

(h) *The Supreme Court Action*

On May 17, 1991, the Nicaraguan Supreme Court declared unconstitutional Articles 7 and 11 of Decree-Law 11-90. These two articles were thus declared "unapplicable."²⁷ The court based its reasoning on constitutional arguments: only the court system has the power to adjudicate matters, as described in Articles 7 and 11 of Decree-Law 11-90. Those provisions had tried to allocate that power to the commission.

Traditionally in Latin America, unlike the U.S., supreme courts have not declared laws unconstitutional with any degree of frequency. In some countries in the region, this has never happened. Thus, the action of the Court in this instance was aggressive. It may be that Nicaragua is developing a truly independent judiciary, one that is not afraid to check executive or legislative power.

(i) *Decree 23-91*

To address the constitutional problems of Decree-Law 11-90, the UNO government quickly prepared decree No. 23-91, dated May 24, 1991. This new decree was designed to put the review of confiscations back on track.

The introduction to that decree specifically mentioned that guarantee of property rights was essential for economic development. It also recognized the actions of the Supreme Court in declaring unconstitutional the provisions of Decree-Law 11-90 referring to the decision-making power of the National Review Commission.

Article 1 of Decree 23-91 reinstated all the constitutional provisions of the earlier Decree-Law 11-90. Article 6 asserts the power of the executive to decide matters concerning land under the government's control and possession, while recognizing that other cases remained in the purview of the judicial system. Article 7 affirms that prior decision of the Commission should be considered as recommendations to the Executive for resolution. The Attorney General was then instructed to prepare a list of cases for administrative resolution.²⁸ Finally, the Minister of Finance was instructed to draw up a plan for compensating persons deemed legally eligible for compensation.

In this way, Presidente de Chamorro has brought the claims process back to life. However, many questions remain:

- (1) What kind of payment will be made. The "confiscados" do not want government bonds. The government lacks money to pay the many claims. The "confiscados" do not want to accept the equivalent amount of land in another location because it may not be near infrastructure.

27. Sentence Number 27 of the Supreme Court, Managua, May 17, 1991, page 6 of the decision.

28. Articles 8 and 9.

One option discussed is to allow the "confiscados" to use their claims to purchase shares of state-owned businesses. Yet there are not enough state-owned businesses attractive for investment purposes to compensate everyone.

- (2) Some allege that many Sandinistas have claimed to be members of the resistance to qualify for preferential treatment in receiving land. Distinguishing among the groups is difficult.

Despite these problems, privatizations are already underway. On June 3, 1991, the government distributed 420,000 "manzanas" of land to individuals. This land was previously owned by three state-owned companies in the areas of cotton, cattle and coffee.²⁹

(j) *The position of the "Confiscados"*

In general terms, the "confiscados" argument relies on a formal reading of the Civil Code.³⁰ And, among other arguments, the most interesting position is that the confiscations violated "human rights."

Under the present constitution in Nicaragua, Article 46 adopts the "Organization of American States' American Convention of Human Rights" (sometimes called the Pact of San José). The Pact of San José, in turn, states that no person should be deprived of his property except through payment of a just indemnization, for reasons of the public interest.³¹ This, is used to justify compensation in cases of both confiscation and expropriation.

The UNO party began debating legislation to repeal Laws 85 and 86. This, however, would produce a retroactive effect on property held by "campesinos," and thus be legally suspect. Civil Code jurisdictions, including Nicaragua, do not allow for retroactive legislation. However, the notion of "reinterpreting" the constitution, as advocated by the "confiscados," could allow the National Assembly to declare the Laws 85 and 86 unconstitutional (via Article 46) and, therefore, of no legal effect. This would produce the same effect as repeal of the legislation without getting into questions of retroactivity. Politically, any move to remove the effect of Laws 85 and 86 is sensitive.

