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Competing Claims: The Struggle for Title in Nicaragua

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Competing Claims: The Struggle for Title in Nicaragua

ABSTRACT

Nicaragua's Sandinista Revolution of the 1980s left the country's property scheme in a state of disarray. For eleven years, the leftist Sandinista government instituted mass land confiscations and agrarian reform that caused many individuals to lose their property and flee the country. The transition to democracy begun in 1990 has been a difficult process for the country's new presidents who have been forced to reconcile competing claims and fight corruption from within their own ranks. In this Note, the Author examines the property legacy created by the Sandinista Revolution. With another round of presidential elections scheduled for November 2006, the Author also examines whether Nicaragua will be able to escape the wave of leftist leaders who have emerged successful in recent elections throughout Latin America. With the international community once again focusing its attention on Nicaragua, the Author suggests that the country must finally resolve the status of its land titles in order to attract foreign investment and increase its prospects for lasting democracy.

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I. INTRODUCTION

In many ways, Nicaragua's entire turbulent history over the last century can be characterized as one large property dispute. As a nation of 5.6 million people in Central America,¹ Nicaragua's household poverty index of 63%² places it among the poorest nations in the Western Hemisphere.³ As in many parts of the developing world, the concentration of Nicaragua's wealth in the hands of a small minority had, up until the Sandinista Revolution of 1979, historically deprived the majority of the nation's citizens of the ability to own land.⁴

The Sandinista Revolution brought Nicaragua much more than just land reform, however, as it sparked a decade-long civil war that resulted in the deaths of thousands of Nicaraguans and a national economy crippled by massive debt and utter ruin.⁵ Depending on one's point of view, the situation in Nicaragua at the end of the Sandinista Revolution in 1990 was either much better, or much worse, than it was in 1979 when the violence first began.⁶ Political biases aside, however, there was no arguing with the fact that the country's economy was in shambles both before and after the Revolution.

1. U.N. Econ. Comm'n for Latin Am. & the Caribbean, *Statistical Yearbook for Latin America and the Caribbean* 2003, 129, U.N. Doc LC/G.2224-P (May 2004).

2. *Id.* at 53.

3. See generally Jules Lobel, *The Meaning of Democracy: Representative and Participatory Democracy in the New Nicaraguan Constitution*, 49 U. PITT. L. REV. 823, 844 (1988) (discussing poverty in Nicaragua).

4. See J. David Stanfield & Steven E. Hendrix, *Ownership Insecurity in Nicaragua*, 22 CAP. U. L. REV. 939, 941 (1993).

5. Hunter R. Clark & Amanda Velazquez, *Foreign Direct Investment in Latin America: Nicaragua—A Case Study*, 16 AM. U. INT'L L. REV. 743, 792 (2000–2001).

6. Compare Roberto Gargarella, *Distributing Ownership of the Land: The Alternatives Facing the New Democratic Government of Nicaragua*, 22 CAP. U. L. REV. 873, 885–86 (2003) (arguing that because of Somoza's prolonged looting of the Nicaraguan treasury, Nicaragua's social development indicators actually improved under the Sandinista regime despite the nation's civil war), with Clark & Velazquez, *supra* note 5, at 793 (detailing how, in 1989, "Nicaragua was poorer than it had been a decade earlier").

Exhausted from eleven years of violence, yet left with little in the way of lasting reform, Nicaragua found itself faced with two dilemmas at the end of the Sandinista Revolution in 1990. Not only was the nation faced with accomplishing the Revolution's initial goal of providing for the poor, but it was also charged with correcting the illegal actions taken by the Sandinista leadership that ran afoul of the rights guaranteed by Nicaragua's Constitution, and even the Sandinistas themselves, at least on paper.⁷ While Nicaragua has been forced to address many of the legacies of its civil war and the Sandinista-led Revolution over the last fifteen years, the Sandinistas' property schemes have been the most difficult to confront.⁸ Indeed, as former Secretary of State James Baker once remarked, "the investment community is going to take one more look at Nicaragua If [it doesn't] have policies in place by then or at least don't show that [it is] creating an environment for investment, they're going to go somewhere else."⁹ As Nicaragua continues its attempts to structure its property law in a way that reconciles the country's colonial and revolutionary pasts with its democratic future, attracting foreign investment can be a tall order.

With this in mind, this Note will begin by examining the historical origins of the Somoza dynasty and the Sandinista Revolution. Part III of this Note will then examine the radical changes Nicaraguan property law experienced during the Sandinista Revolution. Part III will also analyze the efforts made by Nicaragua's three post-1990 democratic governments to reconcile the Sandinistas' expropriations and other land confiscation policies with the claims of dispossessed original landowners. Part IV will then briefly discuss the upcoming November 2006 presidential election, as well as the development opportunities that may result if the nation is finally able to attract much-needed foreign investment.

