



THE CARTER CENTER OF EMORY UNIVERSITY

Nicaraguan Property Disputes

Report prepared for the
United Nations Development Program

by the

Latin American and Caribbean Program
The Carter Center
Atlanta, GA 30303
April 1995

Working Paper Series

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PREFACE

The Carter Center's Latin American and Caribbean Program is collaborating with the United Nations Development Program (UNDP) in Nicaragua to facilitate an efficient and fair resolution to the complex property conflicts in that country. The Carter Center has a long involvement in Nicaragua, beginning with the observation of the election process in 1989-90, and followed by subsequent meetings between former president Jimmy Carter, Carter Center personnel, and Nicaraguan leaders in Atlanta and Managua to discuss economic recovery, political reconciliation, and international assistance.

In June 1994, former president Carter travelled to Nicaragua to participate in a conference dealing with property disputes and sponsored by the Nicaraguan National Assembly, UNDP, US AID, the Foundation for a Civil Society and the Institute for Central American Studies. Upon his arrival, he was invited by President Chamorro and others to explore ways to help resolve the property conflicts. During that trip, the Supreme Court invited The Carter Center to send a team of legal experts to advise on setting up legal procedures to deal with the approximately 5000 cases expected to be submitted by the Attorney General's office to the courts for resolution.

Consequently, The Carter Center organized a team of experts from the American Bar Association and the Land-Tenure Center/University of Wisconsin to go to Nicaragua in August 1994. Hosted by the UNDP, the team advised the courts and helped design a larger UNDP project to speed up the resolution of property conflicts. The UNDP then worked with the government to develop a comprehensive program to increase the efficiency and capacity of administrative agencies charged with reviewing the 15,985 claims by former owners and the 112,000 petitions for titles by current occupants. The UNDP and the Nicaraguan government signed an agreement in January 1995 to implement the UNDP-funded US\$3.7 million comprehensive program. The Supreme Court accepted the recommendations made by the Carter Center team in August 1994 to designate two courts in Managua to handle property issues, to be followed by three additional courts in other areas of the country. The UNDP is providing funding for extra staff and equipment.

At the UNDP's request, The Carter Center sent a second team of property, mediation, and legal experts to Nicaragua November 29-December 3, 1994 to advise on the legal framework and assess the potential for mediation to resolve the most difficult disputes. The team met with government officials, political party leaders, the president of the National Assembly, the mayor of Managua, international and Nicaraguan groups involved in mediation, and foreign donors.

This report is based on the interviews conducted during that trip, supplemented with additional reports and telephone interviews. The first section of the report summarizes the nature of the problems of rural and urban property and obstacles to their solution. Subsequent sections discuss the political context and current proposals for a legislative solution, as well as progress on the judicial reforms. The last section explores alternative dispute resolution mechanisms and makes recommendations for using mediation techniques

to resolve property disputes. The report concludes with a set of steps that we believe will be necessary to make progress on this important, but complex problem.

The team's work in Nicaragua was greatly facilitated by the tireless assistance of the UNDP staff, including Alvaro Herdocia, Matilde Mordt, and Silvia Castana; Marcia Kay Stubbs who served as translator; and Carter Center intern Marc McCauley. We thank all of those Nicaraguans who graciously gave of their time and expertise to provide the information presented in this report.

We believe that this is a propitious moment for reaching a political consensus on property for several reasons. The divisions within the two major political forces in the country -- the FSLN and the UNO -- are actually reducing polarization in the country and leading to new legislative coalitions of large majorities, as shown in the Assembly's recent votes on constitutional reform. After being pushed to the backburner during the debates over military reform and constitutional reform in 1994, property issues are coming to the top of the legislative agenda in March 1995. There is a clear social consensus to protect the small property-holders who were beneficiaries of agrarian and urban reform. In addition, an improved administrative procedure is in place to review currently occupied properties, as well as claims by prior owners.

But time is running short. Establishment of a clear and secure legal framework for property rights is absolutely essential for investment and economic recovery. In addition, Nicaragua must show substantial progress in resolving property disputes in order not to jeopardize foreign development aid. For example, U.S. foreign aid and support for loans to Nicaragua from multilateral institutions is contingent on resolution of property claims of U.S. citizens, with the next decision by the U.S. State Department due in July 1995. Further, campaigning for the November 1996 presidential elections in Nicaragua is likely to either put property resolution on the backburner again, or inflame the debate and impede a solution.

A window of opportunity exists now to make real progress on a political compromise to remove property from the political debate in the country, to provide security for the small property holder, and to establish mediation and conciliation mechanisms that can prevent disputes from erupting into political and violent conflict in the future. It is in this spirit that we offer this analysis of the property problem in Nicaragua, and recommendations for establishing alternative dispute resolution mechanisms that could make a long-lasting contribution to Nicaraguan society.