The "confiscados" also allege that confiscations and uncompensated expropriations constitute a criminal punishment, one not contemplated in the Penal Code. Therefore, the punishment should be overturned and their land returned.

Approximately 6000 cases were filed with the Commission before the government's December 31, 1990 filing deadline.³²

29. Data provided by Dr. Silvio de Franco, meeting June 20, 1991.

30. In particular, Articles 615 and 616.

31. Paragraph 2, Article 21 of the Pact.

32. U.S. Department of Commerce, unclassified cable to the Secretary of State, dated April 1991, providing an update of OPIC political risk.

(k) Decree No. 35-91:

On August 19, Presidente Violeta Barrios de Chamorro signed a new decree affecting property rights.³³ The wording of that decree began by noting the "Concertation" (social pact) taking place in the country.³⁴ It then went on to create a new public office called the "Territorial Regulation Office," under the auspices of the Finance Ministry to order property following existing law.³⁵ That office was then placed in charge of reviewing land acquisitions made under Laws 85 and 86 as well as the agrarian reform.³⁶

Interestingly, that office was given power to emit a new document: the "Solvencia de Ordenamiento Territorial" ("Territorial Regulation Receipt," or "SOT").³⁷ This new document is broken down into two classes: revisions and dispositions.³⁸

(a) Territorial Regulation Revision Receipts:

The Revision Receipt is available to recipients of property under Laws 85 and 86.³⁹ The recipient of the property must show that he got the property according to and in the spirit of the earlier legislation.⁴⁰ Persons who later receive the property from the original recipient may also submit to the process and receive the document, provided they meet the burden of proof.⁴¹

If the property received was housing, additional requirements apply: Persons who in retrospect qualify under Laws 85 and 86, and who have no other lodging for their family,⁴² will be allowed to remain on the property and will receive the "Revision Receipt."⁴³ To obtain a Revision Receipt, the owner must submit an application, with certain other documents,⁴⁴ between October 15, 1991 and June 30, 1992.⁴⁵ Organizations also can obtain Revision Receipts, provided they add to their applications documentation of their organizational structure and existence.⁴⁶

The Territorial Regulation Office has been instructed to review the applications individually, using such factors as nationality, occupation as

33. Decree No. 35-91, Aug. 19, 1991.

34. III and IV whereas clause of the preamble to Decree No. 35-91, Aug. 19, 1991.

35. Art. 1, Decree No. 35-91, Aug. 19, 1991.

36. Art. 2, Decree No. 35-91, Aug. 19, 1991.

37. Art. 6, Decree No. 35-91, Aug. 19, 1991.

38. Art. 7, Decree No. 35-91, Aug. 19, 1991.

39. Art. 8, Decree No. 35-91, Aug. 19, 1991.

40. Art. 8, Decree No. 35-91, Aug. 19, 1991.

41. Art. 8, Decree No. 35-91, Aug. 19, 1991.

42. A family is defined as the married (or in fact) father and mother (or single parent), along with the dependents children living permanently with the parent(s). See Art. 10, decree No. 35-91, Aug. 19, 1991.

43. Art. 9, Decree No. 35-91, Aug. 19, 1991.

44. Included are (a) a sworn statement of (1) faithful compliance with the law in obtaining the property and (2) of no other property ownership, (b) the original acquisition documentation (title, if issued) and identification (ex. birth certificate). See Art. 12, Decree No. 35-91, 1991.