II. HISTORICAL BACKGROUND

A. *The Somoza Years*

While the nations of Latin America have often been ruled by military dictators since their independence, few have suffered from the long-lasting effects of a family dynasty like Nicaragua.¹⁰ Indeed,

7. See O. Herodocia Lacayo, *The Current State of Nicaraguan Property Law*, 22 CAP. U. L. REV. 839, 842-43 (1993).

8. Clark & Velazquez, *supra* note 5, at 768-69.

9. See *id.* at 769 (citing Steve Fainaru, *Rightist on Way to Victory in Nicaraguan Elections*, BOSTON GLOBE, Oct. 22, 1996, at A1, available at LEXIS, Nexis Library, Major Newspapers File).

10. Gargarella, *supra* note 6, at 885.

no matter how one feels about the property confiscations and other actions undertaken by the Sandinista government, the root of Nicaragua's current property crisis is almost always attributed to the Somozas.¹¹ After decades of corruption under the Somozas—during which the Nicaraguan treasury, land, and other resources were all exploited for the benefit of a select few—the severity of the Sandinista policies can only be described as a reaction to the Somoza years.¹² “The government of the Somoza regime is a clear example of how a criterion that puts forward ‘the increase of wealth’ can lose its legitimacy . . . when it is completely disconnected from improvements in health care, education and the diet of the rest of the society.”¹³

The “Somoza dynasty,” as it has come to be known,¹⁴ formally began with the support of the United States when General Anastasio Somoza Garcia assumed control of the country in 1937.¹⁵ Although Somoza Garcia ruled Nicaragua for nineteen years during a time when fascist leaders were generally disfavored on the world stage, the support Somoza Garcia received from the United States allowed him to remain in power.¹⁶ Having studied in the United States, Somoza Garcia had early visions of continuing his dictatorial legacy when he sent his two sons to the United States to study.¹⁷ It was the oldest of these sons, Luis Somoza Debayle, who assumed control of Nicaragua following Somoza Garcia's assassination in 1956.¹⁸ Anastasio Somoza Debayle, Somoza Garcia's second son, and perhaps the most infamous member of the Somoza dynasty, served as commander of the National Guard, and assumed the presidency in 1967.¹⁹

Despite the Somozas' totalitarian tactics, Nicaragua's economy saw marked growth during the forty-plus years they were in power.²⁰ Fueled by international instability and a high demand on the world market, Nicaragua's exports of cotton, sugar, meat, and seafood increased exponentially during the 1950s.²¹ Nicaragua's fortunes, however, did not translate into gains for the nation's population at large.²² While foreign capital flowed into Nicaragua, it failed to reach the impoverished majority of Nicaraguans.²³

11. See *id.* See generally Clark & Velazquez, *supra* note 5, at 784–89 (describing the Somoza dictatorship).

12. See generally Clark & Velazquez, *supra* note 5, at 792–94 (describing the Sandinista regime's actions after they came into power).

13. Gargarella, *supra* note 6, at 885.

14. Clark & Velazquez, *supra* note 5, at 785.

15. *Id.*

16. *Id.* at 785–86.

17. *Id.*

18. *Id.* at 786.

19. *Id.* at 786–87.

20. Gargarella, *supra* note 6, at 885.

21. *Id.*

22. *Id.*

23. *Id.*

[I]n spite of a gross domestic product that rose during [the 1950s] by 250%, the rapid economic expansion was not transferred into an equally rapid improvement of social indicators. At the end of the boom, the indices for literacy, infant mortality and life expectancy were among the worst in Latin America.²⁴

Indeed, the Somozas' greed only appeared to worsen as power passed from one Somoza to the next, and "[l]ike their father, the sons constantly added to the family's wealth."²⁵

The Somozas ultimately carried their graft too far, however. In December 1972, massive earthquakes hit Nicaragua's capital city of Managua, resulting in the deaths of over ten thousand people.²⁶ Various nations, including the United States, responded to the disaster with millions of dollars in aid money, which was quickly pocketed by Anastasio Somoza Debayle.²⁷ U.S. President Jimmy Carter was a strong proponent of human rights, and the United States was thus unwilling to continue supporting Somoza Debayle when he was swept from power by the Sandinistas on July 20, 1979.²⁸

B. *Revolution and Sandinista Rule*

Drawing their name from a 1930s-era foe and eventual victim of General Somoza Garcia,²⁹ the Sandinista National Liberation Front (FSLN) was the political reincarnation of a terrorist organization the Somozas had long since disregarded.³⁰ Following nearly half a century of self-enrichment by the Somozas, the main goal of the FSLN was to improve the conditions of the impoverished majority of Nicaragua's citizens.³¹ While many have argued that the Sandinista Revolution was fundamentally socialist in its philosophies, and that "the Sandinistas abandoned all pretense of pluralism and incrementally initiated a totalitarian, Marxist-Leninist state that was modeled after Cuba and aligned with the Soviet Union,"³² this view has not been universally accepted. Instead, others have argued, the primary force behind the 1979 overthrow of Somoza was the leader's unbridled greed, and that in actuality "[t]he FSLN . . . sought to ensure that the needs and interests of the working class and peasantry [were] dominant in all aspects of Nicaraguan life, yet at the same time [it sought] to maintain the political, economic and

24. *Id.*

25. Clark & Velazquez, *supra* note 5, at 787 (citing ENRIQUE BOLANOS GEYER, EN POCAS PALABRAS—: NICARAGUA: 165 AÑOS DE VIDA INDEPENDIENTE 20 (1987)).