Jennifer McCoy
Atlanta, GA
March 1995

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ACRONYMS

ADR	Alternative Dispute Resolution
AMUNIC	Asociación de Municipios de Nicaragua (Association of Nicaraguan Cities; a organization formed by the mayors)
CNRC	Comisión Nacional de Revisiones de Confiscaciones (National Commission for the Review of Confiscations)
FSLN	Frente Sandinista de Liberación Nacional (National Liberation Sandinista Front)
IDEAS	Instituto de Desarrollo Empresarial Asociativo (Associative Business Development Institute; an FSLN-linked NGO).
INCAE	Instituto Centroamericano de Administración de Empresas (Harvard-affiliated Graduate Business School)
INIFOM	Instituto Nicaragüense de Fomento Municipal (Nicaraguan Municipal Development Institute; a decentralized state entity)
INRA	Instituto Nicaragüense de Reforma Agraria (Nicaraguan Institute of Agrarian Reform)
NED	National Endowment for Democracy
NGO	Non-governmental Organization
OCI	Oficina de Cuantificación de Indemnizaciones (Office of Quantification for Indemnization)
OOT	Oficina de Ordenamiento Territorial (Office of Territorial Ordering)
OTU	Oficina de Titulación Urbana (Urban Titling Office)
UNAN	Universidad Nacional Autónoma de Nicaragua (National Autonomous University of Nicaragua)
UNAG	Unión Nacional de Agricultores y Ganaderos (National Union of Farmers and Ranchers)
UNDP	United Nations Development Program

UNO Unión Nacional Opositora (National Opposition Union)

UPANIC Unión de Productores Agrícolas de Nicaragua (Union of Agricultural Producers)

USAID United States Agency for International Development

Executive Summary

I. The Problem.

With the first peaceful transfer of power from one political party to another in Nicaraguan history in 1990, Nicaraguans ended a decade-long civil war and began a process of reconciliation. Within the space of a year, the army was shrunk from 96,000 to less than 15,000 troops, the Nicaraguan Resistance was demobilized, and new forms of dialogue between previously hostile groups emerged. Nevertheless, economic recovery remained elusive in the face of hyperinflation, high expectations and competing demands among organized groups, and a lack of confidence among investors and producers. Disputes over property have played a significant role in Nicaragua's recent political and economic experience, and are a fundamental factor in its future economic recovery and political reconciliation.

Property disputes and an uncertain legal framework for property rights impede investment and economic recovery, and generate political conflict, sometimes violent, in Nicaragua. Stemming from the redistribution of land and property during the Sandinista government, the issue today is a complex one involving groups as varied as peasants waiting for clear title for land granted under agrarian reform, Sandinista and contra ex-combatants seeking land in the countryside, and prior owners from Nicaragua and abroad demanding the return of or compensation for houses, factories and land confiscated, expropriated or abandoned in the past. Resolving the problem requires addressing both fundamental philosophical debates over whose rights to property should take precedence, as well as administrative and legal impediments to sorting out multiple claims to individual pieces of property and modernizing the titling system.

The size of the problem is indicated in the following statistics: Owners whose land was confiscated or expropriated since 1979 are now demanding the return or compensation for the equivalent of two-thirds of all the property acquired by the State for the agrarian reform, and twelve percent of the land mass of Nicaragua. Over 5,200 prior owners filed claims for 15,985 pieces of property¹, and nearly 112,000 beneficiaries of agrarian and urban reforms are being reviewed for eligibility to receive formal title. By 1992, roughly 40% of the households of the country found themselves in conflict or potential conflict over land-tenure due to overlapping claims by different people on the same piece of property.²

¹ These claims include land and houses, as well as vehicles, machinery, factories, stocks and certificates of deposit. The vast majority of claims are for land and houses (12,415) which are the causes discussed in this report.

²The 40% estimate is provided in David Stanfield, "Analysis of the Current Situation Regarding Land Tenure in Nicaragua," Report prepared for the Swedish International

The government of Violeta Chamorro (1990-1996) established an extensive administrative process to sort out these claims, and by February 1995, the government could claim significant progress: 87% of the 117,178 cases submitted to government agencies had been administratively reviewed and issued either approvals or denials of claims (although appeals were still pending). The government estimates completion of the entire review process by June 1996. But this review process is only the first step in resolving the larger problem. The titling process for urban properties of approved occupants just began in early 1995, with some 600 titles issued by February 1995, while rural titling had yet to begin. Thirty percent of the claims by prior owners had been approved for compensation, but only fifteen percent had actually received bonds as indemnization³. Even more troublesome, the court system was expecting up to 6,000 cases of denials and appeals to enter into litigation. Why, five years after the Sandinistas transferred power to the UNO government, was property still such a disputed topic in Nicaragua?