45. Art. 11, Decree No. 35-91, Aug. 19, 1991.

46. Art. 13, Decree No. 35-91, Aug. 19, 1991.

of February 25, 1990, and whether the family still lacks alternative available housing, as well as whether the property belongs to the state, a state institution or a city.⁴⁷

In cases where the lot is 100 square meters or less, whether under Law 85 or 86, the Revision Receipt is issued immediately without fee and without further investigation, except as justice requires as viewed by the Territorial Regulation Office.⁴⁸ Lots greater than 100 square meters are subject to a stamp tax on the application.⁴⁹

(b) *Territorial Regulation Receipts:*

Disposition Receipts are a form of tax receipt used to document the payment due under Decree 36-91 with respect to land over 100 square meters received under Law 85.⁵⁰ A person must obtain the Revision Receipt before requesting the Disposition Receipt.⁵¹ As with the Revision Receipt, Disposition Receipts for 100 square meter or less lots are issued tax free.⁵²

(c) *Void Transfers and Restitution of Property:*

In cases where the property recipient cannot legally justify his receipt of the land, the property will revert to the state, and the individual may be held for civil and criminal penalties.⁵³ Further, for those not meeting the filing deadlines, there is a presumption of non-compliance with the law.⁵⁴ This presumption is extended to later acquirers of the property, whom the law presumes to have acted in "bad faith."⁵⁵ While it is not entirely clear, it appears that these are not rebuttable presumptions.

Any property returned to the state via these provisions will be turned over to the "original" owners, as a form of restitution.⁵⁶

(d) *The President's Special Commission:*

Agricultural land will be subject to a President's Commission, to be formed later.⁵⁷ This Commission will review assignments, titles and possessions made between February and April of 1990, which are within the scope of the Agrarian Reform.⁵⁸ The three member Commission⁵⁹ will

47. Art. 15, Decree No. 35-91, Aug. 19, 1991.

48. Art. 11, Decree No. 35-91, Aug. 19, 1991.

49. The value of the tax is C\$120.00, payable upon conclusion of the process. See Art. 17, Decree No. 35-91, Aug. 19, 1991.

50. Art. 20, Decree No. 35-91, Aug. 19, 1991.

51. Art. 21, Decree No. 35-91, Aug. 19, 1991; Decree No. 36-91, Aug. 19, 1991.

52. Art. 22, Decree No. 35-91, Aug. 19, 1991.

53. Art. 23, Decree No. 35-91, Aug. 19, 1991.

54. Art. 24, Decree No. 35-91, Aug. 19, 1991.

55. Art. 24, Decree No. 35-91, Aug. 19, 1991.

56. Art. 26, Decree No. 35-91, Aug. 19, 1991.

57. Art. 28, Decree No. 35-91, Aug. 19, 1991.

58. Art. 28, Decree No. 35-91, Aug. 19, 1991.

59. Art. 29, Decree No. 35-91, Aug. 19, 1991.

make its reviews based upon (a) the productivity of the land for a head of household according to its location, use and infrastructure condition, (b) the personal dedication of the beneficiary to agricultural production, and (c) the beneficiary's lack of other economic means.⁶⁰ In the case of a positive review, the Commission will advise the Office of Territorial Regulation to issue a Territorial Regulation Receipt.⁶¹ In the case of a negative review, later legislation will decide the course of action.⁶²

The same procedures can be applied to people who have received and taken possession of agricultural property via a return to the owner, a barter transaction or an indemnization by the State during these same periods.⁶³

(e) Appeals:

Appeals of decisions can be made to the Finance Ministry within three (3) days of any decision.⁶⁴

(l) Law 133:

Reacting to Decree 35-91 and the "Concertation" with the Sandinista party, the UNO-led legislature passed "Law 133." The preamble to the "law" uses partisan language to describe the "decapitalization" that occurred between February 25 and April 25, 1990, under Decrees 85 and 86.

