state did not formally own, was in turn transferred by the government to individuals or groups.

While most Sandinistas were confident that they would win the 1990 elections, the pending elections still brought some sense of uncertainty. The desire to legalize allocated properties, which accelerated in the late 1980s, continued up to the elections (and especially after).

3.5. Sandinista Corruption and Human Rights Violations

In many ways, the Sandinista Government used the same methods of political control as the Somoza Government. Imprisonment without charge for political offenses, torture, and summary executions were commonplace.¹⁵⁶ Additionally, the Sandinista leadership generously helped themselves to confiscated properties and government assets, residing in the best available houses and otherwise enriching themselves.

Sandinista Electoral Defeat and the Piñata

When the Sandinistas unexpectedly lost the February 1990 election, they had not focused on legitimizing the possession of the new occupants, including their own leaders. Between the February 25 day of the elections and the April 25 installation

¹⁵⁶ United States Department of State, *Human Rights in Nicaragua under the Sandinistas: From Revolution to Repression* (Washington: U.S. Department of State, 1986).

of winning candidates, the outgoing FSLN-dominated National Assembly passed a rapid succession of laws designed to institutionalize the property transfers that had occurred over the previous decade. Three laws gave such property to the present occupants: (1) Law 85 gave "state-owned" urban houses to individuals and civic organizations occupying them if they were tenants before February 25, 1990, if they were Nicaraguans, and if they owned no other houses, (2) Law 86 did the same for urban lots, and (3) Law 88 granted rural land to agrarian reform beneficiaries who had previously held only provisional titles, allowing them to sell, transfer, and hand down the property. The process by which laws were passed by the outgoing FSLN-dominated legislature and the hurried attempts to register property titles before the new government took over became known as the "Piñata" because the process of grabbing properties was likened to children scrambling for treats.

The process was hasty and resulted in many dubious transactions. "State-owned" urban properties were given to people and "civic organizations" without other property and rural land to agrarian reform beneficiaries. FSLN leaders benefited disproportionately and remained in the most opulent confiscated properties.

Oscar Herdocia Lacayo, former Attorney General and law professor sees a basic illegality in the confiscations.¹⁵⁷ In addition, Herdocia argues that fundamental problems with these laws were that they obliged an impoverished Nicaraguan state to pay an indemnity to the original owners of confiscated property that was equal to the taxable value of the property, which he seemingly perceived as a misuse of publicly-owned funds, and the legalization of expropriation by ministerial decree without trial.¹⁵⁸

¹⁵⁷ Herdocia, who died in 2003, was long a respected legal authority among the conservative, anti-Sandinista element of Nicaragua. A lawyer, he founded the *Comisión Permanente de los Derechos Humanos* (the Permanent Commission for Human Rights) and served as President of the *Asociación de Confiscados de Nicaragua* (the Nicaraguan Association of those Confiscated), and finally served as Attorney General in 2002 until his death in 2003, during the administration of President Enrique Bolaños.

¹⁵⁸ Oscar Herdocia Lacayo, "The Current State of Nicaraguan Property Law," *Capital University Law Review* 22.4 (1993): 845.

3.6. *The Protocols of Transition*

As noted earlier, the electoral victory of Violeta Barrios de Chamorro was a tenuous victory. Despite an impressive edge in votes received, Sandinista operatives remained in control of virtually all apparatuses of the government, most notably the Army and the Police, there was a distinct possibility that they would disregard the election results and simply maintain power. Since the Sandinistas likewise feared direct U.S. intervention, both sides had an incentive to cut a deal. This deal was known as the Protocols of Transition, signed on March 27, 1990 while the *Piñata* laws were being implemented and before her inauguration, and it gave both sides something. Chamorro received recognition as victor and new president, with the ability to name new ministers. In exchange, however, she promised to respect the current Army's and Police Forces' command structures, provide legal security for those who had received confiscated property from the Sandinista government, and guarantee job security for all Sandinistas working in the government bureaucracy. In addition, there was a widely known secret addendum to the Protocols that ensured that Humberto Ortega would remain as commander of the Army.¹⁵⁹ These arrangements ensured that Sandinista control of many institutions involved in property claims would endure, especially in the judiciary that was dominated by Sandinista appointees. In addition, the FSLN maintained control of potent mass movements that could be readily called upon to strike or engage in violent demonstrations and thus presented a constant menace to their opponents.

Some argue that Chamorro sold out to the Sandinista leadership.¹⁶⁰ The counter argument was that compromises were necessary to avoid civil war and to assure the possibility of gradual democratization of society and government. In any event, there is no dispute that, throughout Chamorro's presidency, she took steps to appease Sandinista interests.

¹⁵⁹ Republican Staff, 2.

¹⁶⁰ Republican Staff, 2.

Finally, as will be shown, the corruption so characteristic of the Somoza and Sandinista regimes would continue under her leadership. Though there are no allegations that she personally benefited from her position, her son-in-law Antonio Lacayo and others prominent members of her faction, including Managua Mayor and future President Arnoldo Aleman, appear to have profited greatly from their positions.

After Violeta Chamorro's election, the Government began to restore properties to the original owners, compensate them, and settle ownership questions for certainty and a positive investment climate. However, these efforts initially lacked a solid legal framework.

3.7. The Post-Sandinista Legal Regime: Reconciling Two Systems

Nicaragua remains a country divided. The FSLN and related groups obviously defend the Revolution. But those who benefited from the Somoza regime or those hostile to the Sandinista regime for other reasons generally question the legitimacy of the Revolution, or at least of the ruling *Junta* and the subsequent Sandinista administration.

There are two main perspectives concerning the Sandinista period's handling of the property issue. One side argues that the normalcy and primacy of established pre-revolutionary could not be overruled or affected by revolutionary laws, which must be considered illegal and in violation of constitutional and other fundamental protections against the taking of private property. The other side argues that the Sandinistas established a legal and moral basis for righting the wrongs of the Somoza era and of centuries of unfair land policy. Both sides' perspectives are often tainted by their own self interest, as many proponents of the first view lost significant properties as a result of the Revolution and many supporters of the second gained properties, often in contravention of the Sandinistas own legislation. Let us look at the best-known proponents of each position.

Anti-Sandinista View of Sandinista Property Laws

In a law review article where his anti-Communist, anti-confiscation views are clearly expressed, Oscar Herdocia Lacayo offered a very useful summary of the traditional (conservative) view of the history of the Nicaragua Civil Code.¹⁶¹ As Herdocia writes,

Article 617 of the Civil Code¹⁶² establishes the protection of property from state power – nobody can be stripped of their property without recourse to the law or a court sentence based in law. The code also establishes how, by virtue of property’s social function, its owners may be denied ownership rights against their will. Expropriation for the public good must be approved by law or by a court sentence based on the law. Expropriation cannot be carried out without prior indemnification. In the case of war, it is not essential that the indemnification be prior. If these prerequisites are not carried out, judges will protect, and where necessary, return the possession to the person being expropriated.¹⁶³

Herdocia points out several areas in which people whose property was unjustly seized are protected.¹⁶⁴ Article 876 guarantees that the right to reclaim confiscated goods cannot be prescribed. Article 3954 C establishes that when a transfer title of real property ownership is inscribed in the Property Registry, any subsequent inscriptions must be based on preexisting entries and no other contradictory title may be accepted. “[T]he inscriptions form a chain of registry which cannot be broken and, therefore, guarantees the legitimacy of the inscribed property right.”¹⁶⁵ To insure that all transactions associated with a piece of property are made clear, Article 3955 C provides that all other inscriptions, made in other registries, related to the property are to be noted by an inscription in the Property Registry.

¹⁶¹ Oscar Herdocia Lacayo, “The Current State of Nicaraguan Property Law,” 845-846.

¹⁶² Article 617 reads (translation mine): No one can be deprived of property except by virtue of law or a judicial decision based on it. Expropriation for reason of public utility must be set forth in law or a judicial decision based on it and will not be executed without compensation in advance. In case of war, it is not essential that compensation be in advance. If these requirements are not followed, judges shall return possession to the person expropriated from.” Código Civil de la República de Nicaragua, at <http://www.biblioteca.jus.gov.ar/CodigoNicaragua.PDF> (accessed July 6, 2011).

¹⁶³ Herdocia, “The Current State of Nicaraguan Property Law,” 840.

¹⁶⁴ Herdocia, “The Current State of Nicaraguan Property Law,” 841.

¹⁶⁵ Herdocia, “The Current State of Nicaraguan Property Law,” 841.

Herdocia even cites Article 6 of the *Estatuto Fundamental* of July 1979, which was the first decree of the Revolutionary *Junta*, establishing the legal basis for the *Junta*'s rule, as well as Article 182 of the current (Sandinista) Constitution of 1987 to establish that the Constitution is the fundamental legal document of Nicaragua, to which all other laws are subordinate. His conclusion:

[A]ll the confiscatory laws, decrees and resolutions passed in Nicaragua during the recent dark period in its history have absolutely no value at all. Moreover, property rights have not been changed in substance by legislation or any other acts of government. The nature of property law has not changed one iota during the last thirteen years.¹⁶⁶

One problem with Herdocia's analysis is that, while it may be correct that invalid transactions cannot be considered legitimized from a moral standpoint, as will be seen below, it will be more difficult for the original owner to retrieve property someone else occupies, leaving the only remedy a civil suit, with uncertain results, against the individual who illegally obtained the property then resold it. Furthermore, because it is difficult to establish that the third party did not buy it in good faith (how does a court or administrative adjudicator determine this state of mind?), this provision gives considerable opportunities for transactions wherein the eventual purchaser, by using a straw man (*testaferro*) either to obtain the property from the State or to be inserted in the sales chain to "clean" the ownership trail, is able to eventually assert that he or she got the property in a legitimate sale, regardless of whether the property had earlier been illegally confiscated from the original owner. As we shall see, this is exactly what happened in some cases.

The Official Sandinista Justification for their Property Laws

In several writings following the Sandinista electoral defeat of 1990, Jaime Wheelock Román, formerly Minister of Agrarian Reform under the Sandinistas and former guerrilla commander, defended the Sandinista expropriations and land redistribution, as he did while Minister. While much of what he writes provides solid statistical evidence of abuses by members of Somoza regime elite, Wheelock

¹⁶⁶ Herdocia, "The Current State of Nicaraguan Property Law," 842.

himself has been identified as one who personally benefited from receipt of expropriated lands and his accounts should be read in that context. The essence of Wheelock's justification for land confiscation was several. First, the properties confiscated from the Somozas and their supporters were illegally obtained by them and, in many instances, had either been mortgaged and re-mortgaged to state financial institutions for more than their actual value or had been obtained using unrepaid loans from state banks.¹⁶⁷ Second, governmental expropriation of private property is not necessarily unjust if it is "necessary and ... linked to the interests of society at large and national stability."¹⁶⁸ Wheelock thus argued that creating "a balance in Nicaraguan society" by breaking up large landholdings and distributing them to the peasantry is justified; furthermore, idle or abandoned properties should be expropriated to bring them into productive use for the benefit of society at large.¹⁶⁹

It is difficult to make an accurate numerical valuation of the scope of the economic consequences of Somoza era abuses, but, excepting the view of members of the families of the Somozas and of his former high officials, there is no legitimate dispute that such abuses occurred. However, it is worth reiterating the Sandinista view of them, as spelled out by Wheelock; much of what he writes rings true. Wheelock portrays the situation as one in which land possession was highly concentrated. He notes that 2,000 properties, equaling half of the farmland in the country, exceeded 500 manzanas (each *manzana* equals .7 hectare) each, and 575 farms occupied 37.5 percent of total farmland and more than half of registered property owners consisted of peasants owned just 190,000 *manzanas*, or 3.4 percent of total cultivated land. At the same time, tens of thousands more peasants were landless.¹⁷⁰

Attempts to Bridge the Two Perspectives

¹⁶⁷ Wheelock, "Changes in Agrarian Property in Nicaragua," 863-64.

¹⁶⁸ Wheelock, "Changes in Agrarian Property in Nicaragua," 865.

¹⁶⁹ Wheelock, "Changes in Agrarian Property in Nicaragua," 863-64.

¹⁷⁰ Wheelock, "Changes in Agrarian Property in Nicaragua," 853.

Attempts have been made to reconcile the two perspectives, with the aim of settling the uncertainty and allowing the country to move ahead, usually with some recognition that not all wrongs can, or should, be righted.

In August 1992, a conference was sponsored by the Universidad Nacional Autonoma de Nicaragua in Leon, Nicaragua, which included Nicaraguan academics and politicians and attendees from the United States and Latin America (UNAN-León). Unfortunately, the records of the conference indicate that proponents of the two arguments made little headway in reconciling the legality and justification of the confiscations with the rights of the original owner. The conference was mainly useful in the extent to which the problem and opposing views were clarified.

Somewhat more successful was the July 1995 Conference, co-sponsored by the Carter Center and UNDP that resulted in some general statements that small beneficiaries should be able to keep small plots of land and that those receiving larger properties should pay for a portion above an undefined minimum, while those whose property was taken should be adequately compensated.¹⁷¹ Law 278 was passed as a result of this consensus and it reaffirmed the rights of recipients, but required payment for larger properties.

Philosophical Underpinnings of the Confiscations and Redistribution

There are many factors that can be cited to justify massive land redistribution. The scope of the Somozas' power to accumulate property and marginalize the rural poor resulted in an unjust concentration of property in their hands foremost, but also in the hands of those who supported them or otherwise acquiesced in their regime. The centuries of dominance of the nation by a relatively small *Criollo* elite (the upper class in Nicaragua remains largely of white European descent) with significant ability to turn the powers of government to their benefit or to simply ignore rules that might hinder their accumulation of wealth. The Spanish conquest

¹⁷¹ The Carter Center, 11.

in the first place could be said to raise doubts about the legitimacy of property ownership in the post-Conquest era. And finally, there are Latin American legal theories supporting the “social function” of land and the leftist argument in general in favor of social justice, including land re-distribution. In the Nicaraguan context, none of these are easy to discard.

3.8. The Dust Settles, a System is Established, and Corruption Endures

The return of the Sandinistas to power in 2007 is the end point of my analysis, which focuses on the first Sandinista years and then the evolution of the claims mechanism in the decade and a half after Chamorro won the presidency. The basic situation up to 2006 is that an original owner of property occupied by someone else has three realistic options. The original owners (claimants) may either seek compensation for their property through an administrative process or use the Nicaraguan judicial system to attempt to obtain the return of their property. The legal system, though, has been heavily dominated by Sandinista-appointees. Often, original owners and current occupants enter into an extra-judicial transaction, sometimes involving government-issued compensation bonds, to work out a mutually satisfactory arrangement.

Since the 1990 defeat of the FSLN, disrespect for the law has continued. Regardless of which party is in control, and typically even when a party is not in the majority, members of that party are widely perceived to use their positions to benefit themselves or their allies.

As will be discussed below, high corruption indexes are one way to quantify the situation in Nicaragua. At the same time, the fact that hundreds of individuals in high positions enjoy immunity from law suits insulates them from prosecution and accountability. In Nicaragua, immunity granted to public officials acts as a protection for corrupt actions, first, by blocking lawsuits against them and, second, by blocking criminal prosecution. The list of those eligible is long.

Chamorro Appeared “Clean”, Members of Her Administration Not

President Violeta Barrios de Chamorro, the successful candidate of the anti-Sandinista opposition, was regarded by some as permitting considerable corruption within the ranks of her own administration, appointing her son-in-law Antonio Lacayo as Minister of the Presidency, and many other relatives to high government positions. Lacayo had remained in Nicaragua during the Sandinista years and had profited from regime-granted contracts and monopolies in cotton seed oil and poultry.¹⁷² Lacayo was in partnership with Comandante Jamie Wheelock Román (Minister of Agrarian Reform and himself beneficiary of confiscated properties), Comandante Bayardo Arce (linked to numerous illegal land transactions), Armed Forces Commander General Humberto Ortega (allegedly now one of the richest men in Latin America), and *Junta* member (and later President) Daniel Ortega.¹⁷³ It is true that Chamorro was walking a delicate tightrope; the Protocol of Transition allowed an undefined period in which Sandinista officials would remain in their government position, especially in control of the Army and police and that there would be no wholesale firing of government employees. Since virtually all civil servants at the time of her inauguration had obtained their positions under the Sandinista government, Chamorro faced a situation in which nearly all the government machinery was essentially part of the FSLN power structure, including low-level bureaucrats and judges.

Aleman was the Master of Corruption

Chamorro’s successor, Arnaldo Aleman, was convicted of corruption and, because of health problems, was allowed to serve under house arrest, in his comfortable mansion. He and many members of his administration were made ineligible to travel to the United States because of substantiated charges of corruption.¹⁷⁴ Estimates of the amount of money diverted to Aleman and his cronies are in the

¹⁷² Republican Staff, 1. Citing Lacayo's friends interviewed by the Republican staffers of the U.S. Senate Foreign Relations Committee.

¹⁷³ Republican Staff, 1.

¹⁷⁴ Loásiga López, Ludwin, "Quitan Visa a Marengo." *La Prensa*, June 7, 2005.

hundreds of millions of dollars, much of it siphoned off from foreign assistance to Nicaragua. Means by which monies flowed to Aleman and his henchmen include the same ghost employees that flourished in Somoza's time, importation and resale of vehicles brought in duty-free under the administration's umbrella, and a secret presidential administration account.

In addition, Aleman operated a company named GENINSA that obtained substantial properties in the coastal area around Tula, many of which had been confiscated during Sandinista times and which are still claimed by their original owners. I personally visited the area and saw where a fence line had been removed, in effect, to enlarge a GENINSA-controlled property. Aleman continues to exercise control over the Liberal Party from his luxurious home not far from Managua. Under the administrations of President Bolaños, the country remained in paralysis because the FSLN and the Liberal Party leadership entered into a pact to prevent reforms desired by reformers on both the left and the right, a cynical pact widely considered to have been an agreement to share in the illegally gained spoils obtained by the elites of both parties during their respective years of ascendancy.

The Return of Ortega and the Continued Undermining of Rule of Law

As seen above, Daniel Ortega used *El Pacto* to enable his election in 2006 with less than a majority of the vote. .

In Nicaragua, immunity granted to public officials acts as a protection for corrupt actions, first, by blocking lawsuits against them and, second, by blocking criminal prosecution. The list of those eligible is long and outlined later, and includes most nationally-elected and appointed high officials.

The Pact between Alemán's PLC and Ortega's FSLN, even with FSLN dominance, ensured that the two corrupt parties enjoyed both a parliamentary majority and immunity from the courts, which nonetheless remain in the control of the same two

factions.

3.9. The Revolutionary Nature of the Sandinista Regime

The Sandinista Revolution claimed that it represented a new legal order. In *The 72-Hour Document* the FSLN had outlined, in extreme Marxist terminology, the party's goal: to create a socialist society based in the dictatorship of the proletariat, with the FSLN gaining "hegemony in every aspect of social and economic life, starting with the key means of production, which should pass to the hands of the State."¹⁷⁵ Daniel Ortega's brother, Sandinista Minister of Defense and *Junta* Member Humberto Ortega said publicly, "Marxism-Leninism is the scientific doctrine that guides our revolution.... Our doctrine is Marxism-Leninism."¹⁷⁶ The bulk of the propaganda of the Sandinistas at the time, including marches displaying large images of Marx, Lenin, and Castro, along with Carlos Fonseca and Daniel Ortega, made it clear that this was the path that they sought to take.

However, the Sandinistas faced practical limitations on their ability to completely revolutionize Nicaraguan society. For one thing, they had depended heavily on allies among the "Bourgeoisie" to defeat Somoza and this was recognized by the fact that two of the five members of the Revolutionary *Junta* were not members of the FSLN. The *Junta de Gobierno de Reconstrucción Nacional* (the *Junta*) was initially composed of Violeta Chamorro (future president whose husband, a martyred journalist, was clearly a member of an establishment, non-Communist family), Moises Hassan, Daniel Ortega, Sergio Ramírez, and Alfonso Robelo. While the Sandinistas were dominant in the *Junta* and on the ground, by virtue of their control of a former guerilla army, there were many other views and factions in existence in Nicaragua, most of whom did not share their vision of a communist state dominated by a dictatorship of the proletariat. Those who did not share their

¹⁷⁵ Sergio Ramírez, *Adiós Muchachos* (Mexico, Aguilar, Altea, Taurus, Alfaguara, S.A. de C.V., 1999), 112.

¹⁷⁶ Humberto Ortega speech of August 25, 1981, *La Prensa* (Honduran newspaper), October 27, 1981, San Pedro Sula, Honduras; cited in *The Soviet-Cuban Connection in Central America and the Caribbean* (Department of State and Department of Defense, March 1985).

vision included many urban and rural poor although many of these groups were susceptible to the propaganda. Still, the FSLN never had complete freedom to seek the complete collectivization of Nicaraguan society. As a group, there never seemed to be the drive toward the absolute heavy-handedness required to force society into the Marxist mold.

Contrast with early Bolshevik Decrees

In contrast to the Nicaraguan Revolution, the situation in revolutionary Russia, as we shall see, had represented a complete overthrow of the old system in decrees from 1917 and on, when land and private association assets were transferred to local governments, workers were given control over factories, and banks were nationalized. Several early Bolshevik decrees effectuated confiscations. In “Decree on Land” dated November 8, 1917, landlords’ rights to land property were abolished and workers’ (and soldiers’) control was decreed to be established over mills and factories.¹⁷⁷ In the “Abolition of Class Distinctions and Civil Ranks” dated November 24, 1917, property of the nobility was ordered transferred to the corresponding *zemstvo* institutions and properties of merchants’ and commoners’ associations were ordered transferred to the municipalities.¹⁷⁸ In “Nationalization of Banks” dated December 27, 1917, banking was declared a state monopoly, existing banks were absorbed into the State Bank, and assets and liabilities of establishments in the process of liquidation were assumed by the State Bank; interestingly, “the interests of small depositors [were to be] fully protected.”¹⁷⁹ In “On the Rights and Duties of Soviets” dated January 7, 1918, the Soviets were empowered to make requisitions and confiscations. On February 28, 1922, the Soviet Government ordered the confiscation of all religious objects of value.¹⁸⁰

¹⁷⁷ Dekret II Vserossiiskogo s’ezda Sovetov o zemle 26 oktyabrya (8 noyabrya) 1917 g., <http://www.law.edu.ru/norm/norm.asp?normID=1119068>, (accessed September 11, 2011).

¹⁷⁸ Dekret ob unichtozhenii sosloviy i grazhdanskikh chinov, 11(24) noyabrya 1917 g., <http://www.law.edu.ru/norm/norm.asp?normID=1119199>, (accessed September 10, 2011).

¹⁷⁹ Dekret o natsionalizatsii bankov 14(27) dekabrya 1917 g., <http://www.law.edu.ru/norm/norm.asp?normID=1119084>, (accessed 10 September 2011).

¹⁸⁰ “Russian Famine and Antichurch Campaign,” <http://web.archive.org/web/20040816142648/http://www.stetson.edu/departments/russian/lenina/ndtikhon.html> (accessed September 10, 2011).

Though Lenin stepped back from the total central economic system in his War Communism and New Economic Policy, these confiscations remained.¹⁸¹

Many reasons can be put forward for the less aggressive Sandinista position, not least the fact that they had only succeeded in their guerrilla war when middle class and business elements had thrown their support behind the movement against Somoza. Confiscation of Somoza's assets was a legally easy and politically popular move. Other steps would prove less popular and played a role in ending the middle class' support for the new regime and in driving Violeta Chamorro to resign from the *Junta*.

Corruption and Opportunism among the Sandinista Leadership

Two significant issues are linked to the Sandinista era land redistribution. One is the political and economic issue of the large number of poor who received property from the government. The second is that the Sandinista leadership itself benefited from confiscated properties.

Examples below will demonstrate that some key elements of the elite's sense of entitlement did not change, even if there was a revolutionary and new aspect to it. This new elite, the Sandinista leadership, behaved very similarly to previous elites in Nicaragua. When arriving in Managua, these leaders, and many rank-and-file Sandinistas, needed places to live. It was natural, though ideologically hypocritical, for the leaders of the victorious guerrilla army and political faction to move into the better homes, which had been made available either through outright confiscation or through the absence of their previous owners, many of whom fled because of questions about what the new regime might do to supporters of the old regime or to people who were simply among the wealthy of Nicaragua.

There seems to be no official or doctrinal justification on the part of the Sandinista

¹⁸¹ Bradford DeLong, "Slouching Towards Utopia? The Economic History of the Twentieth Century," 102, <http://econc10.bu.edu> (accessed July 1, 2011).

as to why their leaders merited the best houses. Perhaps an argument could have been made that this was payment for years of toiling in the wilderness, fighting the Somoza regime and organizing cadres, or for career opportunities that had been forsaken in the pursuit of the Revolution. But available sources do not provide any official justifications, other than that the leaders, as any landless Nicaraguans, were entitled to a single property and, if that property was larger than contemplated by the *Piñata* laws, payment was to be properly made to offset any dimensions of the house or land that exceeded the limitations.

That Sandinista leaders personally obtained some of the choicest properties is uncontroverted. In an admittedly partisan report by Republican staff of the U.S. Senate Foreign Relations Committee, a useful list of beneficiaries of confiscated properties has been published.¹⁸² My own experience working in Nicaragua indicates that the list is well-founded in fact and, if anything, understates the extent of the FSLN leadership's property grab, which was largely hidden by means of straw men and other devices that concealed personal gains from confiscated properties. (See discussion below for evidence of several Sandinistas' use of such mechanisms to obtain property beyond the single property that the *Piñata* laws allotted.) The Republican Staff list, provided in full below, reads like a who's who of the Sandinista leaders and features Humberto Ortega, Daniel Ortega, Joaquin Cuadra Lacayo, Lenin Cerna, Jaime Wheelock Roman, Tomas Borge, Bayardo Arce, and many, many other prominent Sandinistas. The list also includes those from whom the property was taken. Admittedly, many of them were prominent members of the Somoza establishment but many were also just successful individuals who appear to have made their money in an honest way. In addition, even if one were to assume that these individuals were invariably corrupt and were justly deprived of illicitly gained property, it is not ideologically consistent, under socialist principals, to justify the assignment of the choicest properties to the FSLN leadership when so many Nicaraguan peasants lived in simple shacks.

Continuity of the Fundamentals of the Legal System

¹⁸² Republican Staff, 28-33.

If the Sandinista acknowledged the continuing validity of pre-revolutionary codes, they also set about establishing a large corpus of law on top of the old, initially by decree. While the result was generally that the pre-revolutionary laws were deemed superseded by the decrees, often the result was a confused effort to try to read both old codes and new decrees in a way that allowed both a range of application. And, as will be shown in specific examples, in many cases the laws and/or decrees were misapplied or simply ignored when dealing with confiscations and subsequent redistribution or assignment. Many of these improperly handled transactions were then later legitimized in a number of ways, sometimes properly and sometimes not. The end result is confusion in both what the law currently is and in what property was legitimately handled.

But was this revolution?

Even after the *Estatuto Fundamental*, Revolutionary decrees were passed that simply changed the laws existing under the Somoza regime, presuming that the older legislation and codes continued to be valid until altered by the new decrees. If the legal regime was truly completely new, it might be assumed that all previous laws were null and void, just as the Somoza Constitution was. For example, the Civil Code of 1904 remained valid. According to one Nicaraguan lawyer specializing in property law, the Civil Code, being a compendium of laws drawn from various Latin and European countries, is difficult to change piecemeal without affecting the interrelationships among sections.¹⁸³ While the Sandinistas made some changes to family laws (and, of course, to property laws), the basic laws regarding property remained valid.¹⁸⁴

In other ways, the continued existence of the Somoza legal system, which itself was simply the continuation of preceding governments, was also implicit in the fact that the way law was handled remained essentially the same, new government,

¹⁸³ Email from Leónidas Henríquez dated January 31, 2005.

¹⁸⁴ Email from Leónidas Henríquez dated January 31, 2005.

new courts, and new decrees notwithstanding. For example, the “new” court system was explicitly to be governed by laws concerning the “old” court system. Regardless of the fact that a series of revolutionary tribunals were established, the regular new court system directly paralleled the old (Supreme Court, Appeals Court, Supreme Labor Court, District and Local Courts), though the magistrates were all named by the new regime.

Also, the *notario* system continued unaltered. So did the method by which *notarios* and the property registries continued to function as they always had, though irregularities due to post-revolutionary confusion became rampant.

3.10. Conclusion: Little Fundamental Change but Many Inconsistencies

I define revolutionary change in a legal system as meaning a virtually complete movement from an earlier system to a new system. The definition of “revolutionary” is “marked by or resulting in radical change.”¹⁸⁵

By this definition, there was nothing radical about a system of laws that altered, but did not displace the existing civil code, notarial system, court system, or property registration system.

Disrespect for Law and Abuse of Position was a Continuing Phenomenon

Many of the most supporters of the pre-revolutionary status quo and opponents of the Sandinistas’ expropriations and land redistribution had been large land-owners before the Revolution and had lost much property and assets as a result of the Revolution.¹⁸⁶ Therefore, their observations must be assessed in light of the bitterness they felt towards those whom they perceived as taking their lands. Still, the fact remains that many benefited from the corruption and inside deals of the Somoza era. There is a logical fallacy to argue that lands owned as of July 1979

¹⁸⁵ *American Heritage Dictionary* (Boston: Houghton Mifflin, 2000).

¹⁸⁶ See discussion of Somoza-era corruption above.

had been gained through hard work, inventiveness, and savings alone. The fact is that many had essentially gained their properties in an immoral way, and probably illegally as well had the Somoza era legal system been capable of functioning fairly and analyzing land ownership in an impartial and intellectually honest manner.

Even under the Somoza Regime, there was token adherence to the idea of agrarian reform for the benefit of the peasantry.

Similarly, the Sandinista leadership, consisting in large part of people who had struggled in the countryside for years without recompense, themselves largely benefited from confiscated lands. In fact, one might argue that it is even more egregious that proponents of Marxist ideology, with its claims that all should equally benefit from society's wealth, should themselves seize generous helpings of Nicaraguan land, far in excess of their per capita equal share.

To summarize the situation: Under the Somoza regime, Nicaragua's governmental and legal system was subverted to benefit the ruling class. The laws remained but were subject to abuse and twisting. Following the Revolution, while there were manifestations made that the old laws were being thrown out, most existing legislation and practices were implicitly continued (Civil Code, notaries, registration system). However, the judicial system, which might have given some means of determining the rightness of individual government acts, essentially collapsed. Furthermore, extra-legal seizures and occupancies of all kinds were rampant. On this foundation, the *Piñata* laws were passed in the hopes of legalizing the anarchy of the Sandinista years. The years since have been spent in trying to establish a clear legal, titling, and compensation system that satisfies all (previous owners, beneficiaries, and subsequent owners) an impossible goal.

Sandinista Laws were not Revolutionary

Because of the retention of most of the preexisting legal system, I would assess Sandinista property policies not to be revolutionary per se, but rather chaotic and relatively evolutionary. The *Estatuto Fundamental* and the Constitution of 1987 and laws issued under them often included preambles pledging revolutionary change, but the underlying structures of courts, notaries, and public registries remained either unchanged or similar to what had come before.

CHAPTER 4: SPECIFIC PROBLEMS OF NICARAGUAN PROPERTY

The Sandinista confiscations and redistribution have given rise to many issues which subsequent governments have had to grapple with, including conflicting claims, uncertain laws, and problems of resolving those uncertainties; this not only applies in individual cases, but also in the overall application of policy.

4.1 Two Dimensions, Confiscation and Benefit, Both Uncertain

The Sandinista government confiscated properties from a variety of individuals and entities for a variety of reasons. The legality of those confiscations varies significantly based on the steps followed or ignored. One side of the equation is whether the property was properly confiscated.

On the other side are the questions of how individuals and entities, the beneficiaries, came into possession of properties and what kind of ownership documents protect their interests. As with confiscations, distributions of properties were carried out under a variety of laws and procedures. The degree to which ownership security is manifested in the cases where individuals and entities benefited from confiscated property will be discussed in greater detail later. There are three main categories of such beneficiaries: poor beneficiaries of urban and rural land reform, individual beneficiaries of property who cannot be deemed poor (most notable Sandinista elites), and government or FSLN entities. The former may appear to be most “worthy,” but even here the tendency for sympathy for the poor and historically dispossessed can be tempered by sometimes erratic, sometimes selfish behavior of the poor (as will be seen in the discussion of land invasions).

Overview of Some General Types of Property Claims

Each confiscation was different. There were many mechanisms for takings: from highly legalistic procedures following legal decrees to a group of private citizens,

under color of some kind of revolutionary authority, simple taking over a property, with property defined as a house, a piece of land, a business enterprise, shares or bank accounts, or cattle and farm implements. In this complex mosaic of different actions, though, some of the most common types of seizures can be discerned using the subset of claims that constitute the claims registered with the U.S. Embassy for its citizens, which could apply to the larger pool of claimants. The U.S. Embassy in Managua has articulated several of the most common examples of the types of property for which restitution claims by its citizens have been submitted:

- The claimant owned one or more large farms (*fincas*) that were confiscated in the early 1980s and turned over to Marxist-style cooperatives dedicated to collective agricultural production. In the transition from private to collective management, productivity plummeted. Many of these large farms have since been converted into small plots with *campesino* owners whose titles are often legally deficient. The former owners are reluctant to take such property back because of concerns about legal battles with *campesino* groups and possible retribution and harassment by the dispossessed peasants. Most claimants seek compensation bonds or, more rarely, other [Nicaraguan Government]-held lands via land swap. A newer approach has been to pay off the *campesinos* with the bonds in order to get all or some of the property back without resentment.
- The claimant owned one or more urban houses that were seized by Sandinista officials or Sandinista groups or by organs of the revolutionary government, often with a day or less notice to the owner. Many are now occupied by former party officials, retired military, or Sandinista-dominated organizations which use them as facilities. The new occupants typically obtained title under the *Piñata* laws of 1990. The contents of the houses long ago disappeared and the houses themselves are often damaged by years of neglect and/or pilferage. Claimants have several choices of what remedy to pursue: (1) accept 15-year compensation bonds based on the taxable value of the property at the time of seizure, (2) sue the occupants if it appears that the occupants did not properly register title in their names, and (3) negotiate with the occupants to work out some sort of extra-judicial arrangement, often involving a cash payment by one of the parties, in conjunction with one side taking the compensation bonds, and sometimes dividing larger properties

so each party obtains a portion.¹⁸⁷

- The claimant owned a business, such as a factory or large farm, that was ransacked by quasi-official groups. As with the above two scenarios, the real estate is typically now in the possession of *campesino* groups or some [Nicaraguan-Government]-affiliated entity and the claimant has the same choices as above for how to proceed. As for factory machinery, livestock, farm equipment, and vehicles, the claimant's only effective remedy is to seek compensation from the [Nicaraguan Government] based on the item's depreciated value.
- The claimant owned a bank account in one of the nationalized banks. The only remedy is to accept the compensation bonds for the dollar value of the account at the time of nationalization, with no provision for lost interest.¹⁸⁸

Title Insecurity for Beneficiaries

As discussed in Chapter 3, the three categories of beneficiaries described above (beneficiaries of land reform, beneficiaries of the *Piñata* laws, and state entities) do not always have secure title. Initially offered a type of provisional title called a *solvencia*, the regularization of their ownership interests are at various stages of formalizations.

4.2 Problems of Sandinista Confiscations

The chaotic period following the Revolution permitted widespread, and various forms of, property seizures. A typical event was invasions by large groups of *campesinos* whose invasions were not resisted or reversed by authorities and

¹⁸⁷ One example of an extra-judicial settlement was my neighbor down the street in Managua whose step-father was a military officer under Somoza who was assassinated by a Sandinista who lured him to a tryst that was a set-up in a fairly famous case. His family claimed undeveloped land on the periphery but within the city limits of Managua. According to my neighbor, a Sandinista-controlled company planned to develop the land her family claimed by building a series of houses. She told me she settled with the developers by agreeing to drop the claim in exchange for them building her a very nice house (the largest in the development) and a second house built on an adjoining lot that she could rent out. The company went on to build a dozen or more other houses. I do not know if any Nicaraguan government compensation bonds were involved.

¹⁸⁸ “2002 Expropriation Report: Nicaragua,” unclassified cable from U.S. Embassy Managua dated June 26, 2002.

which, in many cases, were actually incited by FSLN party leaders or local or national revolutionary government authorities. With the separation between party leadership and government position often blurred or irrelevant and with the co-existence of competing authorities (police, party, army, peasants, non-governmental revolutionary organizations, and the like), whose division of authority was slow to be properly delineated, property takeovers occurred in many different forms. Sometimes groups of private individuals, typically *campesinos* but also frequently anyone with a gun or any semblance of authority, would take over land, frequently in the name of some peasant cooperative. Sometimes the authorities themselves took over properties, and the authorities seizing property were as varied as the levels of government, party, and ministries. Sometimes a formal order, in conformity with a decree of the Revolutionary *Junta*, was issued and invoked as grounds for seizure. Often, a copy of a decree was simply waved in the face of those whose property was confiscated, without any proceeding to establish that the confiscation was proper under the decree proffered. Finally, many seizures were simply seizures in fact, without any formal attempt to establish a legal justification for it, maybe because of revolutionary necessity, maybe because of personal greed, or maybe simply because of whim. Finally, many of the informal occupations of homes, as shall be seen below, were individuals and organizations who moved into properties vacated by those who had fled, whether they had been Somoza supporters or were just concerned about instability in the country.

Scale of Lands and Population Affected: Extent and Types of Acquisitions and Redistribution under the Sandinistas from 1979 to 1990

The Sandinista confiscations affected huge amounts of property throughout the country. Given the various levels of legality (or illegality) under the Sandinistas' own decrees and legislation and given the problematic property recording system, it is impossible to define with precision the exact scope. The scope of the property problem in Nicaragua is vast and exact numbers of people and properties affected are difficult to state with certainty, with different observers giving different, though

always significant, numbers. While credible observers caution that the various estimates are from different government officials and that certain data is not presently (and may never be) available,¹⁸⁹ several credible attempts have been made that serve to provide a good idea of the enormity of the problem. Due to conflicting claims over a given piece of land, perhaps 40 percent of Nicaraguan households were in actual or potential conflict over ownership.¹⁹⁰

During the upheavals of the Revolution and revolutionary government, property registries in four departments (Chinandega, Estelí, Masaya, and Matagalpa) were destroyed and the subsequent recreation of the lost registries cannot be deemed fully complete or accurate.¹⁹¹ Similarly, as will be seen below, there are major problems with accuracy and physical control of records in even in registries which were not destroyed.

As for land claimed by former owners who had been subject to confiscation, in one 1995 estimate, the amount claimed by 5288 former owners consisted of a quarter of the cultivable land of Nicaragua, totaling over 12,000 claims for land or houses, out of nearly 16,000 claims, which also included machinery, bank accounts, and securities.¹⁹² These claims were estimated to total US\$ 650 million dollars, or 35 percent of GDP, equal to two years of exports.¹⁹³ The claimants were estimated to be seeking return or compensation for property equaling two-thirds of all land that the Nicaraguan state had acquired for agrarian reform, or 12 percent of the total land in Nicaragua.¹⁹⁴ Some estimates have been higher, from 18,000 to 30,000 homes, companies, and pieces of real property.¹⁹⁵ Real property claims filed by the original owners eventually exceeded 16,000, about half for rural properties and half for urban lots.¹⁹⁶

¹⁸⁹ J. David Stanfield, "Analysis of the Current Situation Regarding Land Tenure in Nicaragua," *Report prepared for the Swedish International Development Authority (ASDI)* (1994), 4.

¹⁹⁰ Stanfield, "Analysis of the Current Situation Regarding Land Tenure in Nicaragua", 15.

¹⁹¹ Trackman, Fisher, and Salas, *The Reform of Property Registration Systems in Nicaragua*, 9.

¹⁹² The Carter Center, 6.

¹⁹³ The Carter Center, 2.

¹⁹⁴ The Carter Center, 6.

¹⁹⁵ Republican Staff, 9.

¹⁹⁶ Ministry of Finance and Public Credit, *Claims by Type of Property ("Reclamos por Tipo de*

One source estimates that Law 85 legalized possession of approximately 20,000 urban houses, 15,000 in Managua of which 13,500 were simple structures given to the poor, while Law 86 legalized approximately 50,000 urban lots.¹⁹⁷ By 1995, nearly 112,000 agrarian and urban reform beneficiaries were already having their status reviewed to determine their eligibility to receive formal titles to the lands they occupied.¹⁹⁸ But the Carter Center estimated that there were a total of 172,000 beneficiaries of agrarian and rural reform, most of them poor.¹⁹⁹ Trackman estimates that 40 percent of the population of Nicaragua and hundreds of foreigners were affected on one side of the equation or the other.²⁰⁰

The value of urban lots is significantly higher per square meter. Whether a given piece of property is currently claimed by a former owner or not, the overall question of who owns what gives rise to doubts that undermine the confidence of all in the security of property ownership.

From these disparate and often contradictory statistics, one can at least conclude that the property question affects a huge percentage of Nicaragua's arable and urban land and involves hundreds of thousands of individuals, including family members of those receiving or claiming title, a significant part of the nation's total population of about five million. All observers agree that the majority of beneficiaries were poor people.

Because of the relatively higher value, per meter, of urban lots and because of their greater importance urban properties, especially those obtained by the Sandinista elite and their supporters, are thus more controversial. The fate of these properties is examined in detail below, using some case studies of actual individual property claims.

Bien) (1999).

¹⁹⁷ Envío Team, "Inside the Property Debate," *Envío Digital*, (1991), 23.

¹⁹⁸ The Carter Center, 6.

¹⁹⁹ The Carter Center, 6.

²⁰⁰ Trackman, Fisher, and Salas, *The Reform of Property Registration Systems in Nicaragua*, 21.

The following chart shows one estimate of the amount of land acquired for distribution via agrarian reform.

Table 1: Acquisition of Land for Agrarian Reform²⁰¹

<u>Means of Acquisition</u>	<u>No. of Properties</u>	<u>Area (mzs)</u>
Decrees Nos. 3, 38, and 329	2,000	1,400,000
Agrarian Reform Law (1981)	1,200	820,000
Abandonment Law	252	18,230
Purchases by Sandinista Government	1,050	196,000
Other Means	860	88,951
Purchases by Chamorro Government	N/A	250,000
De Facto Occupations under Sandinistas	N/A	300,000
Total Land Acquired		3,073,181

It is very difficult to get precise estimates of the lands acquired because of the various means used. As Stanfield notes:

Estimates of purchases and de facto occupations are estimates of various functionaries and require more time and effort to verify. In general, the data in the table are estimates only, since many of the acquisitions of land were not adequately documented and since the files of INRA (Instituto Nicaragüense de Reforma Agraria), the agency responsible for applying the agrarian reform law and other laws and decrees dealing with rural properties, are being organized and have proven difficult to tabulate in their present state. Moreover, different estimates exist for the same parameter, such as the data managed by the Ministerio de Finanzas, which estimates that 817,000 mzs. of land were confiscated under Decrees 3 and 38. *Nuevo Diario* 8 (Oct. 20, 1992). As one researcher advised me "if the data on the agrarian reform from any source are consistent, be suspicious."²⁰²

The amount of property distributed to beneficiaries of land reform is similarly subject to different estimates, because of the different ways title passed to the state, if at all, and the different provisions under which land was distributed or title was

²⁰¹ J. David Stanfield, 942. Citing Molina, September 1992.

²⁰² Stanfield, 942. Citing Molina, September 1992.

granted. It is estimated that 70 percent of the land transfers under the Sandinistas were not recorded, largely due to the Sandinista view of the property registry as a capitalistic apparatus.²⁰³ This not only complicates making very precise estimates of the scope of the problem, but it also has led to significant legal complications, as ownership is often difficult to determine based on a lack of paper records and on conflicting paper records.

Table 2: Titling of Land by the First Sandinista Government²⁰⁴

Type of Land Assignment	Area (mzs)	Percent
Cooperativas Agrícolas Sandinistas (C.A.S.: titles to collectively managed cooperatives)	591,000	18
Colectivos de Trabajo (C.T.: to small groups, often a family)	129,000	4
Titles to groups, with individual farmers (C.S.M. or C.C.S.: to groups that would divide parcels for individually-farmed plots of the members)	175,000	5
Individuals:		
Reform Land	830,000	25
Squatters (Precaristas)	1,460,000	43
Indigenous Communities	170,000	5
Total	3,355,000	100

Most the titles in this chart were only provisional titles since the state did not have clear titles. Those for indigenous communities and most involving squatters, for example, involved property already owned by the government.²⁰⁵ This also explains why the amount of property involved with titling and with expropriation are not the same.

The provisional titles were legalized by the *Piñata* laws, although in many cases the government's ownership and the legitimacy of the original confiscation is itself

²⁰³ Trackman, Fisher, and Salas, *The Reform of Property Registration Systems in Nicaragua*, 2.

²⁰⁴ J. David Stanfield, 942. Citing Molina, September 1992.

²⁰⁵ J. David Stanfield, 942. Citing Molina, September 1992.

subject to dispute. As shall be seen, because of the overlapping and inconsistent processes and legislation, determining property ownership is a problem that pervades Nicaraguan society and has a major effect on development in the country.

Many Methods of Seizure Contribute to Confusion

Land was taken by the government and individuals in many ways. The complex mix of legal and illegal and government and private or group seizures and the different decrees used for the strictly formal and legal seizures present a web of intersecting, and often conflicting, standards to be applied to a given property. Conflict among these different standards and with preexisting laws and laws passed after the end of the decade of Sandinista rule further cloud the status of many, or perhaps most, disputed properties.

The government claimed that the goal was more equitable distribution of property. However, the revolutionary government chaotically implemented property seizures, with many different entities involved in seizing the lands (Attorney General's Office, various ministries, the Army, municipal governments, individual government or party officials and their followers, and unofficial groups of poor people). In this confusion, the titles to much of this property were never properly transferred to the state. Some of this land, which the state technically did not formally own, was in turn transferred by the government to individuals or groups.

In Nicaragua, the term "*Piñata*" most precisely refers to the period between February 25, 1990 and April 25, 1990, between the Sandinista electoral defeat and the taking of power of the Chamorro government, and the three laws granting title to those living on lands. However, it is more broadly applied to the taking of properties, most notably by Sandinista elites for private benefit, a long, continual process in Nicaragua. Immediately after the confiscations started in 1979, peasants, government or Sandinista-party entities, and individuals (including Sandinista leaders) began occupying seized properties. While sometimes legally-confiscated properties were left vacant, more commonly they came to be occupied by

someone. As shall be seen in Chapter 6, who got what was a very confused and chaotic process. Some properties were abandoned by Somoza era elites in the lead up to the Sandinista seizure of Managua, others were legally confiscated from occupants under one of the decrees, and others were abandoned in the first months or years of the new regime, as members of the middle and upper classes sought temporary safety in Miami or Costa Rica. Large numbers of guerrillas and political exiles arrived in Managua with the Revolution, presenting an immediate demand for housing, which many did not have ready access to through their own private channels. In many cases, new occupants simply moved into a vacant property that they heard about, which may or may not have been confiscated by any government or FSLN organ. In other cases, the government agency with possession would make a formal assignment of property to an individual or group, sometimes, though, to someone who might already have been on the property. The agencies most frequently involved in making assignments were the Ministry of Housing (and, later, the Housing Bank, or BAVINIC, the *Banco de la Vivienda de Nicaragua*, to which Ministry of Housing control was transferred), the Army, the National Police, or municipal governments.