26. *Id.* at 788.

27. *Id.* at 788–89.

28. *Id.* at 789.

29. *Id.* at 784–85.

30. *Id.* at 790–91.

31. *Id.* at 790.

32. *Id.* at 792.

cultural space for capitalist relations.”³³ It is this dual purpose, it is argued, that allowed the FSLN to draw support not only from the poorest sectors of Nicaraguan society, but also from the middle-class “anti-Somocista” elements as well.³⁴ This view is certainly helpful in explaining why the middle class, which would clearly disfavor pure Marxism, was nonetheless extremely grateful to the FSLN for sounding the death knell of the Somoza regime.³⁵

The difficulty one experiences in labeling the FSLN’s precise political underpinnings is perhaps the result of its inability to keep up with its overnight transition from guerilla terrorist organization to ruling political party. Indeed, while the FSLN undertook a rapid nationalization of both Nicaragua’s major industries and privately-held property, it was not always accomplished by strict adherence to parliamentary procedure.³⁶ Although the FSLN passed a dizzying number of decrees and acts that placed 35% of the nation’s private property under its control,³⁷ it neglected to amend the Nicaraguan Constitution of 1974 that upheld the right to private property and stated that all other laws were subordinate to this fundamental right.³⁸ This fact has led some to suggest that “the [FSLN] confiscatory laws, decrees and resolutions . . . 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 [did] not change[] one iota during the [Sandinista Revolution].”³⁹

Despite the technical legal justification behind such logic, the clear reality is that the Sandinista years did change Nicaraguan property law in a great number of ways. FSLN decrees and land reform policies resulted in a protracted ten year civil war that raged on through the final days of the Cold War.⁴⁰ Additionally, even though the end of Nicaragua’s Revolution coincided with the FSLN’s political loss in the February 1990 presidential elections, the Sandinistas remain a political party in Nicaragua today.⁴¹ As such, the FSLN continues to play a role in supporting its property confiscation policies of the past, even as subsequent administrations work to undo the great legal uncertainties they have caused.⁴²

33. Lobel, *supra* note 3, at 841.

34. *Id.*

35. *See id.*

36. Lacayo, *supra* note 7, at 841–42.

37. Clark & Velazquez, *supra* note 5, at 768.

38. Lacayo, *supra* note 7, at 841–42.

39. *Id.* at 842.

40. Clark & Velazquez, *supra* note 5, at 790–92.

41. *Id.* at 794–95.

42. *Id.* at 794–96.

C. Transition to Democracy

Following the defeat of the FSLN in the February 1990 elections, Nicaragua began on its long path to both democracy and reconstruction.⁴³ The FSLN was driven from power by the fourteen-party United Nicaraguan Opposition (UNO) coalition headed by Violeta Barrios Chamorro, the widow of an assassinated newspaper publisher who had been a vocal critic of the Somoza regime. "Chamorro inherited a virtually bankrupt economy."⁴⁴ Still, during her six years in office, Chamorro spearheaded a monumental effort to rectify the illegalities committed by the FSLN, heal the wounds caused by the nation's protracted civil war, and bring much-needed foreign investment back to Nicaragua.⁴⁵

While the reform policies of the post-Sandinista administrations will be examined in greater detail below, it is agreed that no administration has been able to conclusively deal with this ongoing dilemma.⁴⁶ Indeed, "because the Chamorro administration failed to resolve the issue of property ownership, it . . . remain[ed] one of the biggest problems"⁴⁷ faced by Nicaragua's second post-Sandinista democratically-elected president, Arnaldo Aleman of the Liberal Coalition.⁴⁸ Aleman's five-year term expired in 2002 and—under the supervision of large-scale international elections monitoring—Nicaragua succeeded in choosing a third democratically-elected president, Enrique Bolaños.⁴⁹

The 2001 election of Liberal candidate Bolaños was watched with special interest around the world because Bolaños was opposed by the FSLN leader, and former guerilla fighter, Daniel Ortega.⁵⁰ Although the voting process was familiar to Nicaraguans in 2001, the election was not without contest.⁵¹ Following the pronouncement of Bolaños as the winner of the election, Ortega and the FSLN raised challenges in the Nicaraguan courts. The results were briefly overturned by an appeals court before Bolaños' victory was ultimately declared by the Nicaraguan Supreme Court.⁵² While the eventual outcome of the

43. See generally ALMA GUILLERMOPRIETO, *THE HEART THAT BLEEDS: LATIN AMERICA NOW* 23–46 (Knopf 1994).

44. Clark & Velazquez, *supra* note 5, at 794; Violeta Chamorro, Wikipedia, http://en.wikipedia.org/wiki/Violeta_Chamorro (last visited Apr. 18, 2006).