Using language apparently lifted from briefs filed by the "Confiscados," the law refers to Article 46 of the Constitution and "human rights," declaring a guarantee for private property.⁶⁵ Similarly, as in briefs by the "confiscados," it repeats the civil code provision calling for a judicial decision to take property away.⁶⁶ The "law" goes on to revoke earlier expropriations.⁶⁷ And, it even reverses all donations and grants, in all or part, by the State or its institutions taking place after January 1, 1990.⁶⁸ Property returned to the state could be handed over to the "legitimate" (original) owners.⁶⁹

Interestingly, the "law" did provide for recognition of private ownership of property formerly belonging to the state provided certain conditions were met.⁷⁰ It also provided that legally instituted cooperatives could keep their land, while they complied with the Agrarian Reform.⁷¹ And, the law

60. Art. 30(a), (b) and (c), Decree No. 35-91, Aug. 19, 1991.

61. Art. 31, Decree No. 35-91, Aug. 19, 1991.

62. Art. 31, Decree No. 35-91, Aug. 19, 1991.

63. Art. 32, Decree No. 35-91, Aug. 19, 1991.

64. Art. 33, Decree No. 35-91, Aug. 19, 1991.

65. Art. 1, Law No. 133, Aug. 23, 1991.

66. Art. 3, Law No. 133, Aug. 23, 1991.

67. Art. 8-12, Law No. 133, Aug. 23, 1991.

68. Art. 14, Law No. 133, Aug. 23, 1991.

69. Art. 20, Law No. 133, Aug. 23, 1991.

70. Art. 18, Law No. 133, Aug. 23, 1991.

71. Art. 24(a), Law No. 133, Aug. 23, 1991.

allowed for alternative compensation (other land or time drafts) to former owners rather than the return of the original land.⁷²

(m) Chamorro's Response

On August 29, President de Chamorro sent a public letter to the National Assembly. That letter, couched in terms of a civics lesson, reminded the legislature that bills did not become law unless signed by the President. "Law" 133 had not yet been signed or vetoed, and thus was not "law" in Nicaragua. The President lamented the confusion the nomenclature caused with the people and requested that the President of the National Assembly correct the misconception.

Since that time, the Sandinista party and the President agreed that new legislation should not retroactively revoke property rights, stating that this move would create chaos among the peasantry. Consequently, the President used her veto power to stop Law 133. This means that the law existing before Law 133 is still valid.

As of this date, it remains to be seen whether the National Assembly will override the veto.

3. *Politics and the Law in Action*

It would be difficult to overestimate the emotion in Nicaragua concerning this issue of land.⁷³ Catholic Nicaraguan Bishop Oswaldo Mondragon recently proclaimed that the earth was "donated by God for all men, not only for a few, but for the human species. If property becomes an obstacle to collective prosperity, the common good demands expropriation."⁷⁴ Capitalist theory has been invoked to advocate both security of ownership (as noted by the "confiscados") and free, unrestricted access to the factors of production, including land (as noted by the Sandinista adherents). The heart of Leninist idealism, used by some Sandinistas in the 1980's, is "land to the tiller." A.I.D. policy itself advocates "democratization" and "participation." Dr. Daniel Núñez, Sandinista member of the National Assembly, states that the "campesinato" of Nicaragua, more than anything, simply wants "access to land." And scholars have long debated how to better distribute the world's resources.

In Nicaragua, the problem has reached a stage reminiscent of the French revolution.⁷⁵ Graffiti that refers not only to property rights, policy

72. Art. 25 and 26, Law No. 133, Aug. 23, 1991.

73. Majorie Miller, "Sandinistas Want to Keep their Farms," *Los Angeles Times* (March 6, 1990), p. 14, Part A, Col. 1, reports that land should become the front line in another war under the post-revolutionary government. Miller states "Nicaragua's rich black farmland is one of the most emotional issues facing the government of President-elect Violeta Barrios de Chamorro, and potentially the most violent."