Revolutionary Decrees: The Formal Means of Confiscation

As noted earlier, the Government of National Reconstruction authorized property seizures through a series of decrees, from 1979 to 1981, that gave the government title of land of several classes of people: the Somoza family and high officials (Decree No. 3), supporters of “*Somocismo*” (Decree No. 38), certain large enterprises “working against the national economy” (Decree No. 759), and those out of the country for more than six months (Decree No. 760). Similarly, banks and insurance and mining companies were seized for public utility (Decrees Nos. 25, 107, and 137). As discussed in Chapter 3, land reform began in 1981 with Decree No. 782, which established agricultural cooperatives, expanded in 1986 Law 14) to taking and re-allocating abandoned or under-utilized property, if the owners owned larger properties.

4.3. Legalization of Occupied Lands: The Piñata, February to April 1990

By the mid-1980s, there were several methods of receiving title documents of one kind or another. While most Sandinistas were confident that they would win the 1990 elections, the elections brought a sense of uncertainty and the desire to legalize properties, which accelerated in the late 1980s, continued up to the elections and especially after.

The Elections of 1990 and the Piñata

When the Sandinistas unexpectedly lost the February 1990 elections, they had not focused on legitimizing the possession of the new occupants, including their own leaders. As many expropriations had occurred without land title formerly passing to the Government and thence to beneficiaries, when the Sandinistas lost the election of February 1990, there was a frantic attempt to legalize these titles before the new Government assumed power, with the inauguration of Violeta Chamorro, in April of that year.²⁰⁶ The process known as the *Piñata* had two steps. First, the outgoing FSLN-dominated legislature passed legislation giving those occupying property the right to possess it. Second, there were the hurried attempts to register property titles before the new government took over. While technically referring to the period from the electoral defeat (February 25, 1990) to the newly-elected officials taking their offices (April 25, 1990), it more generally applied to the whole process of confiscated or seized properties being reallocation. The term “*piñatero*” refers to someone who benefit from receipt or use of such properties.

The outgoing FSLN-controlled legislature passed the three “*Piñata*” laws between March 30 and April 5, 1990, giving property to the present occupants:

- Law 85 of March 30, 1990: granted title to "state-owned" urban houses

²⁰⁶ The Carter Center, 2.

to individuals and civic organizations occupying them if they were occupants before February 25, 1990, they were Nicaraguans, and they owned no other houses.

- Law 86, of April 3, 1990: did the same for urban lots.
- Law 88, of April 5, 1990: granted rural land titles to agrarian reform beneficiaries who had previously held only provisional titles, allowing them to sell, transfer, and hand down the property.

There were many abuses. Laws 85, 86, and 88 required that *Piñata* beneficiaries be resident on their properties as of February 25. During the *Piñata*, there were many documented attempts to create evidence of residency on that date and it is widely believed that numerous documents were backdated in the succeeding months, even after the new government came to power, with ongoing Sandinista influence among officials at all levels of government, including in the public registries. Influential party officials or well-connected individuals were often able to evade the one-property-per-person restriction by registering properties in the names of others who acted as straw men (see below for documented examples). These straw men (*testaferros*) were typically low-level FSLN supporters eager to please their patrons or themselves were given rewards, in the form of property or other undocumented incentives. It is widely reported that in the two months before the inauguration of Violeta Chamorro, FSLN affiliated lawyers worked full-time churning out and registering title documents; the haste with which they worked often led to legal errors and or defective titles (examples below). These mistakes have often provided the best hope for original owners to regain possession although, as will be shown, mere illegality does not guarantee return of the property.

Moisés Hassan Morales, who had been one of the original five members of the *Junta* formed in 1979 and who later resigned from the FSLN in 1987, has indicated that seizure of the best properties began within one or two months of the fall of Somoza, with the FSLN leadership immediately began dividing up properties, not limiting them to those formerly owned by the Somozas.²⁰⁷ He objected to this

²⁰⁷ “A 20 Años de La Piñata,” *La Prensa* (April 24, 2010)

attitude, but his comrades brought him on a tour of luxury homes so that he could pick one he liked, but he refused and remained living in his own house in Managua. Hassan remembered that the Sandinista leadership justified this by claiming that they did not have anywhere to live and needed homes, which had to be secure and presentable for official visitors. Hassan explained that this process continued throughout the first Sandinista government and noted that those identified as the biggest beneficiaries were Daniel Ortega, Humberto Ortega, Tomás Borge, Jaime Wheelock Román, Bayardo Arce, and Herty Lewites.

Hassan noted that the fiction that the properties belonged to the state ended in 1990, with the *Piñata*, when the FSLN implemented laws that, once passed, the new government would be unlikely to revoke.

It was clear that they knew that if they did not win, Doña Violeta would win, and they already had deep relations with Antonio Lacayo from the eighties. Thus, it was, let's legalize all; Doña Violeta of course is not going to bother us, she is going to do nothing, on the contrary, she is going to re-legalize it... Lacayo and the Ortega brothers – especially Humberto – had forged, directly or – more probably – through intermediaries... solid ties.

And Hassan maintained that it was because of these ties that Chamorro did nothing to undo the *Piñata* laws, and even blocked Law 133.²⁰⁸

On the other hand, Chamorro's former Minister of the Presidency Antonio Lacayo Oyanguren, in the same article, was quoted as saying there was never any kind of deal or co-government and denied personally knowing or communicating with the Ortega brothers before February 1990.

The *Commandantes* were like Olympian gods, raised on high platforms, removed from the simple mortals who were the businesspeople subject to unjustified imprisonment and capricious confiscations.²⁰⁹

While representing the view hostile to Sandinista property policies, the jurist Oscar

<http://www.laprensa.com.ni/2010/04/24/nacionales/22663#.TjWrkGFNTrc>, (accessed July 31, 2011).

²⁰⁸ "A 20 Años de La Piñata," *La Prensa*.

²⁰⁹ "A 20 Años de La Piñata," *La Prensa*.

Herdocia Lacayo summarized, in terms that appear to be a correct description of the situation in February to April 1990, though in his characteristically dramatic tone:

Very few titles to confiscated land had been recorded when the government lost the 1990 elections. So, in hurried negotiations that constituted a crime of conspiracy, everybody qualified for the task busied themselves in manufacturing, as speedily as possible, resolutions, agrarian titles (which, being copies of documents, floated around like confetti), deeds of transfer (many predated), and inscriptions in registers (many likewise re-dated). This was the bureaucratic machinery working at its fastest and leaving in its wake a series of crimes against the public's faith without parallel.²¹⁰

Notwithstanding his strong position about the morality of this period, he is correct that a large volume of transfer documents and property registrations was undertaken in a short period in 1990. It will be shown in the case studies in Chapter 7 that there were many irregularities and many transactions were processed in this time frame, the case studies highlighting the deliberate and rapid nature of the work carried out in these two months, with many in leadership positions using various methods to obtain multiple properties and to assist others in gaining titles.

4.4. First Tries at Resolving Claims and Awards of Property

Violeta Chamorro took office with the UNO coalition holding a majority of seats in the National Assembly. Still her position was not strong. The Sandinista civil service remained largely intact and the FSLN controlled the Police and the Army. The Sandinistas continued using other demagogic methods to intimidate the new administration. Many in the UNO coalition were pushing their agenda. This gave Chamorro very narrow operating room.

The Chamorro Administration and the Weakness of Chamorro's Position

After Violeta Chamorro assumed the presidency, despite expectations by many, the

²¹⁰ Herdocia, "The Current State of Nicaraguan Property Law," 844-45.

Piñata laws were not overturned for political reasons:

Groups of businesspeople and farmers, the unemployed (including former Contras and dismissed Sandinista soldiers), and the unions all entered, sometimes violently, the contest over the future shape of the economy, property ownership, and the redistribution of wealth and land. . . . Rather than leading the country, the Chamorro government was compelled to act as a broker among competing interests in resolving the two central issues of her early administration: the resolution of property issues and the establishment of peace through the demobilization and resettlement of the Contras and the Sandinista military.²¹¹

The divide between those who sought return or compensation for their properties and those who had benefited from receiving confiscated properties was stark. Nicaragua status as one of the poorest countries in the Western Hemisphere meant that resources were limited. Hard feelings resulted from decades of struggle, with many suffering from human rights violations perpetrated by elements of the other side. This made negotiations difficult. On the Sandinista side, there were the leaders of the expropriation, many of whom had suffered torture at the hands of the Somoza National Guard and had endured more than a decade of revolutionary struggle, who had been pressured by trade sanctions and a United States-supported Contra war into an election which they had lost. On the other side were members of the old elite, many of whom, but certainly not all, had gained wealth and privileged position under the now-discredited Somoza government; those who had left suffered confiscation and official harassment (and fear of assassination) on their return from exile and those who had remained in Nicaragua had faced the same throughout.

While the middle position opened Chamorro to criticism, her signature achievement was steering a transition that avoided civil war and began regularizing or creating institutions that were no longer revolutionary-based.

Ruling from Below: FSLN Methods of Control after Electoral Defeat

²¹¹ Tim Merrill, ed. *Nicaragua: A Country Study*, 47.

Recalling that Daniel Ortega announced plans to “rule from below” within days of the February 1990 electoral defeat, it is important to note that this method had long been, and remains, a tool of the FSLN. Even during the earliest days of the *Junta*, youth mobs (“*turbas divinas*” or divine mobs) would harass and threaten those opposed to the Sandinista, even journalists, priests, and Violeta Chamorro herself. So it was a natural tool to be used in defeat, along with the enduring Sandinista influence within the police and military.

The threat [of reversal of the *Piñata*] to the Sandinistas was multifold, both materially and politically. Reflecting the seriousness of the problem, when the legislation to repeal the land transfer was introduced, former president Daniel Ortega warned that war could return and voiced what was widely interpreted as a death threat against UNO National Assembly deputies. Protesting the repeal bill, Sandinista demonstrators occupied six city halls, including the city hall of Managua, and three radio stations.²¹²

The destabilizing threats of mass political action had their analogies in land invasions by organized groups of the poor, as will be examined below, which creates an unstable environment for those whose property is at risk, or threatened by them. This bottom up pressure, combined with Sandinista domination of the bureaucracy, to give the defeated substantial power to limit the action of the new administration. Other threats, too, existed.

Chamorro's First Steps (1990)

When Violeta Chamorro, whose re-election campaign had focused on reconciliation and economic revitalization, came to power, she faced a large number of people seeking return or compensation for confiscated properties (the “*confiscados*”). Many believed that the arrival of the new administration would bring them satisfaction, based on still valid pre-revolutionary Nicaraguan law and the terms of the Peace Accords, which had been reached in January 1989.²¹³

²¹² Tim Merrill, ed. *Nicaragua: A Country Study*, 47.

²¹³ “¿Hacia dónde vamos? Socialismo y acuerdos de Esquipulas,” *Envío*, No. 91 (1989) <http://www.envio.org.ni/articulo/581> (accessed July 31, 2011).

At the same time, the hundreds of thousands of beneficiaries of agrarian and urban reform were seeking formal, legitimate titles for the properties they understood they were given, also claiming this on the basis of the Peace Accords.²¹⁴

Subsequent peace agreements between the Resistance (the Contras) and the Nicaraguan government (initially the Sandinista government in March 1990, then the Chamorro administration from April) set the demobilization of the Contras by June 10 and the huge reduction of the Nicaraguan armed forces, which was by far the largest in numbers and per capita in Central America.²¹⁵ Per the Contra Accords, former Contras were to be resettled in demilitarized developments zones, with “minimum economic assistance to each demobilized combatant,” representatives of the demobilized resistance members to be appointed to the several ministries, including Agrarian Reform, creation of Governing Council of the Nicaraguan Repatriation Institute. “In accordance with the government program and prevailing laws, priority will be given to demobilized members and their families in the return of or indemnification for their properties, real estate and personal property, that have been confiscated, placed under government control or de facto taken over.” Furthermore, “Once legally organized and settled in the different development zones, the community members will have the right to urban and rural property titles and access to the forests, bodies of water and other existing resources, in accordance with prevailing Nicaraguan laws and regulations.”²¹⁶ Nearly 20,000 former Contras had turned in their weapons, seeking a return to normalcy.

There were murders and violence. U.S. Senate Republican staffers counted 217 former members of the resistance, who had disarmed as part of the Peace Accords, had been assassinated, presumably by Sandinista-linked individuals, in the first

²¹⁴ “Protocol of Managua on Disarmament May 30, 1990,” translated and published in “Contra Accords”, *Revista Envío*, No. 107 (June 1990), <http://www.envio.org.ni/articulo/2614>, (accessed August 2, 2011).

²¹⁵ “Protocol of Managua on Disarmament May 30, 1990.”

²¹⁶ Tim Merrill, ed. *Nicaragua: A Country Study*, 51.

two years or so of the Chamorro Administration.²¹⁷ This was part of a trend of escalating tensions on both sides. Within months of the June 1990 demobilization, ex-Contras found that the land they were promised was often unavailable and support was limited, with a weak economy; in July, this led first to an armed takeover by ex-Contras of the Managua bus terminal, ended peacefully by UN negotiators.²¹⁸ Later in the year, some ex-Contras attempted to seize Sandinista cooperative land and others announced they were taking up arms again, and were labeled Recontras. Tensions came to a head when former Contra leader Enriquez Bermúdez Varela was gunned down in a Managua parking lot and a bungled or intentionally obfuscating police investigation did not help soothe tensions.²¹⁹ On the other side, in 1991, former Sandinista soldiers also started to demand the land they were promised when the military scaled down and some re-armed; in 1992, the government responded to both sides, paying a bounty for retirement and buying up weapons, again promising land.²²⁰ Later, elements of these two groups would make common cause.

Within months of assuming the presidency, Violeta Chamorro was expressing her desire to return property to those from whom it was confiscated. By Presidential Decree No. 11-90, President Chamorro established the National Commission for the Review of Confiscations (CNRC, *Comisión Nacional de Revisión de Confiscaciones*), under the authority of the Attorney General's Office, to assist in the return of confiscated properties and determine the legitimate owner of properties in dispute. By the original deadline of December 30, 1990, 5,288 people had filed claims for confiscated properties.²²¹ But the Sandinista-dominated Supreme Court suspended CNRC decisions, declaring the Chamorro Administration's process unconstitutional, on the basis that it violated the constitutional separation of powers because dispute resolution was a judicial, rather

²¹⁷ Republican Staff, 65-72.

²¹⁸ Tim Merrill, ed. *Nicaragua: A Country Study*, 51.

²¹⁹ Tim Merrill, ed. *Nicaragua: A Country Study*, 51.

²²⁰ Tim Merrill, ed. *Nicaragua: A Country Study*, 51.

²²¹ The Carter Center, 9.

than administrative, function.²²²

Conflict and Debate Intensify (1991-1992)

Still, Chamorro remained cautious, too much so for members of the new National Assembly majority UNO collation. As a result, 1991 saw the property debate become a focus of three-sided political battles (President Chamorro, UNO, and Sandinistas). In June of that year, the UNO-dominated National Assembly, lead by the Assembly President Alfredo César Aguirre, voted to study a proposal to revoke the *Piñata* laws. The presidency argued that such a law would prevent negotiation of a solution among farmers, unions, and businessmen.²²³

Meanwhile, the administration also established two new offices: the Office of Land Ordering (OOT, *Oficina de Ordenamiento Territorial*) and the Office for the Quantification of Indemnities (OCI, *Oficina de Cuantificación de Indemnizaciones*). OOT was to review the *Piñata* property assignments, which involved grants of property between February 25 (election day) and April 25, 1990 (inauguration day, when the new President and National Assembly deputies took office). OCI was to determine the amount of compensation due each previous owner of lands that were legitimately granted to agrarian and urban reform beneficiaries.

Though this administrative process to review claims by owners and current occupants was somewhat confused, due to competition among government offices, it did result in the conversion of most conflicts over property from violent confrontations to disputes that were legal and peaceful. Still, the procedures seemed to constantly changing and those responsible for administering the program often had significant conflicts of interest. Initially, potential claimants were told that they would have only six months to file claims but, in fact, the

²²² The Carter Center, 9.

²²³ Tim Merrill, *Nicaragua: A Country Study*, 47.

Attorney General's Office continued accepting claims for two years.²²⁴

Conduct by those around Chamorro led to suspicions of corruption by members of the new administration, though not of the president herself. While in office, in 1992, Chamorro's main deputy (and son-in-law and, according to many, the true power behind the presidency), Minister of the Presidency Antonio Lacayo, was reportedly operating his own shrimp farm on confiscated property.²²⁵ Sometimes the documentary requirements were changed and the claimants never notified that their files were deemed incomplete.²²⁶ Many high-ranking government officials of the Chamorro Government were living in confiscated properties, held by the government, to which they had apparently been given access because of their positions. One of the U.S. claimants, who has not given me explicit permission to cite her case, had documentary evidence confirming this kind of occupancy by those connected to the new government. Minister of the Presidency, Chamorro's chief of staff and son-in-law, with many links to the prominent Sandinista beneficiaries of the *Piñata* laws, including business relationships

On May 17, 1991, the Supreme Court ruled Articles 7 and 11 of Decree No. 11-90 as "inapplicable" because it was unconstitutional to give adjudicative power to the CNRC, which the court deemed more properly lies within the judicial system.²²⁷ The administration quickly repaired Decree No. 23-91, issued on May 24, reinstating all the provisions of Decree No. 11-90, and its Article 6 establishing the power of the executive branch to decide matters involving properties in its control and possession and its Article 7 making decisions of the CNRC as recommendations to the executive for resolutions of cases.

Chamorro then unilaterally issued two presidential decrees (Decrees Nos. 35-91 and 36-91) allowing occupants to retain homes gained in the *Piñata* if they had no

²²⁴ Republican Staff, 10.

²²⁵ Republican Staff, 1-2.

²²⁶ Republican Staff, 10.

²²⁷ Steven Hendrix, "The Crisis of Land Law and Policy in Nicaragua," 29 Comp Jur Rev 3-24 (1992), 13.

others but requiring them to pay the market value if they sold or rented them.

The next day, National Assembly responded by passing Law No. 133-92, with all UNO in support and all Sandinista deputies opposed, that overturned the *Piñata* laws; it was vetoed by President Chamorro.²²⁸ The final version allowed heads of household without other property who were living in illegal settlement or people's barrios, in other words small homes and agrarian properties.²²⁹ In discussing the bill, National Assembly President Alfredo Cesar Aguirre argued that the *Piñata* had to be undone because the passing of those laws was contrary to the transition agreements and because it was important to respect written agreements.²³⁰ Despite the rhetoric and the strong support of property owners, Law No. 133-92 still stated that property has a social function.

Minister of Presidency Antonio Lacayo Oyanguren noted that it was essential to retain the *Piñata* laws out of respect for the legal authority of the previous assembly to pass laws or respect for legislative process would be undermined; in September 1991, Chamorro vetoed the new property law and, in December, with mainly Sandinista support, her veto was sustained.²³¹

At the same time, the moral duplicity of Sandinista leaders who had helped themselves to substantial properties led to dissensions by those in the Sandinista ranks who advocated for a less corrupt approach.

The *Piñata* was pointed to as one of the major causes of the vocal demands for democratization within the Sandinista movement and one of the principal reasons for the disaffection of mid-level and lower-ranking Sandinistas who sought new political alternatives....²³²

²²⁸ "A 20 Años de La Piñata," *La Prensa* (April 24, 2010).

²²⁹ Law 133 of August 23, 1991, "Law of the Re-establishment and Stability of the Legal Order of Private, State and Municipal Property," published in *La Prensa* on March 27, 1997, <http://legislacion.asamblea.gob.ni/normaweb.nsf/d0c69e2c91d9955906256a400077164a/9abfad6678de06cc062570c80062e0ec?OpenDocument>, (accessed July 31, 2011).

²³⁰ Tim Merrill, *Nicaragua: A Country Study*, 47.

²³¹ Tim Merrill, *Nicaragua: A Country Study*, 47.

²³² Tim Merrill, *Nicaragua: A Country Study*, 47.

Disenchantment with Sandinista leadership would eventually lead to the creation of a rival Sandinista renovation movement.

In August 1992, the *Universidad Autónoma de Nicaragua*, León (UNAN-León), and Capital University co-sponsored a conference in León that featured legal experts representing the Sandinista and anti-Sandinista perspectives, including outside experts from Latin America and the United States. This served to clarify the perspectives on both sides. The conference's results filled most of an issue of the Capital University Law Review, which was dedicated to property rights in Nicaragua.²³³

Foundations Laid for Current System (1992-1993)

President Chamorro, indeed the whole country, was keenly aware of the importance of the property question. Resolving land claims would be central to Nicaragua's continued peace and economic development. She set up two independent systems to resolve claims, one for those who currently had possession of properties and one for those whose lands had been seized.

Under the Chamorro administration much of the eventual compensation system was set up. As noted elsewhere, building on her 1990 creation of the National Review Commission (CNRC) to accept claims from people whose property had been confiscated, she created, by Decree No. 35-91, the Office of Land Ordering (*Oficina de Ordenamiento Territorial*, or OOT) to review titles of those who benefited under the *Piñata* laws and grant *solvencias*, or titles, to those who followed the rules. About half the applications for *solvencias* under Law 85 were denied for failure to follow the rules; nearly all those sought under Laws 86 and 88 were granted. In 1993, President Chamorro set up the Office of Quantification and Indemnification (OCI), charged with determining the value of compensation to be paid to the claimant in indemnification bonds.

²³³ Most of Volume 22, Number 4, (1993) of the Capital University Law Review is dedicated to the Nicaraguan situation.

In September 1992, Decree No. 51-92 established the Office of Quantifying of Indemnities (OCI, *Oficina de Cuantificación de Indemnizaciones*) to determine the fair value of properties that could not be returned to their original owners, for the purpose of compensation the former owners.

In September 1992, President Chamorro reactivated the CNRC as a mechanism for determining to whom and in what amount to pay compensate for those whose property had been confiscated.²³⁴ By allowing appeal to the regular court system, constitutional issues were avoided.

The government also budgeted US\$ 650 million (about two years' worth of exports) to resolve the claims. This amount represents money budgeted through 1995.²³⁵ A great deal more money was later allocated for claim resolution. While progress was made in resolving land-related disputes, new claims continued to be filed.²³⁶ The Peace Accords also upheld the right to own property and the principle that owners must be indemnified when the government expropriates land. The 1995 Amendments to the Constitution reiterated these principles.²³⁷

President Chamorro's major strength was her credibility. While criticized for not undoing the full range of confiscations, for not sufficiently controlling the corruption that flourished among members of her government, and for allowing continued Sandinista influence and violations of human rights, she kept a very divided country from falling into bloody civil war again.

There was some progress in processing claims and in determining ownership for agrarian reform beneficiaries but several factors conspired to hamper resolution of many cases. First, as discussed in Chapter 4, there was the problem of two

²³⁴ Decree No. 47-92, "Reestablishment of the National Review Commission." September 9, 1992.

²³⁵ See Carter Center, 9.

²³⁶ See Código Civil, Art. 617, prohibiting confiscations without explicit legal justification for public utility

²³⁷ See *Constitución de la República de Nicaragua*, Art. 44, as reformed by Law 192, published in the *Diario Oficial*, July 4, 1995.

overlapping legal systems by which an original owner could have rights to a property to which an agrarian reform beneficiary also had apparently good title. Second, the process was characterized by an arbitrary and often biased judicial and administrative staff, remembering that the vast majority of civil servants and judges in the early 1990s were Sandinista appointees. Third, wealthier, better-connected beneficiaries made full use of their influence, their wealth, and their ability to intimidate to slow any move that would divest them of their properties. Likewise, former owners would often resort to any means available to regain their properties, and violence would often erupt when they tried to evict peasants and poor urban residents who had obtained mere provisional systems under the agrarian and urban reform campaigns or, frequently, held no paper title at all.²³⁸

Attempts continued to find some kind of acceptable resolutions of seemingly irreconcilable and competing interests. As mentioned, there was a conference in 1992 in León sponsored by UNAN-León and Capital University. There was also a Property Issues Conference sponsored by the UNDP and Carter Center held in Montelimar. There has been a steady stream of international experts and advisors providing suggestions to the Nicaraguan government. Some of these suggestions have been adopted and remain the core of the current compensation system.

Debating and Fine Tuning the Compensation System (1994-1995)

In August 1992, at the *Universidad Nacional Autónoma de Nicaragua* in León, Nicaragua, over two hundred people participated in a three day conference on “The Nicaraguan Property Regime After Sandinista Land Reform: Revolution, Participatory Democracy, and Property.” Attendees included a mix of legal scholars, government officials, judges, *confiscados*, and representatives of those *campesinos* who benefitted from agrarian reform.

The Carter Center’s Latin American and Caribbean Program had been active in Nicaragua since its involvement in observing the 1990 elections. In 1994 Jimmy

²³⁸ The Carter Center, 9.

Carter and staff of the Carter Center had met with Nicaraguan leaders in both Atlanta and Managua to discuss possible solutions to Nicaragua's problematic political and economic heritage.²³⁹

The resulting August 1994 Carter Center team consisted of American Bar Association experts and staff of the Land Tenure Center of the University of Wisconsin-Madison. The team provided advice to the Nicaraguan judiciary, as well as assisted in the design of a UNDP project to improve the ability of government administrative agencies in reviewing the nearly 16,000 claims by former owners and the 112,000 petitions for formal titles by current occupants.²⁴⁰ In January 1995, the UNDP signed an agreement with the Nicaraguan Government to fund this US\$ 3.7 million program. The Supreme Court also adopted the Carter Center team's suggestion to designate two courts in Managua to handle property issues, followed by three others elsewhere, with UNDP funding for some of the extra staff and equipment required.

Meanwhile, a second Carter Center-sponsored team of experts came in late 1994 to provide advice on mediation and law. It met with government official, political leaders, foreign donors, and international and Nicaraguan groups involved in mediation. This group recommended various steps to encourage resolution of the property issues:

1. Raise the value of the bonds used to compensate those whose properties cannot be returned. The team recommended using proceeds from the privatization of the telephone company to back the bonds to make them more attractive to claimants.
2. Establish an ombudsman's office to support the work of review and titling.
3. Give greater legal security to those small property holders with solvencies, to protect them from eviction while awaiting formal titles.
4. Complete the administrative review process by mid-1996 (undertaken

²³⁹ The Carter Center, 9.

²⁴⁰ The Carter Center, 3.

by the new Property Superintendency within the Ministry of Finance).

5. Deal with unfulfilled promises to provide land and assistance to demobilized soldiers from both the Sandinista People's Army and the Resistance to reduce violent confrontations in the countryside.
6. Establish the five new property courts and beginning processing the 6,000 litigation cases.
7. Identify and train mediators to use alternative dispute resolution to reduce the number of cases to be litigated.
8. Improve the titling process by building on existing programs. One is a World Bank project to ensure integration of the various property registries, modern mapping of property, and a computerized property registry to ensure agrarian reform beneficiaries have clear title. The second is a UNDP project to support the then-new Office of Urban Titling (OTU), which was issuing titles for urban reform properties.
9. Improve access to land markets by giving agrarian reform beneficiaries and ex-combatants -- and poor and disadvantage groups in general -- access to mortgages and mortgage guarantees, land banks, agricultural credits, such as by building on an existing EU project to support credit given by farmer organizations in place of banks, reducing new trend toward re-concentration of land.²⁴¹

In July 1995, UNDP and the Carter Center sponsored a conference on resolving property disputes, known as the Montelimar Conference, named for the Pacific Coast resort where it occurred, on properties formerly owned by the Somoza family. This conference was funded by Nicaragua's National Assembly, USAID (the foreign assistance arm of the United States Government), UNDP, the Foundation for a Civil Society, and the Institute for Central American Studies. Attendees included former U.S. President Jimmy Carter and members of President Chamorro's cabinet, leaders of the National Assembly and the main political parties, Supreme Court justices, and various representatives of civil society organizations (those whose properties were confiscated, bondholders, beneficiaries of agrarian reform, unions, former combatants, and COSEP, the business association). At the conference's conclusion, Jimmy Carter released a summary

²⁴¹ The Carter Center, "Conference on Property Issues," July 4-5, 1995, 9.

statement outlining “Points of Consensus” resulting from the conference.²⁴² This statement concluded that “distribution of small plots of land and houses to people of few resources serves a social benefit for the country” and that “some protection for the small property holders is desirable until they receive the full title” following obtaining a *solvencia*, a sort of temporary title.²⁴³ On the contrary, those who received property larger than “some social benefit” should pay to receive title and the suggested value was cadastral value.²⁴⁴ Cadastral or taxable value is typically much lower than market value. Anyone who abused the process was to be prosecuted by the Attorney General’s Office.²⁴⁵ There was also consensus that those whose property was confiscated, whether large or small, “should receive prompt and fair compensation, and that the indemnification bonds issued by the government need to be increased in value.”²⁴⁶ The statement indicated that funds resulting from the privatization of the telephone company and other state-held assets could be used to guarantee the bonds.

During the Montelimar Conference, the Nicaraguan Supreme Court asked the Carter Center to gather and send to Nicaragua a team of legal experts who might provide advice on the establishment of a legal regime to resolve the estimated 5,000 cases that the Nicaraguan Attorney General’s Office was expected to submit to courts for resolution.

The Montelimar compromise, not accepted by all attendees and others involved in the property question, resulted in Law 209, which Chamorro was able to get passed in the National Assembly after centrists joined Sandinistas in electing a new National Assembly Directorate, lead by Christian Democrat Luís Humberto Guzmán, when new leadership elections came due in 1994. However, in 1995, the Supreme Court ruled much of Law 209 unconstitutional because of lack of review of administrative actions by the judiciary, though it reflect the opinion of a

²⁴² The Carter Center, 10.

²⁴³ The Carter Center, 10.

²⁴⁴ The Carter Center, 11.

²⁴⁵ The Carter Center, 11.

²⁴⁶ The Carter Center, 11.

majority of the National Assembly, the Sandinistas and certain centrist legislators, who believed awards of title by the Sandinista government should largely be validated.²⁴⁷

A successor law, Law 278 was passed in 1997. This law reaffirmed the rights of those who received property under Laws 85 and 86, but required beneficiaries of larger properties to pay back taxes or forfeit them.

The administrative process that the Chamorro government created from 1990 to 1996 was to review claims for property to determine whether there was a legitimate basis for the claim or not. It made significant progress. Claims totaling 117,178 were submitted and, by February 1995, 87 percent of them had been administratively reviewed and either approved or denied, though appeals were still pending.²⁴⁸ Thirty percent of the claims by prior owners had been deemed worthy of compensation, but only half of those had received compensation bonds. In mid-1995, government officials were forecasting resolution of the review process by mid-1996.²⁴⁹

Following the review process, though, would come the titling process and compensation. The urban titling began in 1995 and 600 titles were issued by February, though with only 30 percent being granted compensation, of which half were granted the bonds.²⁵⁰ It was anticipated that the thousands of denied claims would end up in the courts.²⁵¹

In 1995, according to the Carter Center, challenges included:²⁵²

1. a legal framework including laws passed between the February 1990 election and the April 1990 inauguration of President Chamorro, whose

²⁴⁷ Trackman, Fisher, and Salas, *The Reform of Property Registration Systems in Nicaragua*, 21.

²⁴⁸ The Carter Center, 12.

²⁴⁹ The Carter Center, 12.

²⁵⁰ The Carter Center, 12.

²⁵¹ The Carter Center, 12.

²⁵² The Carter Center, 12.

validity and perceived abuses are contested by a sizable segment of the population;

2. multiple ownership claims resulting from land distribution practices during the Sandinista government when titles were not always formally transferred to the state upon confiscation or expropriation, and when subsequent transfers to the beneficiaries of reform provided only provisional titles;
3. political disputes over whether to return property or compensate former owners, and whether current occupants of land and houses should pay for their property, and how much. Neither the political parties in the National Assembly, nor the Assembly and the Executive branches, were able to agree on a comprehensive property law in the first five years of the Chamorro administration;
4. a judicial system that will be overwhelmed by the estimated 6,000 cases coming to litigation. One justice estimated that even if the courts dealt with nothing but property cases it would still take ten years to review all of those cases;
5. low valuation of bonds used for compensating prior owners, currently trading at 17 percent of face value, which decreases the potential to resolve cases through this method;
6. lack of coordination among administrative agencies charged with property matters that were dispersed physically and functionally until a physical consolidation of offices in February 1995;
7. an antiquated cadastral, titling and registration system whose records are partially destroyed and whose resources are inadequate for the tasks of physically surveying the properties, proper titling, and inscribing titles in the Property Registry; and
8. inadequate funding, personnel and equipment of government agencies.

In addition, there is the complicating factor that property claims include claims by U.S. citizens, many of them naturalized previously 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. (Only 501, or 31 percent, 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).

4.5 Law 278 Codifies the Middle Ground but Problems Persist

Law 278 was designed to confirm the rights of the smaller beneficiaries of Law 85 (urban houses) and Law 86 (lots) while requiring recipients of larger properties to pay taxes for the properties or forfeit them. President Aleman had indicated that this law is designed to honor his campaign promise to protect the poor while making those receiving larger properties pay.

Claimants criticized Law 278 for many reasons. First, Article 42 made the taxable (cadastral) value of the property the basis for establishing levels of compensation. As will be seen in the case studies, cadastral value is significantly lower than replacement or market value. Second, Article 19 gives CORNAP (*Corporaciones Nacionales del Sector Público*, National Corporations of the Public Sector, a government holding company administering many publicly-owned enterprises) contract holders 12 months the effective date to pay up to 100 percent of the balance due in compensation bonds at 50 percent of face value. Article 48 gives the Nicaraguan government or claimants that chance to seek annulment of the CORNAP contracts if the terms are not honored. Typically, such contracts were years in arrears.²⁵³ Article 30 requires claimants to pay for any improvements the government has made to the property claim (such as buildings), but Law 278 does not compensate claimants for any deterioration of the property. Article 31, though, allows claimants to pay for such improvements by compensation bonds, at full face value.

Article 9 of Law 278 was controversial because it indicates that those who have received properly issued *solvencias de revisión y disposición* (provisional titles), unless they themselves can be shown to have committed fraud, will be presumed to keep possession, with the claimant only getting bonds. The practical effect of this is to put the burden on the claimant to prove, in court, that the occupier committed fraud, since, under the *Piñata* legislation, those in possession of the properties which the state was administering were authorized to receive title.²⁵⁴ This means

²⁵³ Interviews with Claudia Vivas, 2000-2002.

²⁵⁴ See Article 2, Law 85.

that, even if the property was not properly confiscated, the issuance of a *solvencia* essentially ensured the beneficiary keeps the property. Law 278, read in conjunction with the Nicaraguan Civil Code (Articles 2075, 2237, and 2575), presumes good faith on the part of those who have property and later purchasers, putting the burden on original owners to prove bad faith and, even then, normally only have access to monetary damages from whoever in the title chain can be proven to have acted in bad faith. Without rights to regain property that was transferred to a third party who bought it in good faith, original owners are put in the position of having to sue someone no longer on the property, an unreliable means of getting satisfaction given issues with the Nicaraguan judicial system, discussed later in this chapter, with an example of a manifestly unfair judicial result given in Chapter 7.

Article 32 allows the government to compensate claimants through land swaps. Article 19 allows bonds to be issued to CORNAP contract occupants. Article 97 allows active and retired police and military to formalize houses given them under Law 85 without paying Article 98's tax on properties over 100 square meters.

The process for claimants, under Law 278 and others legislation, was for a claimant to file a claim with the CNRC, with specific documentary requirements to support the claim. The CNRC studies and issues a *resolución de la comisión*, which is a finding that the claimant's property has been confiscated or not ("*no ha lugar*"), with supporting legal bases and a determination as to whether the property can be returned. If the *resolución de la comisión* finds that the property can be returned, the claimant must either obtain the occupant's agreement or sue the occupant in court. If the *resolución de la Comisión* gives the claimant a right to be indemnified for the lost property, the claimant then files with OCI (*Oficina de Cuantificación de Indemnizaciones* or Office for Quantifying Indemnifications).

If the claimant disagrees with the CNRC *resolución*, he or she must sue in trial court, which will pass the matter to the property tribunals, as with any other property dispute.

The CNRC determines if the claimant has the legal right to compensation (did the claimant originally own the land and did they lose it through confiscation). If so, it passes the claim to the Office of Quantification of Indemnifications (OCI), which conducts research to determine the claimed property's value, and issues a resolution indicating the value, in indemnification bonds, to which the claimant is entitled. Based on my experience in the Property Office, a common complaint by claimants is that property value is determined by using the tax value at the time of seizure, which is far lower than current market value. The property's tax value at the time of confiscation is converted to its dollar value at that time. This amount of dollars is then reconverted to current Córdobas at the time the bond offer is made. Claimants thus realize a loss due to the difference between 1979 dollars and current dollars. But had the Nicaraguan Government valued everything in Córdobas, claimants would have faced the consequences of determining a property value with worthless, hyper-inflated Córdobas from the 1980s. There is no provision for lost income or interest in the years between confiscation and payment of indemnification bonds.

Thus, technically, if the seizure occurred properly under the confiscation decrees, if the property was correctly registered in the name of the state, and if the beneficiary of the *Piñata* laws followed all the correct procedures, the only recourse for the claimant is bond compensation from OCI or trying to negotiate a land swap with other Government-owned land.

Most Aspects of the Legal System Remain Constant

As noted earlier, each regime explicitly retained the preexisting Civil Code. As stated in the Law of Notarization (*Ley de Notariado*):²⁵⁵

Article 1: The Notariat is the institution in which the laws vest the public faith in the guarantee, security, and permanent record of contracts and

²⁵⁵ Robert Buitrago, *Manuel de Notario* (Leon, Nicaragua: Bibliographias Technicas, 1959), 15.

dispositions between living persons and by reason of death.

Article 2: Public Faith is the legitimate authority attributed to notaries, consuls, and secretaries of courts to ensure that documents are in the proper form, that they and their contents are considered authentic and true as long as the contrary has not been proven.

“A notary may record any kind of act or contract.”²⁵⁶ This means that no legal transaction can be proven without the involvement of a notary and his or her verification of the transaction.

In Nicaragua, to be a notary, one must first be a lawyer, because the Law of Notarization requires his admission to the legal profession.²⁵⁷ In Nicaragua, to become a notary, a lawyer must apply to the Supreme Court to be a notary. The Court conducts a background check before granting the notarial title.

In Nicaragua, and other Latin countries, all formal legal documents such as contracts, deeds, and statements exist, in their original form, only in the ‘protocols’ (*protocolos*) of notaries, typically bound in large volumes. The documents are prepared on special engraved and lined sheets containing tax stamps (*papel sellado*). The formal rules are very strict. Every recorded legal document in the protocol must contain an introduction, a body, and a conclusion. The introduction must contain the place, hour, day, month, and year the document is written, the complete names, ages, occupation, domicile and marital status of the parties, whether a party acts personally or in representation of someone else (and if representing someone else, reference to the power of attorney must be inserted in the present document), and a statement by the notary that the parties, witnesses, and interpreters are known to the notary. The body must clearly explain what the contract or act intends. The conclusion should ensure the validity of the document through statements that the parties are informed of its purpose and that the document has been read to the parties in the presence of the required witnesses and

²⁵⁶ Jose Antonio Tijerino Medrano, and Maria Palma Ibarra, *A Statement of the Laws of Nicaragua in Matters Affecting Business*, fourth ed. (Washington, DC: General Secretariat, Organization of American States, 1978), 52.

²⁵⁷ Tijerino Medrano, *A Statement of the Laws of Nicaragua*, 52.

accepted by them, and should be signed by the parties, interpreter, witnesses, and notary.

Each protocol book will contain a series of such documents, numbered consecutively, which are referenced by volume and sheet. A notary must retain these books and on his or her death or retirement, they are turned over to the Public Registry of the notary's domicile. A notary is obliged to begin a new protocol each year and provide to the Supreme Court an annual index of the last year's protocol, with sheet number and description of transaction for each document.

What is used in everyday transactions and in registrations at the various registries is an affidavit (*testimonio*), also on *papel sellado*, by a notary wherein he or she quotes the document verbatim, citing the relevant protocol entry. Except in the case of special documents, such as cancellations of debts, unlimited official *testimonios* can be prepared and used, similar to how a certified copy of a legal document is used in the United States. In the case of the registration of a deed, for example, the notary will prepare a *testimonio* quoting exactly the deed in his or her protocol book. The *testimonio* attesting to the deed is then registered at the Public Registry for the area where the property is located.

Government offices, such as Public Registries or the Commercial Registries, house large number of registry books (*libros de registro*), where documents applying to companies and real estate, respectively, are recorded.

In contrast to the United States, where the original documents themselves, or certified copies thereof, are filed with government offices, in Nicaragua, one files the *testimonio* referring to the actual document, which remains in the original notary's *protocolo*. When documents are filed with the public registry, for example, it is, in fact, the *testimonio* of the notary him or herself that is brought to the office. Employees of the registry then enter a verbatim quotation of the affidavit into the relevant volume, with notations as to when and by whom it was filed. These notations then become part of the record.

Using as an example a property conveyance, the two parties to the conveyance will go before a notary, who will prepare the actual deed in his protocol volume. Each party will sign, along with witnesses. If someone is signing on behalf of another party (such as an attorney on behalf of the government or a private party), that person must also provide a copy of the documents empowering him or her to sign on that party's behalf. In the deed itself, such justifications, which are themselves affidavits of notary-prepared documents, will be referred to, though not necessarily quoted verbatim. An affidavit documenting the exact text of the deed in the notary's possession will then be prepared by the notary. One of the parties or a representative for one of the parties will then bring the affidavit of the deed to the public registry, where it will be entered into the section of a registry volume that governs that particular piece of property. At this point, the transaction is complete and has been formally registered in the name of the new owner. (When a property is first established by subdivision, or "*desmembración*," it is assigned a unique Property Number and is entered into a registry volume.) Therefore, the current status of a piece of property should theoretically be determinable by going through the registry entries.

Notaries are empowered to prepare all manner of legal documents, such as deeds, wills, contracts, etc., as part of their protocol. The role of the notary is fundamental to such legal transactions. The notary prepares the text of the contract and, acting as a lawyer, advises the client how best to achieve his goal. To make illegal transactions work, the notary is normally complicit, since part of his role is to explain the transaction to the parties. For example, just as a U.S. lawyer preparing a contract, the notary is the individual responsible for establishing the exact wording of a transaction. A dishonest notary is also able to fraudulently establish the presence of individuals who are not present and fraudulently cite documents that do not exist, such as powers of attorneys and affidavits of deeds. This ability gives notaries much more power than U.S. attorneys have to unilaterally "legalize" illegal transactions.

Notaries possess the power to attest to the genuineness of various legal documents, including contracts and inheritance. As of 1978, a notary had to be at least 21 years old, have an academic degree in the profession (including law), and be in good reputation and conduct as confirmed by three witnesses selected by the Supreme Court.²⁵⁸ When appointed, the notary was registered with both the Ministry of Justice and the Supreme Court.

The main duties of a notary are to keep a “*protocolo*” of full sheets of stamped (meaning taxes have been paid on each sheet) paper on which instruments are recorded.²⁵⁹ In other words, it is a book consisting of all the legal documents that the notary has witnessed in a year. The notary inscribes instruments in consecutive pages by writing out the full text of each document and gives the parties a stamped copy of each within three days after recording (writing) the original document in his or her *protocolo*. The *protocolos*, thus, are key to preserving records of legal transaction and, in fact, a notary must deposit his or her *protocolo* with a district court if he or she leaves the country.

While in many cases, *solvensias* were registered, the process established under Law 278 was to require beneficiaries to seek regular titles from OOT (Law 85 beneficiaries), the OTU (Law 86 beneficiaries), and the Office of Agrarian Titling (Law 88 beneficiaries).

A proper sales transaction in Nicaragua might normally take about 65 days and involves the following steps:²⁶⁰

1. The lawyer requests the *Libertad de Gravamen* (Free of Lien) document from the Public Registry Office. It should show any impediment to the sale (such as previous promises of sale, mortgages, pending legal cases, etc.), and the name of the real owner.
2. Once the lawyer has checked this paper:

²⁵⁸ Tijerino Medrano, *A Statement of the Laws of Nicaragua* 52.

²⁵⁹ Tijerino Medrano, *A Statement of the Laws of Nicaragua* 52-53.

²⁶⁰ “Properties for Sale in Nicaragua,” http://www.property-nicaragua.com.ar/property_transaction_costs_fees_nicaragua.html (accessed August 31, 2011).

- A new *escritura* (or title deed) will be drawn up showing the buyer as the new owner.
- The seller of the property and the buyer of the property will sign this new document and it will be witnessed by the lawyer.
- The seller should provide his Tax ID Number, Land Registry Certificate, Land Registry Survey, Power of Attorney (if not the property owner, 1 percent Withholding tax and Verification that all taxes have been paid to date).
- At the same time the money for the purchase of the property should be transferred from the buyer to the seller.

3. Following this, the lawyer will take the necessary steps to have the property registered in the buyer's name:

- The Cadastral Office will evaluate the property.
- The buyer will then pay four percent of this assessed value to the Revenue Office. Payment of this Transfer Tax results in the transfer of the property to the buyer's name.
- In addition, the buyer will pay 0.5 percent of the assessed value to the Public Registry. Payment of this Registration Fee ensures that the property is registered in the buyer's name.

Corruption and Immunity

The Constitution in effect since 1987 guarantees many elected officials immunity from all acts, criminal and civil, except in matters of family law (such as divorce). This precludes any judicial involvement in most civil cases involving the highest levels of the elite with such positions, which span political parties.

Those enjoying this immunity include the President and Vice President (Article 148), ministers and vice ministers (Article 151), the five members and substitute members (*suplentes*) of the *Controlaria General de la República* (Article 154), magistrates of the Supreme Court and Appeals Courts (Article 162), magistrates of the Supreme Electoral Council (172), Superintendent General and Vice Superintendent of Banks and Other Financial Institution, Fiscal General and

Assistant Fiscal General (Article 138), Procurator and Sub-Procurator for the Defense of Human Rights (Article 138), National Assembly Deputies (*Representantes*) (Article 139), who are elected for five year terms. Article 133 gives National Assembly seats to the previous President and Vice President (those elected in the last election) and to the second-place presidential and vice presidential candidates in the most recent election. This extends the immunity of the President and Vice President by an additional five years after they leave office.

The number of ministries, including “autonomous and governmental entities, and state banks and other financial institutions of the state” can be increased by law (Article 151), so there is essentially no constitutional limit to the number of people with the title of minister and vice minister.