45. Clark & Velazquez, *supra* note 5, at 794–95.

46. *Id.* at 768–69.

47. See *id.* at 768.

48. *Id.* at 795–96.

49. See DAVID R. DYE & SHELLEY A. MCCONNELL, *THE CARTER CENTER, OBSERVING THE 2001 NICARAGUAN ELECTIONS: FINAL REPORT (2002)*, available at <http://www.cartercenter.org/documents/1027.pdf>.

50. *Id.* at 10.

51. See *id.* at 27–28.

52. *Id.*

2001 presidential election reassured proponents of Nicaraguan democracy, the event also demonstrated the fragility of the country's political system and the continued viability of the FSLN as a political force in Nicaragua.⁵³ Indeed, international elections monitors observed that "[a]lthough Nicaragua has successfully conducted a series of democratic national elections, making alterations in the election law and system before each vote . . . the changes have not led to cumulative progress."⁵⁴ Furthermore, the Bolaños-Ortega struggle following the 2001 election once again highlights the enormous obstacles faced by Nicaragua's post-1990 democratic administrations in settling key legal matters.

First and foremost among these unresolved issues, of course, is Nicaragua's property crisis. As discussed in the next Part, it is clear that the ability of the nation's leaders to address the property dilemma is hopelessly lost among the political turmoil that continues in Nicaragua.⁵⁵ It was following the FSLN's 1990 electoral defeat, in fact, that the Sandinista leadership committed some of its most egregious property violations, "award[ing] land to people who were not eligible," through means that have been "viewed as illegitimate by most political groups."⁵⁶ Although President Chamorro promptly took steps to address these violations, she was understandably constrained in the amount of power she could exercise as the first democratically-elected president following more than a decade of bloody conflict.⁵⁷ These factors, when combined with the FSLN's continued political existence and support for its own confiscatory policies, have created a very difficult atmosphere for conclusively resolving the property issue.⁵⁸

Although some attention has been given in the relevant literature—by means of discussion—to the property legislation enacted by the FSLN,⁵⁹ little effort has been made in the United States to actually translate and examine the key provisions of this legislation in an effort to better understand the legacy it has created in Nicaragua. Because of advancements in technology, namely the creation of the electronic database maintained by the Nicaraguan National Assembly,⁶⁰ access to past and present legislation is now easier than ever before. It should be noted that all translations from the Nicaraguan Civil Code and other executive orders found below

53. See *id.* at 24–29.

54. *Id.* at 29.

55. See generally Stanfield & Hendrix, *supra* note 4, at 948–49.

56. *Id.* at 948.

57. See *id.* at 949–50.

58. See *id.* at 958–63.

59. See Stanfield & Hendrix, *supra* note 4; Gargarella, *supra* note 6; Lacayo, *supra* note 7.

60. See Asamblea Nacional de Nicaragua, Portal Legistivo Nicaragua, <http://www.asamblea.gob.ni> (last visited Apr. 2, 2006).

are those of the Author, but have been made in an effort to fully demonstrate the substance of these important provisions. In addition to the FSLN legislation, the next Part also examines the measures taken by the three democratically-elected post-1990 administrations to remedy the property crisis created by the Sandinistas.

III. ANALYSIS: THE POLITICS OF PROPERTY

A. *Property Reform Under the Sandinistas*

1. First Steps

Although the Sandinistas were able to gain control of Nicaragua in July of 1979, the last leader of the Somoza dynasty refused to leave without a fight. On September 11, 1978, President Anastasio Somoza Debayle issued Executive Decree Number 3, in which he declared the commencement of a thirty-day period of martial law in the zones of Masaya and Estelí, both of which are located just south of Managua.⁶¹ Describing the decree as necessary to combat “acts of terrorism, arson, assassination and other crimes punishable by law,” including the destruction of public property, Anastasio Somoza Debayle issued an official thirty-day suspension of “all constitutional guarantees” in the Departments of Masaya and Estelí.⁶² The initial limited declaration of martial law in these zones was expanded just two days later, on September 13, 1978, to cover the entire country.⁶³

In this second decree of martial law, Anastasio Somoza Debayle justified his actions by citing armed attacks, which he alleged had occurred in virtually every major city and town in Nicaragua in the days preceding the decree.⁶⁴ With a touch of irony, however, Anastasio Somoza Debayle suspended Nicaraguans’ constitutional guarantees as the result of a “campaign of public agitation and subversive propaganda” begun by groups he labeled as “oppos[ite] to Nicaragua’s constitutional regime.”⁶⁵ To this end, the President explained the supposed discovery of foreign elements that had penetrated the country, consisting of both Nicaraguans living abroad and foreign mercenaries who sought to introduce communism into

61. Decretos Ejecutivos No. 3, 11 Sept. 1978, *Decrétase Ley Marcial en Masaya y Estelí* [Declaration of Martial Law in Masaya and Estelí], *La Gaceta* [L.G.], 11 Sept. 1978 (Nicar.).