The answer is a mixture of political polarization, scarce economic and administrative resources, and the ravages of eight years of civil war. The challenges include:

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

Development Authority (ASDI), The Land Tenure Center, University of Wisconsin, 21 October 1994.

³ Nicaraguan agency statistics refer sometimes to number of cases resolved (which may include more than one property claimed by a single individual), and sometimes to numbers of properties involved. Therefore, it is difficult to make definitive assessments of progress to date.

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% 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 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%, 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

Although Nicaragua has recently resolved the seven high-profile cases of U.S. citizens' property claims involving high-level government officials' property, as well as 372 other U.S. citizens claims, future U.S. foreign aid and support for loans to Nicaragua from multilateral institutions is by law contingent on the return of properties claimed by U.S. citizens or a procedure offering "prompt, adequate and effective compensation" for the remainder of these properties.

⁴ Although international law stipulates that a government may espouse only those properties owned by persons who were citizens at the time of expropriation/confiscation, the United States chose not to use the espousal principle, but instead to support all of those claims of newly-naturalized citizens even after the confiscation.

II. Possible Solutions in the Judicial, Legislative and Mediation Arenas.

The terms of reference for the Carter Center/Land-Tenure Center expert team traveling to Nicaragua November 29-December 3, 1994, included: a) assessing progress on recommendations for judicial reform made by a previous expert team in August 1994 to speed up court cases, b) analysis of legislative proposals for the resolution of small property cases, and c) proposals for alternative dispute resolution mechanisms, especially mediation.

Judicial reform. The August expert team recommended creating two additional civil courts and judges in Managua and three outside of Managua to handle the approximately 6,000 cases expected to go to litigation. The UNDP is providing funding for these courts, with operation scheduled to begin in May 1995.

The December team further recommends that these courts be supplemented by the appointment of quasi-judicial officers (such as law clerks and lawyers) to facilitate case processing in the courts. These officers would prepare the cases for quick determination, freeing the judges from personally managing the pleadings and other preparatory documents. External funding would be required for training and support.

Legislative reform. By March 1995, property was once again high on the legislative agenda with draft laws to privatize the national telephone company Telcor, whose revenues will be used to increase the value of the property bonds, and competing proposals for a comprehensive property law. A broad social consensus exists to protect Nicaraguans who legitimately occupy small pieces of urban and rural property (about 90% of the 112,000 claims by current occupants). However, there is not a universal agreement that new legislation is required to provide legal security. Instead, some feel security already exists.

Under the administrative review process, current occupants who meet the legal criteria (such as owning only one property) receive a *solvencia* -- an administrative document certifying conformance with the law as a prior step to titling. But because the *solvencias*, as administrative certificates, carry less legal weight than formal titles, they do not necessarily protect the occupant from eviction by the courts if a prior owner successfully presses his claim. Neither do the *solvencias* contain a geographic or cadastral description of property boundaries, necessary for inscribing titles at the Property Registry. Consequently, they do not provide a secure legal basis to mortgage, buy, sell, or rent the property.

A new law could protect the large "block" of smallholders while the complicated problem of titling is resolved (which may take years), and free up the court system to deal with the more complex cases. Draft proposals by the FSLN and the Conservatives, as well as the resuscitated UNO Law 133 (passed and vetoed in 1991), all reinforce the administrative process and would recognize the rights of smallholders providing they meet the conditions for agrarian and urban reform. The draft laws call for the State to expropriate the land in those cases, compensate the prior owner, and transfer formal title, first to the State and subsequently to the occupant.

The more difficult problem remains the two thousand medium to large-size houses. Disagreement exists over (1) whether and how much current occupants should pay to receive title, (2) how much to compensate prior owners, and (3) the value of the compensatory bonds.

Alternative Dispute Resolution. Currently, there are no legal requirements to engage in mediation, conciliation, negotiation or arbitration to resolve property disputes, and only nascent organizations and mechanisms exist to provide such alternatives to litigation in the courts. The team recommends a two-track approach to help resolve property disputes and stimulate the long-term growth of peaceful dispute resolution in Nicaraguan society. None of the recommendations require any new legislation.

First, the team recommends establishing an **ombudsman's office** to serve as a complaint handler and problem solver for the clientele of the administrative agencies and the titling offices. The ombudsman's office would provide information to claimants and help them through the maze of administrative offices, thus taking pressure off the agency personnel. Ombudsmen would also refer claimants to mediation services, thus helping to reduce the burden on the courts and potentially produce faster resolution of cases.