The only check on constitutional immunity is the fact that the National Assembly can lift the immunity of the President by a two-thirds vote and of other officials by a majority vote (Article 130). This is rare. In 2002, the National Assembly lifted former President Arnoldo Alemán’s immunity so that he could face charges of money-laundering and defrauding the state of US\$ 10 million.²⁶¹ A year later, he was convicted and sentenced to 20 years.²⁶² In 2009, the Nicaraguan Supreme Court overturned his conviction, an action widely seen as part of The Pact between Alemán’s Liberals and Ortega, whose appointees dominate the Supreme Court.²⁶³

On paper, the framework for fighting corruption appears strong, partly due to the efforts of President Bolaños; Nicaragua has a solid system of laws to address corruption; it is party to the United Nations Convention against Corruption (UNCAC, in 2006) and the Inter-American Convention Against Corruption

²⁶¹ “Alemán fue despojado de su inmunidad parlamentaria,” *El Nuevo Diario* (December 12, 2002), http://www.eldiario.net/noticias/2002/2002_12/nt021213/8_00int.html, (accessed September 10, 2011).

²⁶² “Nicaragua’s former leader jailed,” BBC (December 8, 2003), <http://news.bbc.co.uk/2/hi/americas/3299289.stm>, (accessed September 10, 2011).

²⁶³ Business Anti-Corruption Portal, “Nicaragua Country Profile,” <http://www.business-anti-corruption.com/country-profiles/latin-america-the-caribbean/nicaragua/general-information/>, (accessed September 10, 2011).

(1999).²⁶⁴ It has also signed the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA) which criminalizes bribery affecting trade and investment. Nonetheless, all measures indicate that corruption permeates Nicaraguan society. Beyond the low Transparency International rating given above, most other indicators point to a high level of official corruption.²⁶⁵ This is verified by the number of stories in the daily Managua papers that refer to corruption.

Legalization of Occupied Lands

The dilemma of many living on properties and working on lands to which they do not have title is one widely recognized as needing to be resolved. As a result, there are mechanisms to confer formal title on those occupying property, but lacking title.

Article 13 of Decree No. 35-91 permits the OOT to grant a *solvencia* to persons with legal personality who benefited under Law 85 for having a “social function.” This provision related to properties affected by Law 85, which can be applied by analogy to those properties affected by agrarian reform, considering that Decree No. 48-92 ordered the OOT to review the cases of “persons” holding properties affected by agrarian reform, in place of the Special Presidential Commission created by Articles 28 to 32 in Decree No. 35-91.

But it is necessary to clarify that those conventional persons who can be granted a *solvencia* by the OOT related to rural properties have to be Cooperative Enterprises created according to Law 84.²⁶⁶ This can be found in Article 3 of Law 278, which clarified Laws 85, 86, and 88. The Cooperative Enterprises to which were assigned rustic properties had to fulfill a series of requirements, among which the most

²⁶⁴ Business Anti-Corruption Portal, “Nicaragua Country Profile,” 2011.

²⁶⁵ Business Anti-Corruption Portal, “Nicaragua Country Profile,” 2011 and Bertelsmann Stiftung, Nicaragua Country Report, Bertelsmann Transformation Index 2010, at <http://www.bertelsmann-transformation-index.de/101.0.html?L=1> (accessed September 27, 2011).

²⁶⁶ Published in *La Gaceta* on March 28, 1990.

significant is that the land had to be worked directly by them and always with social interest.

Two Claims Options Theoretically Available but Courts Unsatisfactory

In Nicaragua, individuals who suffered confiscations have two options settling claims. First, claimants could file an administrative petition, seeking return of or compensation for their property; the date for this option closed as of July 31, 2005. Most such administratively resolved claims involve payment in 15-year bonds, based on the tax value of the property at the time of confiscation. Second, in some cases, claimants could use the local judicial system to gain the return of their property. The judicial system, however, has not shown objectivity, as will be seen in Chapter 7.

To obtain compensation, the claimant files a claim with the Nicaraguan government. If the claim is successful, the government will issue the claimant bonds, based on the taxable value of the property, which is typically significantly lower than the current market value. The main complaint against pursuing the administrative compensation route is that many claimants do not consider the compensation bonds to be reasonably valued, although values have risen in recent years.

The current scheme affirms the rights of those legally receiving property under the *Piñata*. Recipients of larger properties were supposed to pay back taxes or forfeit them. Those whose property was confiscated were to receive indemnification bonds its taxable value at the time of confiscation, without interest or lost profits.

Arbitration, Mediation, and the Courts

As noted above, a claimant has a right to sue in court if he or she believes that not all technical requirements were met and can theoretically obtain the return of his or her property. However, when Law 278 was passed in 1997, it froze property cases

that were passing through the regular judicial system in favor of creating special tribunals for property disputes. It took two years, until October 1999, for the Supreme Court to establish the property tribunals (DIRAC, the Office for Peaceful Settlement of Disputes) to handle property disputes, under authority of Law 278.²⁶⁷ Observers predicted that thousands of property cases would have to be resolved in court.²⁶⁸ In reality, this did not happen, as claimants rights were delayed through the freeze of property cases and then blocked by a biased judiciary.

Even after the tribunals were established, it took two more years for lawyers to be appointed as arbitrators and judges. Open advertisements solicited lawyers interested in appointments, but the Sandinista leadership pushed lawyers affiliated with their party to apply, and the result was that the majority of those who put forth their names were Sandinista-aligned.²⁶⁹ The names were drawn by lottery, meaning that a majority of those finally designated were Sandinista-linked. Appeals are made to the Property Appeals Court only, as the final level of appeal (there being no appeals on property cases to the Supreme Court), and the membership of this court was drawn from the same pool of lawyers. With most of the pool affiliated with the Sandinistas and most of the remainder affiliated with Aleman's faction, the decisions of the Property Appeals Court could be expected to favor entrenched interests, and they did, as will be shown in Chapter 7.

The property tribunals, with mediation and arbitration stages, achieved some success but they suffer from some of the same ailments as the regular courts. As of 2002, the Property Appeals Courts, *Salas de Propiedad*, had never ruled against an occupant, even when evidence and law strongly favor the original owner. Judicial rulings, especially by the Property Appeals Courts, from which there is no further appeal, appear not to reflect the true legal and factual situation. In any event, results from the property tribunals must be passed back to the regular courts for

²⁶⁷ United Nations Human Rights Committee, International Covenant on Civil and Political Rights, CCPR/C/NIC/Q/3/Add.1, October 7, 2008, at http://ccprcentre.org/doc/HRC/Nicaragua/CCPR.C.NIC.Q.3.Add1_En.pdf. Accessed August 17, 2012.

²⁶⁸ The Carter Center, 12.

²⁶⁹ Interview with Claudia Vivas, December 12, 2001.

preparation of a formal order, thus subjecting claimants to the very system they were designed to avoid.

If a beneficiary under the *Piñata* laws has not paid his or her taxes, the Nicaraguan Government can sue to foreclose, regain title in the name of the state, and then convey the property back to the original owner.

The cases involving properties occupied by the poorest beneficiaries of land reform usually involve *campesinos* or groups of urban squatters. The norm is for claimants to accept bonds for properties occupied by hundreds of *campesinos* or urban squatters, while seeking return of properties seized by individual families.²⁷⁰ Claimants know that it is not practical to get the *campesinos* or squatters off land since there is a greater threat of violence or retaliation from such a large group of dispossessed people with no other meaningful assets except a small piece of earth and ramshackle shelter where they live.

The judicial route is only effective when the current occupants of the property failed to comply with the legal requisites of the Nicaraguan laws that allowed them to obtain possession. However, as we see, even this seldom results in success.

When setting out the historical and legal milieu of the Nicaraguan property conundrum, one point stands out: the decrees confiscating properties and the so-called *Piñata* laws awarding them to occupants are still considered valid law. Claimants have the best, perhaps only, chance to reclaim properties in those frequent cases where procedures by which the properties were confiscated and/or awarded did not adhere to the letter of the laws. In other cases, current laws only permit compensation by means of low-valued Nicaraguan Government bonds or, rarely, by identifying another, substitute property in the hands of the Nicaraguan Government. The complicated nature of the property situation affects all classes of Nicaraguans and presents a political and economic issue that will remain at the forefront of Nicaraguan news for years to come.

²⁷⁰ Interviews with Claudia Vivas, 2000-2002.

The legal situation of property in Nicaragua is convoluted. Even Nicaraguan judges are often ignorant of the rules and widely recognized as corrupt.²⁷¹ While Nicaraguan Governments have made considerable progress in returning properties or giving compensation (albeit insufficient) and “wrapping up cases”, much remains to be done to increase certainty of property ownership and to provide the concomitant confidence that are essential in order for investors, developers, and even small-holders to make the most, economically, of their property assets.

There is a third option: entering into an arrangement with the occupants of the property. Such an arrangement may include the occupants receiving the bonds, perhaps supplemented by a cash payment from the original owner, who prefers to negotiate a less than full solution in order to get their property back.

The utility of bonds either for claimants or occupants is largely driven by their value, which was initially poor, but has increased in recent years.

4.6. Bonds and the Problem of Adequacy of Compensation

Under Violeta Chamorro, the Nicaraguan government determined to pay off property claimants with bonds that would be payable at a later date, in those cases where property could not be returned. The official title of these compensation bonds is "Certificate of bonds for the payment of indemnification" ("*Certificado de Bonos de Pago por Indemnización*" or BPIs). They are listed on the Nicaraguan

²⁷¹ The problems of incompetence, corruption, favoritism, and politics influencing judicial decisions are widely recognized, with 80 percent of Nicaraguans having a negative view of the judicial system. See Latin American Data Base/Latin American Institute, Nicaragua. “Judge Fired for Dropping Charges in Checazo Corruption Case & Murder Case,” (2000), <http://www.thefreelibrary.com/NICARAGUA+percent3A+JUDGE+FIRED+FOR+DROPPING+CHARGES+IN+CHECAZO+CORRUPTION+...-a063745604> (accessed 2011-8-31). A U.S. Federal Appeals Court has upheld a finding by a District Court that a Nicaraguan court judgment could not be recognized in Florida because it was “rendered under a system which does not provide... procedures compatible with the requirements of due process of law”, although it was not willing to uphold the District Courts determination that Nicaragua as a whole “does not provide impartial tribunals.” *Osorio v. Dole Food Co.*, 665 F.Supp.2d 1307 (S.D.Fla.2009), aff’d, 635 F.3d 1277 (11th Cir. 2011).

Stock Exchange (*Bolsa de Valores*) as BPIs. Initially, the bonds were unattractive to claimants because of their low resale value. As a result, over the years there have been several changes to the bonds that eventually have succeeded in making them more attractive to investors and, thus, more acceptable to property claimants. Tracing these changes is basic to understanding the nature of the main form of compensation offered.

How the Bonds Originated

The original legal justification for the bonds arose under Sandinista decrees. In 1980, the *Junta's* Decree No. 611,²⁷² allowed the issuance of bonds by the Nicaraguan government. Article 3 defined two types of bonds. The first type consisted of bonds for specific or general state needs. The second type, of relevance to the property issue, constituted “bonds to pay contracted debts or which the State contracts for acquisitions, nationalizations, or expropriations of property belonging to natural or juridical persons.” The Minister of Finance is empowered to issue the bonds (Article 7), which can be denominated in foreign currencies (Article 19).

Of importance is the provision in Article 17, which says that both types of bonds “will be transferable without any restriction: The Treasury, Autonomous and Decentralized Entities, and the Credit institutions of the nation will be obliged to accept the Bonds in Payment of Outstanding Obligations of the holder of the instrument....” This article would seem, then, to make the bonds liquid for payment of debts to the government, including taxes, making them more attractive as almost the equivalent of cash. Those having such obligations would, presumably, buy them at a modest discount from the face value, giving themselves a savings on what they had to pay to the state and giving the bondholders most of the face value of the bonds.

²⁷² Decree No. 611, Law of State Bonds of the Republic of Nicaragua ("*Ley de Bonos Estatales de la Republica de Nicaragua*"), of November 4, 1980, published in *La Gaceta* on January 9, 1981.

However, during the first period of Sandinista rule, the government never used the legal authority to issue bonds and never provided compensation bonds or any other compensation to those whose property it expropriated during the period from 1979 to 1990.

With the establishment of OCI²⁷³ by Decree No. 51-92 in September 1992, the next month, using the old Sandinista era Decree No. 611 as a legal basis, the administration implemented regulations that allowed the issuance of bonds, first with Decree No. 56-92.²⁷⁴ By the end of the year, this was followed by Ministerial Accord No. 33-92.²⁷⁵

In Article 2 of Decree No. 56-92, the bonds were created with the following characteristics: they were to be transferable with a simple endorsement, be linked to the dollar, possess a 20 year maturity, pay three percent annual interest, and be backed by state assets. Article 4 states that the bonds will be accepted at face value, as cash, when used to purchase state assets in privatizations. Article 5 lists the companies for which bonds can be used to purchase the privatized assets: Telcor, INE's thermal plants, Montelimar tourist complex, the old *Banco de América* building, buildings in the free trade zone, a cement company, an agro industrial company, a carton company, and several sugar processing plants.

Ministerial Accord 33-92, of the Ministry of Finance, authorized issuance of C\$ (Córdoba) 500,000 in face value of bonds, named them *Bonos de Pago por Indemnización* (BPIs or, literally translated, Bonds of Payment for Indemnity), denominated them in even córdoba amounts between C\$ 500 and C\$ 10,000 (though with statement linking their value to the dollar).

²⁷³ In September 2007, OCI was transferred from the *Intendencia de la Propiedad* to the Attorney General's Office and was renamed the *Dirección de Cuantificación de Indemnizaciones*, by Decree No. 93-2007, September 11, 2007 and published in *La Gaceta* on September 21, 2007.

²⁷⁴ *Sistema de Compensación*, Decree No. 56-92, October 15, 1992, published in *La Gaceta* No. 198 on October 16, 1992.

²⁷⁵ *Creación de Bonos de Pago for Indemnización*, Acuerdo Ministerial No. 33-92, approved November 30, 1992, published in *La Gaceta* No. 249 on December 31, 1992.

Per these rules, the Ministry of Finance started issuing these bonds in February 1993.²⁷⁶ These bonds paid three percent annual interest, with a fifth of the principal being paid in each of the last five years of the 20 year period.

Early on there were various criticisms of the bonds: there was doubt about the ability of the Nicaraguan government to pay when they matured, the three percent interest rate was low, they were not very liquid because sales on the market were infrequent, banks would not accept them as collateral for loans (unlike U.S. treasury bonds), many recipients had outstanding tax obligations that they had hoped to pay off but could not with such a low resale value for the bonds, privatization of state-owned property and companies was delayed; this made claimants reluctant to accept them in settlement of their claims.²⁷⁷ In 1994, for example, the bonds were selling at 21 percent of their face value.²⁷⁸

As will be seen in the case studies below, Sandinista elites often paid off the amount they owed for benefiting from a property in excess of the allowed amounts by using compensation bonds, which they would have been able to buy on the open market, at a fraction of their face value, in the early years of the bonds.

Bonds Gradually Improved, but Values Fluctuated

The Nicaraguan Stock Exchange (*Bolsa de Valores*) began operations on January 31, 1994.²⁷⁹ At the very beginning, the sale of the compensation bonds was by far its largest activity.²⁸⁰ Initially, prices for the compensation bonds were low, but over the years have improved.

From the beginning, there was concern about the compensation bonds' resale

²⁷⁶ John Strasma, *Los Bonos de Compensación para los Bienes Confiscados entre 1980 y 1990: Análisis de Medidas Alternativas para Elevar su Valor en el Mercado* (1994), 1.

²⁷⁷ Strasma, *Los Bonos de Compensación*, 5-6.

²⁷⁸ Strasma, *Los Bonos de Compensación*, 2.

²⁷⁹ Bolsa de Valores de Nicaragua, *Quiénes Somos*, http://bolsanic.com/index.php?option=com_content&view=article&id=1&Itemid=8, (accessed July 16, 2011).

²⁸⁰ Bolsa, "Quiénes Somos."

value, vital to their acceptability for compensation, and efforts were made to improve their value. Starting in 1994, studies, largely funded by the United States government through the United States Agency for International Development (USAID), began producing recommendations on how to make the bonds more attractive to investors and, therefore, more attractive to claimants. One of the earliest of these studies, by University of Wisconsin economist John Strasma, rejected some possible solutions.²⁸¹

- Requiring the Nicaraguan government to accept the bonds at face value for any taxes would deny the government revenue, requiring issues of payment to third parties in different bonds, effectively created a parallel money.
- Requiring banks to accept them as if they were cash for paying off of bank debts would deprive banks of cash and cut off their ability to make loans.
- Encourage land beneficiaries with dubious title to pay something to the former owners to make an essentially legal and proper transfer.

Strasma did discuss several alternatives for improving compensation (allow bonds to be used by construction companies for guarantees for public works contracts, allow bonds to be counted for part of the capital on which they can make loans, give claimants shares of state-owned companies instead of bonds, give shares of mutual funds that are used to buy state-owned companies or the *Banco de América* building, require those who received larger properties to pay for much of the value in bonds), but he preferred several concrete measures to improve the value of the bonds, including.²⁸²

- Increase the interest rate to 6 percent.
- Reduce the maturity date to 10 years.
- Use proceeds from the privatization of TELCOR, the phone company, to buy U.S. zero-coupon bonds to guarantee the payment of the compensation bonds at maturity.

²⁸¹ Strasma, *Los Bonos de Compensación*, 8-14.

²⁸² Strasma, *Los Bonos de Compensación*, 17-19.

- Allow use of the bonds for payment of select obligations to the government: cotton-growers debts to the government or taxes that the Ministry of Finance does not believe would normally be collectible.

As a result, the Nicaraguan Government incrementally moved to standardize the bonds to attract investors and adopted most of the recommendations, recognizing the need for improving the bonds. In July, the National Assembly and President Chamorro approved Law No. 180. Article 2 changed the maturity date to 15 years, with five equal payments of 20 percent of the face value in years 11 to 15 and it increased the interest rate from 3.0 percent after the first two years to 4.5 percent for the next five years, then 5.0 percent for the rest of the duration.²⁸³ Other features continued, such as use of the bonds at face value for guarantees of state projects (Article 5),

New features were the ability to use the bonds for one year to pay for pre-June 1993 debts to the Social Security Institute, to agencies providing power, telephone, and water, and for taxes (Article 6) and to use the bonds for three months at 100 percent of face value and for another three months at 50 percent of face value to pay pre-June 1993 taxes and customs duties (Article 7). Also, the law specified that interest on these bonds was to be paid out of proceeds of privatization or reduction in current expenditures (Article 10). Those receiving bonds would at that time be obliged to sign a “*finiquito*” to be inscribed in the Property Registry, registering the transfer of the property and eliminating their liability for real estate taxes (Article 12).

The new bonds were issued, older bonds were converted to the newer bonds, and, by May 31, 1995, the government had issued C\$ 2,014 million in CPIs, of which 28.6 percent had been redeemed in payment of taxes or for purchases of state-owned property and goods.²⁸⁴

²⁸³ *Ley Especial de Valorización de Bonos de Pago por Indemnización*, Law No. 180, approved July 12, 1994, published in *La Gaceta* No. 141 of July 28, 1994.

²⁸⁴ Hernán J. de Santa-Coloma, Donoso Montealegre Z., and Paul B. Pieper, *Analysis of the Problem of Compensating Property Owners: A Brady-Type Plan for Nicaragua* (IMCC, Arlington, Virginia: September 1995), 4.

In early 1995, Strasma built on his earlier proposals with further recommendations having to do with the form of the certificates (date of issue, detachable coupons, better government communications), as well as with suggestions for ensuring beneficiaries of larger properties paid for them.²⁸⁵

A more significant study was conducted in 1995, funded by USAID, which called for the creation of a Brady-type plan, because the CPIs were still trading at a fifth of the face value.²⁸⁶ This study identified reasons for their low value as “illiquidity of the Nicaraguan financial market, the economic condition of the country, the fiscal deficit of the [Nicaraguan government], which reduces its capacity to repay the bonds [and] lack of interest by international investors in purchasing the CPIs.”²⁸⁷ The crux of the plan was to use proceeds of the sale of the phone company to purchase zero coupon U.S. Treasury bonds held in trust as a guarantee for payment of the interest.

The main weakness in the CPIs was the absence of real financial backing for the bonds; recommendations to use proceeds from privatization of state-owned assets never materialized because of a variety of delays and, then, what appeared to be intentional roadblocks set up by Violeta Chamorro’s successor Arnoldo Alemán. Therefore the bonds were backed only the Nicaraguan government promises to pay on maturity, which were not sufficient to assure enough investors to purchase the bonds, keeping the price low, which eventually reversed when the Nicaragua did pay off the earliest bonds on schedule as they matured.

Over the years, the value on the secondary market of these bonds has varied, depending on many factors (see Table 3). When, in the late-1990s, these bonds

²⁸⁵ John Strasma and Javier Molina, *Aspectos del Problema de la Propiedad en Nicaragua: Evaluación y Recomendaciones* (Department of Agricultural Economics and the Land Tenure Center, University of Wisconsin, Madison: February 13, 1995).

²⁸⁶ Santa-Coloma, Montealegre, and Pieper, *Analysis of the Problem of Compensating Property Owners*, 4.

²⁸⁷ Santa-Coloma, Montealegre, and Pieper, *Analysis of the Problem of Compensating Property Owners*, 4.

were accepted for payment of various obligations to the Nicaraguan Government, the resale value of newly issued bonds exceeded 30 percent of face value. However, when the Nicaraguan Government reversed this policy and reneged on promises to use proceeds of privatization to back the bonds, the resale value fell to under 20 percent, where it was in 2001. As Strasma's 1994 report noted, using bonds for tax and other obligations to the Nicaraguan government leads to an unpredictable government revenue stream and international financial institutions do not like how this undermines the ability of the government to plan budgets.²⁸⁸

Table 3: Secondary Market for BPI, by Year, for Newly Issued BPIs²⁸⁹

Year of Sale (Resale of Bonds Sold in Same Year Issued)	Average Sale (As Percentage of Face Value)
1994	20.82
1995	20.10
1996	27.83
1997	32.80
1998	30.09
1999	27.08
2000	21.00
2001	19.51
2002	27.30
2003	36.33
2004	50.42
2005	45.26
2006	37.56
2007	45.50
2008	58.44
2009	39.10
2010	68.44

Even in a perfect environment, the value of newly issued bonds are not likely to ever reach close to 100 percent because they do not reach full maturity for 15 years

²⁸⁸ Interviews with John Strasma, 2001-2002.

²⁸⁹ From Bolsa de Valores de Nicaragua, *Informes Anuales 1994-2011*, http://bolsanic.com/index.php?option=com_content&view=category&layout=blog&id=19&Itemid=70 (accessed July 3, 2011).

and the interest rates and faith in Nicaraguan government are unlikely ever to give investors the necessary percent return and confidence of repayment. The fluctuating prices, and gradual improvement in their value over the years, reflects different policies and is instructive about what steps are helpful in making the bonds attractive to international investors.

In 1999, the Finance Ministry standardized the bonds' form and issuance dates, replacing older issues with bonds paying interest each February and October (pro-rating older bonds that were issued in other months). These bonds included coupons the bearer had to bring to the Treasury in Managua for payment, discouraging international investors unwilling to travel to Nicaragua to collect interest.

The compensation system used the taxable value of the property at the time of confiscation, converted into the then-dollar rate. If the Córdoba value had been used, compensation would have been virtually nothing because of the massive inflation of the 1980s. There is no provision for the loss of the value of the U.S. dollar and no interest or other provision for lost use over the years since the property was taken.

According to John Strasma, who advised the Nicaraguan Ministry of Finance from 1993, part of the deal was the return some confiscated properties in exchange for the new occupants retaining most of them in most instances, but with the original owners getting compensation.²⁹⁰ The litmus test was to be whether the 1990 *Piñata* laws' procedures were adhered to; irregularly awarded properties were to be returned to the original owners, with others compensated with bonds.

Many property claimants were reluctant to accept these bonds for two reasons: (1) compensation is based on taxable property values, which are considerably less than market values, and (2) the bonds' present value is a fraction of their face value. Because the bonds do not reach full value until the last principal payment at

²⁹⁰ Interviews with John Strasma, 2001-2002.

maturity, the bonds cannot approach full face value until close to that point, at 15 years. Because the resale value rises over a bond's lifetime, the only objective way to compare bond price trends is by looking at prices of newly-issued bonds. This means that the present cash value of a Nicaraguan Government-settlement offer has at times been less than one-tenth the current market value of the confiscated property. In addition, the compensation scheme has never allowed for lost interest, profits, or other damages.

Bond Values Have Greatly Improved as Some Reached Maturity

In 2000, the Nicaraguan Government contracted with Deutsche Bank to pay interest and principal on the bonds, allowing international investors to trade in the bonds and receive interest and principal payments without having to travel to Nicaragua.²⁹¹ Standardization that makes the bonds attractive to international investors, a dearth of alternative investment opportunities in Nicaragua, and confidence resulting from both the Bolaños Administration and the new Ortega Administration paying off the interest and principal of the bonds as they have become due has led to a surge in market prices for the bonds, with newly issued bonds valued at above 50 percent of face value, a significant improvement over the fractional resale value of the first bonds issued (See Table 3).

In the summer of 2001, the Finance Ministry and Deutsche Bank signed an agreement to make the bonds tradable internationally. The bonds are to be deposited in the Nicaraguan Treasury for registration in Euroclear, with electronic deposit of semi-annual interest payments and the five annual principal payments to be made to a Deutsche Bank account anywhere in the world. The Nicaraguan Government pays Córdobas (C\$) to the *Banco Centroamericano de Integración Económica (BCIE)*, which acquires dollars on behalf of the bondholders on the local market, a transparent process. Whoever is on record as owner of each US\$ 1,000 bond 15 days before the payment will receive it. Bondholders must have an

²⁹¹ Bolsa de Noticias, "Firman Contrato con Banco Londinense." February 7, 2000, <http://www.grupoese.com.ni/2000/bn/02/07/ecMM0207.htm> (accessed September 29, 2011).

account with Deutsche Bank or a broker; a buyer will instruct a broker to deposit bonds in the buyer's name in exchange for payment. The electronic deposit system will allow investors to use fractional portions of bonds, with such fractions bought and sold on the Nicaraguan Stock Market (*Bolsa de Valores*). Because of the tradability of fractions of bonds and because of the automatic e-payments, investors world-wide should find the bonds easy to buy and sell, which have increased their liquidity and, possibly, the demand for them.

There is a dearth of other investment opportunities in Nicaraguan, and the nascent pension funds and other investors have few alternatives to the bonds for domestic investments. This, and confidence in the Bolaños Administration, which won a clear electoral mandate and which had a talented economic team dedicated to sound fiscal policies, contributed to a rise in the resale value of the bonds on the Nicaraguan Stock Exchange (*Bolsa de Valores de Nicaragua*).

The *Bolsa de Valores* is the source of the figures on the value of the bonds. This is the secondary market. Although the market is not liquid, in the sense that there are often days when there are no buyers and sellers, the price consistently stayed in the area of 19 percent for several years, though it raised a couple percent after the election of Bolaños. The figure of 19 percent refers to the most recently issued bonds; bonds are issued annually with a February maturity date. Older bonds' values increase as they approach maturity. These 15-year bonds pay annual interest in February and then on years 11, 12, 13, 14, and 15, there is a principal payment of 20 percent of the face value. The oldest bonds, issued in 1993, garnered principal in 2004. These bonds could exceed 50 percent of face value on the market though, since the resulting confidence that the Bolaños government would pay principal, these bonds briefly disappeared from the secondary market, as the holders are more hopeful that they will receive cash. The only backing the bonds have is the "full faith and credit of the Nicaraguan government".

Table 4 illustrates how the bonds have become more valuable at their maturity date approaches. Bonds issued in 1993 began paying 20 percent of face value in 2004.

Table 4: Current Bond Prices²⁹²

*Week of June 21 to June 27, 2011
(price blank if none sold for the listed year in that week)*

<u>Year of Issuance</u>	<u>Average price</u>
2001	94.23
2002	---
2003	91.50
2004	86.18
2005	---
2006	---
2007	---
2008	---
2009	70.00
2010	67.50
2011	63.33

As of 2001, a total of US\$ 882 million bonds had been issued, of which US\$ 177 million had been redeemed (used in payment of property “taxes” by beneficiaries or for other Nicaraguan Government obligations), which means that the Nicaraguan Government had over US\$ 700 million in outstanding obligations. Bond legislation permits a maximum of US\$ 850 million in bonds to be outstanding, without further legislation to raise the ceiling. As of 2011, US\$ 1,300 million have been paid on these bonds, including interest.²⁹³

Bonds as a Finite Resource

²⁹² Source: Banco Central de Nicaragua, *Emisiones y precios de CBPI, vigentes para el periodo del martes 21 de junio 2011 al lunes 27 de junio de 2011*, <http://www.bcn.gob.ni/estadisticas/financieras/LAFEX/BPI-precio-graficos.pdf>, (accessed, June 27, 2011).

²⁹³ INVERCASA Puesto de Bolsa, *Bond of Payment by Indemnification (BPI)*, http://www.invercasa.com.ni/index.php?option=com_content&view=article&id=83:bono-de-pago-por-indemnizacion&catid=19:productos-mercado-nacional&Itemid=88&lang=en (accessed June 26, 2011).

The question remains, though, of how the Nicaraguan government will eventually pay off the approximately US\$ 740 million, and rising, in outstanding bonds. Sustainability remains an issue, though the current Ortega Administration has been able to leverage the financial support of Venezuela's President Hugo Chavez to maintain a sustainable government sector, while retaining an essentially capitalist economy.

In 2002, when I attended meetings between U.S. Ambassador Oliver Garza and Bolaños' Finance Minister (and later presidential candidate) Eduardo Montealegre, the latter repeatedly stressed the need to limit issuances of more bonds, proposing instead to return as many properties as possible to their original owners and, where this is impossible, to ensure that the beneficiaries pay at least the taxable (*cadastral*) value of the properties they have received (Meetings with Finance Minister Montealegre, spring 2002). Montealegre's preferred course of action was to return properties held by the Nicaraguan Government to their original owners, which both reduced the need for issuing compensation bonds and served to convince the bond market that the Nicaraguan Government was serious about justice for those whose properties could not be returned.

In any event, many government-held properties have already been returned or compensation agreements reached. Since a large number of the remaining properties claimed by earlier owners are now in the hands of politically influential Sandinistas or thousands of rural poor, politically and legally it seems implausible that these properties will ever be returned to the original owners. This means that additional compensation will have to be paid by bonds.

According to La Prensa, citing the Central Bank, by 2009, Nicaragua's total internal debt had risen to US\$ 1,170 million, 19 percent of GDP, of which 63 percent (US\$ 740 million) was in BPIs.²⁹⁴ Even given the measures taken to

²⁹⁴ Gisella Canales Ewest, "A 20 Años de La Piñata," *La Prensa*, (April 24, 2010), <http://www.laprensa.com.ni/2010/04/24/nacionales/22663#.TkYZqmFfauLby>, (accessed July 31, 2011). Citing *El informe de la deuda pública de Nicaragua, elaborado por el Banco Central de Nicaragua y actualizado hasta el IV trimestre del año 2009*.

improve the value of the bonds, then, repaying the bonds presents an ongoing fiscal challenge to the Nicaraguan Government. Even if some future Nicaraguan Government were able to recoup funds that have disappeared through corruption and to conserve future Nicaraguan Government resources through brilliant fiscal management, the huge burden imposed by past and future settlements will affect Nicaraguan Government finances for years to come.

Comment on the Value of the Córdoba.

In the 1980s, there had been massive devaluations and it would take 5 million of 1991 Córdobas to make a single new Córdoba (the money has been re-denominated several times as inflation devalued it). In 1912, the Córdoba had replaced the peso as Nicaragua’s currency. This iteration, now known as the First Córdoba, lasted until February 15, 1988. At that time, because of inflation association with the war and economic crisis under the Sandinista government, it was replaced with the Second Córdoba at the rate of 1000 First Córdobas to 1 Second Córdoba. A year after the election of Violeta Chamorro, the third Córdoba, as known as the Córdoba Oro (NIO), replaced the second at the rate of one for 5 million Second Córdobas. The symbol for all is C\$ and the code for the current Córdoba is NIO.

Table 5: Córdobas to U.S. Dollars ²⁹⁵

<u>Period (day.month.year)</u>	<u>Type</u>	<u>C\$s to US\$ 1</u>
1.1.1946-1.3.1979	First Córdoba	7
1.4.1979-12.2.1985	“ “	10
13.2.1985- 31.1.1986	“ “	28
1.2.1986-14.2.1987	“ “	70
15.2.1988-17.4.1988	Second Córdoba	10
18.4.1988-16.5.1988	“ “	11
17.5.1988-14.6.1988	“ “	12
15.6.1988-3.8	“ “	80

²⁹⁵ Source: Banco Central de Nicaragua,
http://www.bcn.gob.ni/estadisticas/mercado_cambios/tipo_cambio/index.php

4.8.1988-30.9.1988	“	“	180
1.10.1988-1.10.1988	“	“	320
1.11.1988-23.11.1988	“	“	550
24.11.1988-3.1.1989	“	“	920

On January 4, 1989, the Córdoba jumped to 2,000 to the Dollar and by December 31, had reached 38,150 per Dollar. By December 31, 1990, it had reached three million to the Dollar. By March 2, 1991, it had reached 5.2 million.²⁹⁶ But under the Sandinistas, the black market rate was much higher, three times the official rate in mid-1988, for example.²⁹⁷ On March 3, 1991, it was replaced with the third Córdoba (NIO), which was set initially at five to the Dollar.²⁹⁸ The new currency had already been used for accounting and for six months the two were both legal tender, at the rate of 5 million Second Córdobas to one third Córdoba.²⁹⁹

In general, since the Chamorro administration, the black market value and the official exchange rates have been close. The official exchange rate, currently a 6 percent annual devaluation vis-a-vis the dollar, has always been set by the Nicaraguan Central Bank and these figures are readily available on the Internet. From March 3, 1991 to January 9, 1993, the official rate was 5 Córdobas to the dollar (black market rate about 5.35, not a large difference). On January 10, 1993, it jumped to 6 and then crept up to 6.35 by the end of the year, with the black market rate only slightly higher. It has continued to move up from that point. As of August 28, 2011, there are currently nearly 23 Córdobas (NIO) to one U.S. Dollar.³⁰⁰ Compared to many Latin American currencies, including the First Córdoba during the Sandinista era, during periods of high inflation, this is a rather stable currency.

²⁹⁶ Banco Central de Nicaragua, http://www.bcn.gob.ni/estadisticas/mercado_cambios/tipo_cambio/index.php (accessed September 11, 2011).

²⁹⁷ Library of Congress, *Glossary – Nicaragua*, at http://rs6.loc.gov/frd/cs/nicaragua/ni_glos.html, (accessed September 11, 2011).

²⁹⁸ Banco Central de Nicaragua, http://www.bcn.gob.ni/estadisticas/mercado_cambios/tipo_cambio/index.php (accessed September 11, 2011).

²⁹⁹ Tim Merrill, ed., “Finance”, *Nicaragua: A Country Study*. Washington: GPO for the Library of Congress, 1993, at <http://countrystudies.us/nicaragua/35.htm> (accessed September 11, 2011).

³⁰⁰ This was calculated using exchange rates found at <http://www.xe.com/ucc/>

4.7. Hard Feelings, Social Reality, Slow Progress, and Grudging Acceptance

There was a huge divide between those who sought return or compensation for their properties and those who had benefited from receiving confiscated properties. The fact that Nicaragua is one of the poorest countries in the Western Hemisphere has meant that resources are limited. Hard feelings resulting from the fact that large sectors of each of the two sides had engaged in decades of struggle, with many suffering from human rights violations perpetrated by elements of the other side, made negotiations difficult. On the Sandinista side, there were the leaders of the expropriation, many of whom had suffered torture at the hands of the Somoza National Guard and had endured more than a decade of revolutionary struggle, who had been pressured by trade sanctions and a United States-supported Contra war into an election, which they had lost. On the other side were members of the old elite, many of whom, but certainly not a majority, had gained wealth and privileged position under the now-discredited Somoza government; those who had left suffered confiscation and official harassment (and fear of assassination) on their return from exile and those who had remained had faced the same throughout.

CHAPTER 5: TAKINGS FOR BROADER BENEFIT: LAND INVASIONS AND PUBLIC NATIONALIZATIONS

Properties were seized in several ways. Formal notices signed by government officials pursuant to legal decrees, informal taking of possession of vacant properties (such as houses in Managua that had been abandoned), formal nationalization of companies pursuant to legal decrees for public use, and land invasions.

5.1. Land Invasions

This chapter focuses on two very distinct types of property takings: land invasions and nationalizations. What they have in common is that neither were for the benefit of Sandinista elites per se, and were attempts to improve the lot of the larger number of the citizenry of Nicaragua. In that way, they do have a common thread, and the question of sheer personal gain by already connected individuals is examined elsewhere. Another common thread is a practical one, in that there is a family who has given permission to cite their case that involves multiple claims, some property was taken through invasion and some by nationalization, that provide good examples of several mechanisms used.

A broader discussion of land invasions in Latin America is far beyond the scope of this work. However, there is ample statistical evidence within this work of the numbers involved in land invasions from the Revolution and after that illustrates the vast dimensions of this issue, illustrated by this one case.

5.2. Case Study of Invasion and Looting of Farms: the Willey Family

There are as many stories about the invasions as there are claimants who witnessed them, as well as differing versions of the same story from different witnesses, with each observer likely having a bias.

One of the most detailed descriptions of one family's experience with the chaotic nature of land seizures in the first years after the Revolution was that set out by Robert Willey, an American raised in Nicaragua, who knew the language and area well and who witnessed the transition from Somoza to Sandinista governments. While the story of one family, it illustrates the confusing nature of the motives of those who participated in, and perhaps took advantage of, the revolutionary movement. It also demonstrates some of the compromises that businesspeople had had to make under the Somoza dictatorship.

The Willey family had several family assets confiscated: the Matagalpa Power Company, two farms (*haciendas*), and an urban property confiscated in Matagalpa. The confiscations occurred in different ways. Some Sandinista officials attempted to help Mr. Willey. The confiscation of the power company, involving different questions, will be discussed last. The original Willey family members, Robert's grandparents, had moved to Nicaragua in 1916 or 1917.³⁰¹

Robert's mother, Carolyn Willey, died in 1978 and conveyed her interests in the estate to her sons Robert and Alan Willey.³⁰² She left to Alan's family and Robert equal shares in a house she lived in and used as an office for the power company a block from the cathedral in the middle of Matagalpa, two-thirds to Alan and one-third to Robert of land in Matagalpa on which an electric plant and ice plant were built, and two cattle ranches (La Victoria and San Gregorio) to Robert, the two-fifths of her 50 percent ownership share of the Matagalpa Power Company to Robert and three-fifths to Alan and his wife Katherine (20 percent and 30 percent of the total company, respectively). At one point, the two branches of heirs were pursuing claims separately but, when Robert Willey died in 2005, all were united into a single package of claims.³⁰³

³⁰¹ Telephone interview with George Gagnon, February 23, 2011

³⁰² Will of Carolyn Willey dated February 2, 1977

³⁰³ Telephone interview with George Gagnon, February 23, 2011

b. Invasions of Willey Farm Properties

Robert Willey, who does not appear unsympathetic to the overthrow of Somoza, wrote detailed first-hand descriptions of the property situation as he experienced it in Chontales Department in the first years after the Revolution. He wrote of problems in the lead up to the Revolution, as the civil war reached his farm.³⁰⁴ Three weeks before the Sandinista victory in July, he sheltered about 20 refugees who had left Santo Domingo for two days in Chontales Department because of fear of attack, but they left when three unknown individuals shot at them in the middle of the night.³⁰⁵ On July 16, 1979, the commander of the local (Somoza-controlled) National Guard had summoned Willey to the barracks because of suspicions that he had harbored a unit of Sandinista guerrillas on his farm.³⁰⁶ To avoid this, he left his farm in the control of an old man and his cook and headed to *La Libertad*, which he believed was already under Sandinista control. While he was there, a group of youths to whom he had lent five saddled horses for their operations stole many things from him and took merchandise that he had been storing for a friend who was worried it would be damaged in attacks on Santo Domingo. “The thieves are known delinquents of the town of Santo Domingo, various of whom have been involved in disturbances and drugs.” This occurred even though his cook, her sister who had taken refuge there, and his cook’s teenage son were on the property. Willey made a partial list of what had been stolen and brought it to the local Sandinista unit. There was no investigation. “What really pains me is that these young men knew me as a quiet man and anti-Somoza from a very young age.” He noted that he had donated ten of his fattest young bulls to help the increased numbers of people in the area, in demonstration of his support for the revolutionary government.³⁰⁷

³⁰⁴ All descriptions are portrayed from the standpoint of Robert Willey unless otherwise noted, and presume the accuracy of his statements. There seems no reason to disbelieve his accounts since many are supported by other documentation. There is, however, in many cases, a great deal of variation among credibility of many on both sides of the debate, between those claiming lost property and those seeking to hold possession to it.

³⁰⁵ Robert Willey, Letter to the Junta, October 12, 1980.

³⁰⁶ Robert Willey, Letter to the Junta, October 12, 1980.

³⁰⁷ Robert Willey, Letter to the Junta, October 12, 1980.

He noted invasions and troubles within a month of the overthrow of Somoza.

... Early in August of 1979 my problems dealing with my cattle property situated in Santo Domingo, Chontales Department, began with the first cattle theft of 25 cows and 25 seven to eight month old calves. The theft was reported to the military authorities. No action was taken by them to investigate. At this time there were no local judicial authorities in office. This came in January, 1980 when Señor David Perez Andino was named the local judge, a member of the Conservative Democratic party.

Shortly after the ending of the Nicaraguan conflict local townspeople of the laboring class began to invade my San Gregorio and Victoria properties. The first, 245 *manzanas* of titled land; cutting down all kinds of timber. I placed a complaint with the military authorities. No action taken.

Toward the end of August 1979, I visited IRENA [*Instituto Nicaragüense de Recursos Naturales y del Ambiente*, or Nicaraguan Institute of Natural Resources and the Environment], a government agency charged with forest conservation activities and denounced the destruction of the forest on my property. I paid out of pocket the travel and all other expenses of a forestry inspector. He was taken to all the areas where the wood cutting was taking place. He spent two days verifying my plunder. The day he left we encountered an 8 ton truck being loaded with fire wood taken from my property. No action was taken by the local authorities or by IRENA.

Numerous high graders³⁰⁸ called "*Quirises*" began to invade the San Gregorio property where 46 years ago my father developed a small gold mine and later bought the surface rights but did at one time hold a 10 percent right to the gold denouncements [sic]. The Somoza regime granted a 54 Córdoba per ton levy to off-set surface damages. The high graders never honestly honored this agreement signed by them. Ultimately, a group of four individuals cut through my fence line and road with a tractor that plowed up a 250 meter by 4 meter wide strip of a seeded pasture. I made the complaint before the judge in February of 1980. No compensation due to damages were granted. [They] also cut down my timber and left many exposed holes that are a detriment to the value of my land and constitutes a real danger to both human and cattle who can accidentally fall in and be trapped indefinitely as they are 30 to 40 feet deep. I have lost two hefers [sic] in such holes.

When INRA (Agrarian Reform) unlawfully took my farm away from me on trumped up charges and occupied it for nearly two months more cattle was stolen including many of my few remaining personal belongings.³⁰⁹ All I

³⁰⁸ Persons who search out gold ore bearing deposits, formerly clandestinely.

³⁰⁹ See copy of notice below; there is, however, nothing from INRA, other than this notice, that would suggest any kind of legal procedure was followed.

managed to recuperate was a small 13" color TV. When INRA occupied my farm they took a very detailed inventory of my livestock, materials and installations. When they returned my farm they refused to turn back everything based on that inventory. They even charged me \$3,760.00 Córdobas for having mismanaged the farm.

CONDEMINA³¹⁰ has authorized the high graders to roam at will on my San Gregorio property violating and disrespecting my rights. I asked for and got an on site inspection but the results were negative, as expected. The continued destruction of fence lines and surface property continues unabated.

A small quarry ... was taken over in its entirety. The local *Junta* promised to leave 1/2 of the material for my private road maintenance of about 3-1/2 kilometers in length which I must maintain at my personal cost. I now do not have material to keep the road serviceable. I have placed complaints with the Road Department on several occasions promising me an on site inspection of my allegations. Nothing has resulted to compensate me for damages suffered.

At least twenty persons daily are cutting down my timberland and selling it to various people who cart it away in trucks to resell. Just from this wanton thievery I could pay the taxes owed by me to the government!

... low grade ore [my father left me] is being hauled away without any compensation or participation on the milling of this ore by CONDEMINA. At least 12 tons of this ore is taken per day and has been hauled to a neighboring gold mine now controlled by the government during the past four months.

Other persons thinking that I have no rights to my property enter, steal anything their eyes happen dwell upon and cart it away. There is nothing I can do to stop this abuse.

I placed a complaint with the leading member of Local Junta, Luis Felipe Delgado, about the forest destruction. He took no action. Delgado forms links with a Trotskyite Communist miniscule group [sic] that goes around inciting the local people to take people's properties away by force. The group has had little or no success in this activity. The original two moderate members of the Junta have been forced out and replaced with Delgado choices.

I have lost in the past 19 months 67 head of cattle and 6 riding animals and about 1,000 yards of my telephone private line including thefts of tools on my farm.

³¹⁰ A government agency that nationalized the natural resources and foreign gold mine investments in Nicaragua.

In Matagalpa our home was looted of all household belonging and valuable historical antiques and set afire by Sandinistas about the 15th of June, 1979. In July of 1980 the lot on which the family home stood was dismembered with a loss of more than half of the original property.³¹¹ This was done without my knowledge and permission by the local municipal authorities.... The municipal authorities told me that we would not be compensated for this and that when they finish the street widening, paving and new sidewalk improvements that we will also be charged for this sometime later this year. I have title to this lot. It was not stolen. I have been forced to pay taxes on it for many years....³¹²

I have in the meantime exhausted my small financial base attempting to get the Nicaraguan government to recognize and respect my rights; In April, 1980, I began to sell off the little remaining cattle and completed this task in September converting the fast declining Nicaraguan Currency into U.S. Dollars at a 19:1 exchange taking a large loss in the transaction.

... I have tried futilely to get a fair hearing on my complaints having exhausted legal and otherwise means to get justice with a negative result. My life has continued to be endangered by the unstable and uncertain conditions prevailing in this country where the situation continues to worsen as the Sandinistas radicalize further their movements; it has been impossible to work in this atmosphere lacking calm and good will.... I see no possibility that the anarchic conditions prevailing in this country and especially out where my property is located will soon be ended. I have wasted away \$145,000.00 Córdobas in legal fees, travelling and lodging expenses related with my troubles. I have averaged three trips per month to Managua for the past 19 months trying to resolve those problems without any real success. I am exhausted physically, emotionally and spiritually.

I currently owe a small amount in taxes as compared to my net worth of my property. But my property rights are not being respected. I cannot see how I can pay those taxes when I have no guarantees by the Nicaraguan government who forbids anyone including nationals of other countries from leaving Nicaragua if they have debts outstanding even though the

³¹¹ According to Robert's niece's husband, George Gagnon, this was burned down when a gas can was thrown into the structure and neighbors took the furniture while no one put the fire out; the house was bulldozed within 72 hours as a hazard (Interview with George Gagnon, February 23, 2011). This claim is not really relevant to the discussion of compensation for expropriated property beyond a typical municipal taking of some land, though heavy-handed officials played a role.