62. *Id.*

63. Decreto Ejecutivos No. 56, 13 Sept. 1978, *Decrétase Ley Marcial en Toda la Republica* [Declaration of Martial Law in the Entire Republic], *La Gaceta* [L.G.], 18 Sept. 1978 (Nicar.).

64. *Id.* ¶ 3.

65. *Id.*

Nicaragua's otherwise "democratic institutions."⁶⁶ Anastasio Somoza Debayle supported his expanded decree of martial law not only with his concern for Nicaragua and its constitutional democracy, but also with his self-proclaimed duty to protect the Western Hemisphere from "the recognized proponents of international communism."⁶⁷

Despite Anastasio Somoza Debayle's decrees of martial law and other attempts to perpetuate his family's control of Nicaragua, the international community failed to protect him from the Sandinista takeover the following year. Just two days following the overthrow of Anastasio Somoza Debayle, the Sandinista leadership, led principally by Daniel Ortega and Violeta Barrios Chamorro, and referring to itself as La Junta de Gobierno de Reconstrucción de la República de Nicaragua,⁶⁸ passed a "National Emergency Law" on July 22, 1979.⁶⁹ Blaming the "genocidal actions of Somoza" for the countless deaths and destruction of personal property and industry in Nicaragua, the Sandinista emergency decree covered the entire country for an initial period of thirty days, and was subject to extension for as long as the state of emergency persisted.⁷⁰

Perhaps the most striking features of the Sandinistas' emergency decree were the severity and immediacy of the restrictions placed on private property.⁷¹ Only two days after the fall of Anastasio Somoza Debayle, the Sandinistas' views on private property were made clear through the emergency law which stated that "the State [could] make rational use of any residence or private building for purposes of public utility after remitting to the owner a just compensation."⁷² Additionally, Article 4 of the emergency law also placed all private colleges and other educational institutions at the service of the state.⁷³

Perhaps even more troubling than the restrictions on real property were the Sandinistas' restrictions on personal property. They were largely controlled by a five line provision in the emergency law that suspended all transfers of movable and immovable goods that resulted from agreements effectuated after December 31, 1977.⁷⁴ Additionally, the Sandinistas attempted to exercise control over even the individual labor of the populace, declaring that "local authorities

66. *Id.* ¶¶ 4-5.

67. *Id.* ¶5.

68. This elaborate title for the early Sandinista leadership translates into English as "The Government Coalition of National Reconstruction for the Republic of Nicaragua."

69. Decretos—Ley No. 10, 22 July 1979, Ley de Emergencia Nacional [National Emergency Law], *La Gaceta* [L.G.], 23 Aug. 1979 (Nicar.).

70. *Id.* at "Considerando" no.1, art. 13.

71. *Id.* art. 4.

72. *Id.*

73. *Id.*

74. *Id.* art. 3.

[could] require the collaboration of the citizenry in the realization of unpaid labor undertaken for the benefit of the community.”⁷⁵

Besides formulating their general property policies applicable to the nation as a whole, the Sandinistas also singled out the former adherents of the fallen Somoza regime for special treatment.⁷⁶ On July 20, 1979, the very day of its takeover, the Sandinista coalition passed Decree Number 3, entitled “Confiscation of Goods,” which ordered the Procurador General de Justicia to “immediately confiscate all goods” of the Somoza family, as well as Somoza’s key military supporters who had fled the country anytime after December 1977.⁷⁷ This initial decree was later greatly expanded on August 8, 1979, to apply not only to Somoza and his key allies, but also to all “persons alleged [to be followers of Somoza], for whom a denouncement has been made, or who [the Procurador General] considers it prudent” to take the preventive measure of either restricting their alienability of property or confiscating such property altogether.⁷⁸ Feeling that the anti-Somoza decrees had served their purpose by the end of 1979, the Sandinista coalition attempted to boost its image by suspending them on November 21, 1979, and prohibiting the future seizure of property owned by Somoza sympathizers.⁷⁹ The suspension of the seizure decrees, however, was largely meaningless given the authority granted to the Procurador General to continue administering seizures which, up until that point, had already taken place under the previous decrees.⁸⁰

2. Decree Number 760: “The Absence Law”

While the Sandinistas’ initial appropriations focused on the Somozas and their allies, the coalition’s Decree Number 760—officially titled “Appropriation by the State of Abandoned Goods” but more commonly referred to as the “Absence Law”⁸¹—was a much more comprehensive statute targeting the exile community as a

75. *Id.* art. 5.

76. See Decretos—Ley No. 3, 20 July 1979, Confiscación de Bienes [Confiscation of Goods], La Gaceta [L.G.], 22 Aug. 1979 (Nicar.); Decretos—Ley No. 38, 8 Aug. 1979, Aclaración y Adición al Decreto No. 3 [Explanation and Addition to Decree No. 3], La Gaceta [L.G.], 3 Sept. 1979 (Nicar.).