74. CEPAD, Nicaraguan Newsbrief, Vol. 1, No. 10, June 15, 1991.

75. The French Revolution was an analogy used by John Young, Carana Corporation, in a meeting with him in Managua, June 17, 1991. Lindsey Gruson, "Ex-Contras, Citing Broken Promises, Seize Land and Talk Again of War," *The New York Times* (October 29, 1990) p. 3, Section A, Col. 1, reports that "The discontent, particularly over the Government's failure to fulfill pledges of land redistribution, has led to a

and law, but to specific decree numbers can be seen in the streets. Tomás Borge, an ardent leader of "Sandinism," admits that there may have been abuses.⁷⁶ One of the leaders of the "confiscados," a seventy year old man, was shot in Matagalpa.⁷⁷ "Campesinos" occupied government buildings to demand titles, and, using guns, other "campesinos" took over a radio station and began broadcasts against the UNO party.⁷⁸ Since the beginning of June, "Recontras" (rearmed "contras") killed the chief of police of San Rafael del Norte and his secretary, and have rioted and attacked houses, a cooperative and a town.⁷⁹

It is difficult to know the exact amount of property taken or the levels of abuse. The Sandinistas destroyed at least some documentation upon their election loss. Because of Sandinista giveaway programs and a property registration system done by hand,⁸⁰ the government does not always know who owns what or whether a particular farm is already being worked.⁸¹ The land issue, being of central importance in public debate, is subject to data manipulation and hyperbole by advocates, conservative and liberal.⁸² Thus, in my view, empirical data regarding the legal status of land should be used with suspicion, no matter the origin.

Civil law has traditionally preserved rights of property ownership. The French and Spanish did so for very good reasons. Persons who have security of ownership invest in their property, making it and society as a whole more productive. They are encouraged to continue to work, knowing they can keep their gains. Therefore, in capitalist market systems, several policies lead us to conclude that property should be protected and is generally a "good idea."

However, conservatives and Sandinistas alike mention the illegitimacy of formal law in Nicaragua today. At the time of the revolution, some (mostly the poor, some intellectuals and some Christians) felt that the law

rising spiral of violence and retaliation and could drive thousands of former rebels to take up arms and return to the mountains just months after their demobilization."

76. See Borge reconozco que hubo abusos," *La Prensa*, Monday, June 17, 1991, p. 1, col. 4-6.

77. "Asesinan a asesor de confiscados en Matagalpa," *La Prensa*, June 17, 1991, p. 1, col's. 1-3.

78. "FSLN renueva violencia," *La Prensa*, June 18, 1991, p. 1, col's. 5-6. "Se toman Alcaldía para exigir títulos," *El Nuevo Diario*, June 19, 1991. In a letter dated May 24, 1991, signed by eleven national religious leaders in Nicaragua, including two bishops, addressed to the Stated Clerk, 203rd General Assembly, Presbyterian Church (USA), the authors contend the poorest of the Nicaraguans have begun to lose hope for their country and for a recovery after the long war.

79. CEPAD, *Nicaraguan Newsbrief*, Vol. 1, No. 10, June 15, 1991.

80. Quite serious problems have occurred due to the manual nature of the recording process. In two jurisdictions, property registration records have been completely destroyed. This has caused a 100% loss of data. New registries had to be set up and information had to be collected to determine tenancy. Of course, this information will be second hand information and not as reliable as the original record. One can imagine the disputes this causes.

81. Shirley Christian, "Panicky Need for Farm Land Leads Nicaraguan Peasants Into Fatal Clash," *The New York Times* (March 6, 1991), p. 3, Section A, Col. 1.

82. Roberto Menéndez, the Argentine administrator of the program for demobilized rebels run by the Organization of American States asserts that "It's a feature of Nicaraguan culture to exaggerate... to pressure and achieve a certain objective." Lindsey Gruson, "Ex-Contras, Citing Broken Promises, Seize Land and Talk Again of War," *The New York Times* (Oct. 29, 1990), p. 3, Section A, Col. 1.

had been used not to promote work, investment or savings, but rather as a tool of a few to dominate the many.⁸³

In short, a sort of feudalism was perceived to exist: the original purposes for the rule of preserving property ownership were lost. In the Sandinista view, the economic structure, anti-democratic in nature, was supported by the legal structure. Interestingly this has a parallel in Peru, as noted by Hernando de Soto in *El otro sendero*. The purpose of the law changed from promotion of investment and personal industry, to consolidation of wealth and power by a few.