³¹² Robert Willey also worked on getting compensated for the house lot confiscated on September 27, 1979 (Memo from the Junta of Reconstruction of Matagalpa to the General Directorate of Taxes dated January 6, 1981). According to George Gagnon, a settlement of \$30,000 was paid, after Willey's lawyer had sold it and kept the money (Interview with George Gagnon, February 23, 2011). Here this is useful only in showing possibly unfairness or inefficiency of local authorities and the corruption within the Nicaraguan legal profession.

investment far outweighs the debt.

I have tried to find local buyers but no one wants to buy property when the government itself fails to protect it. The climate of uncertainty and threats of sudden confiscation has driven potential buyers off the market, especially after the assassination of the prominent Nicaraguan business leader Jorge Salazar.³¹³

I put up for 20 years with the many abuses of the Somoza regime but ... was able to conduct my business without the continual harassment I am being forced to endure under the Sandinistas whom I have done no harm. I have no criminal record on which they might base charges against my person. I was never involved in politics and privately did not like many of the things that were allowed to go on during the Somoza regime. But I kept out of the turmoil the best possible. With the new regime imposing so many obstacles to free enterprise it is impossible to succeed within a framework of Marxist Leninism that seems to be encompassing Nicaraguan society.

I would be willing to take whatever was offered for my farm if the United States government ... could help me sell it to the Nicaraguan government for a cash settlement. I am not a quitter when things turn rough but under the heavy strain I have been under for so many months surrounded by a government intent on hamstringing what little private enterprise still remains the task becomes an impossible one for me. I will be 48 years old in June. I cannot fathom living the remainder of life in a society ruled by a ruthless totalitarian government in the making or want to be on the scene of a future armed struggle. I survived under very difficult circumstances the first conflicts I am not so sure my luck would hold out the second time around....³¹⁴

No Proof of Formal Confiscation of Farms

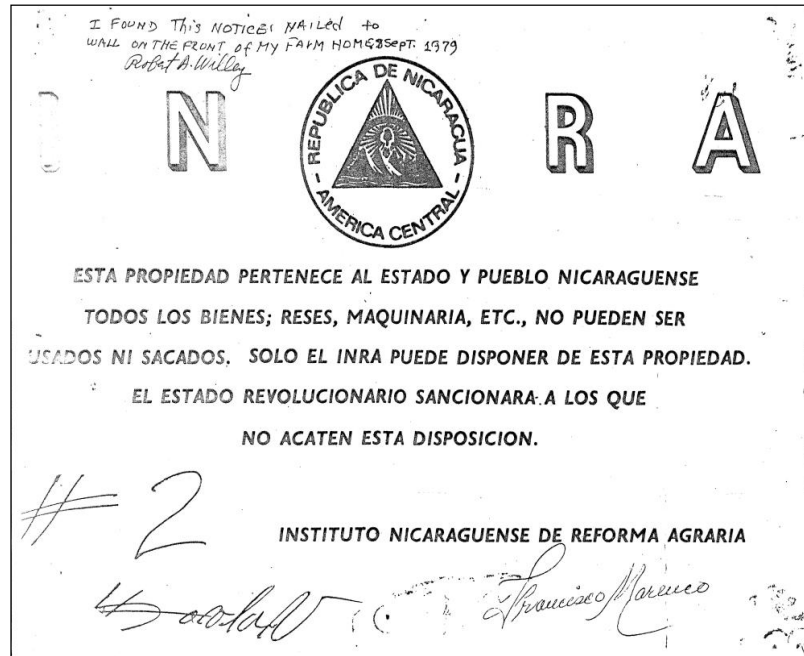
Other than the notice placed at his farms, there was no order or decree that would seem to be applicable to Robert Willey's farmland to indicate a legal or even legally-imperfect confiscation order. The INRA notice placed on his farmhouse looked like a mass-produced one, without name of owner or identification of the property, and was simply signed by lower level officials, likely one of many placed during that period. No title of the signing officials was provided that would give a

³¹³ Jorge Salazar was a leader of coffee growers who had sought to plot against the new Sandinista regime and was killed in a shootout between security forces and his compatriots. He was unarmed. See Christian, *op. cit.* 211.

³¹⁴ Letter from Robert A. Willey to Ambassador Lawrence Pezzullo, April 1980.

hint of their authority. One of the signatures is illegible. Unlike most notices of this type in the West, it did not provide legal justification for the confiscation, other than informing all that the property was confiscated.

Figure 2: Notice Posted on Robert Willey Farm³¹⁵



Translation (mine):

I N R A

This property belongs to the Nicaraguan state and people.
All the goods, cattle, machinery, etc., cannot be used or removed.
Only INRA can make use of this property.
The revolutionary state will punish those who do not obey this order.

The Nicaraguan Institute of Agrarian Reform

In response to this notice, Robert Willey wrote INRA on September 15, 1979, including copies of deeds showing he had obtained this property in the 1940s. He added: “As they may have by error tried to confiscate from me the property to which I refer, I feel obligated to justify the legitimate and honest acquisition of said

³¹⁵ Copy in Robert Willey claim file in U.S. Embassy, used with permission of his heirs.

property and for which it is beyond the reach of Decree No. 3 issued by the comrade members of the National Junta of the Government of Reconstruction...³¹⁶

Attempts to Regain Land and Variety of Official Responses

Robert Willey worked hard to regain his property, focusing on disproving that he was subject to any confiscatory decree. For example, he gained from the Attorney General for Chontales Department a statement that said:

Mr. Robert Wiley [sic] presented himself in the office of this Departmental Attorney General and he complained that he is being bothered in his property, therefore: Mr. Robert Wiley does not find himself included among the persons who were being affected by Decree No. 3, it is requested that his property be respected because there is no record that connects him with the former regime. For this reason, his property should be respected, anything contrary will be considered breaking current law.³¹⁷

Robert Willey wrote a notation on a copy of Argüello's statement:

When I went with this order to the INRA (Agrarian Reform) Representative it was disregarded. Comandante Jaime Wheelock Roman heads this institution. The above man named procurator [attorney general Argüello Rivas] was later dismissed for being too moderate.

Still, he was able to obtain a similar statement from a subsequent Departmental Attorney General in Chontales who provided a statement that Robert Willey "is not a subject of intervention or confiscation".³¹⁸

Juan José Mairena, a lawyer for Robert Willey, had unsuccessfully approached INRA (presumably the local offices) who determined, though Willey was not

³¹⁶ Letter from Robert Willey to the Comrade Members of INRA dated September 15, 1979.

³¹⁷ Statement of Dr. Rogers Camilo Argüello Rivas, Attorney General of Department of Chontales, dated September 1, 1979.

³¹⁸ Statement of Omar Cortes Ruiz, Departmental Attorney General of Chontales, hand-dated December 10, 1980.

subject to Decree No. 3, there was nothing that could be done without “the good faith of members of INRA.”³¹⁹

U.S. Embassy staff attempted to meet with INRA Minister Wheelock Román on Willey’s case, but succeeded only in meeting Vice Minister Coronel Kautz, who reportedly said that Willey “can do whatever he wants with the *finca*, as it is free” and that Kautz would follow up with INRA’s legal department.³²⁰

Robert Willey went to a variety of officials, gaining from many written confirmation of his rights to possess properties. For example, INRA’s legal advisor in Chontales wrote:

Mr Robert Willey is authorized to take possession of the *Finca* La Victoria belonging to him, so that he can freely administer it and dispose of what exists on it. Therefore, the provisional intervention that had been placed on the property is lifted by authorization of this Regional authority. It is requested that the military and police authorities do not interfere in the administration of said property of Mr. Robert Willey.³²¹

A key factor for Willey, as with others in the uncertain early days of the Revolution, was personal fear of harm by either unofficial individuals in the region or even by officials or by members of the quasi-official militias. Robert Willey noted how a policeman had told him in September 1979 that he had orders to shoot Willey, but decided not to.³²²

A year later, Willey was still experiencing problems. He wrote the *Junta* explaining his situation on October 12, 1980.³²³ Five days later, he sent a copy of his letter to the *Junta* to the Permanent Commission of Human Rights in Nicaragua.³²⁴ After writing the *Junta* again in November, he finally got a response

³¹⁹ Letter from Juan José Mairena to Robert Willey, undated, 1979

³²⁰ Ambassador Lawrence Pezzullo, Letter to Robert Willey dated October 17, 1979.

³²¹ Note of Santiago Ortega C. dated October 28, 1979

³²² Ambassador Lawrence Pezzullo, Letter to Robert Willey dated October 17, 1979.

³²³ Letter from Robert Willey to the Junta of the Government of National Reconstruction dated October 12, 1980.

³²⁴ Letter from Robert Willey to Professor Ricardo Paiz Castillo, President of the Permanent

from the General Secretariat of the *Junta* in December that said,

.... We have not answered you earlier, and we apologize for that, because we contracted the Ministry of Agropecuary Development asking for information about your case. They told us that they consider that the problems are under the authority of the Ministry of the Interior, of the Police, and of CONDEMINA.

For this reason, we suggest that you contact those institutions, explaining your situation and with all security, if it is within their ability and competency, they will try to help you solve them....³²⁵

In a marginal notation on a copy of the letter he received, Robert Willey noted, “I complied with the suggestions to no avail. I have to go in person and ask for my Oct. 12th letter at Government House. Every effort at not helping was made by the various ministries I visited.”

At one point, he came back from a trip to Matagalpa to find three people living in his house, one an armed soldier; Willey told them that the Vice Minister of INRA had confirmed that there was no basis for action against him and had returned his farm, but that the employees that had been there stole whatever had not been taken in the first thefts and that even the *Asociación de Trabajadores del Campo* (ATC) had divided some of the clothing he had purchased to replace those lost in the first thefts.³²⁶ To make matters worse, INRA charged him C\$ 3,700 for its “administration” of his farm, during which he lost 25 cows, 25 one-year-old male calves, and five horses and refused to provide him the inventory that they had taken of his property. An INRA employee “only told me that I could take possession.” He also complained that not only did the local judge refuse to order the arrests of “dozens of people armed with axes and machetes who invaded [his] property under [his] own eyes,” but that there were people with “papers signed by the Ministry of Interior-Sandinista Police of Santo Domingo, Chontales that

Commission of Human Rights in Nicaragua, dated October 17, 1980.

³²⁵ Letter from Gladys Campos de Orozco, Public Relations of the General Secretariat of the Junta, to Robert Willey dated December 10, 1980.

³²⁶ Letter from Robert Willey to the Junta, dated October 12, 1980.

authorized them to cut and take firewood and wood from [his] property.”³²⁷

Invasions Continued

People continued coming onto his land, sometimes with legal authorization of some kind. In February 1980, a man started planting corn on his property, claiming authority with a document from INRA dated November 8, only 11 days after INRA lawyer Ortega’s confirmed Willey’s exclusive rights. Willey went to a judge, who required the man to sign a document requiring token payment in corn to Willey for using the land, with a deadline for harvesting it.³²⁸

Willey was targeted in other ways, as when seemingly drunk boys harassed him, or when three trucks of rice and beans in El Rama were broken into and the contents distributed to locals.³²⁹

Not Confiscated in Accordance with the Law

There is no known decree applicable to Robert Willey. He had not abandoned his lands nor had he been a Somoza supporter.

.... I am observing that with the fall of the tyrant Anastacio Somoza what came to replace that regime is hate, settling of old conflicts through violence and a marked deviation of the Government Plan of Reconstruction that we all welcomed as a model of the good and clean intentions that could be imitated by other countries as the road to take in the not too distant future.

I believed that when the Revolution triumphed that the life of our country would change in such manner that all citizens without exception would form a grand union of brotherhood and that the well-being of all would be the best answer to what we were bequeathed by Somocism. I am seeing with my own eyes that as each day passes many things contrary to that vision are taking place. I realize that it is too much to expect that a situation of disorderliness and injustices of which we were all victims for

³²⁷ Letter from Robert Willey to the Junta, dated October 12, 1980.

³²⁸ Undated statement of Robert Willey

³²⁹ Statement of J.M. Siero, March 3, 1980.

more than forty years can be eliminated in a couple of months. Nevertheless, I am witnessing that even those who were not at fault of what Somoza did are now being marked or signaled [sic] out by someone as having been participants in that rotten immoral regime....³³⁰

Other Difficulties

Robert Willey could not get an exit visa to leave Nicaragua because he had outstanding tax obligations, which he could not pay off because his enterprises (farms and power company) no longer provided income; eventually he was able to get a statement from INE that he was entitled to payment for the nationalization of Matagalpa Power Company (discussed below) and got a statement from the General Directorate of Taxes.³³¹ The man he planned to leave in charge of his property was arrested in March 1981 and imprisoned for at least a year.³³² Willey moved to California soon after, but continued pressing his claims.³³³

Land Never Regained

Willey estimated that his farms were worth US\$ 325,000 when Somoza fell. Summarizing the situation a decade after the Sandinistas left power, Willey wrote:

Daniel Ortega allowed numerous people to take possession of my land illegally. In the meantime those squatters have fraudulently sold my property to well-to-do buyers. The Nicaraguan government has refused to return my land and is offering a ridiculous 38-40,000 dollars. I instructed my lawyer to refuse the government offer. The other properties held by my person with those other members of my family residing in Tampa, Florida, have suffered the same fate – low prices. I do not see a willingness of the corrupt Aleman regime wanting to pay me a fair and just price for these other properties. The low prices offered and a non-money payment arrangement (virtually worthless bonds whose maturity will take place long after I've disappeared from this life). How is it possible for this corrupt

³³⁰ Letter from Robert Willey to Ambassador Pezullo, undated 1979

³³¹ Letter from Robert Willey to U.S. Embassy Economic Section Chief Garry Maybarduk dated February 21, 1981.

³³² See notation dated March 26, 1982 on copy of Letter from Robert Willey to Gary Maybarduk dated March 8, 1981.

³³³ Letter from Robert Willey to State Department Nicaragua Desk dated December 22, 1981.

regime to be given U.S. financial aid when it cannot settle property claims of hundreds of American citizens?

My lawyer is fully aware of the OCI resolutions, all unacceptable.³³⁴

The final resolution of the claims occurred when Robert Willey received bonds in about 2003.³³⁵

Power Company

As will be discussed below, the new government also expropriated their power company, which will be treated separately as that was done on a very different basis: nationalization of the power companies country-wide.

Other Examples of Land Invasions

Land invasions have continued, often with the encouragement of Sandinista leaders.³³⁶ My own experience was that complaints of land invasions were a constant complaint by U.S. citizen claimants, even after their rights to property was confirmed by the government. Perhaps this is a continuation of the tactic of using lower class people to throw Sandinista opponents off-guard. In any event, such unexpected invasions contribute to ownership insecurity.

5.3. Examples of Nationalizations for Public Benefit

As noted in Chapter 3, in the first years after the Revolution, the *Junta* issued decrees to nationalize specific industries, in addition to the properties of Somoza and his supporters under Decree No. 3 and 38 in the very first months. Among the most significant decrees with an economic focus were Decrees Nos. 25, 107, 137,

³³⁴ Letter from Robert Willey to Benjamin Dille dated March 14, 2001.

³³⁵ Interview with George Gagnon, February 23, 2011. The exact amount he received is uncertain as he has since died and his relatives sharing interest in other Willey family claims were not parties to this claim.

³³⁶ Email from Leónidas Henríquez dated May 27, 2011.

189, and 759 (respectively banks and financial institutions; insurance companies; mining; private electrical companies; and specific companies “working against the national economy”).

All confiscations had an economic and political effect, but this group is similar, except possibly for Decree No. 759, in that the goal was a broader, philosophical goal of centralizing larger economic activity in the state. This could be deemed a purer and more objective goal than takings from high ranking Somoza officials and “supporters” of Somoza. Under international law, as discussed in Chapter 8, broader nationalizations are more likely to pass scrutiny than targeted ones. Whether one considers nationalized industries economically desirable or not, the issue is a very simple one under international law: whether compensation is adequate. Under this criterion, compensation was delayed and widely considered inadequate; but the takings themselves should, theoretically, be objectively determinable as legal or not.

Matagalpa Power Company as an Example of Nationalization of a Private Utility

The most valuable expropriated asset of the Willey family, introduced earlier in this chapter, was the Matagalpa Power Company. The power company was taken over by the new regime just after the July 1979 Revolution and, in December of that year, the Attorney General (*Procurador General*) ordered an end to dividend payments to the family following its formal nationalization at the end of 1979.³³⁷

Robert Willey reported that his father John Willey founded the Matagalpa Power and Ice Company in 1925.³³⁸ The company was still operating at the Revolution, after the deaths of John Willey and his wife Carolyn. In 1951, when his father needed to make improvements to the power company, apparently as a condition of a new contract requiring installation of electric meters, he applied for a loan from

³³⁷ See Decree No. 189 of November 30, 1979 published in La Gaceta No. 75 of December 5, 1979.

³³⁸ Letter from Robert Willey to U.S. Ambassador Lawrence Pezzullo, April 1980.

the Nicaraguan National Bank. In order to get the necessary approval for the loan from the then-dictator Somoza García, the senior Willey was compelled to give Somoza half the shares of his business, which Willey continued to operate while sharing profits with Somoza.³³⁹

In 1925 my father founded the Matagalpa Power and Ice Company. Later, in 1952 [sic], not having sufficient capital to make improvements in his electric power services applied for a loan from the Nicaraguan *Banco Nacional*. In order to get approval of a new municipal contract that would revise the rates from the 1925 one Córdoba a light bulb to a metered graduated rate depending on consumption, he had to make a very substantial cash out-lay. At that period in the history of this country General Somoza García was running things and everything had to pass through his hands to be approved. His signature was needed for my father to obtain the loan. My father's lawyer advised him to give Somoza 50 percent of his business and investment and make him a non-investing partner. Thus he got his financing without the Somoza family spending one cent and receiving over the years a very considerable amount of money. The company operated under my father's control and at his death my mother took over and at her death the family's 50 percent share was willed in 1978 3/5 to my brother and 2/5 to me. When the Nicaraguan conflict ended in July 1979, the company was taken over by the *Procurador General* who ordered stopped payments of dividends to my family and in December of 1979 it was officially nationalized. We have yet to receive a report in the audit performed in September of 1980 in order to evaluate the net worth of the company and we still do not know what price was fixed by the Sandinista government and do not know after nearly 21 months when we will get the promised long termed bonds as payment for our business enterprise.³⁴⁰

Based on the records available, all evidence suggests that the family built up this company with their own work and resources without abusing any special position.

Under Somoza, the electrical sector moved from private ownership to state ownership; at the time of the revolution, most of the electrical sector, though not Matagalpa's, was state-owned.³⁴¹

Electric Sector Nationalized

³³⁹ Deed of October 24, 1951.

³⁴⁰ Letter from Robert A. Willey to Ambassador Lawrence Pezzullo, April 1980.

³⁴¹ Ruth Selma Herrera, "Our Electricity System Is One of Our Political Class' Great Failures," *Revista Envío*, No. 291 (2005), <http://www.envio.org.ni/articulo/3075>, (accessed July 10, 2011).

By Decree No. 189, electrical enterprises that remained privately-owned (a minority of the sector) were absorbed into the nationwide INE (*Instituto Nicaragüense de Energía*, or Nicaraguan Energy Institute). Article 2 set the price:

The price of acquisition of the property or equity ... will be the value on the books according to an audit to be performed for this purpose. In order to establish said value, generally accepted standards of accounting will be applied. The price of acquisition of the property or equity will be discounted by any overdue amounts that the companies owe to the Institute for electrical energy service.

Article 3 set the method of compensation as bonds:

The price of the property or equity shall be paid in government bonds that will pay an annual interest of 6-1/2 percent, paid after each year, computed from the date of this decree and will have an expiration period of five years. Holders of such bonds can use them to pay off financial and tax obligations to the State. The State may cancel the bonds through payment in cash at whatever time before the expiration date.

These bonds were never issued for any privatization, even after 1981, when Decree No. 611 created on paper a system for bond issuance.

The Family Fights for Compensation

Initially, Robert Willey, still in Nicaragua, led efforts for compensation. In December of 1980, a year after the nationalization decree, he wrote to the Director of INE, commenting on his many visits to their offices and the difficulty of getting information:

As you know, we have not received any company income since May 1979... 17 months without receiving anything from a business that has not ceased operating despite the ravages caused by the past war of liberation.... I know the valuation of what was Matagalpa Power has been completed already. Also, we desire to know when and how will be paid out our nationalized part. In the Council of State a few weeks ago was issued a Bonds Law. Can you tell me when these bonds will be issued and if there will also be payment of part of the cash that was in its safes at the end of

the war?

Economically, I am experiencing great difficulties and it was my hope to pay off the taxes that I have outstanding with my part of what INE pays for Matagalpa Power. The Director of Taxes gave me until last July 31 to pay the taxes that I was hoping to pay with the part that INE pays me. I am now being fined monthly from that date in an amount of about 1,800 Córdobas. I know that IMPESCA paid cash to the Booth family. That means that a precedent exists. Why not give us an advance that I could use to reduce some of my financial problems.³⁴²

In response, the Executive Subdirector of INE, Heberto Incer, wrote to tell Willey what he already knew: the electric companies had been nationalized, the book value would be used, paid in bonds maturing in five years with an annual interest payout of 6 percent, and the valuation was complete, but in the hands of the Controller General.

Once the report [on the valuation] is processed by the Controller General, it will be sent to the Ministry of Finance, which will be in charge of paying through the issuance of bonds. The General Law on Bonds has already been approved [Willey also knew this] and the only thing that remains is for the Ministry of Finance to issue them, because it is charged with paying off the equity and property of all nationalized companies, be they insurance, banks, etc.³⁴³

In a note hand-written on this copy of the letter by Robert Willey years later, he wrote, “In the 11 years since Matagalpa Power was nationalized, the Willey Family has never received the 6 percent bonds promised nor payment of the enterprise of which it owned 50 percent. “ The family never claimed the 50 percent that Somoza took from them.

In 2000, the Spanish company Union Fenosa bought 95 percent of the shares of the state-owned ENEL for US\$115 million.³⁴⁴ Part of the assets and customer base were attributable to components owned by Matagalpa Power’s nationalization.

³⁴² Letter of Robert Willey to INE Director Emilio Rappaccioli dated December 15, 1980.

³⁴³ Letter of Executive Subdirector Heberto Incer M. to Robert Willey dated February 18, 1981.

³⁴⁴ Banco Central de Nicaragua, *Boletín Económico*, July-September 2000, Vol. II, No. 3, p. 7, <http://www.bcn.gob.ni/publicaciones/trimestrales/boletin/economico/boltrij-s00.PDF>, (accessed July 10, 2011).

This successful privatization was useful to the family. In 2002, advocate and representative of the other branch of the family George Gagnon, son-in-law of Katherine, was pressing settlement of his mother-in-law's 3/5 shares in the company:

Nicaragua needs to settle in good faith with the Katherine L. Willey family for the 30 percent portion of Matagalpa Power (MPA) founded by the family in 1935 [sic] and seized in 1979. It was sold to Union Fenosa ACEX on 12 September 2000 as part of Disnorte for a cash settlement on 19 October 2000. Based on this sale, the value of the claimed 30 percent portion was US\$3,150,000.

The family asserts on the basis of proof obtained from the Nicaraguan OCI archives that their standing as an unresolved U. S. Citizen claimant was, in fact, misrepresented to the Inter-American Development Bank and the non-Nicaraguan Directors as a deliberate subterfuge engineered by Nicaraguans. The utilization of this "misinformation" by Directors of the IDB at the bank's 30 September 1998 meeting erroneously influenced the approval of a US\$ 76.10 million loan for the electric sector of Nicaragua. This U.S. taxpayer subsidized loan was, in part, used to restructure the Willey claimed property with intent to convert, to hire consultants to facilitate the conversion through a privatization auction, and then to execute the privatization thereby converting the claimed property to cash by a sale to Union Fenosa ACEX.³⁴⁵

Mr. Gagnon has aggressively tried to negotiate with both the Aleman and Bolaños administrations since January 2000. Nicaragua proposed a US\$ 23,000 (7/10 of one cent on the sale price dollar) settlement during the 2½ year period before the privatization, afterward Nicaragua raised the offer to the current US\$ 430,000 (13.7 cents on the sale price dollar). Requests of Nicaragua to consider utilizing MIGA of the World Bank to ascertain an objective third party appraisal have gone unanswered. In effect, there appears to be an unpublicized but "official" Nicaraguan policy to settle all claims at 1-2 cents on the dollar and only rise to 8-12 cents if settlement is very difficult. Nicaragua sold the Willey property for US\$ 3,150,000 cash and the family desires their rightful share. Considering two factors: Nicaragua's utilization of the Willey's very own taxpayer funded subsidies in the IDB loan and the family's spirit of compromise, the family believes that 40 cents on the dollar of the cash sale price of the 30 percent portion of MPA is a fair and just "offer in compromise." That would amount to US\$ 1,260,000.

³⁴⁵ Read the IDB loan description and Treasury letter. See enclosures "A & B"

The Inter-American Development Bank has refused family requests to sponsor or intercede to facilitate efforts for a MIGA appraisal of fair value, for brokering, or for an arbitration function to facilitate a resolution of the claim as requested by the Willey family.³⁴⁶ The family based this request on the accurate belief in the involvement (inadvertent or not) of the IDB combined with behavior involving subterfuge (inadvertent or not) by one of the IDB members, Nicaragua. Righteous indignation forces the family to be blunt in describing this subterfuge and the inaction decided upon by the IDB. The recent IDB written reply avoids answering the charge that a dishonest lawyer, Tomas Delaney, colluded with his cohorts at ENEL, resulting in a deliberately engineered acceptance by OCI of an unauthorized and illegal signature on an “official notification on 27 March 1998” which required a written answer within 10 calendar days to maintain the right of appeal. The family was not told of this fraudulent act until 2 years later and then the OCI maintained we had lost the right of appeal up to and through, six days prior to the privatization, and even after this information had been presented to the OCI by the family’s Managua lawyer Hernan Estrada. The Managua US Embassy property office was not told until May 2000. (A previous OCI offer in March 1996 had been complied with by the family, within the 10 day appeal requirement, without the use of a lawyer. Thus demonstrating the family knew the importance of the 10 day requirement.) This “fraudulent official notification” was then utilized by Nicaragua to present a “false status” of no outstanding US Citizen property claims relating to the electric sector to their privatization advisors, Schroeders (Bogota, Columbia office) and Intervest (Lima, Peru office), during these advisor’s “due diligence” efforts. This subterfuge caused wrong information to flow to the IDB Directors. The Nicaraguan Archive OCI records clearly established that the claim was not legally resolved, and should have been reported as an active and outstanding US Citizen property claim relating to the electric sector when the IDB Directors deliberated their vote on the electric sector loan on 30 September 1998.

The Nicaragua OCI ignored the review of their very own document file, containing legal papers, in good order, that clearly confirm that the lawyer who signed the official notification, did not have the general power of attorney required to do so. Regarding the advisors, please note that notice of the Willey family’s “unsettled US Citizen claim status” was faxed on 06 June 2000 to the two privatization advisors retained by Nicaragua with IDB loan resources. This provided 96 days prior notification to said advisors before the 12 September 2000 privatization that an unresolved U.S. Citizen claim existed related to the electric sector. Public notice of same was provided in Managua La Prensa on 01 June 2000 by a half page ad in the Wall Street Journal section.³⁴⁷

³⁴⁶ Read IDB letter from Counsel J. Spinner, See enclosure “C”

³⁴⁷ See the US Embassy Privatization Summary, fax cover to Advisor Juan Pablo Bayter of Henry Shroeders, copy of *La Prensa* notice, and actual fax phone bill. See enclosures “D1-D4”

The family made a concerted effort before the privatization to notify every party involved with it. Fairness and justice for both Nicaragua and the family was, and is, the Willey family's goal. What more could the Willey family have done?³⁴⁸

This was the Katherine Willey family's position.

A year before, the Nicaraguan Government had moved from offering about \$35,000 face value worth of BPIs to offering about \$700,000 for the entire Matagalpa Power claim, a twenty-fold increase.³⁴⁹ As noted elsewhere, at that time, BPIs were selling on the secondary market for about 20 percent of face value. Under the nationalization decree, the government was to pay compensation for the declared tax value of Matagalpa Power Company at the time of seizure and was to pay 6.5 percent interest on the unpaid principal. Since neither the principal nor the interest was ever paid, the Government had come to be willing to compensate the family for the declared value of the company, plus 6.5 percent interest compounded annually for 22.5 years, for a total offer of C\$ 9,889,981.76, to be payable in one-year bonds.³⁵⁰ This would have been about \$730,000 at 13.5 Córdobas to the dollar, of which Katherine Willey's portion would be 60 percent, or about \$440,000. (If this had been a confiscation and not nationalization, OCI could not have paid lost interest or profits or compensate lost opportunity cost when fixing settlements.) The nationalization decree did not specify what currency the compensation was to be paid in, "*bonos del estado*" were normally to be denominated in Nicaraguan currency. However, as with OCI valuations, which are specifically required to be converted to contemporary dollars and re-converted to present Córdobas, the government was implicitly accepting the premise that they would not pay in old Córdobas, as debased by the massive inflation of the 1980s.

The Katherine Willey position was that compensation should not be based on the declared value of the assets but, instead, on the market value of the assets as sold as part of the privatization of Disnorte, or US \$2,860,000, plus US \$300,000 for

³⁴⁸ George Gagnon, "Current Status & Review," June 1, 2002.

³⁴⁹ Letter from Benjamin Dille to George Gagnon dated May 23, 2001.

³⁵⁰ Letter from Benjamin Dille to George Gagnon dated May 23, 2001.

substations retained by ENEL, for a total of US \$3,160,000. The Disnorte portion is based on 30 percent (Katherine Willey portion of whole, or 60 percent of Willey family's half) of the portion of the total number of current country-wide subscribers that reside in the area served by the former Matagalpa Power Company.³⁵¹

Katherine Willey rejected the book value compensation because it did not include the value of the company being a monopoly, while the Disnorte sale did, but there was no documentation that established this.³⁵²

Resolution of the Claims

Because the type of bonds set forth in the electric sector nationalizations were never issued and because the claim was not treated as a claim for real property, the claimants were free to argue in favor of different kinds of settlement. In fact, with the Nicaraguan government gaining a cash infusion from the privatization of the electrical sector, it was harder for it to argue that claimants had to accept bonds with long-deferred maturity (the bonds envisioned for the electrical sector nationalizations were, after all, set to be shorter term than the BPIs).

In any event, Robert Willey had ended up settling his portion of the claim for \$270,000 in cash before he died.³⁵³

Given the limited success of other claimants, I had underestimated the desire of the Nicaraguan government to settle and the tenaciousness of George Gagnon; reckoning that getting a comparable amount would be the best that they could get, and in 2002 I advised him so. However, as noted elsewhere, George Gagnon had noted that, based on a per capita user basis, the 30 percent Katherine Willey share of the Matagalpa Power percentage of the amount sold to Union Fenosa amounted to US \$3.1 million. Due to George Gagnon's persistence and the need to solve the

³⁵¹ Letter from Benjamin Dille to George Gagnon dated May 23, 2001.

³⁵² Letter from Benjamin Dille to George Gagnon dated May 23, 2001.

³⁵³ Interview with George Gagnon, February 23, 2011.

problem of the OPIC insurance guarantee, President Bolaños' Secretary of State (and future presidential candidate) Eduardo Montealegre and the family agreed on a payment of US \$713,000 in cash, half in 2003 and the second half some years later.³⁵⁴

Other Examples of Nationalizations

Many other ongoing farms and business enterprises had been confiscated under the various decrees and passed to the control of the CORNAP. Established in the first Sandinista regime, CORNAP (National Corporations of the Public Sector) administered rent-with-option-to-buy contracts signed during the Violeta Chamorro administration. Most contract holders are Sandinista cooperatives on large coffee or cattle farms, virtually all confiscated properties.

Sandinista Leadership saw Businessmen as Supporters of Old Order

As noted in Chapter 3, Jaime Wheelock Román has argued that business people in partnership with Somoza were willing partners of his regime, though this may seem like a double standard in light of the land and commercial dealings of his own colleagues, and even he and his wife. However, the Willey family argues convincingly that it was forced to grant, without compensation, half of its company's shares to Somoza, shares in a company that pre-dated his ascendancy. It is likely that there were many instances when the Somoza-dependent elite both supported Somoza and benefited from the relationship, but there is no evidence of such here. Indeed, Robert wrote of his initial support for the Revolution, which was true throughout a broad swath of the Nicaraguan business establishment, until the Sandinistas alienated this sector through confiscations and heavy-handed rule.

Many facilities useful to the population found their way from owners with little proven ties to the old regime to the new government's control. In the first days of

³⁵⁴ Interview with George Gagnon, February 23, 2011.

the Revolution, Bayardo Arce appointed the writer and now former Sandinista, Gioconda Belli, to run the first Sandinista television network, the former Somoza-run state network, because of her background in writing and in advertising. She then took over a second, private channel, which the owners had left in the hands of a lawyer, Luis Pasos Argüello, whom she asked for permission.

“We need to use the facilities, Doctor,” I said to him.

Dr. Pasos, who was also a friend of my own family, his daughter and I had been classmates – said yes, of course, by all means. Trust and good faith reigned and the doctor courteously granted us all the access we needed to the facilities, while his son-in-law Octavio, the owner, made his return.

Coming to power with such popular support, after a victorious military campaign, gave us a sense of absolute entitlement which presented a myriad of temptations. There was an agreement, for example, stating that only the properties belonging to Somoza and his closest allies should be confiscated. Nevertheless, several months later, Channel 2 was confiscated. It was argued that its owners were Somoza supporters, mainly because they had some family connection to him, but that was merely a pretext for a totally unjustifiable action. Because I had been the one handed the keys with such trust, I regretted the takeover on a personal level, even if I was in no position to reverse the decision. That kind of conduct quickly eroded the private sector’s trust in the revolution, and impeded progress on the road to a new social contract. Other agreements were “modified” as well, and concessions made to political parties, individuals, and the private sector were not honored. To maintain the hegemony necessary to push through the radical changes that would benefit the majority, the Sandinistas excluded those who had hoped to share power in a national coalition. With the dictatorship out of the way, blame fell squarely on the shoulders of the bourgeoisie. Sandinistas who came from upper-class background felt too intimidated to point out this policy of exclusion, at the expense of agreements that had been made during the struggle. We were afraid to be eyed with suspicion. The bourgeoisie, I knew this firsthand, was far from innocent and its members were only biding time while all these young Sandinista leaders revealed their incompetence. I also knew that if we made enemies of them, they would never give up. But this did not seem to bother many of my *compañeros*. They felt powerful, capable of handling any situation. Once again, the notion of the ends justifying the means had won out.³⁵⁵

But as we saw above, it was when the business class turned against Somoza in the

³⁵⁵ Gioconda Belli, *The Country Under My Skin* (Bloomsbury Publishing, London, 2003), 257.

mid-1970s that the guerrilla movement gained traction.

The interesting point here is that some of the Sandinistas themselves, most notably Humberto Ortega, became very wealthy capitalists. Returning to power, they have adopted a softened version of some of the collectivist rhetoric of the past, but have articulated support for business that is understandable both for political reasons (seeking centrist votes) and for economic ones (they themselves benefit).

5.4 Discussion of Non-Elite Seizures

The goals of these property seizures were arguably more for the benefit of the entire population (as compared to those of the elites examined in the next chapter). Still, there were numerous instances of self-interest in the takings of these properties, as encouraging or allowing chaotic invasions of property kept a class the Sandinistas considered their enemies off guard.

With either active encouragement by the authorities or with authorities unwilling to enforce the law, it was virtually impossible for individual land-owners, even with extended family and employees, to keep people off their land. The quality of title received by those who invaded property was problematic and not as economically useful to the targeted beneficiaries as titles to properly confiscated land would have been. It also inculcated – or reinforced – disrespect for the rule of law that still negatively impacts the legal and economic system of Nicaragua. What is most striking to me is the disrespect that so many government officials showed to the determinations of others. In some cases, this could be attributed to inexperienced officials working in a climate of dislocation and war. But in many others, it was very clear that officials at various levels sought to undermine the property owners.

The nationalizations of industries are harder to criticize from a legal standpoint, except for the compensation question. The decrees were clear and easily enforced. Those affected could clearly understand what had happened. There is less need for judicial determinations as to whether a property was affected by nationalization.

Still, as noted elsewhere, the question of compensation was a significant one, though a charitable view would be that the economic disorder in a nation under war and rebuilding from a civil war and the 1972 earthquake could provide the excuse of the delay in providing compensation.

CHAPTER 6: THE SANDINISTA ELITE AS HEIRS OF NICARAGUAN TRADITION

What makes the Nicaraguan case interesting is the degree to which seemingly ideologically pure revolutionaries fell prey to the seduction of personal benefit.

6.1. Houses Occupied

With the victorious Revolution, large numbers of people arrived in Managua. It is difficult to estimate the numbers, but they must have been in the thousands, or tens of thousands, with rank and file Sandinista warriors the most numerous, along with their leaders, returning political exiles, and international allies from other Latin American countries, including Cuba, plus eventually Eastern Europeans. Even before the overthrow of the Somoza regime, many houses had been vacated by fleeing supporters and officials of the previous government, meaning they were vacant at the moment many of the victorious arrived. Once the formal confiscations began immediately after the Revolution, additional possibilities of places for them to stay became available. As other members of the upper and upper-middle classes began fleeing the country in the early 1980s, more of the better houses became available. It was natural that the leadership, which was predominately the offspring of the Nicaraguan ruling class, would take the largest houses for themselves. Many of these people had fought for a decade in the wilderness, many had spent years in prison, and some had been tortured, perhaps leading to a feeling of entitlement.

As shall be shown, it was typical for people with connections that allowed them to learn what properties were confiscated to use their influence to simply move in or, better, to get a formal assignment to the property.

Thus, by the mid-1980s, most of the top leadership and much of the middle leadership (such as army officers) had been living in confiscated properties for several years. At about this time, people began to seek to formalize their

possession. Typically, this took the form of lease-to-buy contracts with the Housing Bank. In the case of the military, the Personnel Office assigned properties. In the case of peasants, the Ministry of Agrarian Reform (MINRA) began giving out agrarian reform titles following the passage of those laws.

Witnesses: Guerrillas Arriving to Deserted Neighborhoods

Leading Sandinistas who have since left the party, in part because they felt that the FSLN was corrupt and undemocratic, have reported how the process worked.

Gioconda Belli, a writer who had grown up in a wealthy family in the Somoza period, had become outraged by social inequalities and had joined the guerrilla movement in the 1970s. In her autobiography, *The Country Under My Skin*, she writes of the situation in Managua in the first days of the victory of the Revolution. On July 20, 1979, the day after the FSLN guerrillas had victoriously entered Managua, she arrived there on a plane filled with bundles of newspapers announcing the Revolution.

We had taken over. The experience evoked images of the Allied troops arriving at towns abandoned by the Nazis at the end of the Second World War. That was the kind of joy the people greeted us with, and that was the power void in which we found ourselves: a clean-slate situation. The state had been completely dissolved. There were no courts, no police, no army, no government ministries. Just abandoned offices, deserted military bunkers. It was an odd sensation to have been subversive guerrillas and fugitives only a day earlier, and now, suddenly – as young as we were, no less – to find ourselves in a city deserted by the ancient regime, conscious that from then on, everything was up to us.

Managua was in a state of euphoric chaos, and some people did succumb to anarchy. The disenfranchised pillaged the uninhabited, locked-up houses of the rich and the military. Guerrillas with their red and black bandanas took the vehicles that the Somoza supporters had left behind in their frantic flight, and drove with glee through the city streets at full speed. Men and women from self-appointed popular military units decided to assume the role of traffic police or general vigilantes, arbitrarily performing some arrests, and proclaiming themselves *comandantes*. If one had been in the news or had a name people associated with any kind of authority,

compañeros and civilians would bestow the title upon you.³⁵⁶

In describing the situation with larger houses in Managua,

The city changed in other ways as well, including the residential neighborhoods that had once been the sole domain of the Haute Bourgeoisie. Many homes that had been abandoned by Somoza supporters and military officers on the run – government ministers, corporate executives whose companies were linked to the dictatorship, and wealthy families that had left Managua months earlier when the insurrection had begun to spread throughout the country – were now occupied by guerrillas. I don't know how it happened or who made the decision, but I can only guess that initially it was just a matter of finding a house for the combatants who didn't have any place to live. The obvious solution was to occupy empty homes, based on the assumption that those properties now belonged to the state. The improvised nature of this operation, however, lent itself to abuses as time went by. Those houses were deemed spoils of war taken from a corrupt enemy; at least this was the moral justification for making use of them. One simply took possession of the house and the belongings of the people who had fled. The house I moved into with my daughters had belonged to a colonel in the Nicaraguan navy. It was simple but comfortable, with four rooms, a garden and a guest house in the back, filled with books on navigation. Some of its furniture still remained, and it took me several months to conquer the feeling that time inside the house was stalled, and of having intruded upon someone else's life – there were family photos and children's notebooks everywhere, and you could feel the presence of those people who, when they left, probably never imagined they wouldn't be coming back.³⁵⁷

Elite beneficiaries distinguished from poor beneficiaries

Earlier chapters have described the historical background of land and law in Nicaragua and the legal regimes of the periods preceding, during, and following the period of FSLN rule and have examined the majority of land transfers, involving land grants to the rural poor (*campesinos*). This chapter focuses on the even more controversial and questionable process by which influential members of the new FSLN-dominated regime obtained many valuable properties under dubious circumstances. In sheer numbers, these properties involve a fraction of the property confiscated and re-distributed during the decade of Sandinista rule,

³⁵⁶ Gioconda Belli, 249.

³⁵⁷ Belli, 263-264.

including the few months of the *Piñata*. However, these properties include many of the most valuable in the nation, especially large luxury homes in high-value districts of Managua.

Looking at specific properties will allow an examination of how the process worked in some cases that may serve as generalized examples. This is by no means an exhaustive study nor does this necessarily represent archetypical situations. However, the cases selected may at least serve as representatives of some of the more common ways in which the land seizures and redistribution were abused by those in power for their own benefit. Sometimes, property was taken from individuals in privileged positions under Somoza, who may have obtained their property through influence peddling or corruption, or perhaps actually obtained the property legitimately. In all cases, the eventual beneficiary appears to have gained property illegally under the Sandinistas' own laws.

Scope of the problem and why it matters

It is difficult to know exactly how many of the Sandinista elite benefited from the *Piñata* property laws without being able to cross-reference the thousands of new occupants with a historical compendium of all FSLN party members and government and army staff. However, OOT has estimated that there were about 11,000 beneficiaries of Law 85 and 100,000 of Law 86.³⁵⁸ Though nearly all of the beneficiaries under Law 86 (urban lots) and most of those under Law 85 (urban dwellings) appear not to have been elites, the still large figure for the latter and the known examples of Sandinista leaders who benefited suggested that a substantial number of both the higher leadership and mid-level leadership benefited from redistributed houses.

As discussed in Chapter 1, using the pool of U.S. Embassy claimants to draw specific cases from presents some challenges, in the terms of possible subjectivity

³⁵⁸ Anne Larson, "Nicaragua's Real Property Debate," *Envío* (January 1993), <http://www.envio.org.ni/articulo/1666> (accessed June 11, 2011).

in selection and the fact that the pool may consist of claims that might differ from the average. However, I believe that these cases are a productive source of details about claims that is generally unavailable to the public and the utility far outweighs the fact that it is admittedly a limited set of examples. This sample can be used to get some idea of the scope of the confiscations and can certainly show the benefit gained by those who obtained their properties. And the legal issues raised by them can illustrate some of the legal mechanisms used in at least some cases. Finally, that the cases selected present examples of the larger process is borne out by public and more general discussions of the process as described in other, non-U.S. government sources cited in this work.

In the *Piñata* era, it was common for high Sandinista officials to use lower-ranking members of the party to register property in their names, in order to overcome the one-property-per-family limitation of the *Piñata* laws. Straw men typically occupied property and falsely stated that they had lived on the property for the legally-mandated minimum period of residence in order to satisfy the *Piñata* requirement that they had resided on the property.³⁵⁹ Examples follow below.

Based on the hundreds of known cases, on the fact that many were probably put into the names of poor individuals who were used as straw men for other officials, and on the presumption that many low-level Sandinista officials escaped notice by blending into the lower-class groups of beneficiaries, I estimate that several thousand officials, including military and police, of various levels were able to obtain real property based on their position in or connections to the Sandinista regime.³⁶⁰

As will be seen, amassing property was only one of these official methods and overall corruption and illicit enrichment was a common characteristic of the

³⁵⁹ Unclassified cable from U.S. Embassy Managua dated September 20, 2001.

³⁶⁰ Challenging the illegalities will become more difficult with the closing of public records on the issuance of reform titles because the Ortega Administration has sharply limited public access. Email from Leónidas Henríquez dated May 27, 2011.

Sandinista elite, at least comparable to the Somoza era elite.³⁶¹ Violeta Chamorro's son-in-law, Antonio Lacayo, allegedly had great financial success in his dealings with the Sandinista regime and used his partnership with Commander Jaime Wheelock Roman and General Humberto Ortega to secure contracts and monopolies from that government.³⁶²

6.2. Particularly Egregious Cases Not Covered in Detail

Examples of cases of elite enrichment are plentiful. Among the most famous is the situation of former General Humberto Ortega, who obtained a compound consisting of a subdivision of 20 contiguous confiscated houses that he walled and staffed with around-the-clock security.³⁶³

Daniel Ortega gained many properties. In fact, Daniel Ortega currently lives in a house confiscated from the man who has since become his Vice President. Ortega has publicly stated that he is obliged to stay in the property because to move from a house he received as part of the *Piñata* legislation would undermine the rights of the many poor who received properties under the same legislation.³⁶⁴ The current Vice President, Jaime Morales Carazo, had been a banker who went into exile after 1979 and who in 1988 had represented the Contras in negotiations.

As part of his new image, Ortega had shrewdly chosen as his running mate

³⁶¹ In Nicaragua, even those who have split with the PLC and the FSLN over corruption are seldom clean of the taint of greed-related misdeeds, even if their scope is far more modest than those of the two largest, and most corrupt, parties. This is true on the left, among members of the *Movimiento de Renovación Sandinista* (MRS, Movement of Sandinista Renewal), supported by the *Movimiento por el Rescate de Sandinismo* (MPRS, Movement for the Rescue of Sandinism, or *El Rescate*), and formed by former guerilla commander, Mónica Baltodano. Baltodano had been cut out of FSLN activities when she denounced Sandinista corruption. Baltodano was involved in bank robberies that collected funds for the Sandinistas before their seizure of power. However, some years later, Baltodano was on a talk show that took phone callers and one female caller said, on air, that Baltodano was wearing the caller's jewelry, which had been taken from a safe deposit box during one of these robberies. The cameras cut away and Baltodano was not wearing the jewelry when she came back minutes later. Interviews with Claudia Vivas, Spring 2002.

³⁶² Republican Staff, 1.

³⁶³ Republican Staff, 16.