77. Decretos—Ley No. 3, 20 July 1979 art. 1.

78. Decretos—Ley No. 38, 8 Aug. 1979 art. 1.

79. Decretos—Ley No. 172, 21 Nov. 1979, Suspensión Aplicación Decreto No. 38 de 8 de Agosto de 1979 [Suspension of the Application of Decree 38 of August 8, 1979], La Gaceta [L.G.], 24 Nov. 1979 (Nicar.).

80. *Id.* art. 3.

81. José Armando Aragón Manzanares, *La Propiedad en Nicaragua*, available at <http://www.monografias.com/trabajos5/nicaragua/nicaragua.shtml> (last visited Mar. 30, 2006) (unpublished Civil Law final paper, Universidad Nacional Autónoma de Nicaragua).

whole.⁸² Stating that reconstruction was a "priority task of the Revolution . . . [and required] the rational use of property," and aiming to target those property owners who had "irresponsibly abandoned goods necessary to the reactivation of the national economy," the Sandinistas' Abandoned Goods statute purported to seize all property, both movable and immovable, of any Nicaraguan who remained "absent" from the country for six months or longer.⁸³ The Abandoned Goods statute placed broad seizure power in the Sandinistas' Ministry of Justice, which was required to publish proposed seizures in a national registry and give owners fifteen days to present themselves to the Ministry before their property would be officially seized.⁸⁴ Additionally, notions of due process were largely absent from the Ministry of Justice's broad authority to adjudicate property seizures on the basis of otherwise ambiguous criteria.⁸⁵ For instance, in the case of an absent property owner whose spouse or children remained in Nicaragua, the Ministry of Justice had the authority to permit the owner's family to retain the property, but only if such use was deemed "rational."⁸⁶

The Sandinistas' Abandoned Goods statute was also especially harsh in several other regards, including its treatment of lessees of "abandoned property," and those who contracted to purchase or otherwise take control of property from landowners who chose exile.⁸⁷ With respect to lessees who occupied property that was deemed to be "abandoned" by the Ministry of Justice, Article 6 of the decree required such individuals to present themselves to the Ministry of Justice within thirty days following the promulgation of the statute. If they did not appear, the property they occupied was subject to automatic seizure.⁸⁸ Additionally, for purposes of determining whether or not property had been "abandoned" under the language of the decree, Article 8 presumed ownership from the day *preceding* the overthrow of Somoza, July 19, 1979.⁸⁹ Therefore, Article 8 took the extreme view of "declar[ing] null all negotiations, acts and contracts which would have [otherwise] been brought to effect over such goods" following the Sandinistas' rise to power, unless affected individuals could appear before the Ministry of Justice and prove their "good faith."⁹⁰

82. Decretos—Ley No. 760, 19 July 1981, *Apropiación por el Estado de los Bienes Abandonados* [Appropriation by the State of Abandoned Goods], *La Gaceta* [L.G.], 22 July 1981 (Nicar.).

83. *Id.*

84. *Id.* art. 3.

85. *See id.*

86. *See id.*

87. *Id.* arts. 6, 8.

88. *Id.* art. 6.

89. *Id.* art. 8.

90. *Id.*

Unlike other decrees passed by the Sandinistas during their first days in power, the Abandoned Goods statute continued in effect for over six years, until it was finally repealed on September 25, 1987.⁹¹ Indeed, the Abandoned Goods statute was only repealed by then-Sandinista President Daniel Ortega after Nicaragua signed a Central American Peace Accord in Guatemala in August 1987, through which regional leaders agreed to "put into place actions promoting national reconciliation and democratization."⁹² Nonetheless, as with most of the Sandinistas' repeals of property seizure decrees, Article 2 of the repeal statute clearly stated that all actions previously ratified under the Abandoned Goods statute remained unchanged by the subsequent repeal.⁹³ Thus, for the vast majority of exiles, who fled the country during the violence of the late 1970s and early 1980s when the statute was in effect, the Abandoned Goods statute resulted in the seizure of substantial property from "absent landowners." As a result, the Abandoned Goods statute is one of the key Sandinista legacies that has contributed to Nicaragua's modern-day property crisis and, in particular, to the dilemma facing the country's exiles who have since returned to their homeland.

3. The Revolution Spreads: The Advent of True Agrarian Reform

Although the Abandoned Goods statute applied to all property allegedly abandoned in Nicaragua by "absent landowners," the law was initiated contemporaneously with the Sandinistas' own system of agrarian reform.⁹⁴ Article 5 of the Abandoned Goods statute provided that rural property should be administered by the Ministerio de Desarrollo Agropecuario y Reforma Agraria (MIDINRA).⁹⁵ As such, Article 5 signaled the Sandinistas' eventual goal of effectuating agrarian reform in Nicaragua, which was a key component of the Revolution's ultimate plan for economic and social change.⁹⁶ Agrarian reform formally began on the same day that the Abandoned Goods statute took effect, by means of the Sandinista coalition's first Agrarian Reform Law.⁹⁷

Invoking the spirit of Augusto Sandino, the rebel guerilla leader from whom they drew their name, the Sandinistas made it clear in the Agrarian Reform Law that their policies were designed to combat

91. Leyes No. 30, 25 Sept. 1987, *Ley que Deroga el Decreto No. 760 [Repeal of Decree 760]*, La Gaceta [L.G.], 2 Nov. 1987 (Nicar.).