Possibly for this reason, the Sandinistas did not concern themselves with reforming the old order, but concentrated on establishing a new order of "revolutionary" law. At last, the peasantry was given at least some access to land, which in their view was "just" compensation for years of oppression.

This access, however, came at the expense of not only followers of Somoza, but also at the expense of persons who were simply ordinary property owners. For these persons, the so-called "confiscados," to the extent they were not compensated for their land, there was no justice in the new legal system either. Thus the "confiscados" viewed the Sandinista legal order as "unjust."

To correct the perceived injustices, the "confiscados" are using the tools of the legal system to gain political ends. And, on the surface, these rules appear to be consistent with capitalistic norms of property ownership, fair compensation and market practice. Yet, the Sandinistas view these same rules as a means by the conservatives to return to a feudal society in which property is returned to the few, and the poor are again outside democratic society.

Another curious feature of this debate is that it is taking place not in the courts but in the National Assembly and the press. When the Sandinista law was originally passed, landholders could have gone to the courts, using a writ of "amparo," to get a court decision regarding the constitutionality of the law. In Nicaragua, as in most Latin American countries, the writ of "amparo" is a quick procedure. For a variety of reasons, this was not done within the time limits required.

83. Many members of the Sandinista party were Christians, despite the tendency in the press to characterize them as "goodless communists." One member of the Sandinista Junta was a Catholic Priest. President Jimmy Carter, himself a devout Christian, felt so strongly about human rights abuses that he cut off support to the Somoza dictatorship. For this reason, he was welcomed by all sides as an observer in the most recent elections. J. Hodis, *Development of agrarian reform and present situation of agricultural cooperatives in Nicaragua* (1990) report that under Somoza, land was increasingly concentrated in the hands of the largest landowners and small farmers were pauperized. J. L. Gould, *To lead as equals: rural protest and political consciousness in Chinandega, Nicaragua* (1990) reports that the peasantry moved away from extreme dependency on the patron to achieve an autonomous social and political under the Sandinistas. After years of struggle with landlords and Somoza's National Guard, many peasants realized that their goals of radical agrarian reform could be achieved only through a revolutionary alliance with the Sandinista National Liberation Front (FSLN). C. D. Brockett, *Land power, and poverty: agrarian transformation and political conflict in Central America* (1990) maintains that the extraordinary concentration of land ownership and the entrenched position of a small but powerful land-based elite have long been regarded by both reformers and revolutionaries in Central America as primary causes of the impoverishment of the rural majority and as fundamental obstacles to the sustained, just development of their societies.

Nevertheless, landholders still have the opportunity to challenge the legislation in court now. However, to do so, they must use the ordinary judicial process. This means a trial court decision, followed by a review at the court of appeals, and then finally the Supreme Court would hear the case.

For this process to take place, the "confiscados" would have to pay attorneys and would probably have to wait at least for resolution of the matter. Going to the National Assembly and the press requires no legal services nor does it imply that there will be a guaranteed year delay. And, all, the matter is a political question and may be more appropriately decided by the legislature and the people.

Everyone seems to agree that, in the best of all possible worlds, non-Somoza property owners should have received compensation for their properties taken under the Sandinista government. Yet, Nicaragua cannot afford to pay for the lands. Further, former property owners do not want to accept government bonds as compensation, and therefore insist on the return of the original property.

Having mentioned all in the insecurity of ownership, it should be clarified that it is possible, legally, in Nicaragua today, to purchase property, receive title and be confident of ownership. Legally, to purchase land, as stated above in the outline, the property should be duly registered. The property should also be inspected to insure that no one currently occupies the lot. If these conditions are met, in practice Nicaraguan law would recognize the ownership rights. Whether this works was not investigated.