³⁶⁴ UCA, *Nicaraguan Briefs*. Envío Digital, 1991(No. 119)

a former Contra, Jaime Morales. The fact that Morales supported Ortega was seen as an important symbol of reconciliation, particularly since Ortega, in the early months of the Sandinista regime, had expropriated Morales's luxury home for his own use. Ortega continues to live in the six-bedroom house in Managua's El Carmen district, justifying this by saying that he paid \$2,000 for it when he left office in 1990 even though it was estimated to be worth \$1m, including its furniture and art collection.

After the end of the Contra war, and his return to Nicaragua, Morales fought a long legal battle to win his home back, but always in vain. He said Ortega had commandeered the house the day after the revolution, by which time Morales had fled the country. He only learned it had been confiscated when his wife returned to Managua, knocked on the door and was answered by Ortega's wife wearing Morales' daughter's bathrobe.

Now Morales has given up the claim: "I'm not obsessed. I'm not going to spend the rest of my life shouting, 'Give me that house back.'" He has said he has never visited Ortega in the house.³⁶⁵

Ortega had obtained many properties the day before Violeta Chamorro was sworn in as President. "Former President Daniel Ortega Saavedra bought seven properties from the Housing Bank (Bavinic) for C\$ 2,236,650,000 (US \$41,573 at the exchange rate at that time), a day before Violeta Barrios came to power on April 24, 1990."³⁶⁶ According to that *La Prensa* article, Ortega had had no properties in his name prior to that date, though he had occupied these since 1979. They are located in the El Carmen district, a central residential district of Managua, and total about a half a *manzana*, constituting more properties and a larger size than permitted under the urban house *Piñata* law, Law No. 85.

Silvio Román Barrios Cruz, a certified/chartered accountant representing Bavinic, was the person who signed the sales deed with Ortega, which was notarized by Francis Guerrero Delgado.

He was the same official involved in the transaction of countless real properties that Bavinic administered, after the disappearance of the Nicaraguan Real Estate Corporation (*Corporación Nicaragüense de Bienes*

³⁶⁵ "Daniel Ortega: The Return of the Sandinista," *The Independent* (November 8, 2006), <http://www.independent.co.uk/news/world/americas/daniel-ortega-return-of-the-sandinista-423459.html>, (accessed June 11, 2011).

³⁶⁶ Jorge Loáisiga Mayorga, "La 'piñata' de Daniel Ortega," *La Prensa* (August 8, 2006), <http://archivo.laprensa.com.ni/archivo/2006/agosto/03/noticias/nacionales/134869.shtml>, (accessed July 2, 2011).

Raíces, Conibir) pursuant to Decree No. 1523 of the Junta of National Reconstruction (JGRN), published in the Gaceta 238, of December 11, 1984.

Among the clients that Barrios Cruz attended to was the former Interior Minister, Tomás Borge Martínez, who through Luz Danelia Talavera Valenzuela bought lands in front of his house that he sold last year for nearly 700,000 U.S. dollars; and the former coordinator of the Political Commission of the National Directorate of the FSLN, Bayardo Arce.

Part of the properties that Ortega acquired were confiscated from the corporation *Fomento y Desarrollo Nicaragüense* S.A. (Nicaraguan Promotion and Development, Inc.³⁶⁷), from Guillermo Noguera Zamora (Major General and Public Health Minister under Somoza) and María de los Ángeles Reyes de Noguera, according to the Property Registry.

The confiscation orders were issued by the then Attorney Generals Omar Cortés Ruiz and Rodrigo Reyes Portocarrero, respectively, in applying Decrees 3 and 38, of July 1979, which ordered the confiscation from the Somoza family and its supporters.

Morales repeated yesterday that he came to an amicable deal with Ortega, five years ago, in relation to the house that the latter currently occupies and which belonged to the former. He said that the *comandante* is the one who can make the deal public.

Property number 49,963 that is inscribed in Volume 738, Folio 263, Entry four, in the name of Daniel Ortega Saavedra, from April 24, 1990, had been sold to the State by a person named Irma Vado de Morales for a price of C\$ 10,000 (US \$1,000), according to a statement in the deed of eight in the morning of February 2, 1981, notarized by the lawyer Leonel Tapia Valverde. It was filed in the Property Registry on August 15, 1981.

Later, in April 1990, Omar Cortés Ruiz, in his capacity as Attorney General, gave various farms, including 49,963, to the Housing Bank, in accordance with a deed of March 21, 1990, certified by the notary Armando Picado Jarquín. It was filed at 4:09 in the afternoon of April 24, 1990.

At the same time of the same year a deed prepared by the notary Francis Guerrero Delgado was filed in the Property Registry, and Silvio Román Barrios Cruz, representing Bavinic, and Daniel Ortega appeared, selling to him “various farms”, among which was that which the State had bought from Vado de Morales for the price of C\$2,236,650,000, equivalent to US \$41,573 at the official exchange rate of the time. The purchase deed was

³⁶⁷ A corporation linked to family members of Jaime Morales Carazo, today Ortega’s vice president.

prepared at 8:00 in the morning on April 24, 1990.³⁶⁸

While many of the senior Sandinista leadership came from the Nicaraguan upper class, Daniel and Humberto Ortega were the sons of José Daniel Ortega Saavedra and grew up modestly, moving from Chontales to Managua when Daniel was about five and Humberto was about three.³⁶⁹ Their parents, who were married and stayed together till their father died, were not peasants but were both illegitimate children of elite fathers and lower-status women. Their mother was raised in her father's and his wife's home and she was sent to secretarial school in Managua and was briefly a teacher. Their father ran a store and briefly served as mayor and was mainly an office worker; he at times received support from his father, a school director who had had the elder Somoza as a student. Daniel and Humberto's father's half-brother (their uncle) became the Minister of Foreign Relations in the 1960s. Their parents were able to send them to private Catholic schools, even though they sometimes could not make the tuition payments. Daniel would go on to spend a year studying law at Nicaragua's premier Catholic university, UCA. Thus, though not exactly of the "elite", in a country with a large gap between the smaller upper and middle classes and the larger groups of laborers and *campesinos*, the Ortega brothers were solidly in the former.³⁷⁰

In 1992, early in the Chamorro presidency, Republican staff members of the U.S. Senate's Committee on Foreign Relations issued a scathing report that, though attacked by some, does provide some useful data about many of the highest FSLN official's acquisitions.³⁷¹ The report's focus was overall issues of remaining political control by the defeated FSLN, corruption in the Chamorro administration, and on the overall property issue. The property portion concentrated on American citizens whose property was granted to Sandinista officials; it does correctly identify Sandinista officials, government ministries, and other entities that gained significant and valuable properties as a result of the *Piñata* laws. The report

³⁶⁸ Jorge Loáisiga Mayorga, "La 'piñata' de Daniel Ortega," *La Prensa* (August 8, 2006).

³⁶⁹ Kenneth E. Morris, *Unfinished Revolution: Daniel Ortega and Nicaragua's Struggle for Liberation* (Chicago: Lawrence Hill Books, 2010), 17.

³⁷⁰ Morris, 22.

³⁷¹ Republican Staff, 1.

includes a list, included in the Appendix as Table 7, that includes 60 of the most senior officials of the FSLN and the Sandinista regime, such as Humberto Ortega, Daniel Ortega, Joaquín Cuadra, Lenin Cerna, Jamie Wheelock, Ricardo Wheelock, Tomas Borge, Rene Vivas, and Bayardo Arce.

It would require a much longer work than this to outline the full distribution of confiscated assets among Sandinista elites and rank and file. Suffice to say, though, that the very highest level individuals partook generously of the expropriated properties. As the charts in Table 7 in the Appendix shows, while many properties were used for government, public, or party purposes, leading officials often helped themselves to one or more houses for their own personal use.

The authors of this report focused most on American citizen property claimants, which is why they specifically identify American citizens. However, many of these individuals were not American citizens at the time of the original confiscation, though most were at the time of the actual *Piñata* in 1990.

Nicaraguan government real estate tax records show the following³⁷² were able to take properties in some of the more desirable neighborhoods of Managua (this list duplicates some of the same names and properties listed by the U.S. Senate staff investigation):

- Foundation Cesar Augusto Sandino, one property in Los Robles
- Henry Ruíz Hernández, one property in Los Robles
- Rene Vivas Lugo, one property in Los Robles
- Gloria Maria Cruz de Carrion, two properties in Los Robles and one in Las Colinas
- Humberto Carrión, one property in Los Robles and one in Las Colinas
- Sergio Ramírez Mercado, one property in Los Robles
- Doria Maria Tijerino Haslam, four properties in Las Colinas
- Joaquin Cuadra Lacayo, five properties in Las Colinas and one in Santa Monica
- Javier Carrión, two properties in Las Colinas
- Lenin Cerna, eight properties in Las Colinas

³⁷² Managua Property Tax Roll, dated May 13, 1994.

- Hugo Torrez, one property in Las Colinas
- Rene Nuñez Tellez, one property in Las Colinas and one in Lomas de Monserrat
- Ricardo Wheelock Román, one property in Las Colinas
- Daniel Ortega Saavedra, 12 properties in Las Colinas
- Carlos Carrión Cruz, one property in Villa Fontana
- Monica Baltodano Marcenaro, one property in Villa Fontana

In addition, the U.S. Embassy database gives the names of hundreds of individuals identifiable as Sandinistas or their allies who obtained formal or de facto possession of confiscated property. These names include former *comandantes*, diplomats, police heads, judges, and National Assembly Deputies, many of whom enjoy immunity from lawsuits, and many others. In addition, properties were taken over by the FSLN for use as party offices, by various government ministries, and by a host of FSLN-connected associations and cooperatives, and officials and diplomatic missions of Sandinista-sympathizing governments including Cuba, Russia, Mexico, Libya, and the Palestinian Liberation Organization.

There are several prominent reasons that such cases are important. First, the properties claimed are among the more valuable in the country. Second, the claimants were formerly members of the Somoza elite or were simply successful individuals in Nicaraguan society, meaning that their claims are higher profile than others. Third, the nature by which the original owners got them and by which the Sandinista elites gained them in the end are excellent illustrations in the ways in which Nicaraguan elites have used the legal, economic, and political system for their personal benefit. Thus, these are excellent examples in demonstrating the overall failure of rule of law in a perennially corrupt Nicaraguan society.

The following case studies provide examples of elite beneficiaries and are quite detailed, in order to show the whole legal history, which becomes useful in understanding the process of confiscation. While a comprehensive analysis of every known confiscation would require thousands of pages, I believe that looking at several cases in great detail gives a good sense of the procedures and methods used and by whom they were used.

6.3. Kinship Relationships of Elite Often Traceable to Conquistadors

While the elite origins of many of the Sandinista leaders is often mentioned, there has been no attempt to link the social position out of which many arose to their taking of properties. As in most of Latin America, position (closely related to race) is of crucial importance and often serves to define a person. Furthermore, family links are especially important in Nicaragua. According to Christian:

People who slander one another, conspire to destroy one another politically or economically, or threaten to shoot one another are often cousins, or married to cousins. Frequently, first cousins are married to each other. The justifications that are usually offered for such close marriages are that they keep landholdings in the family or that they protect descendants of the Old Spanish families from marrying beneath themselves, although this doesn't explain why such marriages are common among the poor as well as the affluent. A blood or marital connection does sometimes cause people to temper their feuds before they become mortal. Making a disparaging remark about another person to almost anyone is dangerous because the person you are talking to could be his relative and childhood friend. On the other hand, saying something good about the third person may bring a detailed accounting of an indiscretion he committed twenty years earlier. At times the greater political and social questions seem irrelevant.³⁷³

Nicaragua's population is currently nearly six million, with the vast majority poor urban or rural people without elite connections. The actual business and social elite represents a much smaller number, perhaps in the tens of thousands, or less. While it is true that, as with the middle class Ortega brothers, the Sandinista guerrilla movement and subsequent Marxist-oriented government gave opportunities for those not in the upper class to advance in society, it is striking that so many of the Sandinista leaders, including a majority of those in high positions, were from the same families as most Somocista leaders and as most non-Somocista leaders. The following lists show the degree to which significant elements of the Sandinista leadership were descended from the very earliest conquistadors and noblemen of Nicaragua. They are hardly exhaustive lists of the

³⁷³ Christian, *Revolution in the Family*, 4-5.

kinship ties, particularly among families who joined the elite later on, but do illustrate the extent to which key leaders of the FSLN represent families that have long dominated Nicaragua, often being descended from more than one of these families, given the relatively small pool of those who could be considered elites.

The following Sandinistas³⁷⁴ were descended from the nobleman José Antonio Lacayo de Briones³⁷⁵:

- Martínez Cuenca, Alejandro: Sandinista Minister of Trade in the 1980s, Ortega challenger, and purchaser of cigar factory in 1992.³⁷⁶
- Cardenal Martínez, brothers Ernesto and Fernando: Ernesto was Sandinista Minister of Culture in 1980s, priest advocating liberation philosophy, resigned the FSLN in 1994 to join the Sandinista Renovation Movement; Fernando was Sandinista Minister of Education in 1980s, Jesuit priest removed by Vatican for political service.
- Cardenal Martínez, Rodrigo: Ambassador to East Germany in 1980s.
- Castro Cardenal, Vanessa: Chief of FSLN's Political Education Department in 1980s.
- Wheelock Román, Jaime: Minister of Agriculture and Land Reform in 1980s.
- Wheelock Román, Ricardo: First Sandinista Ambassador to the Soviet Union, later Chief of Army's Directorate of Military Intelligence, half-brother of Jaime.
- Robelo Callejas, Luis Alfonso: Original member of the *Junta*, he went into exile, becoming a Contra leader. Formerly a businessman, university president, and Chamber of Commerce President.
- Cardenal Caldera, Antonio: Priest advocating liberation theology. Became a leader in the FMLN guerrilla movement in El Salvador.
- Reyes Portocarrero, Rodrigo: Minister of the Secretariat of Central Government Affairs, later Supreme Court Justice, now Secretary of the *Banco de Finanzas*.
- Coronel Urtecho, José: Writer and intellectual supporter of the Sandinistas. Nephew is Edgar Chamorro Coronel, from his sister Dolores' marriage to Julio Chamorro Benard (grandson of President Pedro Joaquín Chamorro Alfaro), head of the Contras.³⁷⁷
- Coronel Kautz, Manuel: Former FSLN treasurer, leading negotiator Aleman and Ortega Pact. Son of Jose Coronel Urtecho. Vice Foreign Minister since 2007.³⁷⁸
- Coronel Kautz, Ricardo: Plantation owner, one of "The Twelve" (Los Doce) establishment figures who supported Sandinista goal of defeating Somoza. Son of José Coronel Urtecho. Negotiator of the Pact.³⁷⁹

³⁷⁴ Names from Samuel Stone, *The Heritage of the Conquistadors: Ruling Classes in Central America from the Conquest to the Sandinistas* (Lincoln: University of Nebraska Press, 1990); most positions from State, *Nicaraguan Biographies*, 1988.

³⁷⁵ As were the 19th Century presidents bearing the name Chamorro, plus the murdered journalist Pedro Joaquín Chamorro Cardenal, as well as his wife, future President Violeta Barrios de Chamorro.

³⁷⁶ Savona, David, "An Interview with Alejandro Martínez Cuenca, (April 1, 2007), <http://www.cigaraficionado.com/webfeatures/show/id/6215/p/2>

³⁷⁷ http://www.dariana.com/diccionario/jose_coronel_urtecho.htm

³⁷⁸ Envío Team, "Who's Who in the New Cabinet," *Envío Digital*, No. 307 (February 2007) <http://www.envio.org.ni/articulo/3460>

³⁷⁹ "Who's Who in the New Cabinet."

- Argüello Carazo, Horacio.: Sandinista lawyer, currently Secretary of the Board of Directors of IPSM (Institute of Military Social Provision).³⁸⁰
- Argüello Hurtado, Roberto: Lawyer and justice on the first Sandinista-appointed Supreme Court after the Revolution.
- Argüello Hurtado, Alvaro: Jesuit Priest and member of Council of State until the Pope ordered clergy out of political offices.
- Chamorro Cardenal, Xavier: Director of the newspaper *Nuevo Diario* and brother of Pedro Joaquín (and brother-in-law of Violeta Chamorro).

The following Sandinistas (as well as the Somozas and Presidents Juan Bautista Sacasa, Benjamín Lacayo Sacasa, and Robert Martínez Lacayo and Somoza Debayle's Personal Secretary Frank Kelly Hollman) were descended from the nobleman Antonio de la Quadra:³⁸¹

- Carrión Cruz, Carlos: FSLN Political Secretary and head of Sandinista Youth in 1980s, from one of wealthiest families in Nicaragua, brother of Luis and Gloria, nephew of Arturo Cruz and cousin of Javier Carrion.
- Carrión Cruz, Gloria: In 1980s, General Secretary of the Sandinista Women's Association, AMNLAE, sister of Carlos and Luis.
- Carrión Cruz, Luis: In 1980s, Vice Minister of Interior, FSLN National Directorate and FSLN Defense and Security Commission. First Vice Minister of Interior since April 1980, brother of Carlos and Gloria.
- Lacayo Gabuardi, Roberto: Vice Minister of Housing and Human Services in 1980s, brother of Oswaldo and brother-in-law of Luis Carrion.
- Lacayo Gabuardi, Oswaldo: Sandinista Army Deputy Chief of State, brother of Roberto and brother-in-law of Luis Carrion.
- Cuadra Chamorro, Joaquín: President of Central Bank of Nicaragua in 1980s, member of pro-Somoza fascist group in the 1930s (born 1918).
- Torres Jimenez, Hugo: Original guerrilla commander, in 1980s served as Army Colonel, Chief of Army's Political Directorate, FSLN Defense and Security Commission, FSLN Assembly.
- Cuadra Lacayo, Joaquín: Sandinista General and Vice Minister of Defense (later Minister of Defense (later head of Army under Violeta Chamorro).
- Núñez Téllez, Carlos: FSLN National Director Member in 1980s. Died 1990.
- Núñez Téllez, René: Secretary of FSLN National Directorate, Secretary-Minister of the Presidency in 1980s, brother of Carlos. Later National Assembly head.
- Núñez Téllez, Milena: Vice Education Minister since 2007. Carlos/René's sister.³⁸²
- Guzmán Cuadra, Fernando: Ambassador to Argentina in 1980s, nephew of Joaquín Cuadra.
- Guzmán Cuadra, Alvaro, Vice Minister of Foreign Commerce then of Mines and Hydrocarbons, later head of prisons, brother of Gilberto and Fernando.

³⁸⁰ "El Militarismo un Mal Anacronico en América Latina," Univision.com (October 5, 2010), <http://foro.univision.com/t5/Nicaragua/EL-MILITARISMO-UN-MAL-ANACRONICO-EN-AMERICA-LATINA/td-p/406660707>

³⁸¹ Names from Stone, 1990; except where other sources are given, positions are from United States Department of State, *Nicaraguan Biographies*, 1988.

³⁸² Stone, 93.

The Somoza family was also descended from the conquistador Cristóbal de Alfaro and Juan Vázquez de Coronado.³⁸³

The lists above are not an exhaustive analysis of the kinship relationships of all whom I consider “elite”, who number in the tens or even hundreds of thousands in a country of millions like Nicaragua. But it does illustrate how privileged family ties connect many in the leadership of all political sides, individuals who in most cases would seem to have the ability to do well in society. In many cases, though, those in the Sandinista leadership did avail themselves of the opportunity to secure property during the decade of FSLN rule from 1979 to 1990. Below, we will look at a few examples of the processes by which some obtained houses.

³⁸³ See Stone, 1990.

CHAPTER 7: CASE STUDIES OF SANDINISTA LEADERS AS BENEFICIARIES

The full study of the means that the Sandinista elite used to manipulate and conceal property ownership, involving straw men, shell corporations, and forged documents, may never be fully analyzed. However, the extraordinary lengths that to which they would go might seem impressive. In my case, in my second year in Managua, I and the two Nicaraguan lawyers I was working with were making significant progress in clarifying the transactions involving property claimed by some of the American claimants the Embassy served. After writing directly to Sandinista leaders involved and after the first successful application of the U.S. law barring travel to the U.S. for those involved in property confiscated from U.S. citizens, discussed below, the U.S. Embassy's Regional Security Office contacted me to tell me that someone had thrown human feces into the garden of the house where I lived with my family in Managua. In my surprise and concern, I forgot to ask how they knew that it was human feces. At the time, the Embassy and I took this as an unmistakable threat, even though I was not fully versed as to the severe human rights abuses (personal involvement in torture and murder) that some of these individuals were alleged to have committed in the 1980s.

7.1. Lenin Cerna and Marisol Castillo and Inversiones CERCAS, SA

Illustrative of the way in which top members of the FSLN were able to use their official positions for personal benefit is the husband-wife combination of Lenin Cerna Juarez (Cerna) and Marisol Castillo (Castillo).

Lenin Cerna was born in Leon in 1946, the son of a Nicaraguan Socialist Party (PSN) activist.³⁸⁴ Cerna joined an FSLN military unit in 1963 and brought Daniel and Humberto Ortega, his childhood friends, with him into the FSLN. He received guerrilla training and participated in bank robberies and sabotage. He was in prison from late 1968 until his release to Cuba as a result of the famous 1974

³⁸⁴ United States Department of State, *Nicaraguan Biographies: A Resource Book*. Revised edition ed. (Washington: United States Department of State, 1988).

Christmas Party raid, which took place at the house of Castillo's father, Jose Maria "Chema" Castillo Quant, a prominent personality in the Somoza regime. At this party, attended by prominent guests, commandos of the FSLN, released the hostages for US \$1 million and freedom for 14 FSLN prisoners, including Cerna and Daniel Ortega.

It is said that Castillo may have already been an FSLN sympathizer who let the FSLN guerrillas into her father's house during the party.³⁸⁵ Her father was shot to death when he attempted to resist the raid. She subsequently joined the FSLN and married Edgard Lang, a militant who was killed in April 1979, and later became involved with Cerna.

Under the Sandinista government, whether by virtue of her militant status or her relationship with Cerna, Castillo obtained the rank of major and became the Chief of Personnel for the Ejército Popular Sandinista (EPS, Sandinista People's Army), which was later renamed just the National Army, during the years when the Sandinistas were out of power. In this role, she assigned many houses to officers of the EPS, which many continue to possess, as will be shown below.

Cerna himself went on to command a front in the guerrilla war of the late 1970s and was wounded, after which he left Nicaragua.³⁸⁶ He was stationed at the Nicaraguan Embassy in Honduras after the Revolution, where he was in charge of assassinating exiled enemies of the new regime. However, it was in his subsequent role as head of the Secret Police Directorate General of State Security (DGSE), in the first Sandinista period, 1979-1990, for which Cerna is most known. In that position, he is alleged to have personally tortured members of the civil opposition.³⁸⁷

Cerna worked directly for the Interior Minister, Tomás Borge. It is said that he

³⁸⁵ State, *Nicaraguan Biographies*, 99.

³⁸⁶ State, *Nicaraguan Biographies*, 99

³⁸⁷ State, *Nicaraguan Biographies*, 99.

investigated ownership records for political prisoners and all those denounced by the Comités de Vigilancia Sandinista (CDS), and used this role to confiscate properties for the APP (Area Propiedad del Pueblo), which were later divided among high officials of the EPS, the Police, and members of the DGSE. From April 1990 to December 2006, he used a group of lawyers to create deeds, falsifying signatures, and registering them with corrupt registers of deeds (*registradores públicos de la propiedad*).³⁸⁸ One can also presume that Cerna and Castillo's marriage allowed each to tap into the other's universe of personal and professional contacts and influence.

The links between Cerna and Castillo extend beyond matrimony and official positions to business relations, and they reportedly co-own the corporation Inversiones CERCAS S.A., said to be a contraction of Cerna-Castillo.³⁸⁹ It is a common practice to use initials or first syllables of component names in corporate names in Nicaragua.³⁹⁰ In 2001, the company did not appear in any phone directory that I had access to in the Embassy, somewhat unusual for an ongoing business. Cerna's name appears as representative on CERCAS on real estate transaction documents and as the individual who registered them with the Public Registry.³⁹¹

How They got the Property

CERCAS holds to property on which Cerna and Castillo live, originally owned by Ulises Carrillo Ramirez (Carrillo), a general under the Somoza government. Carrillo may himself have benefited from his position in the Somoza regime. Public Registry documents show that this urban property (No. 19,666) was

³⁸⁸ Raúl Arévalo Alemán, "Lenin Cerna sustituido por Ortega en la Secretaría de Organización del FSLN," *La Jornada*, May 17, 2011, <http://www.lajornadanet.com/diario/archivo/2011/mayo/17/1.php>, (accessed September 1, 2011).

³⁸⁹ Email from Claudia Vivas, July 5, 2011 and interview with Ulises Carrillo, date uncertain

³⁹⁰ For example, a well-known group of companies in Nicaragua, whose original founders were Solorzano, Villa, and Pereira, is known as SOVIPE. Other examples include OCALSA (Organización Cesar Augusto Lacayo, S.A.) and Milca (Manuel Ignacio Lacayo Commercial).

³⁹¹ Unclassified cable from U.S. Embassy Managua dated September 20, 2001.

confiscated in 1979 under Decree No. 3 and 38, because of Carrillo's high position in Somoza's National Guard; the National Commission for the Review of Confiscations later determined that Carrillo was entitled to either the return of his property or compensation.³⁹²

After confiscation, an Agrarian Reform Title was authorized in favor of Wilfredo Javier Escalante Medrano for this property, an area of 26,546 square meters, or less than four manzanas, on February 20, 1990; this title was registered in the Public Registry on April 24, 1990 (during the *Piñata*).³⁹³ However, neither the award of title nor its filing should have been legally possible. Because it was urban property, within Managua's borders, it was not subject to titling under the Agrarian Reform Law, Decree No. 782. That decree also requires that agrarian land grants be at least four manzanas (to bring additional agricultural land into production); Escalante received slightly less than this and, in any event, the large house indicated the property was clearly not agricultural, and may never have been, and could not be easily converted to such use. Therefore, the award to Escalante was not legal under Decree No. 782.

On May 12, 1992, Escalante sold the same property to CERCAS for US \$1,000 (but bought back a fractional piece of it for US \$327). Given the small sales price for such a valuable piece of property, including a house, it is likely that Escalante played the role of a straw man whose role allowed Cerna and Castillo to get title, through their company CERCA, to a property they were already living on. The notary executing the transaction was none other than veteran Sandinista attorney Rafael Solís Cerda.³⁹⁴ Law 88 and Decrees Nos. 35-91 and 36-91, authorize the sale of agrarian reform land only with a certification by INRA that the relevant title was legally valid; in this transaction, there was such a certification, despite the fact

³⁹² Unclassified cable from U.S. Embassy Managua dated September 20, 2001.

³⁹³ Unclassified cable from U.S. Embassy Managua dated May 21, 2002.

³⁹⁴ Solís was active in the resistance against Somoza, was the FSLN's first Ambassador to the United States in 1979, participated in drafting the 1987 Constitution, and has been linked with numerous *Piñata* era transactions.

that the title had been illegally granted.³⁹⁵ Had the title been issued five days later, in the period from February 25 to April 25, 1990, Escalante would have to have gone through the OOT to get proper title. It is possible that dates were inserted during the *Piñata* to make it simpler for those wanting the land.

CERCAS eventually obtained formal title from OOT on October 31, 2000 as a third party buyer in good faith under Law 278. However, under Law 84, the only conventional persons who can be granted a *solvenca* by the OOT related to rural properties must be cooperative enterprises created according to Law 84.³⁹⁶ Cooperative enterprises receiving rural properties had to fulfill a series of requirements, including that the land had to be worked directly by them and always with social interest. CERCAS is registered as a for-profit corporation, not a cooperative enterprise, which would have a special establishment procedure (Article 8 of Law 84), distinct from the one used for stock corporations.³⁹⁷ According to Article 13 of Decree No. 35-91, the OOT can grant a *solvenca* to a conventional person (company) who has a social interest. This provision related to properties affected by Law 85, which can be applied as an analogy to those properties affected by agrarian reform, having in mind that Decree 48-92 ordered the OOT to review the cases of properties affected by agrarian reform, in place of the Special Presidential Commission created by Decree 35-91 (Articles 28 to 32). Therefore, it would appear that there is no legal basis for a stock company to acquire a *solvenca*, as CERCAS did in this case.

As discussed in Chapter 4, the presumption in favor of a subsequent purchaser raises a further barrier to the property's return. Though CERCAS illegally obtained the solvency, Article 45 of Law 278 presumes that third party acquirers like this company acquired it in good faith. This burden of proof can be overcome but still favors CERCAS.

³⁹⁵ Unclassified cable from U.S. Embassy Managua dated May 21, 2002.

³⁹⁶ Published in *La Gaceta* on March 28, 1990.

³⁹⁷ Interview with Claudia Vivas, September 2001.

Nonetheless, Cerna and Castillo continued to occupy and control the property in question, reportedly living there since sometime in the 1980s, before the *Piñata*.³⁹⁸ Beyond their links to CERCAS in whose name the property is registered, two phone numbers under Lenin Cerna's name in the 2000-2001 telephone directory give his address as the same as Carrillo's property.³⁹⁹

7.2. Sandinista Diplomat Lacayo Parajon

Former Sandinista official Francisco José Lacayo Parajon (Lacayo) took title to a house claimed by Miguel Vanegas and rents it for profit. Because of various improprieties related to Lacayo's obtaining the property and a court ruling against him, it seems clear that Lacayo obtained the property through abuse of his position in and connections with the Sandinista government. Lacayo was formerly a Sandinista diplomat and later worked for UNESCO outside of Nicaragua.⁴⁰⁰

Mr. Vanegas claims a house located at Km. 12.5, Carretera Sur, Comarca "Las Jinotepes". This property was originally purchased by Mr. Vanegas and his wife Angela Maria Casanova de Vanegas from Alberto Solorzano and Elsa Solorzano de Wheelock on March 22, 1974, free of encumbrances.⁴⁰¹

Property Confiscated on the Basis of Vanegas' Absence from Nicaragua

Vanegas fled Nicaragua on April 11, 1982, followed later by his wife. According to Vanegas, he did so because, in that year, his two companies, Ceramica Chiltepe

³⁹⁸ Unclassified cable from U.S. Embassy Managua dated September 20, 2001.

³⁹⁹ Unclassified cable from U.S. Embassy Managua dated September 20, 2001.

⁴⁰⁰ Before the Revolution, Francisco Lacayo Parajón was the Director of the School of Sociology of the Universidad Centroamericana (UCA) from 1976-1978. He became Assistant Coordinator of the National Literacy Campaign of Nicaragua, winning the UNESCO International Literacy Prize in 1980. He served as Vice Minister of Education and Culture, Founding Member and Member of the Board of Directors of the Nicaraguan Institute of Research and Popular Education (INEP), and worked for UNESCO from 1993 to 2005, including as Director of UNESCO's regional office in Havana. Biography "Francisco José Lacayo Parajón (Nicaragua)", CREFAL Centro de Cooperación Regional para la Educación de Adultos en América Latina y el Caribe, at http://crefal.edu.mx/gleace/cv_francisco_lacayo.html (accessed September 11, 2011).

⁴⁰¹ *Escritura* or deed dated March 22, 1974.

(a tile factory) and SOVIPE (a construction company) were expropriated and turned over to his workers, who threatened him with death should he return to the premises.⁴⁰² In one instance, he had to leave on foot, abandoning his car at the plant. When he finally left Nicaragua, Vanegas was renting his house out to a Swedish geologist named Bo Lundberg. Vanegas had arranged for Lundberg to pay rent to his niece, Mayra Vanegas, who remained in Nicaragua. According to Vanegas, the Swede lived there for between six months and a year and, on the tenant's departure, officers of the Sandinista police force took over the premises. It appears that the tenant had to move out on March 1, 1983.⁴⁰³

On May 23, 1983, Minister of Justice Ernesto Castillo made a finding that Miguel Vanegas had abandoned his property for being out of the country for more than six months and declared all his property expropriated, under the legal authority of Decree No. 760. This confiscation affected his half of the house whose full ownership he shared equally with his wife.

History of the House after Confiscation

In 1983, the Ministry of Housing leased the house to Bengt Fagerberg of the Swedish Geological Service.⁴⁰⁴ It appears that Fagerberg was placed in the house the day after Lundberg vacated it.⁴⁰⁵ However, in the following year, Fagerberg was given two months notice to move out by October 1984.⁴⁰⁶

Vanegas is not sure what happened to his property while he was out of Nicaragua in the 1980s; his niece could not gain access to the house. However, Vanegas heard a high-ranking Sandinista official was living there and heard rumors it was Monica

⁴⁰² This and the following account were conveyed by Mr. Vanegas in a series of interviews in 2001.

⁴⁰³ Letter of Mayra Vanegas dated December 28, 1982.

⁴⁰⁴ Ministry of Housing Memorandum from Oscar Ramírez Acevedo to Lesbia de Borge dated August 15, 1983

⁴⁰⁵ Furniture Rental Contract between Bengt Fagenberg and Jose Angel Berrios Barberena dated March 2, 1983

⁴⁰⁶ Letter from Oscar Ramirez Acevedo to Fagerberg dated August 2, 1984.

Baltodano.⁴⁰⁷

In August 1988, the house was assigned by the Ministry of Housing to José Roberto Montoya Rourke, director of the Protocol and Services Enterprise of Managua.⁴⁰⁸

Mr. Vanegas' half of the house became the property of the *Banco de la Vivienda de Nicaragua* (BAVINIC), a government-owned bank. The half belonging to his wife Angela Maria Casanova de Vanegas was never formally expropriated. Under Nicaraguan law, as joint owners of the house, they each had a half interest. Official documents still show Casanova as half owner with Lacayo.⁴⁰⁹

From April 1 to December 31, 1989, BAVINIC, through its representative Maria Auxiliadora Reyes García, entered into a lease with Francisco Lacayo Parajon.⁴¹⁰ In May 1989, after the lease began, the house was assigned to Lacayo, Nicaraguan Ambassador to Honduras, for rent of 10 percent of his salary. This assignment was made by Maria Auxiliadora Reyes, Director General of Urban Development of the City of Managua, the same person who signed the lease on BAVINIC's behalf.

On November 1, 1989, BAVINIC, through its representative Silvio Berrios Cruz, the same person who signed off on sales deeds to Daniel Ortega and Bayardo Arce, entered into a sales contract with Lacayo, for 484 million old Córdoba (then worth US \$19,000; this amount is the same as 484 new Córdoba, currently worth about US \$20), payable over ten years.⁴¹¹ The BAVINIC contract states Lacayo paid a down payment of 44 million old Córdoba (US \$1,732 at that time) and was to pay 40 trimestral payments of 11 million old Córdoba, starting December 23, 1989.

⁴⁰⁷ Baltodano served as a guerrilla leader during the revolution, Vice Minister in the Ministry of the Presidency, National Assembly Deputy, and was identified in Mario Cajina-Vega's book "Reclamo Ad Perpetuum" as being involved in the theft of jewelry from safe deposits in the city of Masaya shortly after the Sandinista seizure of power; she was former companion of Bayardo Arce, but has since broken with the FSLN.

⁴⁰⁸ Ministry of Housing Memo from Heidi Grenda to Miriam Fonseca of the Finance Ministry dated August 25, 1988.

⁴⁰⁹ Statement of the Nicaraguan Institute of Territorial Studies dated September 3, 2000.

⁴¹⁰ Lease dated August 28 1989.

⁴¹¹ Contract dated November 1, 1989.

Assuming he made that payment (then worth US \$303), he would have paid only US \$2,035 by the time he was awarded the house under the *Piñata*, a fraction of its value.

In the flurry to register properties under the *Piñata*, on April 7, 1990, on behalf of BAVINIC, Berrios Cruz conveyed Vanegas' house to Lacayo, under Law 85. At this time, before Chamorro took office, officials of the government-owned BAVINIC were invariably affiliated with the Sandinista regime.

Lacayo obtained a *solvenca de revision* (a type of provisional title) on December 18, 1992, in spite of a formal petition by Mr. Vanegas on August 7 to OOT requesting denial of Lacayo's application. On January 13, 1997, Lacayo obtained a *solvenca de disposición*, a type of regular title.

There were many legal irregularities in these transactions. First, BAVINIC could not have sold this house in its entirety to Lacayo because it only received the confiscated half from the Nicaraguan Government; it had no legal authority to transfer Casanova's unconfiscated half.⁴¹² Second, BAVINIC maintained that Berrios Cruz was not authorized by BAVINIC to carry out this transaction on the bank's behalf; there appears to be no documentary evidence that he had such authority.⁴¹³ Third, the deed, dated April 7, 1990 noted that Lacayo was present at the transfer formalities on that date. However, Nicaraguan Immigration Office records establish that Lacayo was out of Nicaragua on that date.⁴¹⁴ Under Nicaraguan law, he had to have been present, as stated by the deed, in order for the deed to be valid. A head of OOT, Dr. Nubia Ortega de Robleto outlined these numerous discrepancies to Attorney General Centeño, concluding, "In the face of such circumstances ... we presume that there was bad faith in acquiring the revision and *solvencias de disposición* from OOT."⁴¹⁵ This would seem to establish that the

⁴¹² February 11, 1998 letter of BAVINIC President Mauricio Montealegre to Jose Alejandro Rio, head of OCI.

⁴¹³ Ibid.

⁴¹⁴ Certification 10588 of Interior Ministry's Migration and External Affairs Office, dated February 8, 2000.

⁴¹⁵ Letter of February 24, 1998, supported by deeds and tax documents provided by the claimant

deed was invalid and fraudulent because it falsely stated that Lacayo was present, a requirement for the valid transfer of real property under Nicaraguan law.

The Assistant Attorney General for Property Matters brought civil suit against Lacayo, where she requested the IV Civil District Judge of Managua to declare null both *solvencias*, the deed allegedly transferring the house from BAVINIC to Lacayo, and the third entry at the Public Registry. She also requested the return of Vanegas' house. This civil suit was filed on January 29, 1999.

Vanegas brought criminal charges against Gustavo Adolfo Sirias Quiroz, the notary public who authorized the transfer deed from BAVINIC to Lacayo, for fraudulently authorizing this deed in Lacayo's absence. These criminal charges never moved forward. According to Vanegas, this is because of Lacayo's influence with the Sandinista-affiliated judge, Silvia Rosales.

The Executive Secretary of the Attorney General Office informed Mr. Vanegas that that office could not proceed on this civil case because Lacayo fulfilled all the requirements for obtaining this house under the *Piñata* laws.⁴¹⁶ Nonetheless, the process continued, with Assistant Attorney General for Property, Elida Lopez Mendoza, submitting legal arguments.⁴¹⁷

Soon after, Bayardo Arce⁴¹⁸ reportedly went to President Aleman to intercede for his friend Lacayo. Vanegas alleges that Aleman pressured the Judge not to go on with the trial. But the trial continued because the Assistant Attorney General for Property Lopez insisted, over the Attorney General's objections, that it continue; Arce and an unidentified Sandinista member of the Supreme Court personally pressured the judge to rule in favor of Lacayo.⁴¹⁹

⁴¹⁶ Letter from Miguel Robelo Ramirez to Vanegas dated October 4, 2000.

⁴¹⁷ Statement of Lopez Mendoza dated August 28, 2001.

⁴¹⁸ Arce, a director of the Sandinista party, National Assembly Deputy, and former Comandante, has been identified as being involved in over 100 cases of properties confiscated during the 1980s that have found their way into the hands of prominent Sandinistas or straw men holding the property on their behalf, according to the U.S. Embassy in Managua.

⁴¹⁹ Statement of Lopez Mendoza dated August 28, 2001.

On October 16, 2001, the IV Civil District Judge of Managua, Ruth Chamorro, ruled in Vanegas' favor. In the court decision, the Judge nullified the deed transferring the house to Lacayo and the two *solvencias* in his favor, ordering the house returned to the Nicaraguan State (whereupon it could be "deconfiscated" and returned to the claimant). She also ordered the Public Registry's entry cancelled. On December 11, 2001, Lacayo appealed the lower court's decision to the Second Chamber of the Property Appeals Tribunal.⁴²⁰ All three magistrates of this chamber were reportedly Sandinistas and have invariably ruled in favor of Sandinista property occupants.⁴²¹ There is no appeal from their decisions, under Article 90 of Law 278 and their decisions have not properly applied Nicaraguan property law to the facts.⁴²² Vanegas' lost when the court ruled in favor of Lacayo's title.⁴²³

As of 2002, Lacayo had been renting the house out for a decade, earning approximately US \$100,000 in rent, and not even using it as his personal residence. As of that time, the tenants were German citizens named Lars and Sabine Wilhelm. The husband worked for the GTZ Agency, in charge of developing German-sponsored aid projects in Nicaragua. During the trial, the Judge ordered the rent payment put into a deposit in court. Vanegas informed the Germans of the court order. The tenants stopped paying rent directly to Lacayo until resolution of the ownership question, but Vanegas never saw that money.

Tiring of the fight, in 2009, Vanegas settled for bonds worth US \$67,000.⁴²⁴

7.3 Military Abuses Involving Confiscated Properties

When the *Junta* took the reins of power, one of its first acts, the *Estatuto Fundamental*, abolished the Somoza National Guard (Article 23) and in its place

⁴²⁰ Judicial Notice of December 12, 2001.

⁴²¹ Interview with Claudia Vivas, December 12, 2001.

⁴²² Interview with Claudia Vivas, December 12, 2001.

⁴²³ Telephone call with Miguel Vanegas, June, 22 2011.

⁴²⁴ Telephone call with Miguel Vanegas, June, 22 2011.

created the EPS (*Ejército Popular Sandinista*, or Sandinista People's Army). Guerrilla elements were transformed into army units, as well as police.

Transfers to Army officers were common during the years of Sandinista rule. Throughout the 1980s, Army officials made assignments of confiscated (some "legally" expropriated under *Junta* decrees, others simply seized by armed soldiers) to military personnel. Through the 1980s, there were numerous examples of armed members of the military and police acting with impunity, the public knowing the violent consequences of resistance. According to the Army's Legal Advisor, Colonel Noel Portocarrero, houses were assigned to military officers depending on their rank, with higher ranked individuals receiving the earliest, and best, assignments and common soldiers receiving nothing.⁴²⁵

In the typical case originating in the mid- to late-1980s, of which there are dozens of examples, the Head of Personnel and Cadres of the Army would assign a confiscated property to an officer. In many instances, there is evidence suggesting the officer already occupied the house in question and the assignment was merely a pro forma legalization of physical occupancy. As the decade of Sandinista control passed, there was an increasing desire to legalize such occupancies, especially as the 1990 elections approached, as a means to guarantee continued possession of the seized land.⁴²⁶

As previously described, immediately following the largely unexpected Sandinista electoral defeat in February 1990, the National Assembly passed the *Piñata* laws before giving up their seats in April. Through that year, there was a rash of spontaneous property title registrations. In many instances, the Nicaraguan Government and FSLN-controlled Housing Bank (BAVINIC) had granted the officers contracts-for-deed, which were cancelled as a result of the *Piñata* laws in favor of cost-free transfer to the military occupants.

⁴²⁵ Portocarrero to Property Officer Benjamin Dille in April 2, 2002 meeting at the Nicaraguan Finance Ministry

⁴²⁶ Interviews with Claudia Vivas, 2001.

After the *Piñata*, through the 1990s, Sandinista-dominated Army offices, including the Personnel Office, the Legal Department, and the Inspector General's Office, assisted officers and others, to get titles to the confiscated properties which they inhabited and in some cases, to properties which they may not have actually possessed. The Army would provide copies of the Assignment Orders and prepare letters and certifications in support of the officers' applications for these expropriated properties. In addition, certain lawyer-notaries selected by the Army or the Sandinista Party, themselves apparently with links to the party, would prepare stacks of title documents for these officers. Records include an example of a single notary, Enrique Sanchez Oviedo, who prepared many deeds or land subdivisions for Army officers.⁴²⁷

Relying on the documents provided by the Army offices, OOT would issue title to the property (*solvencias*), under the authority of the *Piñata* laws and Law 278, as noted elsewhere.

Under Order No. 02/98 of the Commander-in-Chief of the Nicaraguan Army, certifications were issued to assist the beneficiary in obtaining a title from OOT under Laws 85 and 278 and these were being issued a decade after the *Piñata*. The certificates stated that the Army ratified the assignment of the relevant property to the Army official named in the certification. Three Army officials signed off on these documents: the Chief of the Army's Legal Department (Noel Portocarrero), the Chief of the Office of Personnel and Cadres (Lieutenant Colonel Rene Darce Rivera or Nestor Lopez Fernandez), and the Inspector General of the Army (in 1999 and 2000, Major General Osbaldo Lacayo Gabuardi and later Major General Roberto Calderon Meza).

7.4. Javier Antonio Pichardo Ramirez and Ines Valverde Mendoza

⁴²⁷ As noted, in Nicaragua, a notary is a lawyer authorized to prepare certified legal documents, such as deeds and affidavits. The role of a notary is not passive as in the United States but more active, like a U.S. attorney.

One case involving a former officer and his wife is illustrative of how attempts were made to skirt the one-property-per-family rule of the *Piñata* laws: that of former Colonel Javier Antonio Pichardo Ramírez (Pichardo) and his wife Ines Valverde Mendoza (Valverde). As explained below, records indicate that Pichardo and Valverde obtained a house by virtue of Pichardo's official position in the Nicaraguan armed forces. Pichardo and Valverde remain in possession, running it as a hotel. In April 2002, I visited the hotel, which is located in Bel-Air, a relatively high-valued district of Managua, close to the new commercial hub of the city (the old colonial center never recovering from the devastation of the 1974 earthquake).

In 1976, Leyla Rener de Marín (Marín) bought this 1762 m² urban property (No. 52,718), in a still undeveloped area, from private sellers for C\$ 3,000 (US \$429), registering it the next year.⁴²⁸ She borrowed C\$ 300,000 (or US \$42,857) from BAVINIC to build a house on the property.⁴²⁹ According to Marín, the house was built with this money.⁴³⁰ The house was 296 m².⁴³¹ While Sandinistas have alleged that many BAVINIC loans were used by Somoza supporters to obtain cash that could be exported and stashed abroad,⁴³² this does not appear to be such a case, as a substantial house was, in fact, constructed on the site, where it remains and where it is ample enough to house a smallish but stylish hotel. Marín's husband had worked his way up to be a junior partner in the construction firm of SOVIPE, not linked to Somoza and was not in a position to influence the loan process.⁴³³

On April 16, 1980, all of Marín's property was declared confiscated under Decree No. 370 on the basis of Decrees No. 38, for her being a Somoza supporter, which

⁴²⁸ Registry Certificate dated February 23, 2000.

⁴²⁹ Statement of BAVINIC, date March 1, 1976.

⁴³⁰ Interviews with Leyla Rener de Marín, April 2002.

⁴³¹ Statement of Tax Value dated March 3, 1995.

⁴³² See Jaime Wheelock Roman's arguments cited earlier.