92. *Id.*

93. *Id.* art. 2.

94. See Decretos—Ley No. 760, 19 July 1981, art. 5.

95. In English, the name of this governmental administrative agency roughly translates as the Ministry of Agro-fisheries Development and Agrarian Reform.

96. See Decretos—Ley No. 760, 19 July 1981, art. 5.

97. Decretos—Ley No. 782, 19 July 1981, *Ley de Reforma Agraria [Agrarian Reform Law]*, La Gaceta [L.G.], 21 Aug. 1981 (Nicar.).

both the Somoza years and the preceding *latifundismo*.⁹⁸ Based on an attempt to “revise the right of the peasant to live dignifiedly from working the land and to guarantee his incorporation into the national plans and agricultural development under appropriate forms of organization . . . [that] foment production and . . . guarantee the most adequate and rational use of the land,” the Sandinistas’ initial Agrarian Reform Law contemplated an ambitious reorganization of the nation’s rural property.⁹⁹

Although the Agrarian Reform Law labeled the confiscations of land formerly held by the Somoza family and their allies as a “first step” in the critical agrarian reform process, the law as embodied in Decree Number 782 also envisioned far more comprehensive reform.¹⁰⁰ The Agrarian Reform Law specifically targeted property that the MIDINRA viewed as “idle” or “underutilized,” meaning that the Sandinista government did not feel that it had been cultivated to its full potential in the two years preceding the passage of the statute.¹⁰¹ The statute discriminated against large landowners by setting geographical limitations targeting landowners who owned only a certain quantity of land for redistribution.¹⁰² Additionally, the law outlined and prioritized the specific groups able to receive title to redistributed property under the statute, including, in the following order: those who actually worked the land that was being redistributed, those who were either landless or without sufficient land to maintain an adequate existence, those individuals or cooperatives capable of ensuring that the land would be adequately worked, and finally, other larger enterprises specifically constituted by the state to carry out the proposed agrarian reform.¹⁰³ The law also provided for compensation in the form of government bonds for landowners who were dispossessed of their land by means other than abandonment, as well as the transmission and recording of fee simple title to those who received land under the statute.¹⁰⁴ Finally, the Agrarian Reform Law placed additional restrictions upon the alienability rights of even those landowners whose land was not

98. See *id.* *Latifundismo* is a term often used to refer to the inequitable distribution of land that occurred in many parts of Latin America as a result of Spanish colonial administration and governance. See Lola Clayton Rainey, *Monopolistic Land Tenure and Free Trade in Mexico: Resurrecting the Ghost of the Porfirian Economics*, 23 AM. INDIAN L. REV. 217, 261–62 (1998–1999).

99. Decretos—Ley No. 782, 19 July 1981, consideration IV.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* art. 9.

104. *Id.* arts. 10, 11. Note, also, that it is these two aspects of Sandinista property reform (i.e., compensation in the form of government bonds, and the recording of new titles) that have proven most troublesome in the years since Nicaragua’s return to democracy in 1990. This history will be more fully analyzed below.

redistributed, prohibiting them from partitioning or transferring their property in a way that would allow it to escape redistribution under the statute.¹⁰⁵

As the initial Sandinista Revolution evolved into an increasingly violent and devastating civil war, it became clear that the original Agrarian Reform Law enacted in Decree Number 782 was unable to fully address the massive problems Nicaragua faced with respect to property reform.¹⁰⁶ One of the most daunting problems faced by the Sandinista leadership was the method by which the newly distributed land would be titled and recorded.¹⁰⁷ Other more immediate problems were created by the dissent of those who lost their property, which added fuel to the nation's already burning civil war.¹⁰⁸ In an attempt to rectify these and other problems, the Sandinistas passed an additional series of reforms during the final years of their political leadership.¹⁰⁹

First amongst these latter reforms was the somewhat amusingly-titled "Reform to the Agrarian Reform Law," passed on January 13, 1986.¹¹⁰ Although Decree Number 14 begins with much of the same revolutionary rhetoric seen in prior Sandinista decrees—denouncing the now long-gone sins of the Somoza dynasty and the evils of the *latifundismo* system¹¹¹—it also reflects the decreasing political power of the Sandinista leadership in the late 1980s. This fact is perhaps most evident in the Sandinistas' attempt to justify their reform not only in light of their concern for the country's poor, but also out of respect for the "recommendations" of the United Nations and other international institutions. The decree identifies these as organizations "which recognize that 'latifundismo,' idleness of the land, and the marginalization suffer[ed] by the peasantry, [are] principal causes that restrain the economic and social development of the people."¹¹² In terms of actual substance, Decree Number 14 was also different in that it offered some concessions to the opposition, as well as additional safeguards to those whose land was expropriated under its provisions.¹¹³

As opposed to the original Agrarian Reform Law, Decree Number 14 created an Agrarian Tribunal capable of overruling the previously limitless authority of the MIDINRA with respect to the adjudication

105. *Id.* arts. 31–33.