Second, the team recommends that the UNDP and Nicaraguan government support the development of an **independent, nonprofit non-governmental organization (NGO) dedicated to conflict resolution**. The NGO would develop a panel of mediators as well as have staff to monitor court dockets and encourage disputants to refer the case to mediation. Judges could also refer cases to the NGO for mediation. Since the expected 6000 cases coming before the courts are estimated to take upwards of ten years to resolve, the creation of such a mediation NGO will serve several purposes: a) it will reduce the load on the courts and speed up the resolution of property disputes in the short-term; b) it will provide training to other mediating groups in the medium-term; and c) it will provide the basis for alternative dispute resolution mechanisms for other conflicts in Nicaraguan society in the long-term.

Two important issues must be addressed to implement the recommendations for alternative dispute resolution: 1) the impartiality of the mediators and administering organization; and 2) training for mediators. Because of the politicization and perceived partiality of most organizations in the society, the team recommends a collaborative effort between two established and respected institutions perceived as broadly representative of different political perspectives in society, such as the law school of UNAN-Leon and the graduate business school of INCAE, to develop the NGO. **In the short-term, mediation efforts by existing groups, such as the farmer associations of UPANIC and UNAG, should be encouraged and supported with training.** External training for mediators will be required initially because of limited national capacity.

III. Next Steps

Further progress in resolving the complex property issues in Nicaragua requires both short-term and long-term efforts. We suggest the following steps, in order of time urgency. Existing international programs to support these efforts are noted; however, additional international support will improve the prospects for successful completion of the program.

1) **Raise the bond values.** It is essential to provide adequate compensation to prior owners. Pending legislation to privatize Telcor and use a substantial portion of the revenues to back the bonds is currently the most promising means to increase the incentives for prior owners to accept indemnity and transfer title to the state, thus clearing the way for titling of current occupants.

2) **Establish ombudsman's office.** An ombudsman's office, as described in this report, should be opened very quickly to facilitate the work of the administrative review agencies and titling offices, and to reduce frustrations of claimants.

3) **Improve legal security for small property holders.** Greater legal security to holders of *solvencias* needs to be explored to protect legitimate occupants from eviction while awaiting formal titles. Current proposals for new property legislation offer greater protection for legitimate beneficiaries of agrarian and urban reform.

4) **Completion of administrative review process.** The current rate of review needs to be sustained to complete it by mid-1996. The UNDP project has supported the consolidation of the various property agencies into a single building, and the government created a new post, the Vice Minister of Property, within the Ministry of Finance to coordinate these efforts. Improved coordination, physical proximity, and greater access to resources is already speeding up the review process.

5) **Address grievances of ex-combatants.** Both demobilized Sandinista army and Nicaraguan Resistance soldiers expected to receive land and assistance from the government to start a new life. Delays in such assistance have led to violent confrontation in the countryside. These grievances need to be addressed.

6) **Open new courts and improve judicial capacity.** The proposed five additional courts with appropriate staff need to be opened immediately to begin dealing with the expected 6,000 litigation cases. The UNDP project provides support for staffing of the new courts. This would be complimented by a U.S. AID Administration of Justice program which aims to modernize and professionalize the judicial system, including introducing a Public Defender's Office and training NGO's and Ministry personnel in community mediation techniques.

7) **Identify and train mediators.** An alternative dispute resolution mechanism, as described in this report, could potentially remove hundreds of cases from the laborious litigation process and help reduce political and social tensions in the country.

8) **Improve titling process.** Currently, the institutions responsible for titling -- the physical and fiscal cadasters and the property registries -- are dispersed among three separate Ministries as well as the mayors' offices. These need to be integrated and modernized. Two existing programs take the first steps. The World Bank is supporting a program to provide clear titles to agrarian reform beneficiaries by modernizing the physical cadastral survey and mapping capacities, and computerizing the Property Registry system. The UNDP project supports the new Office of Urban Titling (OTU) which issues titles for urban reform properties. These and other projects need to be well-coordinated. This is a long-term process that will take years to complete, but which is essential for secure property rights in Nicaragua.

9) **Improve access to land markets.** Small farmers with inadequate access to credit, supplies, and markets for their goods are forced to sell their land in an unfavorable land market. There are some indications of a reconcentration of land ownership in the 1990s. In order for agrarian reform beneficiaries and ex-combatants to gain access to land markets, programs should be explored such as mortgage guarantees, land banks, mortgage lending directed to the poor and disadvantaged groups, and agriculture credit programs. One example is a European Union project which supports a credit delivery program using farmer organizations rather than banks.