⁴³³ Letter from Marín dated September 4, 2011.

she denies.⁴³⁴ On August 21, 1981, the Ministry of Justice took possession under Decrees Nos. 38, 327, and 282 and then gave title to the *Corporación Nicaragüense de Bienes Raíces* (The Nicaraguan Real Estate Corporation) by Act No. 707 of August 25, 1981.⁴³⁵ According to Marín, she was not in Nicaragua at the time of the confiscation.⁴³⁶ The property was transferred to BAVINIC on October 22, 1985, under Decree No. 1523, "the Law Dissolving the Nicaraguan Real Estate Company".⁴³⁷ On March 20, 1987, Marisol Castillo assigned it to Colonel Javier Antonio Pichardo Ramírez.⁴³⁸ He was on active duty with the Army at the time.⁴³⁹

On April 7, 1990 (during the *Piñata*), BAVINIC, through its notary and representative Enrique Jose Sanchez Oviedo (involved in many such transactions and had also prepared the transfer on behalf of the Army), transferred title to Pichardo under Law 85 for C\$ 281,700 (US \$5 at the rate of 53,800 per dollar); on April 19, 1990, Pichardo paid this sum to BAVINIC.⁴⁴⁰ On June 19, 1992, Pichardo applied for title to the property, identifying Ines Valverde as his wife.⁴⁴¹ A year later, OOT issued Pichardo a temporary title.⁴⁴² However, on March 16, 1995, OOT's Director of Information Services wrote to OOT's Executive Secretary to notify her that Valverde had received an agrarian reform title to 164 *manzanas* of rural land in Leon Department on February 20, 1990.⁴⁴³ Under Laws 278, 85, 86, and 88, each family was entitled to receive only one property, if they had no other. Valverde's possession of rural land should have legally precluded the award of any other land to the couple.

⁴³⁴ *Gazeta Oficial* of same date and Registry Certificate dated July 3, 1992.

⁴³⁵ Registry Certificate dated July 3, 1992.

⁴³⁶ Interviews with U.S. Embassy Property Officer Benjamin Dille in April 2002.

⁴³⁷ Interviews with U.S. Embassy Property Officer Benjamin Dille in April 2002.

⁴³⁸ Assignment Order of same date

⁴³⁹ Certification 311/2001, signed by Army Inspector General Major General Roberto Calderon Meza, Army Chief of Personnel Colonel Nestor Lopez Fernandez, and Army Legal Advisor Noel Portocarrero Argüello.

⁴⁴⁰ Registry Certificates dated February 23, 2000 and July 3, 1992.

⁴⁴¹ *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial* of same date

⁴⁴² *Solvencia de Revision* No. 3798

⁴⁴³ Letter of Luis Lopez Obando to Celia Hurtado Montiel of same date

On October 3, 1995, Pichardo paid C\$ 684,539 to cancel the "tax on real estate"; this was about US \$88,328 at C\$ 7.75 per dollar.⁴⁴⁴ Under Law 278, *Piñata* beneficiaries had to pay this tax, which was based on the taxable, not market, value. He used C\$ 685,000 face-value worth of compensation bonds, then selling at about 22 percent of face value on the Managua Stock Exchange or about US \$18,500.⁴⁴⁵ In 1995, such a built property would have been worth far more than what Pichardo was charged, and many times the value of the bonds he used.⁴⁴⁶ The next day, on October 4, 1995, Pichardo obtained a permanent title.⁴⁴⁷ On October 11, 1995, Pichardo filed these titles with the Public Registry and the property was declared free of encumbrances.⁴⁴⁸

On April 27, 1997, the Nicaraguan Government claims office (OCI) issued a resolution finding that the property's taxable value was C\$ 1,763,736 (or US \$190,674 at 9.25 Córdobas per dollar) and that Marín was entitled to compensation bonds in this amount.⁴⁴⁹ Marín claims the property is worth US \$577,000 (property values having escalated greatly since the 1970s, with this property also benefitting from nearby development).⁴⁵⁰ Embassy staff estimated the house is worth, at a minimum, several hundred thousand dollars.⁴⁵¹

Not only were Pichardo and his wife able to each obtain property, in violation of the *Piñata* laws, but Pichardo also obtained another property in 1990 under suspicious circumstances. On October 15, 1990, Pichardo bought 8607 m² on the Masaya Highway from Carlos Osorio Maradiaga, who had obtained it by a *titulo supletorio*, a kind of adverse possession title.⁴⁵² Pichardo paid Osorio C\$ 800 million, or US \$571, a fraction of value of that kind of land in 1990.⁴⁵³ Such a below-market transaction, months after the *Piñata*, is suspicious, given Law 85's

⁴⁴⁴ Finance Ministry Tax Office Receipt dated October 3, 1995.

⁴⁴⁵ Copies of various bonds he used on file with the U.S. Embassy Property Office

⁴⁴⁶ U.S. Embassy Cable dated April 29, 2002.

⁴⁴⁷ *Solvencia de Disposición* No. 6967

⁴⁴⁸ Registry Certificate dated February 23, 2000.

⁴⁴⁹ CNRC Resolution No. 371-07-97 and OCI Resolution No. A-1466-96

⁴⁵⁰ Letter from Marín to Controller General Agustin Jarquín Anaya dated October 20, 1999.

⁴⁵¹ Cable, U.S. Embassy Managua dated April 29, 2002.

⁴⁵² Registry Certificate dated September 28, 2000.

⁴⁵³ U.S. Embassy Cable dated April 29, 2002.

stated purpose of giving landless individuals property of their own.

Pichardo was active in the FSLN during the 1970s. In the 1980s, he was a member of the FSLN Assembly and from 1980-87, he commanded several military districts in the Sandinista Popular Army. He was promoted to the rank of Colonel, commanding the Air Force from 1987 to 1990 until he retired.

After years of effort, in 2007, Marín accepted a settlement for bonds worth US \$35,000.⁴⁵⁴ Now a retiree living in Miami, Marín notes she spent more money travelling back and forth to Nicaragua in pursuit of her claim than the final amount she settled for, which she used to buy a car. She settled when she was told that she would get nothing if she did not accept it.

7.5. A Mass Military Case Study: the Barreto Claim in Las Serranías

In one interrelated series of cases involving 11 occupants of neighboring lots of land in Managua and 14 individuals who helped them obtain possession of the property illustrates the role of the military and its members in obtaining property and facilitating its transfer to new (military) owners, even without any underlying confiscation that would have enabled the government, under Sandinista decrees, to assign property rights to others. See Table 6 and Figure 3 for the names and plots involved in these transactions. Another issue was that some individuals appear to have been fraudulently identified as military to benefit from laws that grant service members the properties they occupy at no cost.

Las Serranías is a residential neighborhood developed by the *Corporación Nucleos Urbanos Magnum*, S.A. ("Magnum"), a family-owned corporation control by Juan and Samuel Barreto.⁴⁵⁵ The 68 lots in Las Serranías, including those described below, were purchased by Magnum on May 3, 1975.⁴⁵⁶ The Serranías property

⁴⁵⁴ Telephone call with Marín, August 28, 2011.

⁴⁵⁵ Limited Power of Attorney, "Poder Especial," dated October 23, 1998, listing the shareholders of the company

⁴⁵⁶ Public Registry Certificate dated August 25, 1997.

was never formally confiscated by the Nicaraguan Government from the Barreto family or Magnum and the Government has never provided any basis for subjecting the Barreto family or the company to confiscation.⁴⁵⁷

The Army Moves In

In 1980, the Army simply took over Las Serranías, moving in large numbers of Cuban advisors, Nicaraguan and Russian officers and constructing barracks and even a cemetery in addition to using the existing houses.⁴⁵⁸ According to the claimant's brother and representative, a Russian General still lives in the area and the Army still controls other lots.

Five years after the Army took possession, Rodrigo Reyes Portocarrero, the Minister of the Secretariat of Central Government Affairs (*Ministro, Secretario de Asuntos del Gobierno Central*) and later Supreme Court Justice, issued an order decreeing that the land was considered purchased from the corporation, outlining the amount of the sales price.⁴⁵⁹ This sale was never agreed to by the Barretos and the price outlined in the order was never paid to them, nor were the mortgages paid which, under the order, the Government was to assume. Magnum itself eventually paid off the outstanding mortgages.

On November 25, 1988, Colonel Noel Portocarrero (himself a beneficiary of confiscated properties) wrote the Minister of Finance, seeking his assistance in carrying out the legal procedures necessary for the Nicaraguan Government to assume title to Las Serranías from Magnum.

Between April 1990 to September 1991, during the year and a half after the *Piñata*, most Serranías lots, with houses on them, controlled by the Army were legally

⁴⁵⁷ Statement of Minister of Justice Ernesto Castillo Martinez, dated May 13, 1980 and Statement of Secretary General Jose A. Fletes Largaespada of the Attorney General's Office, dated May 27, 1991

⁴⁵⁸ Statements of Magnum representative Samuel Barreto; Property Office staff has toured the area and seen soldiers, the barracks, cemetery, and what appear to be revolutionary-era slogans.

⁴⁵⁹ Order No. 34 of the Secretariat of Central Government Affairs, dated May 27, 1985.

separated from the larger property in favor of individuals, most military personnel.⁴⁶⁰ This occurred in one of two ways. Some lots were given by the State directly to the officers, generally in cases where they were already on the property in February 1990. With others, the State transferred title to the lot to the Army under Law 85, then the Army transferred title to individuals. In addition to assigned lots, the Army itself retains control and title to eight lots.

Table 6: Those Involved in Las Serranías⁴⁶¹

Names (Patronymic Surname in Capital Letters)	Lot
Occupants:	
Odell ORTEGA Solano	9
Denise CALERO García	10
Jorge RAMIREZ Reyes	13
Roger Antonio QUANT Zeledon	40
Ivania Guadalupe RODRIGUEZ Davila	41
Roberto Jose ORTIZ Medrano	53
David Emilio BARRIOS Osorno	56
María Teresa OBREGON de Mayorga	62
Silvio PALACIOS Baca	67
Juan Rigoberto URBINA Mendez	67
Jorge Alberto DELGADO Romero	68
Facilitators:	
Alejandro AGUILAR Robleto	All
Álvaro BALTODANO Cantarero	40
Roberto CALDERON Meza	68
Julio Jose CALERO Reyes	62
Jose Cesar CASTRILLO Abdalah	10, 13, 41, 53
Ramiro CONTRERAS Escobar	10, 13, 40, 62
René DARCE Rivera	9, 62, 67
Osbaldo LACAYO Gabuardi	9, 62, 67
Nestor LOPEZ Fernández	18
Walner Abraham MOLINA Pérez	13, 53, 56, 67
Mario PEREZCASSAR Pereira	13, 41, 53, 56, 67, 68
Rodrigo REYES Portocarrero	All

⁴⁶⁰ Public Registry Certificate dated August 25, 1997.

⁴⁶¹ Compiled by author.

Figure 3: Map of Las Serranías⁴⁶²



English Key, upper right:

- Pink: Army acknowledges it has no use for the lot
- White: Not identified as a separate parcel in the Property Registry
- Purple: Separated into distinct parcels by Magnum
- Green: Separated into distinct parcels illegally by the Army.
- E: Institutional use of the Army
- Star: Case on lie

English Key, lower left:

- House: Houses owned by Magnum
- Yellow rectangle: Barracks
- Yellow rectangle with cross bar: Abandoned barracks
- Gray rectangle: Warehouses
- Blue circle: Water tank
- Blue rectangle: Swimming pool

⁴⁶² Source: Email from Juan Barreto dated June 13, 2002.

Cross: Cuban cemetery
Gray shape: Tunnel access

In many cases, Army officials and lawyers/notaries assisted occupants obtain title, after knowing the family was disputing the Army's possession. Despite his documented direct involvement in assisting these transfers, in meetings with U.S. Embassy staff in 2002, the Army's Legal Advisor, Colonel Noel Portocarrero indicated that the Army had nothing to do with these lots and they were a private matter between the Barreto family and the new owners.

Magnum did not seek the return of 11 that it had sold. According to the Barreto's (see Figure 3), 23 lots are under the name of the Army or its current or former officials and nine are in the names of private individuals. Magnum additionally maintained that attempts to exercise control over the 25 lots that remain in its name have been foiled by hostile actions of Army personnel (armed soldiers ordering them off and unknown individuals destroying private property signs within a day of being put up). On a couple of occasions in spring 2002, my entry to the area, which was via nominally public roads, was barred by military guards.

Serranías Lot 9 to Odell Ortega

The Army assigned Odell Ortega Solano (Ortega) to Lot 9 on May 11, 1988.⁴⁶³ Ortega applied for an OOT title to Lot 9 on August 24, 1992 and swore under oath that he was a farmer and occupied Lot 9 on May 11, 1988.⁴⁶⁴ On April 8, 1990, notary/attorney Sanchez Oviedo prepared a deed, creating Property No. 100,486, transferring it to the Army for C\$ 231,500,000 and then to Ortega for nothing.⁴⁶⁵ According to a note on a copy of a letter addressed to Ortega at his Lot 9 address, in July 1993, "the owner of house No. 9 does not reside there."⁴⁶⁶ On September

⁴⁶³ Assignment Order signed by Marisol Castillo, Head of the Army's Office of Personnel and Cadres, of same date.

⁴⁶⁴ *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial* dated August 24, 1992.

⁴⁶⁵ Deed No. 47 of same date

⁴⁶⁶ Letter from OOT's Celia Hurtado Montiel to Ortega, dated July 14, 1993.

22, 1998, OOT documents indicated that a title could not be granted because Ortega was not on OOT's list of active or retired soldiers. The following summer, Portocarrero, Darce, and Lacayo certified that Ortega was a retired Army major and was given this property at no cost as a gift.⁴⁶⁷ This occurred even though other documents refer to him as a farmer or rancher. Three months after the Certification, on November 17, 1999, Ortega received his permanent title (*solvencia de disposición*). Because Laws 85 and 278 do not require soldiers to pay for properties they obtained under the *Piñata*, Ortega obtained for nothing a property and house with a taxable value of C\$ 250,262 (US \$34,984) for which he was not legally eligible.⁴⁶⁸

Serranías Lot 10 to Denise Calero

Serranías Lot 10 is presently controlled by Denise Calero García (Calero), who requested a title on July 2, 1992.⁴⁶⁹ She apparently only took possession in January 1991, nine months after the *Piñata*, meaning she should not have been eligible to receive title. On April 9, 1990, the property was created (given a separate property number in the Public Registry) and transferred to the Army for C\$ 231,500,000 (US \$4754).⁴⁷⁰ On January 9, 1991, Lt. Col. Ramiro Contreras Escobar conveyed the same property to Calero for C\$ 2 million, less than one dollar.⁴⁷¹ The taxable value was found by the Nicaraguan Government to be C\$ 112,206, or US \$22,441.⁴⁷² On June 22, 1992, Calero wrote the OOT, naming Sanchez Oviedo – who had prepared the deed for the government – as her representative for obtaining title before the OOT. According to Calero's application for title, she first occupied the property on January 15, 1991, nearly a year later than would have qualified her for the property under Law 85.⁴⁷³ OOT initially denied a title to Calero because she had not showed she occupied it on

⁴⁶⁷ Certification 188/99 of August 20, 1999.

⁴⁶⁸ Statement of Tax Value dated January 19, 1995.

⁴⁶⁹ *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial* of same date.

⁴⁷⁰ Deed No. 54 dated April 9, 1990.

⁴⁷¹ Deed No. 24 before Notary Attorney Cesar Castrillo Abdalah

⁴⁷² Notification of tax value No. 236871 dated June 26, 1992.

⁴⁷³ *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial* dated July 2, 1992.

February 25, 1990.⁴⁷⁴ On December 2, 1993, after OOT denied her application, Calero wrote to claim to have served in the army "several years".⁴⁷⁵ In her application for a valuation of the property, Calero had previously indicated her profession as "housewife".⁴⁷⁶ Portocarrero wrote the OOT in support of Calero's application⁴⁷⁷ and the Chief of the Office of Finance Captain Hector Argüello stated that the electrical meter was in Calero's name, and had been in the Army's name from January 1980 to January 1991.⁴⁷⁸ On December 6, 1993, Calero, through her legal representative Sanchez Oviedo, appealed OOT's denial of title.⁴⁷⁹ On February 18, 1994, despite not having inhabited the Lot 10 on February 25, 1990, the OOT reversed its decision and authorized Calero *solvencia* and she got her provisional title a week later.⁴⁸⁰ On September 25, 1994, Calero paid C\$ 206,091 (US \$29,865) and got her permanent title.⁴⁸¹

Serranías Lot 13 to Jorge Ramirez

Serranías Lot 13 is presently controlled by Jorge Ramirez Reyes, who apparently took possession of the house sometime in 1990. According to his application for an OOT title, he claimed he took possession in January 1990.⁴⁸² However, other documents indicate that he acquired the property on April 9, 1990.⁴⁸³ The Army's Personnel Chief, Colonel Hugo Torres Jimenez stated the Army assigned Ramirez the property on December 3, 1990.⁴⁸⁴

Lot 13's property number was created and it was transferred to the Army on April 9, 1990 for C\$ 231,500,000 (US \$4754).⁴⁸⁵ It was deeded to Ramirez on March 4,

⁴⁷⁴ Certification of OOT Director General Hortensia Aldana de Barcenas dated April 23, 1993.

⁴⁷⁵ Letter of same date

⁴⁷⁶ *Solicitud de Avaluo Catastral* dated July 6, 1992.

⁴⁷⁷ Letter of December 2, 1993.

⁴⁷⁸ Affidavit dated November 30, 1993.

⁴⁷⁹ Notification of Appeal of same date

⁴⁸⁰ *Solvencia de Revisión* No. 56532 of same date

⁴⁸¹ *Solvencia de Disposición* No. 5539 of same date

⁴⁸² Undated *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial*

⁴⁸³ Property Tax Certificate dated November 5, 1990 and Deed No. 58 dated April 9, 1990.

⁴⁸⁴ Statement of Torres of same date

⁴⁸⁵ Deed No. 56 dated April 9, 1990.

1991.⁴⁸⁶ However, on September 22, 1998, OOT refused to grant Ramirez a title because he was not on OOT's list of active or retired soldiers. In 1995, Head of the Army's Legal Department, Noel Portocarrero wrote statement in support of Ramirez' application for an OOT title, indicating that Ramirez was given this property at no cost, or "*por via donación*".⁴⁸⁷ On January 9, 1996, Ramirez received his provisional title.⁴⁸⁸ On November 12, 1998, Ramirez received his permanent title.⁴⁸⁹ Laws 85 and 278 do not require soldiers to pay for properties they obtained under the *Piñata*. Even through he was not a soldier, Ramirez was able to obtain this property, to which he was not legally eligible, at no cost.

Serranías Lot 40 to Roger Quant

Lot 40 was created by deed to the Army on April 10, 1990 for C\$ 231,500,000 (US \$4,754).⁴⁹⁰ Roger Antonio Quant Zeledon applied for an OOT title to Lot 40 on August 11, 1992 and swore under oath that he was in the Army and first occupied Lot 40 on January 25, 1991, nearly a year too late to benefit under Law 85.⁴⁹¹ Another document indicates that he first took possession even later, on July 24, 1991.⁴⁹² That day, the Army executed a deed to Quant at no cost.⁴⁹³ Quant obtained a provisional title⁴⁹⁴ on July 8, 1993 and a permanent title⁴⁹⁵ on July 15, 1998. On October 26, 1995, the OOT indicated that the taxable value of Lot 40 was 311,298 Córdobas (US \$39,892).⁴⁹⁶

Serranías Lot 41 to Ivania Rodriguez

⁴⁸⁶ Deed No. 55 dated March 4, 1991.

⁴⁸⁷ Statement dated July 4, 1995.

⁴⁸⁸ *Solvencia de Revisión* No. 8570

⁴⁸⁹ *Solvencia de Disposición* No. 8334

⁴⁹⁰ Deed No. 63 dated April 10, 1990.

⁴⁹¹ *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial* dated August 11, 1992.

⁴⁹² *Undated Descripción de la Propiedad Urbana*

⁴⁹³ Deed No. 130 dated July 24, 1991.

⁴⁹⁴ *Solvencia de Revisión* No. 4101

⁴⁹⁵ *Solvencia de Disposición* No. 8147

⁴⁹⁶ Letter from Celia Maria Hurtado of same date

Ivania Rodriguez applied for an OOT title to Lot 41 on August 28, 1992.⁴⁹⁷ According to her declaration, she first occupied the property on March 13, 1987 and paid nothing for the property. Her assignment orders confirm that she was assigned to the property on March 13, 1987 by Marisol Castillo, Chief of Personnel.⁴⁹⁸ The property was created on April 21, 1990 and transferred Lot 41 and the house directly to Rodriguez at no cost.⁴⁹⁹ Rodriguez obtained both her provisional title⁵⁰⁰ and her permanent title⁵⁰¹ on July 5, 1993.

Serranías Lots 53a/53b to Roberto Ortiz

Roberto Jose Ortiz Medrano applied for an OOT title to parts of Lots 53a and 53b on July 27, 1992 and swore under oath that he was in the Army and first occupied the property on April 2, 1988.⁵⁰² According to Assignment Order of Marisol Castillo, Ortiz and Roger Quant Zeledon and Noel Pichardo Laguna were assigned these lots on April 11, 1988. The separate lot was created on April 8, 1990 and transferred directly to Quant Zeledon (see lot 40), Ortiz, and Pichardo at no cost.⁵⁰³ All were active duty soldiers. This deed identified the two lots as resulting from modifications of Lots 52, 54, and 55. On March 8, 1991, Pichardo gave his share to Genaro Santana Chamorro and Quant gave his share to Carlos Duarte Orozco, with the remainder staying in the possession of Ortiz. Ortiz obtained a provisional title⁵⁰⁴ on July 17, 1993. He obtained a permanent title on September 22, 1998, having paid nothing.⁵⁰⁵

Serranías Lot 56 to David Barrios

On April 11, 1989, David Barrios Osorno, Rosangeles García Lopez, and Roberto

⁴⁹⁷ *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial* of same date.

⁴⁹⁸ *Acta de Asignación* of same date

⁴⁹⁹ Deed No. 165 dated April 21, 1990.

⁵⁰⁰ *Solvencia de Revisión* No. 4011

⁵⁰¹ *Solvencia de Disposición* No. 2652

⁵⁰² *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial* dated July 27, 1992.

⁵⁰³ Deed No. 41 dated April 8, 1990.

⁵⁰⁴ *Solvencia de Revisión* No. 4249

⁵⁰⁵ *Solvencia de Disposición* No. 8233

Flores Siles were assigned to Lot 56.⁵⁰⁶ Barrios applied for an OOT title to his part of Lot 56, swearing under oath that he was in the Army and first occupied it on April 8, 1990.⁵⁰⁷ Though he probably confused his date of initial occupation with the date of the deed, this would have disqualified him for obtaining a *solvencia* under Law 85, which required occupation as of February 25, 1990. The property was created on April 8, 1990 and transferred directly to Barrios, García, and Flores for C\$ 75.35 million (US \$1547).⁵⁰⁸ On July 5, 1993, Barrios obtained a provisional title.⁵⁰⁹ On June 9, 1998, Barrios signed a form letter prepared by the Army requesting a permanent title by virtue of his position of active duty soldier in the Army. On July 22, 1998, Barrios obtained a permanent title for his part of Serranías Lot 56.⁵¹⁰

Serranías Lot 62 to Maria Teresa Obregon

Lot 62 was created on April 9, 1990 and transferred Lot 62 to the Army for 582.5 million Córdoba (US \$11,961).⁵¹¹ The Army applied for an OOT title to Lot 62 on August 27, 1990.⁵¹² However, on January 9, 1991, Colonel Ramiro Contreras Escobar, with General Power of Attorney for the Army authorized by Commander-in-Chief Humberto Ortega Saavedra, donated Lot 62 to Maria Teresa Obregon Mayorga, a housewife.⁵¹³ On July 4, 1995, Colonel Noel Portocarrero ratified on behalf of the Army the donation of Lot 62 to "Comrade Maria Teresa Obregon Mayorga".⁵¹⁴ On August 15, 1995, Portocarrero, then of the Legal Department of the Army's High Command, wrote a letter to OOT Director General Hortensia Aldana de Barcenás requesting that OOT issue a title in favor of Obregon, rather than the Army, because the Army had given it to her.

⁵⁰⁶ *Acta de Asignación* by Army Chief of Personnel and Cadres Marisol Castillo

⁵⁰⁷ Undated *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial*, probably signed on April 9, 1990, when he submitted request for tax valuation

⁵⁰⁸ Deed No. 42 dated April 8, 1990.

⁵⁰⁹ *Solvencia de Revisión* No. 4025

⁵¹⁰ *Solvencia de disposición* No. 8156

⁵¹¹ Deed No. 57 dated April 9, 1990.

⁵¹² *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial* of same date signed by Julio Jose Calero Reyes

⁵¹³ Deed No. 21 dated January 8, 1991.

⁵¹⁴ Copy of Statement on file with the U.S. Embassy Property Office

Obregon was able to obtain a provisional title the next year.⁵¹⁵ However, on June 9, 1998, Gonzalo Cardenal, Chief of the Finance Ministry's Office of Administration of Accounts and Collection (the office charged with collecting the acquisition tax on *Piñata* properties), wrote to OOT Director General's Secretary Celia Maria Hurtado questioning the issuance of title in favor of Obregon and others because of suspicions that the Registrar accepted falsified deeds. Hurtado responded that no permanent deed had been issued to Obregon.⁵¹⁶

The deed of 1991 indicated that Obregon was a housewife and Sanchez Oviedo took her sworn statement on April 30, 1995, where she indicated she was a housewife. On June 8, 1998, Vice Minister of Finance Guillermo Argüello Poesy wrote to Gonzalo Cardenal, noting that Law 85, which exonerates active and retired soldiers from payment of the tax for beneficiaries of *Piñata* properties does not apply to military wives or mothers.⁵¹⁷ However, on June 22, 1998, Mario Perezcassar Pereira certified that Obregon was a retired civilian employee of the Army and had on that basis received Lot 62.⁵¹⁸ Given that she would have been 69 at the time of the Sandinista seizure of power, this is unlikely. On January 22, 1999, Portocarrero, Darce, and Lacayo certified that Obregon was a retired civilian support staff person of the Army.⁵¹⁹ On May 19, 1999, Obregon obtained her permanent title to Lot 62 at no cost.⁵²⁰ She received the property without payment, as a soldier would have even though, under laws 85 and 278, civilians are should pay the taxable value of property received. Furthermore, the Code of Military Organization, Jurisdiction, and Social Welfare mandates that civilian employees of the Armed Forces are to be treated as other public employees, rather than as soldiers.

Serranías Lot 67 to Silvio Palacios and Juan Urbina

⁵¹⁵ *Solvencia de Revisión* No. 8823, dated May 23, 1996.

⁵¹⁶ Letter dated June 12, 1998.

⁵¹⁷ Given her birth in 1910, it is possible she may be the mother of some Sandinista official.

⁵¹⁸ Certification No. 63/98

⁵¹⁹ Certification No. 81/99

⁵²⁰ *Solvencia de Disposición* No. 8644

On April 11, 1988, Marisol Castillo, Chief of the Army's Personnel and Cadre Office, assigned Juan Urbina Mendoza (Urbina) and Silvio Palacios Baca (Palacios) to Lot 67 of Las Serranías. Lot 67 was created on April 8, 1990 and transferred it directly to Palacios and Urbina for 75.35 million Córdoba (US \$1547).⁵²¹ Palacios applied for an OOT title to his part of Lot 67 on June 29, 1992 and swore under oath that he was in the Army.⁵²² On July 5, 1993, Palacios obtained a provisional title.⁵²³ On July 15, 1998, he obtained a permanent title for his part of Serranías Lot 67.⁵²⁴

Juan Urbina applied for an OOT title to his part of Lot 67 on August 18, 1992 and swore under oath that he was in the Army and first occupied the land on April 8, 1990.⁵²⁵ On November 9, 1992, the OOT denied a title to Juan Urbina for his part of Lot 67 because he owned other property.⁵²⁶ On November 2, 1998, Portocarrero, Darce, and Lacayo signed a Certification in support of Urbina's application for title, stating that he was assigned the property because of his status as an active duty member of the Army.⁵²⁷ He reportedly remained in possession and, as of 2002, was still attempting to obtain title with the support of the Army.

Serranías Lot 68 to Jorge Delgado

Jorge Alberto Delgado Romero (Delgado) controls Serranías Lot 68. The property was created on April 8, 1990 and transferred it directly to Delgado for 75.35 million Córdoba (US \$1547).⁵²⁸ On April 23, 1990, Delgado was living at 159

⁵²¹ Deed No. 43 dated April 8, 1990.

⁵²² *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial* dated June 29, 1992

⁵²³ *Solvencia de Revisión* No.4024

⁵²⁴ *Solvencia de Disposición* No. 8134

⁵²⁵ *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial* dated August 18, 1992

⁵²⁶ Resolution of OOT dated August 20, 1993 and undated OOT document entitled "*Otras Propiedades de Juan Urbina*"

⁵²⁷ Certification No. 15/98

⁵²⁸ Deed No. 44 dated April 8, 1990.

Colonia Miguel Bonilla.⁵²⁹ However, an Army declaration states that he was a resident of Lot 68 on February 25, 1990.⁵³⁰ Delgado applied for an OOT title to Lot 68 on August 25, 1992 and swore under oath that he was in the Army and first occupied Lot 68 on April 8, 1990.⁵³¹ Notwithstanding his having resided elsewhere, which normally would make him ineligible for a title, on July 7, 1993, Delgado obtained a provisional title.⁵³² On June 19, 2000, OOT authorized a permanent title for Delgado.⁵³³

Accomplices in Above Examples

It may be useful to examine the same properties from another point of view, looking at who was involved in facilitating the transfers to the beneficiaries. The individuals described below all played roles in ensuring that the property (not legally confiscated) was transferred to individuals connected to the Army by working ensure sounder titles for the beneficiaries, in many cases years after the Army was made aware that government had no clear title. Many are trained lawyers. One could presume that all were aware of the consequences of their actions: depriving the original owners of their rights to the land. Law 278 creates a presumption in favor of those receiving titles. Part of the reason properties were first transferred to the Army may have been to create the presumption of clear title in the intended individual beneficiaries, even though the Barreto property had never been legally confiscated. Because of the haste to make assignments and apparently because not all the recipients had been resident on February 25, 1990, the government assigned in some cases the properties directly to the beneficiaries, without going through the Army. The following participated in the conversion of the Barreto lots (see Table 6).⁵³⁴

⁵²⁹ *Registro Unico Persona Natural* of the Tax Service of the Finance Ministry, dated April 23, 1990.

⁵³⁰ Statement of Army Personnel Chief Mario Perezcassar Pereira dated March 3, 1993.

⁵³¹ *Declaración para la Obtención de la Solvencia de Ordenamiento Territorial* dated August 25, 1992.

⁵³² *Solvencia de Revisión* No. 4084

⁵³³ Statement of OOT Director General Nubia Ortega de Robleto

⁵³⁴ Some supplemental biographical information in the following comes from State Department, *Nicaraguan Biographies: A Resource Book*.

Alejandro Aguilar Robleto

As attorney in the Attorney General's Office, acting as representative of the Nicaraguan Government, Aguilar authorized subdivision and transfer of all the above described lots either from the State to the Army or from the State directly to the beneficiaries. His role was key to the conversions that personally benefited the individual recipients. These subdivisions all occurred within a few days in early April 1990 at the height of the *Piñata* scramble for properties. When authorizing these transfers, Aguilar was actually the attorney for criminal matters in the Attorney General's Office.

Colonel Alvaro Baltodano Cantarero

Baltodano signed a deed for the Army transferring Lot 40 personally to Roger Quant at no cost. Baltodano had formed the first Christian FSLN cell with Javier Carrion (later Commander-in-Chief of the Army under Bolaños) and Joaquin Cuadra (former Commander-in-Chief of the Army) in 1974. With longtime friend Cuadra, Baltodano was said to have been involved in the November 1980 assassination of COSEP leader Jorge Salazar. He has held a series of prominent posts in the Army and the Sandinista party. Baltodano travelled to Cambodia and East Germany. Scion of a wealthy Nicaraguan family, Baltodano is brother of former Industry Minister Emilio Baltodano and son of a former Controller General.

Roberto Calderon Meza

As Inspector General of the Army, Major General Calderon signed a certification on behalf of Jorge Delgado to assist him in his application for OOT title. Calderon was former commander of Military Region V, member of the FSLN Assembly, and the FSLN Regional Directorate for Region V. Calderon was imprisoned for his participation in FSLN actions under Somoza and was released as a result of the 1978 seizure of the National Palace. Impoverished as a youth, he is rumored to

have gotten rich in Army service.⁵³⁵

Julio Jose Calero Reyes

Colonel Calero applied on behalf of the Army for an OOT title to Lot 62. This property was later transferred to Maria Teresa Obregon, a non-soldier. Calero was named in 1988 as the Deputy Chief of the High Command Secretariat. Calero was trained in Cuba in 1981, served as Chief of the Combat Preparation Directorate in 1983, was Executive Assistant to the Chief of Staff in 1984, and served as Military Attaché to Cuba in 1986. Calero occupies a house confiscated from American Citizen Jorge Cardenas, who accepted compensation bonds in April 1995. Up to 1994, Calderon's name appears on numerous Army transfer, sale, and restitution documents for confiscated properties administered by the Army.

Jose Cesar Castrillo Abdalah

As notary and attorney, Castrillo prepared the deeds for the following transfers: Lot 10 to Denise Calero, Lot 13 to Jorge Ramirez, Lot 41 to Ivania Rodriguez, and Lots 53a/b to Roberto Ortiz.

Ramiro Contreras Escobar

Colonel Contreras signed various deeds on behalf of the Army, accepting transfers from the State to the Army and transferring Army property to those seeking Lots 10, 13, 40, and 62. Contreras personally took over another house claimed by an original owner.⁵³⁶ Even though Contreras' OOT application was denied on April 23, 1993 and his appeal was denied on February 11, 1997, Arana was never able to gain control of the property, which Contreras has been leasing out for many years. On March 20, 2000, claimant Arana settled for compensation bonds.

⁵³⁵ Interviews with U.S. Embassy Property Office Nicaraguan Staff Attorneys in June 2002.

⁵³⁶ Interviews with U.S. Embassy Property Office Nicaraguan Staff Attorneys in June 2002.

Rene Darce Rivera

Lieutenant Colonel Darce was one of a series of Chiefs of the Army's Personnel and Cadre Office. In this capacity, he signed certifications on behalf of military personnel that were expressly to assist these officials in obtaining titles to their properties. He signed such certifications in the transfers of Lot 9 to Odell Ortega and Lot 62 to Maria Teresa Obregon.

Osbaldo Lacayo Gabuardi

As Inspector General of the Army, Major General Lacayo signed certifications on behalf of military personnel that were expressly for assisting these individuals in obtaining titles to their properties. He signed such documents in the following transfers: Lot 9 to Odell Ortega, Lot 62 to Maria Teresa Obregon, and Lot 67 to Juan Urbina. Lacayo was formerly Army Chief of Staff for 12 years and was member of the FSLN Assembly. He was a leading architect of the government's counter-insurgency policy. Educated as a civil engineer, Lacayo joined the Christian Revolutionary Movement in 1971-72, along with Joaquin Cuadra and Alvaro Baltodano and joined the FSLN in 1973. He married Cuadra's sister after she divorced long-time FSLN leader Hugo Torres. Lacayo's sister married FSLN national Directorate member Javier Carrion (later Armed Forces Commander), who is also his cousin. Lacayo reportedly lives in a confiscated property and sent his son to a U.S. prep school.

Nestor Lopez Fernandez

Colonel Lopez was one of a series of Chiefs of the Personnel and Cadre Office. In this capacity, he signed certifications on behalf of Armed forces personnel that were expressly for assisting these individuals in obtaining titles to their properties. He did so in support of Jorge Delgado's application for an OOT title to Lot 68. Lopez has also been linked to other confiscated properties. He apparently obtained one property for which the claimant ended up accepting compensation bonds.

Walner A. Molina Perez

Army High Command Deputy Chief Legal Advisor, Captain Molina was identified as submitting title applications to the OOT on behalf of those seeking Lots 13, 53a/b, 56, and 67.

Mario Perezcassar Pereira

Colonel Perezcassar was one of a series of Chiefs of the Army's Personnel and Cadre Office. In this capacity, he signed certifications on behalf of Armed forces personnel that were expressly for assisting these individuals in obtaining titles to their properties. For example, he wrote statements in support of OOT title grants for Lots 13, 41, 53a/b, 56, 62, 67, and 68.

Rodrigo Reyes Portocarrero

As Minister of the Secretariat of Central Government Affairs ("*El Ministro, Secretario de Asuntos del Gobierno Central*"), Rodrigo Reyes issued an order decreeing that the land was considered purchased from the corporation, outlining the amount of the sales price.⁵³⁷ As noted, this was never agreed to by the Barretos. Thus, there was no legal basis under Nicaraguan law for this unilateral action by the Nicaraguan Government. Neither the Corporation nor any of the owners (the Barreto family) were ever subject to any confiscatory decree. This unilateral order was used as the basis for all the subsequent transfers.

Enrique Sanchez Oviedo

As Legal Advisor for the Sandinista Popular Army, Sanchez was involved in preparing the deeds that subdivided the lots described above and transferred them either to the Army or to individual beneficiaries. In addition, he played an

⁵³⁷ Order No. 34 of the Secretariat of Central Government Affairs, dated May 27, 1985.

essential role in pressing title applications before the OOT and served as legal representative of record for at least one of the beneficiaries.

Hugo Torres Jimenez

As Head of Personnel and Cadres in the Army, Torres wrote statements in support of OOT title grants in the following cases: Lot 13 to Jorge Ramirez and Lot 40 to Roger Quant. Torres was formerly married to Joaquin Cuadra's sister. He served as head of the Political Section of the Sandinista Popular Army's General Staff in the 1980s. Torres served as Member of the FSLN Defense and Security Commission. Son of a National Guard lieutenant, he had joined the FSLN in 1971, worked on neighborhood mobilization, and participated as a squad leader under Eduardo Contreras in the 1974 Christmas party hostage-taking. A guerrilla commander, Torres was second-in-command during the August 1978 assault on the National Palace. After 1979, he served as Vice Minister of Interior and Chief of State Security under Tomas Borge, before moving to the Defense Ministry, where he represented the Army in the Council of State. In 1995, Torres replaced Lenin Cerna as Chief of the Directorate of Defense Information, the Army intelligence service. He reportedly manages private businesses of the Army and his own.⁵³⁸

Summary of How Army Involvement was Key to the Transfers

Not only were the assignments made by the Army, during Army control of the whole of the Magnum property, but the Army took measures after 1990 to ensure that their officials and others linked with the Army would be able to obtain unassailable titles. Because the Nicaraguan Government first transferred title to the properties to the Army, the Army's transfer to the beneficiaries makes the transfer fall under Article 45 of Law 278, which presumes that third-party acquirers' titles are valid. As noted elsewhere, there is no holder in due course requirement in Nicaraguan law, and stolen or illegally obtained property is deemed legalized in subsequent transactions, leaving the original owners' only recourse to

⁵³⁸ Interviews U.S. Managua Property Office Attorney Claudia Vivas, 2000-2001.

be a lawsuit against the person who converted the property in the first place, which in most cases is an endeavor of questionable utility given the chronic corruption in the judicial system.

Some lots had been assigned to Army members and were conveyed to them in 1990 under the *Piñata*. However, other lots were doled out to officers up to a year after the *Piñata*, and the Army officials involved worked to get them OOT titles under Law 85, when they technically did not qualify for the titles, since they had not been occupying those lots on February 25, 1990, as required by law. From 1998 on, by virtue of Order No. 02/98 of the Commander-in-Chief of the Nicaraguan Army, the Army issued certifications to help occupants obtain title, whether or not the Nicaraguan government or Army had legal title to convey.

The officials listed as facilitators, by virtue of their positions in the Army, the Nicaraguan Government, or as lawyers/notaries working for a large number of Army officers, were in positions where their participation was essential to the conversions of property. They had full knowledge that these units would be used for the personal living quarters of the individual Sandinista Popular Army officials that were assigned to them.

This involvement continued, as many of these individuals still held positions in the military or government years later. In early 2002, when I was working at the U.S. Embassy in Managua, Ministry of Finance staff charged with handling property claims expressed frustration with the Nicaraguan Army's refusal to address the property issue and asked the Embassy outright to use visa revocations as a means to pressure Portocarrero and others to treat the issue seriously.

Family Gives Up and Accepts Bonds

In November 2009, the family accepted compensation bonds with a face value totaling US\$3.2 million for its claims to the 28 property. This seems higher than most and might be attributable to the pressure exerted by the U.S. Embassy, as it

made up the majority of American claims settled that year.

7.6. Other Cases Involving the Military

Some property was used directly by the military. In cases similar to those above, the military, or its officers, have retained occupied properties. In many cases, the property has been transferred out of military hands, often in what appear to be deliberate maneuvers to switch the property to another owner and to deny responsibility for it.

Analysis of Military Use of Confiscated Properties

Many properties were originally taken for the benefit of the military as an institution, though existing Somoza era facilities were adequate for most such institutional uses. Most of those held by the military for institutional use have been returned to the original owners. Those described above were, however, used by the military to house individual officers.

The basis for the Army's award of such properties to individual officers was service in the Army but there appears to be no clearly defined legal standard for such awards. I know of no case involving enlisted men being assigned properties by the Army's personnel system, though it is likely that low-level military men were beneficiaries of land reform in their capacity as simple members of the lower class, entitled to agrarian reform properties.

Role of Instituto de Previsión Social Militar (IPSM)

One way that members of the military, dominated by Sandinistas, used property transactions to conceal ownership or to make regaining property more difficult was through the *Instituto de Previsión Social Militar* (IPSM, Military Retirement Institute). In many cases, the property has been transferred to the IPSM in what appear to be deliberate maneuvers to switch the property to another owner and to

deny responsibility for it. I witnessed several cases where the claimants and/or the Embassy was in discussion with the Army about returning a property, only to find that it had been transferred to the IPSM while the claim was being raised with the Army.

Part of the agreement between the Sandinistas and the victorious Violeta Chamorro had been for the new government to let the Sandinistas remain in control of the police and the military. One of the consequences was that this gave Sandinista officials access to systems that could serve both their political and economic interests. Among the many ways that this control was used to consolidate control of property was the creation of the IPSM, an investment fund controlled by the army (there is a similar organization for police). IPSM is an entity that exists for the purpose of providing income to retired military personnel. The IPSM was created during the Chamorro administration by Law 181 of September 2, 1994.⁵³⁹

In April 2002, I recall one meeting in particular with military lawyers about a property claimed by American citizens that the military controlled. The officer I was negotiating with indicated that the military no longer controlled the property, since it had been transferred to the IPSM, which he claimed was completely independent and not under the control of the military. He did not give a satisfactory explanation as to how the property came to be transferred. His statement about the lack of links between the IPSM and military was not accurate, as its website currently identifies it as part of the Army and states,⁵⁴⁰

The Instituto de Previsión Social Military of the Army of Nicaragua is responsible for the administration of assistance and social improvement to the members of the army and their family members, through the establishment and operation of different savings plan and complementary pensions, programs for mortgages for housing, programs for personal loans, and whatever other plan of assistance the social improvement that the administration authorizes.

⁵³⁹ IPSM, <http://www.ipsm.mil.ni/reglamento/codigo.asp> (accessed September, 16 2011).

⁵⁴⁰ IPSM homepage, <http://www.ipsm.mil.ni/> (accessed September, 16 2011).

The IPSM has extensive investments, not all of which are transparent, with webs of investments that interconnect with the government and with high-ranking officials and retired officials. A look at some of these is instructive, even if the cited examples are more recent than the period this work focuses on. A September 13, 2010 La Prensa article noted how the IPSM sought to hide its participation in a company called Farcosa by using a company named Inversiones Malinche, which held 35 percent of Farcosa; another 35 percent was held by the National Police's retirement organization, the Instituto de Seguridad Social y Desarrollo Humano (ISSDHU, Institute of Social Security and Human Development), with the INSS owning the remaining 30 percent; Farcosa is a pharmaceutical company that has contracted with the Ministry of Health.⁵⁴¹ Similarly, a government-sponsored hydroelectric project called Brito is listed with the government phone company Telcor at the address housing the offices of Hugo Argüello Carazo, Secretary of the Board of Directors of the IPSM.⁵⁴²

7.7. Comment on the Role of the Judiciary

These cases highlight the constrained role of the judiciary. This requires some explanation. As discussed in Chapter 4, the passage of Law 278 froze court actions properties for years, from 1997 until 2001, until the creation of the property tribunals. When established, these Sandinista-dominated courts ruled in a predictable manner. In their first year of operations, the Property Appeals Courts, Salas de Propiedad, never ruled against an occupant, even when evidence and law strongly favor the original owner.⁵⁴³ From my own observations in Managua, most claimants did not elect to use the court system to pursue their claims. Beyond the three year freeze on property cases, they widely considered them biased. Indeed, I cannot recall a claimant, even though he or she might prevail at the district court,

⁵⁴¹ Octavio Enríquez, Ministerio de Salud favorece con contrato a Farcosa, La Prensa, September 13, 2010, at <http://www.laprensa.com.ni/2010/09/13/politica/37613> (accessed September 16, 2011)

⁵⁴² Moisés Martínez and Octavio Enríquez, Militares conectados con Brito, La Prensa, October 5, 2010, at <http://www.laprensa.com.ni/2010/10/05/nacionales/39756> (accessed June, 1 2011).

⁵⁴³ "2002 Expropriation Report: Nicaragua," unclassified cable from U.S. Embassy Managua dated June 26, 2002.

winning a case because the appeals court judges were appointed by the Supreme Court, which in turn was controlled by political parties.

Since first the claimants needed to get a CNRC resolution to contest, and this took years, most of them had not reached the point where they could proceed with the judicial route. Even where, as in the case of Vanegas, there was clear evidence of fraud (Lacayo having been out of the country of the very date that the deed claimed he was in the country and the property not being fully confiscated), the judicial system favored the Sandinista official beneficiary.

7.8. Analysis of Equities of Elite Possession of Properties

The means by which the original (pre-1979) owners obtained title have been challenged by some FSLN sources such as Wheelock. It appears the price Marín paid for undeveloped land then on the outskirts of Managua was reasonable, as was the amount of the loan she took to build a house on it. The Barretos were alleged to have taken out substantial loans on the Serranías property but, likewise, there is no evidence that they expatriated the cash obtained by the loan, which the Sandinistas, including Wheelock, allege was a common activity by Somoza-era elites. Ulises Carrillo was a Somoza National Guard general and that presents its own questions.

Nonetheless, many others, including the owners of a group of houses who did not wish me to cite their cases for security reasons, were never alleged to have done anything questionable. In that case, there was no evidence of any alliance with Somoza or any other political faction. Indeed, there were many indications that both Sandinista and post-Sandinista officials recognized that there had been no legal basis for the seizure and subsequent re-allocation of the claimant's property.⁵⁴⁴

⁵⁴⁴ Interviews with claimant, 2000-2002.

In any event, whether or not a case could be made for the dubiousness of the title of the original owners, that seems little basis for their concentration in the hand of the new elite (above, we saw that this new elite overlapped considerably, in the sense of blood relationships, with the old elite, dating all the way back to the era of the conquistadors). An amorphous justification of service to the Revolution, without quantifying relative contributions and without including lower level fighters, appears to lack an intellectual foundation which could provide a solid legal basis for possession by the new elite. Many of the new owners, in fact, did not bear arms in the Revolution and simply worked for the new bureaucracy. Some of the confiscees had actually served the Revolution, though not as members of the FSLN, but as members of other factions working to overthrow the Somoza dictatorship.