In short, in the debate as currently presented, we are left with the question of whether (1) the "campesinos" should retain the land, at the expense of former owners, or (2) should the land be returned to the former owners, leaving the poor out and returning to an economy perceived to be more feudalistic than capitalistic. Either way the system will suffer again from the accusation of illegitimacy. And each side will accuse the other of "illegal" actions.

One tragedy of the public debate is that it centers on who, in a legal sense (and here you must decide whether the form is Sandinista, with its relevant decrees, or "Somocista" with the Civil Code and formal requirements), owns property. The better question is who *should* own property.

If the original goals of the Civil Code are to be achieved—investment, savings, personal industry—the Nicaraguans should seek to establish property ownership that will promote these goals, and not seek blindly to follow a set of rules that may have lost their purpose. If the debate were framed in this fashion, energy would be spent on finding economic solutions and areas of agreement, rather than using rules of law that lack a perception of agreement and sowing dissension among a population already filled with hatred and distrust after an unfortunate civil war.

Conversely, however, if former property owners are not compensated in some fashion, it may undermine the country's attempt to create an environment that fosters savings, work and investment. People will want

to save, work and invest only if they feel their efforts will be rewarded and that they will be able to keep that reward. This perception is based in part on experience. Thus, not providing compensation to former land-owners may prove to be a disincentive for future persons to save, invest or work.

Public debate is flawed due to a fundamental lack of access to information. The Commercial Code and Code of Civil Procedure are out of print and unavailable to the public. The famous court decision regarding the unconstitutionality of Decree-Law 11-90 is very difficult to get,⁸⁴ and I have my doubts about the number of journalists who have ever read it, let alone members of the public. Actual texts of decrees are difficult to find. This is not common practice in the U.S. or Latin America.⁸⁵

Possibly one of the most influential "legal" documents is not even part of the Nicaraguan legislation—the "protocólogo" for transition government, entered into by UNO and the Sandinistas. Each side alleges that the other has violated the "protocólogo" from time to time. Interestingly, the National Assembly has never voted on the private agreement between the parties, and thus the document lacks the force of law. In effect, it is a gentlemen's agreement between fierce political rivals.

The "protocólogo" has an important political effect, however. The Sandinistas can use it to de-legitimize measures proposed by UNO, possibly with just cause. UNO can also use it to tell its most conservative constituents that its hands are tied and that it must act in a certain way, without the backlash for "selling out" to the Sandinistas, possibly with good reason.⁸⁶

The use of a "protocólogo" is not unique to Nicaragua used such an "extra-constitutional" document to resolve an electoral crisis in that country when the vote was split between one conservative candidate (who won a plurality) and two liberal candidates. In that instance, the liberals together had more votes than one conservative candidate. A political "deal" was struck with a type of "protocólogo" for a transition of power not unlike in Nicaragua.

To date, the police have been reluctant, at best, to enforce court-ordered property reallocations. **Land invasions** have been disruptive and have created property insecurity. In other words, having title, or getting a political decision and a court order still does not mean obtaining the property.⁸⁷

84. I got a copy from someone who has a friend who works at the Courts. It was not otherwise published.

85. In Venezuela, for example, street vendors sell copies of the actual text for anyone to purchase, usually for less than a dollar.

86. Still, the "contras" themselves were in favor of a written accord with the Sandinistas. See Tracy Wilkinson, "Contras Seek Guarantees on Demobilizing," *Los Angeles Times* (March 6, 1990), p. 1, Part A, Col. 5.