Except for FSLN loyalists, no one disputes that the very senior leaders of the FSLN became rich during the years of Sandinista rule and its immediate aftermath. In fact, it was this corruption by many that caused those who refused to partake, for moral reasons, to leave the party. For example, Sergio Ramírez, Vice President under Ortega in the 1980s, split with the party in 1995 because of its moral decay, forming his Movement for Sandinista Renewal (MRS). This was despite Ramírez' obtaining a property himself, though it was evident that he saw large scale profiteering as something more objectionable than benefiting from single properties. Thus, even some party elements themselves found the excesses unjustifiable.

CHAPTER 8: EXTERNAL INFLUENCES ON NICARAGUAN PROPERTY ISSUES

Outside influences have had a profound effect on Nicaraguan development, including on the property issue.

The presence of Cuban advisors and the time spent by Sandinista leaders in Cuba and the Soviet Union clearly influenced their program, although, as noted in above, the Sandinistas were never able or willing to institute a thoroughly collectivized society that existed in some Communist states. Unlike nations in the Warsaw Pact, the Sandinista leadership was not externally controlled but were willing partners with Cuba and the U.S.S.R. In matters of property, decisions were made by the FSLN leadership and though they welcomed “internationalist” assistance, and Cuban and Soviet economic and military assistance, they were not dominated by those Communist parties. They freely invoked socialist and communist theory.⁵⁴⁵

On the other side of the equation, the influence of the United States has remained preeminent, even to this day, as will be discussed below.

Until Hugo Chavez arrived on the scene with the creation of his Bolivarian Republic in Venezuela, other Latin American countries played minor roles and international organizations and European countries rather larger, but still relatively minor, parts.

8.1 The Role of the United States

As discussed in Chapter 2, the United States has had a major influence on Central American history, and probably nowhere more than Nicaragua, where the American adventurer William Walker briefly became President, where Americans

⁵⁴⁵ *The 72-Hour Document: The Sandinista Blueprint for Constructing Communism in Nicaragua* (United States Department of State, 1986), 32. Citing Asamblea de Cuadros Rigoberto López Pérez, 21, 22 y 23 de septiembre 1979 – Análisis de la coyuntura y tareas de la revolución popular sandinista.

transited to California, and where the 20th Century saw repeated military intervention, from buttressing its investment interests in the first half of the 20th Century, to providing arms and financial assistance to the Contras in the 1980s. The United States Government has traditionally been actively involved with the political and economic development of Nicaragua, from the mid-19th Century to the present, with the U.S. arguably more involved with Nicaragua than with any other country in Central America. U.S. involvement continues to manifest itself, albeit without the military intervention of the past, in political pressure and economic involvement in Nicaraguan affairs, including in the property situation. The United States Government has a long history in Nicaragua, from the insertion of Marines, several times for extended periods, in the first half of the 20th Century, to support of the Somoza government, to arms and financial assistance to the Contras in the 1980s. Since the election of Violeta Chamorro in 1990, the United States Government has staunchly supported the center right, non-Sandinista administrations with large amounts of financial assistance. Even with the return of Daniel Ortega, it appears that the days of active United States military intervention in Latin America may be over.

U.S. support for Somoza was largely grounded in concern about the spread of Communism in the Third World, and its opposition of the Sandinistas was similarly colored by concern over the spread of Cuban-supported leftist movements. In the context of the post-World War II era, the “loss” of China in 1949, followed by the “loss” of Cuba ten years later, and the “loss” of Vietnam 15 years after that highlighted the illusory danger of left-leaning movements of national liberation to the security of the United States.

Many claim that Reagan Administration backing for the Contra resistance was one of the factors responsible for the Sandinistas’ holding free elections in 1990; this belief was prevalent enough to earn a rebuke from Robert Pastor who denied that the Contras were motivated by such a desire and that they deserved no credit for

those elections⁵⁴⁶ and that the power of the United States was a factor in their acceptance of that electoral defeat, while negotiating a continued Sandinista role in many aspects of government. This combined with the drop in Soviet assistance resulting from the rapid decline of the Soviet Union, contributed to the pressure for the Sandinistas to come to terms with the United States and the market economies of the region.

Proximity to the United States, its relatively welcoming immigration policy, and turmoil in Central America has led to a significant Nicaraguan migration to the United States, particularly to regions already populated by Latinos. Miami is the center of the Nicaraguan community in the United States. The large number of Nicaraguans in the U.S. has several consequences. Geographic proximity and differing levels of development and security, in addition to spurring immigration, also encourage Nicaraguans to shop, invest, purchase second homes, and seek medical care in the United States.

U.S. Economic Involvement in and Assistance to Nicaragua

Nicaragua is the second poorest country in the Western Hemisphere, second only to Haiti; as of 2009 it had a GDP of US\$ 6.2 billion, with an annual per capita income of just over US\$ 1000 per year.⁵⁴⁷ It has remained heavily dependent on U.S. economic assistance and on remittances from Nicaraguans in the United States and neighboring countries, like Costa Rica. In 2009, for example, such remittances, most from the United States, totaled US\$ 768 million, over 12 percent of GDP.

Since the election of Violeta Chamorro in 1990, the United States Government has provided generous assistance to center-right, non-Sandinista administrations. Though reduced, assistance to the returning Ortega Administration continued.

⁵⁴⁶ Robert Pastor, "Nicaragua Election Wasn't Contra Policy's Goal," letter to New York Times, September 30, 1991, at <http://www.nytimes.com/1991/09/30/opinion/1-nicaragua-election-wasn-t-contra-policy-s-goal-385591.html>, (accessed September 15, 2011).

⁵⁴⁷ State Department, "Background Note: Nicaragua," (January 11, 2011), <http://www.state.gov/r/pa/ei/bgn/1850.htm> (accessed July 12, 2011).

Indeed, the United States has also been the major donor of foreign assistance throughout the region.

In the 20 years since the 1990 elections, the United States has given Nicaragua over US\$ 2 billion in assistance.⁵⁴⁸ According to the State Department, “assistance has been focused on promoting more citizen political participation, compromise, and government transparency; stimulating sustainable growth and income; and fostering better-educated and healthier families,” as well as assistance in the wakes of Hurricanes Mitch and Felix.⁵⁴⁹

Relations with the government of Nicaragua have been strained since the return of Daniel Ortega as president in January 2007, though this has not ended all financial assistance to the new administration. Even after the installation of the new government and despite longstanding concerns about corruption and anti-democratic behavior by the FSLN, the United States provided direct aid of US\$ 15 million to Nicaragua for humanitarian relief and recovery operations following Hurricane Felix in late 2007.⁵⁵⁰ However, as noted elsewhere in this work, the actions of the new FSLN-dominated government is presenting a challenge to relations between the two nations.

American Perspectives on Private Property and Its Influence on U.S. Policy

Relevant to the United States’ behavior towards and involvement in the property situation in Nicaragua is the presumption in the former country in favor of private property rights and disapproval of expropriation. From the early years of the United States and before, the preference for protection of individual rights from government interference was pronounced. The perception of heavy-handed British treatment of the Colonists, who considered themselves Englishmen with full rights, was a leading cause of the American War for Independence. John Locke, often

⁵⁴⁸ State Department, “Background Note: Nicaragua,” (January 11, 2011), <http://www.state.gov/r/pa/ei/bgn/1850.htm> (accessed July 12, 2011).

⁵⁴⁹ State Department, “Background Note: Nicaragua,” (January 11, 2011).

⁵⁵⁰ State Department, “Background Note: Nicaragua,” (January 11, 2011).

cited by those who led the United States to independence, noted that, for a government to be legitimate, it had to protect its subjects' natural rights to life, liberty, health and property.⁵⁵¹

Even though the term property was not used in the final version of the Declaration of Independence, its drafter, Thomas Jefferson, and contemporaneous state constitutions' supposed protection of private property to be a natural right to be guaranteed by a government.⁵⁵²

Indeed, even during the 1787 deliberations about the United States Constitution, many articulated the need for specific enumerations of natural rights to be protected. Two years after its drafting, the first ten amendments to the Constitution, the Bill of Rights, specifically incorporated many of these natural rights to provide restraint on the power of government. Part of this included the recognition of the need for and appropriate limits on the power of expropriation of private property for public use. The Constitution's Fifth Amendment states, in part:

No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

After the American Civil War, the Fourteenth Amendment extended that restraint to state governments, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

That part of the Fifth Amendment is known as the "Takings Clause." It has, in U.S. law, resulted in much contentiousness as to the meaning of "public use" and "just

⁵⁵¹ William Uzgalis, "John Locke" in *The Stanford Encyclopedia of Philosophy (Winter 2010 Edition)*, Edward N. Zalta, ed., <<http://plato.stanford.edu/archives/win2010/entries/locke/>>.

⁵⁵² Luigi Marco Bassani, "Life, Liberty, and ...: Jefferson on Property Rights," *Journal of Libertarian Studies*, Volume 18, no. 1 (Winter 2004), 31–87. Ludwig Von Mises Institute, Auburn, Alabama, http://mises.org/journals/jls/18_1/18_1_2.pdf, (accessed June 3, 2011).

compensation.” Though a relatively recent case, *Kelo v. City of New London*, 545 U.S. 469 (2005), articulated the full extent of eminent domain in the United States. The U.S. Supreme Court, in a five-to-four decision, set the outside limit of “public use.” The Supreme Court permitted the use of eminent domain to condemn a privately-owned house and lot for its transfer to another private owner, in the name of community economic development. This was the maximum constitutionally-permitted extent of government taking of private property for public purpose, under the United States Constitution. This decision resulted in a considerable backlash among voters and elected officials around the country; within two years of the decision, 42 states had implemented new laws to limit the application of eminent domain for private use.⁵⁵³

Legal scholarship in the wake of the *Kelo* decision also pointed out the economic weaknesses inherent in allowing the taking of properties for private economic development goals that are designed to benefit a larger community; American efforts to U.S. eminent domain to combat urban blight were widely seen to be ineffective and, in many cases, counterproductive.⁵⁵⁴

Still, *Kelo* and its aftermath illustrate the degree to which the American people and lawmakers have been generally hostile to the idea of the use of government to equalize economic status or to correct perceived unequal distribution of property. The result of this strong belief in limiting expropriations and in ensuring full compensation is clearly reflected in U.S. policy towards Nicaragua and other nations.

Anglo-Saxon Legal Tradition forbids Purchaser of Stolen Property to Own It

In the Anglo-American legal tradition, the title to stolen property cannot be

⁵⁵³ Castle Coalition, “50 State Report Card: Tracking Eminent Domain Reform Legislation Since *Kelo*,” (July 16, 2009), <http://www.castlecoalition.org/index.php> (accessed July 12, 2011).

⁵⁵⁴ Charles Cohen, “Eminent Domain after *Kelo v. City of New London*: An Argument for Banning Economic Development Takings,” Vol. 29, No. 2 *Harvard Journal of Law & Public Policy* (Spring 2006): 491-568.

transferred to a good faith purchaser. This rule is called *nemo dat quod non habet* or “no one can give what he does not have.”⁵⁵⁵ The English Sale of Goods Act of 1979 states that a bona fide purchaser of stolen property must return it to the rightful owner; the purchaser’s only legal recourse being against the party that sold him the goods; the same principle applies in the United States and in Commonwealth nations such as Australia and New Zealand.⁵⁵⁶

This is echoed in international law, wherein title to stolen property cannot be transferred, even to a good faith purchaser. The most common disputes arise from the sale of stolen chattels of cultural significance, and Article 3 of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995) states that “the possessor of a cultural object which has been stolen shall return it.”⁵⁵⁷

Relevance of the Difference between Nicaraguan and U.S. Property Ownership

After the initial, legally unjustified, dispossession of Native Americans of their lands, land distribution in the settlement period of American history was strikingly egalitarian. The Homestead Act (1862), most notably, ensured each settler family the same workable dimensions of land, 160 acres (65 hectares).⁵⁵⁸ Given that the ability to gain property in the new territories was based on each family's ability to improve land and that allotments were of predetermined and equal size, one could argue that the foundation of property ownership in many parts of the United States was democratic rather than based on connections and influence.

In Nicaraguan society, by contrast, social position (typically related to class and

⁵⁵⁵ Ken Kanjian, “Nemo Dat Rule and Estoppel by Representation and Estoppel by Negligence - - Moorgate Mercantile Co. Ltd. v. Twitching, The” 8 *Sydney L. Rev.* 698 (1977, 1979), 698 at <http://0-www.heinonline.org.tallons.law.utexas.edu/HOL/Page?collection=journals&handle=hein.journals/sydney8&id=706>, (accessed July 18, 2011).

⁵⁵⁶ <http://business.timesonline.co.uk/tol/business/law/article668507.ece>, (accessed July 18, 2011).

⁵⁵⁷ Stamadtoudi, Irini A. “Legal Grounds for the Return of the Parthenon Marbles.” 55 *RHDI* 519 (2002) p. 519, <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.pdf> (article 3 §1) (accessed July 18, 2011).

⁵⁵⁸ Act of May 20, 1862 (Homestead Act), Public Law 37-64, May 20, 1862.

race) has been and continues to be the main determinant in ones' level of success. This is rooted in the fundamental difference between English and Spanish colonization of the New World. In English America, the relatively few natives were to be traded with or displaced to make way for English citizens to settle. In Latin America, by contrast, a feudal system took hold. Large land grants were made to a privileged few and natives were treated as serfs or, worse, as commodities. Somoza's ability to amass a large part of Nicaragua's arable land suggests that this continues to the present. Throughout Nicaraguan history since independence, these feudal patterns have echoed. The upper class continues to be a relatively small, white circle, most of whom are related to each other.

Under the Somoza regime, those in privileged positions were able to take full advantage, except when competing against the Somoza clan itself, in land, credit, and parastatal services on extremely preferential terms. Sometimes these arrangements were merely beneficial but often they were direct theft. This corruption was one of the main factors leading to the 1979 Revolution, when even the conservative private sector had had enough and joined the revolutionary ranks.

As the Somoza regime's continued existence came into question in the late 1970s, this looting accelerated. Those with connections were able to secure bank loans, often for several times the value of land or other assets used as collateral, a leading complaint of the FSLN leadership. Following the 1979 Revolution, most of the Somoza elite went into exile, and many eventually became U.S. citizens and, eventually, such individuals with claim to property secured access to U.S. Government support, with an office dedicated to such claims established in the U.S. Embassy.

American Traditions Influenced the United States' Approach to Expropriation

Because of the strong American view of property as a natural right and because of a very different historical background of more equalized property ownership in the United States, one can see in the role of some U.S. policymakers a fundamental

assumption when addressing issues in other nations that the American preference for private property rights is presumed to be the proper legal approach.

Historically, the United States has argued that protection of its nationals' property rights served as the basis for intervention in many Latin American countries. While it is true that notions of racial or culture superiority and sheer desire for economic and political influence have been significant factors in U.S. intervention in Latin American, protection of private property interests was the stated justification for many direct interventions by American forces in Latin American. Just a few examples include five interventions in Panama between 1856 and 1902 to protect U.S. owned railroad assets, repeated interventions in Nicaragua into the 1930s often to protect U.S. property interests, and repeated interventions in the 20th Century in Honduras, the Dominican Republic, and Haiti to protect American citizens and economic interests.⁵⁵⁹

As one former U.S. Marine General candidly admitted,

I helped make Mexico and especially Tampico safe for American oil interests in 1914. I helped make Haiti and Cuba a decent place for the National City Bank boys to collect revenues in. I helped in the raping of half a dozen Central American republics for the benefit of Wall Street. The record of racketeering is long. I helped purify Nicaragua for the international banking house of Brown Brothers in 1909-12. I brought light to the Dominican Republic for American sugar interests in 1916. I helped make Honduras "right" for American fruit companies in 1903. In China in 1927 I helped see to it that Standard Oil went its way unmolested.⁵⁶⁰

Substantial examples could also be provided of intellectual inconsistency on the part of U.S. leaders, with dubious adherence to the rule of law in gaining properties in countries in Latin America. For example, it was clear that the gaining of the

⁵⁵⁹ Richard F. Grimmett, "CRS Report for Congress: Instances of Use of United States Armed Forces Abroad, 1798-2001," (updated February 5, 2002), <http://www.fas.org/man/crs/RL30172.pdf> (accessed July 12, 2011).

⁵⁶⁰ Hans Schmidt, *Maverick Marine: General Smedley D. Butler and the Contradictions of American Military History* (University Press of Kentucky, 1987), 231, <http://isengrim.com/sdb2.html>, (accessed June 3, 2011).

Haiti railroad concession occurred through bribery.⁵⁶¹ It is also suggested that 20-mile stretch on either side of the route was taken from peasant owners without any due process of law.⁵⁶² Whether consistent or not, it is clear that U.S. policy has emphasized support for pro-private property and pro-compensation policies in other countries.

In 1999, the Commission on Security and Cooperation in Europe held a meeting on the subject of Communist confiscations.⁵⁶³ In that meeting, Undersecretary of State Eizenstat propounded the view of the United States Government, concerning European confiscations, “that wrongfully expropriated property should be restituted or . . . compensated for.” He recognized that private property seized in the Russian Revolution, out of the memory of the living, presents special problems distinct from more recent confiscations, and indicated “[the United States government] would welcome restitution or compensation where that is possible and where it would not cause some new injustice.” He stated that “the passage of time necessitates that there will unfortunately be historical limits to real property restitution.” The difference in tone between the post-World War Two confiscations and those of the revolutionary Bolshevik government is clear: the United States is not willing to fight to rectify the early confiscations.

The Hickenlooper Amendment and Helms-Burton

The United States has been willing to extend its laws to cover disputes occurring entirely outside of its borders, using legislation holding those involved in transactions involving confiscated properties civilly liable, with consequences for Nicaragua. The best evidence for this, and for the priority given to private property

⁵⁶¹ Douglas, Paul H., “The American Occupation of Haiti,” *Political Science Quarterly*, Vol. 42, No. 2 (Jun., 1927): 228-258, Stable URL: <http://www.jstor.org/stable/2142787> (accessed 29/05/2011).

⁵⁶² Simidor, Daniel, “Island Revisited: A Review of ‘Why the Cocks Fight: Dominicans, Haitians and the Struggle for Hispaniol’” by Michele Wucker,” <http://www.grassrootshaiti.org/Analysis/wuckerbookreview.htm>

⁵⁶³ See “The Long Road Home: Struggling for Property Rights in Post-Communist Europe,” Hearing before the Commission of Security and Cooperation in Europe, March 25, 1999 (U.S. Government Printing Office, 1999).

concerns, primarily for American citizens, are two pieces of legislation: the 1964 passage of the “Hickenlooper Amendment” to the Foreign Assistance Act of 1961⁵⁶⁴ and the The Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996.⁵⁶⁵

The Hickenlooper Amendment was a reaction to the U.S. Supreme Court ruling in *Banco Nacional de Cuba v. Sabbatino*,⁵⁶⁶ which determined that U.S. courts could not rule on confiscations that amounted to “Acts of State” by a foreign government, in that case nationalization of an American commodity broker’s assets after the Cuban Revolution. The Hickenlooper Amendment explicitly barred U.S. courts from applying the Act of State doctrine when an act is in “violation of the principles of international law, including the principles of compensation,” thus specifically invoking international standards.

Illustrative of the lengths that U.S. policymakers would go to protect U.S. citizen property rights was the Helms-Burton Act, a 1996 law that extended the territorial application of the original embargo against Castro’s regime to foreign companies trading in Cuba, levying penalties against those companies, including their officers and shareholders, and any individuals that trafficked in property expropriated from U.S. citizens, drastically expanding the reach of U.S. courts to reach foreigners who engaged in transactions involving such property. More controversially, it extended to property that was expropriated from individuals who were Cuban nationals at the time of expropriation but who subsequently naturalized as U.S. citizens. The extension to those who became U.S. citizens after their property was nationalized conflicts with international law and resulted in widespread criticism from countries allied to the U.S., which did not share the same vehemence on the need to isolate the Castro regime.⁵⁶⁷

Helms-Burton, in explicit terms, emphasized the need “to protect United States

⁵⁶⁴ 22 U.S.C. § 2370(e)(2) (2000).

⁵⁶⁵ “Helms–Burton Act,” Public Law 104-114, 110 Stat. 785, 22 U.S.C. §§ 6021–6091).

⁵⁶⁶ 376 U.S. 398, 416–17 (1964) .

⁵⁶⁷ CFR Title 31 Part 515, amended.

nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.” It provides many definitions useful in analyzing American views towards expropriated property. Key provisions include: allowing legal action against non-U.S. companies that trade with Cuba; exclusion of officials, major stock holders, and their family members of companies that do business in Cuba with property expropriated from U.S. citizens (Section 401 of Helms-Burton). Both the Clinton and Bush administrations suspended application of the private cause of action in view of the intense opposition from many countries, including allies in Europe.⁵⁶⁸ Section 302(a)(1) of Helms-Burton makes “any person that ... traffics in property which was confiscated by the Cuban Government ... liable to any United States national who owns the claim to such property for money damages” of the greater of: the certified determination of the Foreign Claims Settlement Commission, under the International Claims Settlement Act of 1949, plus interest, or fair current; the current fair market value of that property, or the fair market value at the time of confiscation plus interest. Section 302(a)(3) contains a punitive clause that makes the person trading in the confiscated property responsible for three times its value. Section 302(a)(4) requires the U.S. national to have owned the claim before the law came into force, precluding a market in such claims. Section 302(b) requires that the minimum amount in controversy exceeds US\$ 50,000 and Section 302(e) specifically excludes property used as a diplomatic mission.

Section 401(a) requires denial of visas to those involved in confiscation, conversion, or trafficking, including corporate officers and family members.

Section 527 of the FRAA

The Foreign Relations Authorization Act (the "FRAA"), Fiscal Years 1994 and 1995, P.L. 103-236 bans U.S. assistance to any country in which there are outstanding claims by U.S. citizens for properties confiscated by that country. The

⁵⁶⁸ Pedro A. Freyre, *Helms Burton: The Dilemma of Hard Wiring Policy*, 14 *Transnat'l L. & Contemp. Probs.* 187 (2004-2005), 190.

Secretary of State may waive the application of the law with a finding that it is in the national interest to do so. As will be seen below, the waiver has been used as an incentive to get the Nicaraguan government to resolve American property claims. Each year, the Secretary of State and State Department must submit to the U.S. Congress a “Report of U.S. Citizen Expropriation Claims and Certain Other Commercial and Investment Disputes.”⁵⁶⁹

U.S. Involvement in the Nicaraguan Property Claim System since 1990

As soon as the Chamorro administration took office in 1990, U.S. officials set to work to press for the creation of a restitution or compensation system for U.S. citizens whose property had been expropriated in the 11 years of Sandinista rule. The United States’ role in Nicaragua has also been greatly shaped by pressure from Nicaraguan Americans who fled the Sandinista government in the 1980s, including middle and upper class Nicaraguans who naturalized as U.S. citizens. With the defeat of the Sandinistas in the elections of 1990, many of them began filtering back to Nicaragua with the hope of reclaiming their confiscated properties. Their numbers were joined by U.S. citizens who had settled, invested, and worked in Nicaragua and likewise sought return of confiscated properties. The purpose of U.S. activism in the property dispute issue mainly has had to do with supporting the claims of U.S. citizens, not always citizens at the time of taking. However, a secondary, more charitable result of the American role has also been advanced: that clarification of property ownership rights, improvement of the property registration system, and improved administrative and judicial process all improve the rule of law and the economic foundation of Nicaragua.

The United States’ influence remains through substantial economic and developmental aid that it was providing the new governments and its traditional role of military and economic superpower hovering near and to the north of Central America. In addition, various American private organizations have been interested

⁵⁶⁹ Section 527(f) of the Foreign Relations Authorization Act (the "FRAA"), Fiscal Years 1994 and 1995, P.L. 103-236

in Nicaragua's development. Most prominent of these were the Carter Center, based in Atlanta, with its focus on reconciliation and support for rule of law. Many U.S. institutions have participated in advising the Nicaraguan government on ways to resolve property related issues, including the U.S. Agency for International Development (USAID) advising on titling, the Carter Center trying to mediate a path forward on property claims and security of ownership, and the University of Wisconsin's Land Tenure Center, which has been especially involved in making suggestions for strengthening the compensation bonds given in settlement of outstanding claims, seeking to improve the system.

U.S. Advocacy and the Embassy Property Office

While other countries have espoused the claims of their nationals for property expropriated in Nicaragua, no other country has the quantity of claimants or the level of pressure for resolution of the United States and the U.S. Embassy in Managua's role has stood out.

The United States government has applied a very expansive view of property rights, both to the degree to which individual rights take precedence over social benefit and to the extent to which it seeks to exert protection of those rights beyond its borders.

Standard to diplomatic and consular roles of missions in other countries is protection of the foreign country's citizenry. "The functions of a diplomatic mission consist, inter alia, in... Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law."⁵⁷⁰ And the provisions in the Vienna Convention on Consular Relations are nearly identical, "Consular functions consist in: (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and

⁵⁷⁰ Article 3(1) of the Vienna Convention on Diplomatic Relations, 500 UNTS 95, 1961, http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (accessed June 26, 2011).

bodies corporate, within the limits permitted by international law”⁵⁷¹

Traditional international law indicates that the government of one nation does not have standing to seek redress for expropriations of people who were not citizens of that nation at the time of the expropriation. Similarly, diplomatic law considers that people who are the citizens of a country are governed by the laws of that country including dual nationals of the country they are in.

For political reasons, the United States Government has found itself supporting both claims of lifelong American citizens and those of Nicaraguans who naturalized at some point after the seizure of their properties. Thus, the United States finds itself at odds with standard interpretations of international law. Whether this is legal or correct, many Nicaraguans argue that the strong United States stance in favor of compensation or return benefits all of those expropriated and, thus, is important in keeping up the pressure for rule of law.⁵⁷² Whatever the legal arguments may be, the United States has played an influential role in pressuring the Nicaraguan government to establish a compensation or return system. “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 has chosen not to use the espousal principle, but instead to support all of those claims of citizens, even those naturalized after the confiscation.”⁵⁷³

Even the State Department acknowledges that international law limits formal espousal of claims to those who were its citizens at the time of confiscation. On its website it says (though on a page that is part of the European and Eurasian Bureau’s Holocaust restitution links):

The Department of State is concerned with any case in which a U.S. citizen has had his or her property expropriated by a foreign government. Under international law, however, the United States Government may only

⁵⁷¹ Ibid.

⁵⁷² The Carter Center, 40.

⁵⁷³ The Carter Center, 40.

consider espousing (i.e. formally presenting) a claim to a foreign government if a claimant satisfies three prerequisites.

First, the claim must have been held by a U.S. citizen at the time the claim arose and continuously thereafter until the date of presentation, and through to settlement. Second, the acts giving rise to the claim must constitute a violation of international law that is attributable to the foreign government. Finally, the claimant must exhaust local remedies in the relevant country, or demonstrate that doing so would be futile.

In order for the Department to consider taking action on a request for espousal, the claimant must provide sufficient evidence to establish that the claim meets these prerequisites. All evidence should be submitted in English.

Once these minimum requirements are satisfied, the final decision whether to espouse a claim on behalf of the United States Government is vested wholly in the discretion of the Secretary of State. The decision on whether or not to espouse may be based not only upon the merits of the claim itself under international law, but also upon the foreign policy and other national interests that pursuit of the claim may affect.⁵⁷⁴

Property Office of the United States Embassy in Managua

In the 1990s, the U.S. Embassy in Managua established a special office, unique in the State Department's diplomatic missions, to handle expropriation claims. It is housed in the Economic and Commercial Section of the Embassy but works closely with USAID, the Consular Section, the Political Section, and other Embassy offices to ensure that this highly-politicized issue is handled uniformly in the Embassy. The U.S. Embassy in Managua has an American officer and, at times, one or two locally-hired Nicaraguan attorneys engaged full-time in assisting U.S. citizens in filing and tracking their claims, positions unique to that embassy. This office has supported thousands of claims, by U.S. citizen claimants, by instructing claimants and by meeting with Nicaraguan officials to press for favorable resolutions.

This office is simply a very specialized manifestation of a traditional role of

⁵⁷⁴ State Department, Expropriation and U.S. Assistance, <http://www.state.gov/p/eur/rt/hlcst/c11383.htm> (accessed June 25, 2011).

providing consular assistance on expropriation claims involving U.S. businesses and nationals. U.S. embassies and the State Department routinely tracks and publicizes developments in foreign laws, judicial systems and claims procedures.

Not all U.S. citizen claimants have registered with the U.S. Embassy. However, the Embassy Property Office reports the following numbers of registered claimants and resolved cases (from claims filed with the Nicaraguan government between 1995 and 2005), as of April 2011:⁵⁷⁵

Total U.S. citizens with pending claims	240
Total U.S. citizen claims pending resolution (103 were citizens at time of expropriation)	459
Total U.S. citizens registered before July 31, 2005 (269 were citizens at time of expropriation)	1,137
Total U.S. citizen claims resolved (424 were citizens at time of expropriation)	2,697

With the total number of properties claimed set at over 16,000, this, means that U.S. citizen claims (resolved and pending) amount to 3,156, or about one out of five.

The “Waiver”

Each year, U.S. assistance is contingent on a finding by the Secretary of State that enough progress has been undertaken by a nation in which there are outstanding U.S. citizen claims for property that the President can “waive” the terms of the law barring assistance to such countries.⁵⁷⁶ This is known as the annual “waiver” and it receives intense publicity in the Nicaraguan press whenever it is issued, as it has been for 19 consecutive years, even since the return of Daniel Ortega to the presidency.

⁵⁷⁵ Unclassified cable from U.S. Embassy Managua dated May 12, 2011.

⁵⁷⁶ Section 527 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995

Each year, the Secretary of State and State Department must submit to the U.S. Congress a “Report of U.S. Citizen Expropriation Claims and Certain Other Commercial and Investment Disputes” (Section 527(f) of the Foreign Relations Authorization Act (the "FRAA"), Fiscal Years 1994 and 1995, P.L. 103-236). Each year, U.S. assistance is contingent on a finding by the Secretary of State that enough progress has been undertaken by a nation wherein there are outstanding U.S. citizen claims for property that the President can “waive” the terms of the law barring assistance to such countries (Section 527 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995). This is known as the annual “waiver” and it has continued, even since the return of Daniel Ortega to the presidency. The most recent waiver, the 18th in as many years, was granted in July 2011; issuance of the waiver receives intense publicity in the Nicaraguan press whenever it is issued.⁵⁷⁷ Based on my personal experience, the Nicaraguan government always pushes to settle some American citizen claims in time to gain extension of the waiver.

A May 12, 2005 U.S. Embassy press release explicitly expressed concerns about the impact of nearly passed Law 512, creating INPRUR (*Instituto Nacional de la Propiedad* or National Property Institute), passed by the National Assembly on May 10. There were reports, denied by the U.S. Embassy, that the United States Government had compiled a “Black List” of 89 PLC (Constitutional Liberal Party) and Sandinista politicians who had had their visas to enter the United States revoked for corruption or possible terrorist links, under Sections 212(i) and 212(f) of the Immigration and Nationality Act.⁵⁷⁸ The United States suspended US\$ 100 million in assistance because of the approval of INPRUR.⁵⁷⁹ Then U.S. Ambassador Barbara Moore stated that the Embassy was “seriously concerned

⁵⁷⁷ Nohelia González, “EE.UU. concede “waiver” a Nicaragua,” *La Prensa*, July 29, 2011, at <http://www.laprensa.com.ni/2011/07/29/politica/68214>, and “Gobierno de los Estados Unidos concede ‘Waiver’ a Nicaragua en Casos de Propiedad,” *El Nuevo Diario*, July 29, 2011, at <http://www.elnuevodiario.com.ni/nacionales/109187>, both accessed September, 16 2011.

⁵⁷⁸ *La Prensa*, May 16, 2005.

⁵⁷⁹ *La Prensa*, May 16, 2005.

about the possible creation of INPRUR.⁵⁸⁰

Law 558 expressly suspended Law 512, along with other laws, until the inauguration of a new president in January 2007.⁵⁸¹ When Daniel Ortega assumed the presidency in 2007, the government made the suspension permanent.⁵⁸²

Commentary on Effects of the Role of the United States

One could argue that there were positive and negative aspects of U.S. involvement in the Nicaraguan property situation.

The positive aspects, over the years, of U.S. Embassy involvement in the property claims issues, have had several dimensions. First, there has been the technical assistance in the titling and claims system, in the modernization of property registries, and in providing, typically in partnership with others, legal and other advice as to how to cope with some of the major policy, legal, and process issues. In addition, the extent of U.S. pressure to resolve claims for U.S. citizen claimants has, arguably, resulted in better results overall in moving Nicaragua towards resolution of the bigger universe of claims.

A negative aspect is the possibility that U.S. claimants, and in particular those who have been able to gain higher profile support, have fared better than other claimants that are similarly situated. This could undermine U.S. arguments in support of the rule of law and lead to perceptions that corruption or influence peddling can exist within entities of the U.S. government. This could also result in

⁵⁸⁰ National Assembly Establishes New Property Institute: *U.S. Withdraws Visas from 89 Sandinistas and Liberals*, Nicaragua Network Hotline - May 17, 2005, at <http://www.nicanet.org/archive/hotline.php?id=163> (accessed June 29, 2011).

⁵⁸¹ Law 558, *Ley Marco para la Estabilidad y Governabilidad del País*, “Framework Law for the Stability and Governability of the Country”, October 20, 2005, published in the *La Gaceta*, Diario Oficial of the same date, at http://www.ccer.org.ni/files/doc/1186701267_Ley_Marco.pdf (accessed September 10, 2011).

⁵⁸² Law 610, January 19, 2007, published in the *La Gaceta*, Diario Oficial of the same date, at <http://pdba.georgetown.edu/Constitutions/Nica/documentos/Ley610.pdf>, (accessed September 10, 2011).

resentment against this specific sub-group of claimants, as well as against the U.S. government. I often heard complaints of this nature from the bureaucrats that I dealt with in Nicaragua. Finally, there is the possibility that claims espoused by the U.S. government in some cases involved individuals whose property was obtained under questionable circumstances, as in the cases where they were former high officials of the Somoza regime.

8.2. Other Donor Nations

European nations, and especially the European Union, have actively assisted the Nicaraguan government in titling, economic assistance, and even agrarian reforms. Such aid has mimicked U.S. efforts to clarify property ownership issues, without the heavy pressure that the United States exerts to get its nationals' claims settled.

For example, Sweden has financed a study of the property problems in Nicaragua,⁵⁸³ though Swedish aid was later cut off in 2007 over the Sandinistas sudden interest in outlawing abortion.

8.3. International Law and Expropriation

This international law view is set forth in a UNCTAD publication from 2000.⁵⁸⁴ That publication reiterates the standards of customary international law and typical international investment agreements that requires three requirements be met to render “legal” the taking of private property by a government: it is for a “public purpose”, “not discriminatory”, and compensation is paid.

Public Purpose and Non-Discriminatory

The “public purpose” and “not discriminatory” requirements for a “legal” taking are less debated than the compensation requirement, and scholars argue that they

⁵⁸³ David Stanfield, "Analysis of the Current Situation Regarding Land Tenure in Nicaragua," (1994).

⁵⁸⁴ *Taking of Property*, UNCTAD, 2000.

have little force as international law. Burns H. Weston argues that “the doctrine [of public purpose] has found scant support in practice as a “rule” of international law whose violation *independently* engages international responsibility.”⁵⁸⁵ Moreover, even where a “public purpose” is required, it is frequently difficult to prove that the expropriation took place without a public purpose.⁵⁸⁶

Regarding the “not discriminatory” requirement, other scholars have argued that this requirement does not independently make an expropriation “unlawful,” particularly when the expropriation serves a public purpose. García-Amador states that, “it appears unlikely that a nationalization would be contrary to international law if there is a patent public purpose even if the expropriating measures are exclusively against aliens.”⁵⁸⁷

The very question of “lawful” expropriation has not always been acknowledged by international legal authorities. The Iran-United States Claims Tribunal, established to arbitrate claims of government expropriation following the Iranian Revolution of 1979, has created a significant body of jurisprudence on the subject of nationalization and appropriation. However, in the whole of the Iran-United States Claims Tribunal cases, the tribunal never found a taking unlawful.⁵⁸⁸ Instead of framing their analysis on whether the appropriation was lawful or unlawful, the tribunal instead focused on whether the property owner was “deprived of fundamental rights of ownership.”⁵⁸⁹ Where the tribunal found that a property owner’s rights were abrogated, the only remaining question was one of

⁵⁸⁵ Weston, H. Burns, “The Charter of Economic Right and Duties of States and the Deprivation of Foreign-Owned Wealth,” *American Society of International Law*, 439, <http://www.jstor.org/stable/2200684> (accessed 2011-7-30).

⁵⁸⁶ Bring, Ove E. “The Impact of Developing States on International Customary Law concerning Protection of Foreign Property 24 *Scandinavian Stud. L.* 107 (1980) p.107, <http://0-www.heinonline.org.tallons.law.utexas.edu/HOL/Page?collection=intyb&handle=hein.intyb/svnl0024&id=109>, (accessed July 30, 2011).

⁵⁸⁷ García-Amador, F.V. “The Proposed New International Economic Order: A New Approach to the Law Governing Nationalization and Compensation,” 27, www.jstor.org/stable/40175867 (accessed 2011-7-30).

⁵⁸⁸ Tuomas, Kuokkanan “International Law and the Expropriation of Natural Resources” 11 *Finnish Y.B. Int'l L.* 354 (2000): 350-351, <http://0-www.heinonline.org.tallons.law.utexas.edu/HOL/Page?collection=intyb&handle=hein.intyb/finnybki0011&id=360> (accessed July 30, 2011).

⁵⁸⁹ Kuokkanan, 352.

compensation.

Compensation

According to UNCTAD the question of compensation is the only one subject to debate, and that debate concerns the adequacy of compensation alone, not whether it should be paid. Indeed, the requirement for some form of compensation has been accepted by international legal bodies since the early 20th Century. In 1922, the Permanent Court of Arbitration decided the *Norwegian Claims* case, holding that “whether the action... was lawful or not, just compensation is due under... the international law based upon respect of private property.”⁵⁹⁰ However, the decision did little to establish an acceptable method for compensation.

Interpretations of what constitutes valid compensation are contested between wealthy and poor nations. This is the primary source of contemporary conflict regarding expropriation compensation. Wealthier nations tend to endorse the “traditional” approach to compensation, advocating use on international law and the Hull doctrine, while poorer nations support the “modern” doctrine, which gives greater deference to national law.⁵⁹¹

The traditional view of compensation accepted by wealthier Western states is the Hull doctrine. Developed in 1938 by then United States Secretary of State Cordell Hull, the doctrine states that any expropriation must be “prompt, adequate and effective.” These criteria may seem innocuous but are interpreted extremely strictly.⁵⁹² The ‘prompt’ requirement “means without delay,” and payment is expected to take place “more or less on the day of the effective expropriation.”⁵⁹³

⁵⁹⁰ Mavroidis, Petros C., “International Law Compensation for Expropriation Standard: Sources of Law.” 45 RHD 88 (1992): 73, <http://0-www.heinonline.org.tallons.law.utexas.edu/HOL/Page?collection=intyb&handle=hein.intyb/rhelIdi0045&id=71> (accessed 2011-7-30).

⁵⁹¹ Tuomas Kuokkanen, 357.

⁵⁹² Mark Zukas, “How is Expropriation Measured and Compensated,” (Think Africa Press, March 2011), <http://thinkafricapress.com/libya/expropriation-international-law> (accessed July 30, 2011).

⁵⁹³ Bring, “The Impact of Developing States,” 108.

The ‘effective’ requirement “means that compensation must be paid either in the currency of the claimant or any other currency that is considered hard.”⁵⁹⁴ The ‘appropriate’ requirement is the most demanding of all. ‘Appropriate’ payment must fully compensate the owner for the loss of their property.⁵⁹⁵ This is the principle of *restitutio in integrum*, also used in contract law, wherein the claimant is put in the position they would have been in had the contract been fully performed.⁵⁹⁶

Western, wealthy, countries ostensibly prefer the Hull doctrine because it allows for full recovery from expropriation and nationalization.⁵⁹⁷ When a wealthy Western nation’s interests are expropriated by a poor nation, the western national can fully recoup its losses, although often times the assets were obtained when the wealthy nation was a colonial power. However, in practice, wealthy nations often do not require all three elements of the Hull doctrine.⁵⁹⁸ Particularly when dealing with lump-sum payments, Western nations have historically allowed for payment less than market-value and payment in installments.⁵⁹⁹

As more former colonies gained independence and sought to assert their sovereignty over their nation and resources, attitudes toward compensation began to change. Although these new nations had gained sovereignty, their natural resources were often under the control of foreigners.⁶⁰⁰ With insufficient capital, many poorer nations may not be able to exercise control over their national resources because of their inability to pay “adequate” compensation for them. Thus, poorer nations began to advocate for a more equitable policy for expropriation.⁶⁰¹

U.N. Resolutions 1803, 3281 and the NIEO (New International Economic Order)

⁵⁹⁴ Zukas, 287.

⁵⁹⁵ Zukas, 287.

⁵⁹⁶ Zukas, 287.

⁵⁹⁷ Mavroidis, “International Law Compensation for Expropriation Standard: Sources of Law,” 75.

⁵⁹⁸ Mavroidis, 75.

⁵⁹⁹ Mavroidis, 81.

⁶⁰⁰ Kuokkanan, 333.

⁶⁰¹ Kuokkanan, 335.

The principal international legal standard governing property expropriation is U.N. Resolution 1803 (1963). Paragraph 4 reads,

Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.⁶⁰²

Under Resolution 1803, a “lawful” expropriation must be for a “public purpose”, “not discriminatory”, and compensation must be paid.

The wording of the resolution is carefully worded to strike a balance between modern and traditional views of compensation.⁶⁰³

Some elements of Resolution 1803 retained the traditional view of international expropriation law. For example, the resolution states that the expropriation must be made on grounds of “public utility, security or the national interest” and the owner shall be paid “appropriate compensation.” The reference to ‘public utility’ echoes the traditional ‘public purpose’ requirement, and the term ‘appropriate compensation’ is interpreted no differently than ‘adequate’ compensation under the Hull doctrine.⁶⁰⁴

However, other parts of the resolution illustrate a departure from the traditional view, particularly in regard to compensation. Specifically, the resolution states that the aggrieved party will receive “appropriate compensation, in accordance with the

⁶⁰² General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources", <http://www2.ohchr.org/english/law/resources.htm> (accessed June 11, 2011).

⁶⁰³ Mavroidis, 87.

⁶⁰⁴ Mavroidis, 88.

rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law.”⁶⁰⁵ Interpreting this section, it is unclear whether appropriate compensation should be determined according to international law, national law or both.⁶⁰⁶ Despite the ambiguity, including national law in the considerations for ‘appropriate compensation’ signaled the beginning of a departure from the traditional view of compensation and the Hull doctrine.

The United Nations continued to promote a more modern approach to compensation throughout the next decade. Following U.N. Resolution 1803, developing nations continued to criticize “traditional commercial principles,” arguing that “international integration did not sufficiently take into account the special circumstances of developing countries.”⁶⁰⁷ Under pressure to create a more equitable international order, the United Nations passed Resolution 3281 on December 12, 1974.⁶⁰⁸ Addressing a nation’s right to nationalize or expropriate foreign property, Resolution 3281 contained no mention of international law, and stated that compensation controversies be settled by “the domestic law of the nationalizing state.”⁶⁰⁹ However, the absence of any reference to international law “did not meet the demands of the developed countries.”⁶¹⁰

In the same year that Resolution 3281 was passed, the United Nations showed its continued shift toward an interpretation of compensation within the framework of the New International Economic Order (NIEO). Aimed at strengthening developing nations, the NIEO focused specifically on national sovereignty over natural resources.⁶¹¹ The UN’s 1974 Charter of Economic Rights and Duties of States, Article 2 states:

1. Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources

⁶⁰⁵ UN Res. 1803 Paragraph 4.

⁶⁰⁶ Mavroidis, 88.

⁶⁰⁷ Kuokkanan, 336.

⁶⁰⁸ Kuokkanan, 337.

⁶⁰⁹ Mavroidis, 89.

⁶¹⁰ Mavroidis, 88.

⁶¹¹ Kuokkanan, 338.

and economic activities.

2. Each State has the right ... To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.⁶¹²

Under this article, then, compensation must be “appropriate” and controversies are to be settled by the courts and under the law of the nationalizing nation.

These provisions, perhaps, should be read in the context of the preamble of General Assembly Resolution 3281, which states, in part, “Declaring that it is a fundamental purpose of the present Charter to promote the establishment of the new international economic order, based on equality, sovereign equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems...” This tone is continued in Article 16, Paragraph 1:

It is the right and duty of all States, individually and collectively, to eliminate colonialism, apartheid, racial discrimination, neo-colonialism and all forms of foreign aggression, occupation and domination, and the economic and social consequences thereof, as a prerequisite for development. States which practice such coercive policies are economically responsible to the countries, territories and peoples affected for the restitution and full compensation for the exploitation and depletion of, and damages to, the natural and all other resources of those countries, territories and peoples. It is the duty of all States to extend assistance to them.

Once again, national law was designated to resolve compensation disputes while any reference to international law is absent. The relevant part of the NEIO states:

⁶¹² GA Res. 3281(xxix), UN GAOR, 29th Sess., Supp. No. 31 (1974) 50, at <http://www.un-documents.net/a29r3281.htm> (accessed July 15, 2011).

To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstance that the State considers pertinent.⁶¹³

Although the NEIO once again represented a departure from the traditional view of appropriation and compensation, few developed nations chose to “recognize its legal authority.”⁶¹⁴

Although progress has been made by developing nations to break from the traditional view of compensation, little is universally recognized as international law past Resolution 1803. Although Resolution 3281 and the NEIO were created, they are not accepted by developed nations, and were often not even enforced by the countries that favored their adoption.⁶¹⁵

Judicial Decisions and Arbitration Tribunals

The International Court of Justice (ICJ) has not been more effective in clarifying the legal ambiguities regarding expropriation compensation. Kuokkanan makes a compelling argument as to why “no investment disputes were submitted in the 1960s and 1970s” to the ICJ.⁶¹⁶ Because there “was a fundamental disagreement about what is law,” or what should be law, it was “too risky [for any] nation to submit a dispute to the court” and risk an unfavorable judgment.⁶¹⁷ As a result, many disputes were settled by international arbitration.

The tribunals following the Libyan nationalization of their oil industry and the nationalization claims following the Iranian Revolution of 1979 illustrate how expropriation claims are settled in practice.

The Libyan nationalization cases of *Liamco*, *Texaco* and *B.P.* are illustrative of the

⁶¹³ NEIO Article (c), Kuokkanan, 339.

⁶¹⁴ Kuokkanan, 339.

⁶¹⁵ Kuokkanan, 339.

⁶¹⁶ Kuokkanan, 342.

⁶¹⁷ Kuokkanan, 307.

uncertainty in expropriation law. The tribunal attempted to determine whether the expropriations were lawful or not, and “strove to incorporate both traditionalism and modernism in determining the lawfulness of the taking.”⁶¹⁸ In the *Liamco* case, the sole arbitrator Mahmassani loosely interpreted the traditional tenets of “public policy,” “non discriminatory” and that of “prompt, adequate and effective” compensation.⁶¹⁹ In doing so, he ruled that the expropriation was lawful.⁶²⁰ However, under very similar circumstances the arbitrators in the *Texaco* and *B.P.* cases found that the Libyan nationalization was unlawful.⁶²¹ These differences were further evident when the arbitrators determined the extent of compensation.

In the *Liamco* decision, where the taking was lawful, “equitable compensation” was awarded.⁶²² The *Liamco* arbitrator awarded *damnum emergens* (the actual realized loss) and *lucrum cessans* (loss of anticipated profit).⁶²³ In the other cases, where the expropriation was held to be unlawful, damages were awarded inconsistently. In *Texaco*, the tribunal held that the Libyan government must pay *restitutio in integrum* for compensation.⁶²⁴ However, in the *B.P.* case, the arbitrator held that B.P. was entitled to damages but not *restitution in integrum*. Under very similar circumstances, three different compensation schemes were used in the Libyan nationalization cases.

Founded in 1981, Iran-United States Claims Tribunal took a novel approach to awarding compensation. The tribunal made no decision on the lawfulness of any taking.⁶²⁵ Instead, relying on the 1955 Treaty of Amity between the United States and Iran, the tribunal awarded compensation for the “full equivalent of the value of the interests in the property taken regardless whether the taking was lawful or not.”⁶²⁶ This approach has been criticized, in part because the ruling did little to

⁶¹⁸ Kuokkanan, 343.

⁶¹⁹ Kuokkanan, 344.

⁶²⁰ Kuokkanan, 344.

⁶²¹ Kuokkanan, 344-345.

⁶²² Kuokkanan, 346.

⁶²³ Kuokkanan, 313.

⁶²⁴ Kuokkanan, 347.

⁶²⁵ Kuokkanan, 351.

⁶²⁶ Kuokkanan, 352, 354.

settle the existing disputes in international expropriation law, but Kuokkanan argues that by acting practically and doing so, the tribunal was able to effectively perform its duty.⁶²⁷

Overview of International Standards

There is presently no concrete, binding international law addressing the issue of expropriations and compensation. The United Nations has furthered the cause of developing nations, passing Resolution 3281 and the NIEO, but neither has been uniformly accepted by the developed world. As such, the ambiguous provisions of Resolution 1803 are most frequently cited as the standard for international expropriation law. The state of international jurisprudence is not any better, with rich and poor nations both preferring arbitration rather than appealing to the International Court of Justice. These arbitral tribunals are frequently able to resolve conflicts, but as evidenced by the Libyan and Iran-United States tribunals, they have not created more uniform international law.

In the majority of cases, Nicaraguan confiscations were from Nicaraguan nationals by a new Nicaraguan government, so international law is inapplicable, except as a general guide. Even for cases involving those clearly nationals of other nations at the time of confiscation, Nicaragua presents other difficulties. These include lack of resources to pay the optimum level of compensation that other nations might advocate for their nationals and political and economic issues involved in negotiating with a government that outside powers (namely, the United States) seek to influence on broader policy objectives.⁶²⁸

8.4. Regional Standards in the Americas

Nicaragua is a member state of the Organization of American States, a component

⁶²⁷ Kuokkanan, 356.

⁶²⁸ General Assembly Resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources," <http://www2.ohchr.org/english/law/resources.htm> (accessed June 11, 2011).

of which is the Inter-American Commission on Human Rights. Echoing Article 17 of the Constitution and Article 17 of the Universal Declaration of Human Rights is Article 21 of the American Convention on Human Rights Article 21, titled “Right to Property”, which states, in its entirety,⁶²⁹

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

Nicaragua signed the American Convention on Human Rights on November 22, 1969, during the Somoza era. The *Junta*, soon after coming to power, acceded to it on September 25, 1979. The Chamorro Administration recognized,

as binding as of right with no special convention the competence of the Inter-American Court of Human Rights in all cases involving interpretation and application of the Inter-American Convention on Human Rights....

[Nicaragua’s] acceptance of the competence of the Inter-American Court of Human Rights is given for an indefinite period, is general in character and grounded in reciprocity, and is subject to the reservation that this recognition of competence applies only to cases arising solely out of events subsequent to, and out of acts which began to be committed after [February 12, 1991].⁶³⁰

The Bolaños Administration on February 6, 2006 recognized the Inter-American Commission on Human Rights to receive complaints from one member state about violations of another.⁶³¹ Whether specific confiscations, such as Somoza and Sandinista era seizures, might be excluded by the effective dates of the adoption of

⁶²⁹ Interamerican Commission on Human Rights, American Convention on Human Rights, November 22, 1969, entering in Force on July 18, 1979, [http://www.cidh.oas.org/basicos/english/basic3.american percent20convention.htm](http://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm) (accessed August 28, 2011).

⁶³⁰ *Inter-American Commission on Human Rights, “American Convention on Human Rights, “Pact of San Jose, Costa Rica, Adopted at San José, Costa Rica, November 22, 1969 at the Inter-American Specialized Conference on Human Rights,* <http://www.cidh.oas.org/basicos/english/Basic4.Amer.Conv.Ratif.htm> (accessed August 28, 2011).

⁶³¹ *Ibid.*

this Convention by Nicaragua, the above timeline indicates that four very different Nicaraguan administrations have, at least on paper, indicated support for both the right to property and the need to provide “just compensation” but also that such a right to property can be subordinate to “the interests of society”.

8.5. Expropriations by Other Marxist Regimes Contrasted

Full discussion of how other countries have resolved communist-era expropriations is far beyond the scope of this work, but some reference to them may be instructive, at least in noting how other patterns may not provide suitable contexts for comparison.

In pursuit of the Marxist goal of state control of the means of production, in the name of the masses, communist regimes of the 20th Century engaged in extensive nationalization of privately-owned properties. As nearly all these regimes have disappeared or transformed themselves to market-oriented ones, the issue of rights to real property became important to the new economies and had to be resolved for them to be fully integrated into the global (Western) economic system. For this reason, I believe that a survey of matters as they evolved and as they now stand is a relevant contemporary question, though unlikely to be profound.

While the degree of expropriations in Nicaragua never approached that of the Soviet Union (complete) or other communist countries (substantial), reference to the situations in those countries and how they have been resolved may be helpful in putting the Nicaraguan case into context. A common feature of post-Communist Central and Eastern European countries are efforts to re-institute the right to private property and create a legal system to support those rights in an attempt to deal with claims of those whose properties were expropriated without compensation. The biggest exception is Russia and the countries of the pre-1939 Soviet Union, in which a full additional generation had passed since the complete Soviet expropriations, the Bolshevik era decrees contrasted in Chapter 3.

Most discussion of restitution of property confiscation by European communist regimes focuses on those confiscations resulting from the Soviet occupation and installation of satellite regimes in East Central Europe following the Second World War. There seems to be considerably less political interest in revisiting property confiscation issues arising from the Soviet property confiscations in early post-revolutionary Russia. One example of the differing interest was a 1999 U.S. Congressional hearing wherein virtually all testimony concerned countries other than Russia.⁶³² In the end, Soviet era confiscations have generally been accepted by other countries, generally as they established relations with the Soviet Union. For example, in the case of the United States, in 1933, by the Litvinov Agreement between the U.S. and the Soviet Union, the latter agreed to provide partial compensation for property seized from U.S. citizens up to that time.

Expropriations in the core nations of the Soviet Union have largely been resolved by old bi-lateral treaties, the passage of time, the giving of residential units to their long-time occupants, and to state privatization of enterprises. The U.S. focus now is primarily on getting religious properties returned to their communities.⁶³³

This is perhaps natural because the post World War II confisceses or their children are, in large measure, still alive and active, with vivid memories of their losses. In contrast, the Russian confiscations occurred a generation earlier and there are few, if any, individuals with strong emotional attachments to that era. Broader property ownership existed in the more “Westernized” countries of East Central Europe, while Russian owners constituted a smaller percentage of the population, largely in the form of Czarist nobles and Kulaks, many of whom perished in post-revolutionary upheavals. Business and industry, being less developed in Russia, was likely a smaller source of properties than in the more advanced economies nearer to Western Europe.

In Soviet Russia, the property confiscations resulting from 20th Century turmoil

⁶³² See “The Long Road Home: Struggling for Property Rights in Post-Communist Europe,” Hearing before the Commission of Security and Cooperation in Europe, March 25, 1999 (U.S. Government Printing Office, 1999).

⁶³³ Stuart Eizenstat, *Preliminary Study on U.S. and Allied Efforts To Recover and Restore Gold and other Assets Stolen or Hidden by Germany During World War II*, 1997, at http://www.state.gov/www/regions/eur/rpt_9705_ng_links.html, accessed September 29, 2011.

that included the Bolshevik Revolution and 70 years, a lifetime, of Communist rule meant that preexisting property rights were completely erased, for both legal and practical reasons. Virtually no owners survived to assert rights in their properties and their descendants had moved on to new lives, many living through the century's greatest upheaval, the Second World War.

Seizure of communal properties by the Soviet Union is a separate issue. Russia has made great progress in restitution of religious properties confiscated during the Soviet era and, for example, the primary U.S. focus there is on continuing to get religious properties returned to their communities.⁶³⁴ According to the State Department, 4000 buildings belonging to religious communities were returned between 1993 and 2002.⁶³⁵ This report indicates that most such properties were returned to the Russian Orthodox Church but that some were returned to Jewish, Muslim, and other Christian communities and that 15,000 religious articles were returned to the various religious groups.

Nonetheless, Bolshevik confiscations still bedevil today's world. For example, the confiscation of paintings seized in 1918 is still contested by the heirs of the original confiscee; not long ago, the heirs objected to an art exhibit in the U.S. featuring paintings from the Pushkin and the Hermitage Museums taken from a Moscow merchant and art patron without compensation.⁶³⁶ The State Department's approach was criticized for its failure to support U.S. citizens whose property was confiscated by the Soviets, because the Litvinov Assignment, with its provision to pay confiscees out of czarist government assets held in the U.S., was not meant to be a full satisfaction of the claims.⁶³⁷

Central and Other Eastern European Confiscation Distinct from Soviet

An important contrast with the situation in Russia was that in these countries the

⁶³⁴ Eizenstat.

⁶³⁵ Summary of Property Restitution in Central and Eastern Europe, July 16, 2002.

⁶³⁶ See "Lenin's Spoils Given Pass by U.S. Officials," *Washington Post* (December 15, 2002).

⁶³⁷ Peter Rosenblatt, "Letter to the *Washington Post*," (December 30, 2002).

communist regime often lasted only about 40 years, and (especially in the case of properties seized in the middle to later part of this period) many original owners or surviving heirs still had memories of that property (family business, family homes, farms, and the like), making it hard to use the passage of time as an excuse to avoid a restitution scheme. Furthermore, in general, the confiscations were much less comprehensive than the complete nationalization of all property that had occurred in Soviet Russia.

In Central and non-Soviet Eastern Europe, thus, the situation was dramatically different from former Soviet lands for this and for the reason that there were several periods of confiscations overlaying and affecting each other. First, the comprehensive Soviet decrees of 1918 into the 1920s did not exist. In fact, the first mass confiscations were not Communist, but Nazi. During the period of their control, the Nazis seized property from many targeted groups. This included both real estate and other property. The groups they attacked are well known: Jews, Roma, homosexuals, and other groups. Tens of millions perished in organized genocide.

In territories occupied by the Western Allies and throughout Western Europe, efforts were made to return properties to the individuals, organizations, and heirs of deceased owners.⁶³⁸ However, in Eastern Europe, the occupation by the Soviet Army, with little interest by Soviet authorities in returning properties to owners, followed by the rapid establishment of communist governments, precluded any restitution of properties. In the countries of Central and Eastern Europe, the new governments typically just took possession of the property that the Nazis had previously seized.⁶³⁹

Excepting those countries that were part of the Soviet Union from the beginning, all Communist-controlled countries of Central, Eastern, and South Eastern Europe

⁶³⁸ State Department, *Property Restoration in Central and Eastern Europe*, Washington: 2007, at <<http://web.archive.org/web/20080411024558/www.state.gov/p/eur/rl6s/or/9302.htm>>., accessed September 29, 2011.

⁶³⁹ State Department, *Property Restoration in Central and Eastern Europe*.

have had to cope with the question of properties expropriated during and after the Second World War. In most cases, the expropriations and nationalizations occurred in the late 1940s and early 1950s, and often far later, which meant that the period between the owners' losing their properties and new democratic governments coming to power was only about 50 years, just short enough for many original owners to still be alive and interested in pursuing claims. Thus, the countries have tried various means to weigh the interests of the people currently using the property with those of claimants.

With the fall of communism in 1989-1991, the new governments moved quickly towards capitalistic systems, restoring traditional rights of property that had existed earlier and that existed in the West. These governments have taken steps to deal with property restitution, for domestic, political or for reasons of justice, and because of pressure from the West, where many heirs or owners had fled, but also because of the economic desirability of settling property rights. Systematic study of this process is beyond the scope of this work, but some generalities are worth mentioning, as well as using some countries for discussion, admittedly a rather shallow approach.

In Central and Eastern Europe, there are several categories of potential claimants, depending on the country:⁶⁴⁰

- a. Individuals whose property was seized by various regimes, including Jews whose property was taken by Nazis and Nazi-allied regimes and people of any type whose property was taken by Communist governments. This group also includes the old pre-war nobility. Communal groups (religious or ethnic groups whose property was confiscated).
- b. Communal groups (religious or ethnic groups whose property was confiscated). This includes Jewish organizations whose property was confiscated by the Nazis and Nazi-allied regimes, as well as Catholic and other church properties seized by Communist regimes.
- c. The Czech Republic and Slovakia also have the issue of properties lost by ethnic Germans and Hungarians who were driven out after the end of the

⁶⁴⁰ State Department, *Property Restoration in Central and Eastern Europe*.

Second World War and who lost their property in the Benes Decrees. Yugoslavia has the issue of those expelled during the ethnic cleansing associated with the breakup of the nation in the 1990s.

Depending on the country and the type of seizure, resolution of property claims can consist of any of several forms: Return of the seized property to the owners or their heirs, return of similar property or shares in companies, or payment of compensation in the form of cash or state-issued bonds. Many systems include all of the following. For example, it may not be possible to return all of land, if significant numbers of people have lived there for decades; the political cost of their displacement would simply be too high. Sometimes a house could be returned, but other lands not. In this case, a claimant could conceivably receive all forms of restitution.

Progress varies considerably. For example, Poland's attempts at laws permitting restitution of private property have been blocked in Parliament, though there has been more success in claims involving communal property.⁶⁴¹

Similarly, progress has been problematic in Romania, which passed laws authorizing restitution for farm land in 1991 (Law 18/1991), for forest land in 2000 Law (1/2000), and for urban dwellings in 2001, but the decade after the fall of Ceausescu saw a series of contradictory and confusing court decisions, laws, and decrees covering properties confiscated during World War Two and under communism. Finally, in 2001, Law 10 was enacted which governed restitution for private property confiscated under the communists. In March 2010, Franklin Templeton was selected to manage the fund, known as the Fondul Proprietarea, to invest primarily in shares of listed and non-listed Romanian companies, with a small amount in international companies with links to the Romanian economy, making the fund a long-term contributor to the development of the Romanian capital market; shares are to be listed on the Bucharest Stock Exchange.⁶⁴² Still,

⁶⁴¹ Property Restitution in Central and Eastern Europe, Department of State, October 3, 2007, <http://web.archive.org/web/20080411024558/www.state.gov/p/eur/rls/or/93062.htm>

⁶⁴² Williams, Jonathan, "Franklin Templeton to Manage Listed Romanian Compensation Fund," *IPA* (March 4, 2010), <http://www.allbusiness.com/banking-finance/financial-markets->

progress in Romania has been so slow that in October, 2010, the European Court for Human Rights in Strasbourg ordered the Romanian government to, with 18 months, amend its law on the restitution and compensation for communist-era confiscated property.⁶⁴³

Bulgaria was one of the first former communist countries in Europe to pass restitution laws for private property and has made great progress in settling the issue.⁶⁴⁴ It was different from most other former communist countries in that it never nationalized title to land. Generally, claimants for property, regardless of citizenship, can regain property confiscated in the Nazi and communist periods, but non-citizens must sell it upon receiving title. Only Bulgarian citizens, however, can regain forest and farmland. Most of these claims have been settled and the deadline for new claims closed in 2007.⁶⁴⁵ The Bulgarian Orthodox Church, the Catholic Church, the Jewish Community, the Muslim Community, and some protestant groups claim that not all religious properties have been restituted.⁶⁴⁶

Several complex cases are not useful at all in discussing the Nicaraguan situation. For example, Czechoslovakia (now Czech Republic and Slovakia) and Yugoslavia both present very different cases, with ethnic and religious issues complicating any discussion of Communist-era expropriations.

In Czechoslovakia, even before Communist-era confiscations, there was the expulsion of ethnic Germans in 1945 and the period of Nazi occupation that was longer and more intense than in some other countries (1938-1945). For example, at the end of the war, nearly three million Sudeten Germans were expelled by force, nearly all to Germany or Austria by the Beneš Decrees.⁶⁴⁷

investing/14045856-1.html. (accessed July 11, 2011).

⁶⁴³ Ciocoiu, "European Court Corners Romania."

⁶⁴⁴ State Department, *Property Restoration in Central and Eastern Europe*.

⁶⁴⁵ Ibid.

⁶⁴⁶ Ibid.

⁶⁴⁷ The term Beneš Decrees technically refers to all decrees signed by Benes from 1940 to 1945, when the government was in exile and in the first months after the war ended, but it is usually applied to mean only those decrees from May to October 1945 that expropriated Germans, Hungarians, traitors and collaborators, and revoked the citizenship of ethnic Germans and

The successor countries to Yugoslavia have numerous property disputes arising out of the wars and ethnic cleansing related to their break-up of Yugoslavia, similarly making their situation an unhelpful comparison.

Approach Contrasted with Nicaragua

The situation in Nicaragua is clearly different than that in those Central and Eastern European states that were Nazi-occupied and then Communist-occupied from the 1940s to around 1990, a 40 to 50 year period, depending on the country. With the degree of expropriation differing from country to country, the methods of compensation and resolving outstanding claims has varied considerably, with different weight given to Holocaust-era and subsequent confiscations.

Eastern European countries have applied a more or less restrictive approach in remedying the injustice of past expropriations. Certain groups of former owners and expropriations carried out during particular periods were excluded from restitution; others received partial compensation which did not correspond to the market value of the property at the relevant time, and even those persons whose property had been returned did not always receive the full value, given the condition of the property. In addition, time limits for claiming restitution or compensation ensured that the process would not last indefinitely, serve as a restriction on restitution as well.”⁶⁴⁸

Fischer’s position that restitution was restrictive, while true in a legal sense, does not weight the benefit to society as a whole of seeking closure on outstanding property claims, enabling final resolution of ownership doubts and allowing economic development and individual investment in property to move forward without fear of subsequent loss of the property. Therefore, a purely legal analysis

Hungarians, though all decrees expressly did not apply to “anti-fascists.” The government cancelled the citizenship provisions for Hungarians in 1948. Only about 250,000 Germans, including anti-fascists and those needed for important industries, were allowed to stay in Czechoslovakia. These decrees were ratified in March 5, 1946 by the Provisional National Assembly by Constitutional Act No. 57/1946 Sb. Both the Czech Republic and Slovakia retain the decrees as good law in their statutes and Slovakia’s parliament confirmed their application on September 20, 2007, though Hungarian minority leaders opposed this.

⁶⁴⁸ Sabine Fischer, Heiko Pleines, Hans-Henning Schröder, *Movement, Migrants, Marginalization: Challenges of Societal and Political Participation in Eastern Europe and the Enlarged EU*, Ibidem Verlag Jessica Haunschild Christian Schoen, Stuttgart, 2007), 162.

does not necessarily address the issues of societies and property owners at large.

Goals for property system

The U.S. Department of State provides a useful opinion on general standards that a restitution system might seek to strive for:⁶⁴⁹

Property restitution is often complicated and controversial. Changing the ownership and use of buildings and land from one party or purpose to another can cause major disruptions that already economically challenged countries can ill afford. There is no single system of property restitution laws and procedures that can be applied to all countries. In encouraging restitution, the U.S. government weighs the following considerations:

- Restitution laws should govern both communal property owned by religious and community organizations and private property owned by individuals and corporate entities.
- To document claims, access to archival records, frequently requiring government facilitation, is necessary. Reasonable alternative evidence must be permitted if archives have been destroyed.
- Uniform enforcement of laws is necessary throughout a country.
- The restitution process must be non-discriminatory. There should be no residence or citizenship requirement.
- Legal procedures should be clear and simple.
- Privatization programs should include protections for claimants.
- Governments need to make provisions for current occupants of restituted property.
- When restitution of property is not possible, adequate compensation should be paid.
- Restitution should result in clear title to the property, not merely the right to use the property.
- Communal property should be eligible for restitution or compensation without regard to whether it had a religious or secular use. Some limits on large forest or agricultural holdings may be needed.
- Foundations managed jointly by local communities and international groups may be appropriate to aid in the preparation of claims and to administer restituted property.
- Cemeteries and other religious sites should be protected from desecration or misuse before and during the restitution process.

⁶⁴⁹ State Department, *Property Restoration in Central and Eastern Europe*.

CHAPTER 9: ANALYSIS AND CONCLUSION

The creatures outside looked from pig to man, and from man to pig, and from pig to man again; but already it was impossible to say which was which.⁶⁵⁰

Notwithstanding Sandinista claims to represent some kind of new era in Nicaragua, the history of corruption, coercion, theft, and abuse of laws and position to help those in power and their allies dates from the Spanish Conquest and continues today. The Sandinista elite contains many traditional elements descended from colonial elites and even Somoza elites, not just in familial terms but also in traditions.

9.1. Elite Influence for Personal Profit is a Nicaraguan Tradition

From its violent colonization, Nicaragua's Criollo elites have used power and position to distort the legal system for their personal benefit. The Sandinista elite do not stand out. They are descended and related to many of the same families that have long dominated Nicaragua. The techniques they have used would be familiar to centuries of influential Nicaraguans. There was a need for land reform, which had to involve the undoing of many of the displacements of the Somoza era, whether involving land held by the Somoza family or other elites. I do not even challenge that many Sandinista leaders possessed sincerely-held beliefs of the need for social revolution for the poor. What I do challenge is the morality of a group coming to power on such lofty goals and almost immediately setting out to amass their own fortunes. Revolutionary slogans and new institutions did not mean a cultural or legal revolution, simply new terms for old practices.

⁶⁵⁰ George Orwell, *Animal Farm*, 1944, http://www.george-orwell.org/Animal_Farm/9.html (accessed September 11, 2011).

Assuming one accepts that injustices and inequities of the Somoza years and earlier needed to be resolved to benefit the rural poor, an easy assumption to make, the approaches used were not juridically consistent. It is true that the guerrilla war and the Revolution were, by their very nature, upheavals that made consistency difficult. There were even some FSLN attempts to curb unapproved land invasions, though at the same time some elements of the Sandinista leadership were using mob rule to achieve intimidation of opponents. As we see from Robert Willey's personal accounts, which I can confirm are not unusual from the standpoint of those who lost property, different elements of the governments would seek to protect existing property owners while others would seek to undermine them, with groups of *campesinos* often operating on their own.

When it came to official expropriations of nationalized industries, the Sandinista regime authorized payment of compensation by bonds, but never implemented actual compensation. Even if it had, the value might have been quickly eroded by hyper-inflation, though a good case can be made that that was the result of external encouragement of a counter-revolutionary resistance by the United States.

External involvement by the United States, particularly in its support for Somoza, may well be said to have worsened respect for the rule of law in Nicaragua. Yet, it is difficult to contemplate a significantly better result in a land colonized and exploited by the misuse of law centuries before the United States appeared on the world scene. A debate about the economic effects of United States support for the Contras and its utility in pressing Nicaragua towards elections that elected Chamorro is beyond the scope of this work, but that involvement of the United States may not have been the ideal use of U.S. power in influencing Nicaragua along the positive road of institutional development. International legal standards and subsequent U.S. and international efforts towards solving the property question in Nicaragua appear more promising, but so far their promise is unkept. And the reason that their promise is unkept is a fundamentally Nicaraguan problem, that of corruption.

Again, the corrosive effects of corruption on development is a widely discussed problem far beyond the scope of this work. However, we can see the specific problems in Nicaragua, with elected officials, security forces, other civil service, and courts all undermining the regular flow of human activity, with little legal or structural constraint. Immunity of high officials, the blatant disregard for such laws as exist, the tendency to change the laws to suit those in power, and the various ways to cover up illegality, including in property transactions, render even a roughly “fair” solution impossible.

It is true that many of those whose property was confiscated have been compensated. However levels of compensation have varied significantly over the years, with those with influence or with a powerful embassy backing them tending to do better. In the end, though, the thousands of millions of dollars needed to tie up the claims will be borne by future generations of Nicaraguans or international donors and lenders, not at all by those who gained properties.

It is also true that those who lost property would never be happy without its return in the condition it was taken, plus decades of lost profits and interest. This is obviously unsustainable for the second poorest country in the Americas. Indeed, an argument can be made that just compensation must require original owners, as well as beneficiaries and even the general public, to share in the financial consequences of the decade of confiscation and in the imperfections of earlier regimes.

It is easy to argue the social interest of land accumulated illegally under undemocratic regimes should focus on the poor. Somoza, and generations before him, took advantage of power. Therefore, some corrective response was justified.

Had the Sandinistas set up some systematic and legally recognizable system of adjudicating (however hastily and imperfectly) the previous regime’s property seizures, the confiscations might have been easily justifiable under any equitable legal system. This would even be true if they had adopted some method of

establishing a legal presumption of illicit gain in the case of holders of government positions and a rebuttable legal presumption of illicit gain in the case of holders of excessive amounts of property. If an individual could not establish legitimate transactions, the property would be deemed owned by the state (and thus available for re-allocation). Furthermore, if the Sandinistas had restricted agrarian reform (land redistributions) to land that was clearly government-owned or held by former Somoza elites and had prevented wholesale extra-legal seizures, including by controlling land-invasions (by enforcing “revolutionary discipline”), the land grants from the government to beneficiaries would have been significantly more legally-supportable and secure. But none of these occurred and Nicaragua faces a situation where different layers of legal and extra-legal policies confuse the fundamental question of who owns what and who is entitled to what.

9.2 Nicaragua and International Standards

When discussing Sandinista expropriations in the context of “public purpose” under international law, each type of expropriation can be looked at separately. The nationalizations of utilities is relatively easy to justify, given that most countries have government-owned or heavily regulated monopolies that control power generation and/or power grids. Banks are slightly more problematic, though that question would require extensive discussion of economics and political theory to fully explore. Still, these are arguably for the benefit of the larger society, if one accepts a central economic role of the government.

Agrarian reform is a more nuanced issue. Random invasions of private property do not seem to meet the definition of expropriations, except that many of these acts in Sandinista Nicaragua were legalized after the fact. Still, in cases where plots were split up by the invaders, it seems that the public purpose argument is hard to justify. That Nicaragua has substantial land wealth, including property taken from a dictator, Somoza, who had amassed property by twisting the legal and administrative system in his favor, could have sustained a massive agrarian reform program within the constraints of respect for property of the majority of productive

landowners.

In addition, few international standards appear to have been met. The acceptability of the compensation for those expropriated has varied significantly. Delays are rampant and there is no transparent judicial appeals process to challenge arbitrary decisions.

The *Piñata* was the defining moment of the FSLN. Rather than carry out their claimed ideological beliefs to their logical conclusion and distribute luxurious homes equitably to all Nicaraguans, they elected to take maximum personal benefit from the properties, distributing them to their own inner circle, tempering the scandal of self-enrichment by a broader land redistribution to the poorest citizens.

In the year years of the Chamorro government, after laws curbing the most extreme abuses were implemented, occupants were expected to pay for the value of that part of the property that exceeded the amount allowed under the *Piñata* laws. They were able to use the face value of the severely depressed compensation bonds issued to claimants, backed by the full faith and credit of the Nicaraguan government, an asset of questionable value.

9.3. Prognosis for Nicaragua: Long Term Resolution

A nation that has the will to resolve historic property problems can do so in a way that, while not pleasing all, brings rough satisfaction to the majority of stakeholders. Recipients and occupants of confiscated property can be provided some alternatives, or pay a portion of the cost of the property they seek title to. Former owners can have their property returned, though likely without compensation for the years of lost use, or receive compensation or substitute property that gives approximate satisfaction. State entities may simply have to make alternative arrangements. While there is a cost to the collective that is the people, indebtedness or expenditures by the state to settle the needs of beneficiaries and former owners, in many ways the costs are less than continuing with the

uncertainty.

The fact that years after the *Piñata* there remain outstanding claims suggests that governments on both sides of the political spectrum have stalled on addressing the issue. It is true that most claims have been settled, but many remain. There also remain substantial uncertainties with regard to titles. Nicaraguan governments have promised, then backed away from, using proceeds of privatization for property settlements, while the leaders have corruptly lined their own pockets.

Corruption at all levels of Nicaraguan society undermines hopes for final settlement. This corruption extends from the richest and politically most connected to the poorest of the rural poor who seek others' property by simple invasion. Lack of rule of law, persistent illegal behavior, and lack of interest ensure that the problem continues without full resolution.

Obtaining higher, though still modest, payments from beneficiaries for properties received might have harvested resources that could contribute to retiring bonds on the market, and similarly allow an equal value of new bonds; perhaps the Nicaraguan Government could still seek some payment from beneficiaries in exchange for the new titles, giving increased ownership security. Finally, identifying Nicaraguan Government-held properties for return or for substitution for confiscated properties and identifying properties illegally acquired by beneficiaries could limit the need to issue bonds in the future.

Discussion of possible outcomes in countries with confiscatory regimes still in place, such as Cuba, Venezuela, Bolivia, and Zimbabwe remains far too theoretical and broad for this work. Still, as countries shed such regimes, perhaps Nicaragua could serve as a model, largely of how not to handle restitution, with Cuba perhaps the country where the lessons might be soonest applicable. The general lessons provided by Nicaragua are mostly cautionary. Corruption undermines ownership security, so combating corruption is important. Lack of respect for rule of law undermines ownership security, so ensuring respect for rule of law is important.

Retention of influence by those who benefit from confiscations and from the delay in handling the problem also undermines the efficacy of any settlement process. Perhaps the most important lesson for Nicaragua is that an imperfect restitution system, implemented quickly and fully, is preferable to decades of dithering and obstruction.

A very different situation might have prevailed had the Sandinista leaders restricted themselves to confiscating properties only of the Somoza family and identifiable high officials of the former regime. The most controversial aspect was the decision to confiscate the properties of anyone who remained out of the country for over six months. This affected a large number of middle and upper class individuals who had taken refuge in neighboring countries of the United States and who were waiting to see the nature of the new regime – there being a genuine fear of a true Marxist-Leninist dictatorship - and whether old Somoza supporters and/or common criminals would engage in acts of violence. As a result, significant numbers of neutral individuals, tepid Somoza supporters, and even Somoza opponents had properties confiscated under this decree.

In addition, the Sandinista leadership did not merely fail to prevent but, in many cases, actively encouraged spontaneous property invasions by landless individuals that later ended up with provisional titles, further complicating the situation. Had the leadership seized lands clearly linked to Somoza and immediately redistributed it in an equal and methodical way, while discouraging invasions of other properties, there might have been little or no long-term doubts about property rights.

What further discredited the Sandinista leadership – even alienating a large number of true believers – was their own obvious corruption and overreaching for properties for themselves. It is impossible to know their inner thinking. Perhaps they justified it because of the years of struggle in the jungle and the torture many of them experienced at the hands of Somoza's henchmen. It is difficult to believe that any of them, in their youth, entered the guerrilla movement explicitly for the

long-term material gains they might receive as successful revolutionaries.

Further Research

This work only scratches the surface of the thousands of cases involving elite misuse of position for personal gain in Nicaragua. There are several further areas that might provide fertile opportunities for research. Should the Nicaraguan government ever re-open the archives, there are many possibilities for investigating how these transactions occurred and for tracking all the individuals involved in making them happen. As the years pass, such investigations may largely be of historical interest only.

Most productive, though, might be a detailed study of how the legal processes allowed this to happen and whether there might be legislative or policy reforms that address these specific weaknesses. If solutions could be devised to limit abuses in Nicaragua and other countries, hardly guaranteed in countries with this level of corruption and manipulation of the political and legal processes, they could truly contribute to better governance in many countries challenged by official abuse of position.

9.4. Last Words

This study has aimed to provide a selective dissection of several case studies of Sandinista expropriations in an attempt to understand the processes involved, within the broader context of Nicaraguan traditions.

The confiscations and resolutions in Nicaragua provide useful lessons on both sides of the equation: those seeking to redistribute property following an unjust regime and those seeking to compensate or return properties unfairly expropriated. Those lessons are largely cautionary about the dangers of those seeking personal benefit out of a chaotic situation and the hazards of allowing them continued influence in policies having to do with restitution. On the other hand, a study of

Nicaragua perhaps provides the best lesson, a how-to guide, to those who seek personal profit from post-revolutionary property redistributions and who seek to retain the profit through subsequent administrations.

In the case of those governments seeking to confiscate real property according to some legitimate policy, important considerations that I would argue should ideally be adhered to would be to:

- (1) provide solid legal justification for seizures (such as a rebuttable presumption that property held by persons in specific levels of positions was obtained illicitly),
- (2) expropriate in an orderly, non-chaotic, way,
- (3) avoid unjustifiably discriminatory treatment of those whose property is selected for expropriation,
- (4) provide fair tribunals or hearings, and an opportunity for those whose property is expropriated to challenge the act,
- (5) avoid overdone and heavy-handed confiscations,
- (6) provide fair compensation, at least in cases where those affected had not demonstrably abused any position to unfairly gain the property in the first place, and
- (7) ensure clear controls exist to keep those that benefit from involvement in decisions that affect them.

By this measure, the Nicaraguan case violates all these standards: the Sandinista government did not clearly articulate the justification for confiscating from Somoza regime officials and “supporters of Somocism” nor did they meaningfully define this class. Expropriations were chaotic and almost anarchic, with many seizures done in violation of the law or without following any procedures. There was no meaningful way for those from whom property was confiscated to challenge them, and there still is not, 30 years later. Confiscations were, in many cases, excessive, and they often involved people who were either not part of the previous regime or were actively opposing it; in particular, the seizure of the

property of anyone who had been out of the country for six months or more has broadly been seen as unjust. Finally, in most cases, the compensation provided has been inadequate, with compensation bonds trading at a fraction of their face value.

The above presumes that those involved in property redistributions are doing so for morally and legally justifiable reasons and not simply out of greed, opportunism, or bitterness at past injustices. The motivations of many of those involved in the Sandinista redistributions were often suspect. Leadership gaining multiple luxurious residences even alienated the more ideologically consistent Sandinistas. The punitive confiscations for anyone perceived as “bourgeois” seemed, in many cases, driven by years of pent up anger on the part of many. Land invasions by the poor similarly seemed motivated by quick gain, rather than a socially responsible approach to equalizing property ownership. In any event, those benefiting from the property in the Nicaraguan case were able to disarm those whose property they took largely by offering, effectively from the public coffers, enough compensation to get most claimants to abandon their claims.

For those seeking to resolve previous confiscatory regimes, we have a wealth of cases of contrasting approaches to restitution. In Central Europe, by-and-large, after an initial delay in compensation or return, there has been notable progress on resolving claims 20 years on. These economies have been able to move forward from the years of Communism, with a relatively greater degree of success in advancing investment and economic development. Again, the Nicaragua case mainly offers a negative lesson, for countries such as Cuba, as to the effects of delay and unfairness.

On the other side of the equation, though not heavily emphasized in this work, is the reallocation of property. I would argue that similar considerations should be in place, such as to: (1) adhere precisely to the law when implementing the underlying expropriation, (2) define clear standards and dimensions when establishing the parameters for allotments of properties, (3) ensure those benefitting pay up front, in real currency, any fees associated with gaining

permanent title and with gaining portions of property that may be in excess to the maximum, (4) avoid giving properties in excess of the maximum in the first place, (5) ensure a democratic allocation with administrative checks that does not permit those in certain positions to make property allocations that benefit them or their family members or close colleagues, (6) ensure a final title documents, with clearly defined boundaries, within a functional title registration system. Again, by most of these standards, the Sandinista allocations of property, through agrarian reform or the *Piñata*, were not successful from the standpoint of the rule of law.

Nicaragua is stumbling towards an imperfect and unjust resolution of property issues. It is possible that, in some decades, final clarity of titles could be achieved, assuming the questionable expectation that Nicaraguan governments are interested in resolving them. Even in the best possible outcome, the economic, social, and justice costs of this bumpy ride have far exceeded the costs of a faster, more final system of restitution and quieting of titles. As a result of this, of corruption, and of other government policies, Nicaragua, a country with a bounty of national resources, located in a region where it can easily benefit from more prosperous neighbors, has not achieved its economic potential. Though not a failed state, when it comes to the question of property rights, it is an unsuccessful one.

APPENDIX

*Table 7: “Who Stole What”*⁶⁵¹

Individual Sandinistas

Confiscator or Occupant	Identification	Original Owner *	
1	General Humberto Ortega	Armed Forces Commander-in-Chief, one of nine original <i>Comandantes</i>	Guillermo and Gloria Cano
2	General Ortega’s wedding gift to daughter Elizabeth		Sandra Leets de Montenegro
3	General Joaquín Cuadra Lacayo	Chief, Joint Chiefs of Staff, Sandinista Army	Bruce Cuthbertson *
4	General Joaquín Cuadra Lacayo		Indiana Lacayo de Pereira*
5	Daniel Ortega	Secretary, Directorate of FSLN	Jaime and Ampáro Morales Carazo
6	Ramón Romero Alonso	Supreme Court Justice	Raúl Alberto Rios
7	Comandante Lenin Cerna	Chief, New State Security, one of nine original <i>Comandantes</i>	Eduardo Roman
8	Comandante Lenin Cerna; Inhabited by his sister		Iván Osorio *
9	René Vivas	Chief of National Police	Alfredo Montealegre
10	Alvaro Guzmán Cuadra	National Deputy Chief of Police/Managua Police Chief	Fátima Lacayo de Saenz *
11	Comandante Jaime Wheelock	One of nine original <i>Comandantes</i>	Donald Spencer
12	Lt. Col. Ricardo Wheelock	Spokesman and Head of Public Relations, Sandinista Popular Army	Mangui Sengelmann *
13	Esperanza Roman	Mother of Jaime and Ricardo Wheelock	Alexis Argüello
14	Colonel Salvatierra	Chief Commander, Nicaraguan Air Force	Ramón País *
15	Colonel Antenor Rosales	Chief of Intelligence, Sandinista Army	Michael Spencer *
16	Comandante Tomás Borge (in name of nephew, Fernando Solís Borge), used by Office of Agrarian Reform	One of nine original <i>Comandantes</i>	Leandro Marín Abaunza*
17	Comandante Bayardo Arce	One of nine original <i>Comandantes</i>	Roberto Argüello Tefel*
18	Comandante Luís Carrion, registered under his wife’s name, Ana Patricia Lacayo de Carrion	One of nine original <i>Comandantes</i>	Thelma Gallo

⁶⁵¹ Republican Staff, 27-33. * Indicates that the original owner of the property is an American citizen.

19	María Lourdes Núñez Vargas	Widow of Carlos Núñez (Former President of National Assembly, one of nine original <i>Comandantes</i>) alternate FSLN Congresswoman	Fern Kettel *
20	Emilio Rappaccioli	Sandinista Minister of Energy	María Lourdes B. de Terán *
21	Comandante Juan José Ubeda Herrera	Chief of Security, National Police, Former Sandinista Deputy Chief of Secret Police	Gaye Whitsell de Llanes *
22	Ambassador Fernando Ravelo	Ambassador from Cuba (Indicted in the U.S. on narcotics charges)	Nester Terán *
23	Roberto Rondón Sacasa	Minister of Agriculture (He is building a house on her property.)	Maria Louisa Labro *
24	Comandante Álvaro Baltodano Cantarero	General Ortega's Top Aid	Floyd Jones *
25	Comandante Dora María Tellez	FSLN Congresswoman/former Minister of Health	Salvador and Argentina Morales *
26	Comandante Dora María Tellez		Juan Zavala
27	Comandante Doris Tijerino Haslam	FSLN Congresswoman, former Sandinista Chief of Police	Evangelina Sacasa de la Selva
28	Comandante Charlotte Baltodano Egner		Carlos Tellería*
29	Comandante Adolfo Chamorro Tefel		Bruce Cuthbertson *
30	Comandante Antenor Ferrey Pernudi	Former Ambassador to Panama	Elsa Bermúdez (Mrs. Enrique Bermúdez)
31	Comandante Antenor Ferrey Pernudi		Ernestina Leal de Voguel
32	Juan Gaitan-Ramírez	Secretary General, Ministry of Government, Socialist Party Congressman (Alternate)	Nicolás López-Máltez
33	José Pasos Marciaq	Director, International Relations for the FSLN (Sandinista National Liberation Front)	María Lourdes Sánchez de Ulvert
34	Miguel D'Escoto	former Secretary of State	Roberto Incer Barquero
35	Lt. Col. Oscar Cortéz Mann	Vice-Chief, Nicaraguan Air Force	Heidi Mohrke *
36	Arnoldo Alemán Lacayo	Mayor of Managua, Former President of BAVINIC, government HUD bank)	Delia Wehmeyer de Villalta *
37	Colonel Aldo Gutiérrez	Cuban Military Attaché (Registered under Sandinista Popular Army)	Alberto José Argüello Choiseul
38	Commander William Ramírez Solórzano	FSLN Congressman	Norman Downs*
39	José Leon Talavera	former Vice-Minister for Foreign Affairs, current FSLN Congressman	Armando and Gaye Llānes *
40	Lt. Col. Ramiro Contreras	General Ortega's Aide	Carlos Grana

41	Russian Embassy Personnel		Mathelda Muñiz de Molina *
42	Benedicto Meneses	Former Sandinista Minister of Labor	Jorge Sacasa
43	Augusto César Zamora	Legal Advisor to Sandinista Foreign Ministry	Marcel Langrand Belhome
44	Martha Araúz	former Ambassador to Cuba	José Fernández
45	Mayra Pasos	“purchased” by ex-husband Emilio Rappacioli, Minister of Energy	Edith Cohen *
46	Clarisa de Rivas Paniagua	Sandinista Activist	Christianne Bunge de Marín *
47	Jorge Huevo	Former Sandinista Ambassador to Japan	Charles and Rita Kettel *
48	Paul Atha Ramirez	Former Mayor of Managua	Heinz Luedecking *
49	Javier Chamorro Mora	Former Vice-Minister for Foreign Affairs/Sandinista Ambassador to U.N.	María Tefel
50	Dr. Ulises González	Mayor of Esteli	Isabel Turner
51	Dr. Ulises González	Mayor of Esteli	María Cifuentes
52	Luis Pérez Caldera	Mayor of Leon	Miguel Solís
53	Vilma Larios Garay	Reporter for Barricada (Sandinista newspaper)	Christian Machado
54	Lily Soto, Manager	Sandinista-owned Channel 4	Manuel Midence Montiel
55	Jimmy González	Sandinista State Security (gift from Commander Tomás Borge)	Ernesto and Coco Rivas
56	Naftali Matus	Manager, government owned Compañía de Arroz	Sonia Rosales
57	Francisco Xavier Alvarado	Sandinista military official	Enrique and Ruth Tijerino
58	Alvaro Reyes Portocarrero	Delegate, Ministry of Agrarian Reform, Northern District; brother of Rodrigo Reyes Portocarrero, Supreme Court Justice	John Spencer Fraunberger
59	Juan Sanchez Flores	Lawyer/ Professor	Ana María Morejon *
60	Commander Julio Calero Reyes	Secretary to General Joaquín Cuadra Lacayo	Jorge A. Cardenas
61	Commander Amin Gurdian		Salvador Morales *

Government Agencies and Party Organizations

Agency or Entity

Original Owner *

62	Attorney General's Office (until August 7, 1992)	Aristides and Cecilia Sánchez
63	Attorney General's Office (since August 7, 1992)	María Reyes de Noguera

64	Office of Press and Information for Chamorro Government	The Sengelmanns, Kettels and Spencers
65	Ministry of Education	Olga Pérez Fonseca
66	Ministry of Health	César García
67	Sandinista National Liberation Front (FSLN)	W. Hermann and Teresa Hueck
68	FSLN offices in Granada	Alberto José Argüello Choiseul
69	Proyecto Quimal (government sugar plantation, materials donated by Fidel Castro)	Melba Fuentes
70	Sandinista Defense Committee	Watch Tower Society (Jehovah's Witnesses)
71	Sandinista Popular Army guest house	Luis Mejía Gonzalez *
72	Sandinista Popular Army's Protocol House	Elga de la Rocha de Vaca *
73	Sandinista Popular Army (Military Draft Office)	Edmundo Banquero
74	Sandinista Popular Army offices	Inge Sengelmann Bunge
75	Sandinista Popular Army	Soledad Midence
76	Sandinista Popular Army	Alberto José Argüello Choiseul
77	Sandinista Popular Army living quarters	Ileana Sengelmann *
78	Sandinista National Police	César Rorison
79	Sandinista National Police	José Andrés and Esther Mairena de Peralta
80	Social Security Administration (INSBBI)	Flor Barquero
81	National Institute of Agrarian Reform (INRA)	Alfredo Gasteazoro
82	National Institute of Agrarian Reform (MIDINRA/INRA)	Guillermo Barquero
83	Sandinista Youth (Juventud Sandinista)	Armando Salazar
84	Sandinista Youth (Juventud Sandinista)	Gloria Gasteazoro
85	COIP—People's Industrial Corporation (government agency)	Charles and Rita Kettel *
86	Banco de la Vivienda (government HUD bank)	Carlos Grana
87	United National Farmers and Ranchers (UNAG) (Sandinista Labor Union)	Otto and Harry Moller *
88	AGROMAC/CORNAP (state-owned enterprise)	The Sengelmanns, Kettels and Spencers

Foreign Entity

Foreign Entity

Original Owner *

89	Soviet Embassy (1979—1991)	José Guerrero
90	Soviet Embassy	Leonor de Somoza
91	Soviet Embassy	Alexis Argüello
92	Soviet Embassy parking lot	William Montiel *
93	Cuban G-2 Offices (Secret Police, 1979-1990)	Juergen Sengelmann *
94	Libyan Government	Haydée Mann *
95	North Korean Embassy	Myriam Montenegro de Sanchez
96	Mexican Embassy	Josefina Sánchez
97	Cuban Embassy's Protocol House	Alfredo Osorio *
98	German Embassy	Gilberto and Bertha Perezalonzo
99	OXFAM of Canada (occupying lobster receiving plant/dry dock)	Norman Downs *

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