87. It is interesting legal question to consider what happens in a legal system when the law gives you the right to property, but the government does not guarantee access. In some cases, Sandinista groups have seized land given to large corporate farms. "[T]he seizure of plantations has shaken the confidence of big growers," reports Richard Boudreaux, "Nicaraguan's Main Corp is in Turmoil," *Los Angeles Times* (June 7, 1990), p. 1, Part A, Col. 1. Boudreaux quotes Agriculture Minister Roberto Randon as saying "If there is a situation of instability, the producer will not invest, and we need his investment to come out ahead." The U.S. Department of Commerce, in a cable to the Secretary of State, dated April, 1991, regarding an update of

Many land-related questions remain for the government: (1) where do you put the former "contras" so that they will not again take up arms?; (2) where do you put the thousands of still landless "campesinos"?; (3) assuming there is agreement on who should own the land, and assuming compensation to the present (or past) owners should be made, how can an indebted nation pay for it?; (4) assuming the land can be assigned to a beneficiary in an agreed-upon fashion, and assuming compensation can be paid, how do you evict the present occupants?

Until these political, democratic and economic matters are resolved, landholders will continue to be uncertain about their security in the land and the legal system will suffer from accusations of illegitimacy. Normally, holding a title would provide the landholder with a reasonable degree of legal certainty of ownership. However, the situation in Nicaragua is such that legal title does not necessarily convey property ownership *security*. Thus, the normal benefits of titling—increased access to credit,⁸⁸ liberated land markets, increased investment, and so on—will be difficult to get, even if the property is duly titled and recorded.

Both sides of the debate will eventually be forced to engage in "real politik." Whatever "rights" each side has must be compromised so that the country can get on with other matters. This will be a political deal, and may only be influenced by the existing law and not dictated by it.

In one sense, the debate takes on the air of artificiality—as if there were not enough land for everyone. Unlike El Salvador, Nicaragua has lots of land. The problem is not compensating "confiscados" with the same quantity of land as they had before—there would be enough land to do just that. The problem is that everyone wants land closest to infrastructure. Also, everyone wants the top quality land.⁸⁹ Thus, the problem is not the quantity of land, but its quality and location.

Distribution of land as compensation should be distinguished from general land reform projects. The former is a means of discharging an obligation.⁹⁰ The latter is the first step toward bringing the disadvantaged into the economy. Logically, land distribution for this purpose also should include appropriate technology transfers and access to credit and credit

OPIC political risk, reports "As most police officials are holdovers from the Sandinista administration, they have been unwilling to enforce the original owners' property rights. Police have refused to enforce property rights..."

88. Anecdotal evidence in conversations I have had during my visit to Nicaragua indicate that credit sources over the past ten years have not wanted land as collateral. Interestingly, creditors have preferred crops as collateral. An empirical study of this phenomena would be quite interesting.

89. With the exception of some land near the Honduras boarder, most of the land outside the west coast is inferior in quality. Shirley Christian, "Panicky Need for Farm Land Nicaraguan Peasants Into Fatal Clash," *The New York Times*, (March 6, 1991), p. 3, Section A, Col. 1, reports that the most of the pressure for land is in the rich and pleasant coffee mountains of the northwest. Most of those looking for land grew up there and do not want to leave. Likewise, most of the contras came from this region.

90. There is a feeling that land distribution alone has not been an effective tool to promote campesino agrarian production. Unfortunately, Dr. Iván García Marengo (former Director of INRA under the Sandinista Government, currently with ITZTANI) informs me that no comprehensive, reliable statistics or estimates of land distribution under the UNO government are available. Thus, we are unable to confirm the number of relocated contras and confiscados, or to test whether they are staying and actually utilizing the land they receive.

institutions. As a result, agrarian reform is very distinct from land distribution merely to discharge the government's indebtedness. Ample land supplies may make land distribution easier: it will not automatically make agrarian reform easy to do.

In a broader sense, the land crisis can be seen as part of the **democratization process** in Nicaragua. Nicaragua is a country with no democratic history. The Sandinista government under Daniel Ortega was the first in Nicaragua's history to turn over power in a civil fashion. Nicaragua's leaders, both on the left and on the right, are just now learning how to work together and to recognize that the opposition can play a role in government. Thus, at least part of the land crisis depends on this political learning process.