106. Aragón Manzanares, *supra* note 81, at § 5.

107. *Id.*

108. *Id.*

109. *Id.*

110. Leyes No. 14, 11 Jan. 1986, *Reforma a la Ley de Reforma Agraria* [Reform to the Agrarian Reform Law], La Gaceta [L.G.], 13 Jan. 1986 (Nicar.).

111. *Id.*

112. *Id.*

113. *Compare id.* with Decretos—Ley No. 782, 19 July 1981, *Ley de Reforma Agraria* [Agrarian Reform Law], La Gaceta [L.G.], 21 Aug. 1981 (Nicar.).

of conflicts arising between landowners dispossessed of property and the Sandinista government.¹¹⁴ Thus, the right of appeal created by Decree Number 14 was a significant due process victory for those seeking to challenge expropriations carried out in the course of agrarian reform. Additionally, the new Agrarian Reform Law revised the system of government indemnification bonds granted to landowners whose property was expropriated under the decree.¹¹⁵ Under Decree Number 14, the amount of the indemnification bonds granted was calculated in accordance with the MIDINRA's estimation of the value of the property. The decree also enabled certain property owners who lacked other ready sources of income to receive a monthly pension.¹¹⁶ Somewhat notably, however, the Sandinista leadership refused to alter its long-standing policy of disfavoring land it deemed to have been abandoned, and thus the indemnification provision of Decree Number 14 still did not apply to "cases of abandonment or idleness," as defined by the statute.¹¹⁷

4. The Sandinistas and the 1987 Constitution: An Attempt at Constitutional Legitimacy

The Sandinistas have often been criticized for initiating property reform without first repealing or amending the 1974 Nicaraguan Constitution.¹¹⁸ Perhaps cognizant of this fact by 1987, the Sandinistas attempted to legitimize their property redistribution schemes through the passage of a new constitution.¹¹⁹

While the Sandinistas failed to either repeal or replace the 1974 Constitution initially, they did pass a loftily worded statute entitled "Statute on Rights and Guarantees of Nicaraguans" only one month after deposing Anastasio Somoza Debayle in 1979.¹²⁰ In this statute, which is in many respects akin to a mini-constitution, the Sandinistas made a number of statements that were contradicted by their increasingly undemocratic tactics. For example, the Rights and Guarantees statute stated that "the Nicaraguan people have the right to dispose freely of their riches and natural resources,"¹²¹ and that "a

114. Leyes No. 14, 11 Jan. 1986 art. 17.

115. *Id.* art. 20.

116. *Id.* arts. 21-22.

117. *Id.* art. 20.

118. Lacayo, *supra* note 7, at 842.

119. Constitución Política de la República de Nicaragua [Cn.][Constitution], La Gaceta [L.G.] 9 Jan. 1987, as amended by Ley No. 330, Reforma Parcial a la Constitución Política de la República de Nicaragua, Jan. 18, 2000, L.G. Jan. 19, 2000 (Nicar.).

120. Leyes No. 52, 21 Aug. 1979, Estatuto Sobre Derechos y Garantías de los Nicaragüenses [Statute on Rights and Guarantees of Nicaraguans], La Gaceta [L.G.], 17 Sept. 1979 (Nicar.).

121. *Id.* art. 2.

person's home and all other private spaces are inviolable."¹²² At the same time, the statute blurred such private property rights with the Sandinistas' redistribution policies, stating also that "every Nicaraguan has the right to freely choose his residence"¹²³ and that "work is the right and social responsibility of every individual . . . [and it is] the obligation of the state to procure work and productivity for all Nicaraguans in conditions that guarantee fundamental human rights."¹²⁴ The statute also specifically referred to property as "fulfill[ing] a social function," thereby subjecting it to certain limitations required by productivity, security, public interest, and national emergencies.¹²⁵ Finally, while the Rights and Guarantees statute at first seemed to afford Nicaraguans democratic rights, it ultimately included an "escape clause" which allowed the Sandinistas to later justify their harsh policies.¹²⁶ In this regard, Article 49 of the statute allowed the coalition to suspend all or part of the statute in the event of "exceptional situations . . . which put in danger the life and stability of the nation," including but not limited to, civil war or "public order and security."¹²⁷ Indeed, as noted above, the concept of property rights under the Sandinista leadership leaned much more heavily towards expropriation under the Absence and Agrarian Reform Laws than it did in favor of protecting pre-existing private property.

In a subsequent attempt to further justify their land redistribution schemes, the Sandinistas replaced the Rights and Guarantees statute with a new Constitution on January 9, 1987.¹²⁸ In addition to passing the Constitution, the Sandinistas also declared a state of national emergency and suspended the rights and guarantees embodied in the previous 1974 Constitution.¹²⁹ Unlike the Sandinistas' previous attempts to lend their policies an air of democratic legitimacy in the Rights and Guarantees statute, the 1987 Constitution was very much a revolutionary document. Invoking the "example of Carlos Fonseca, the highest continuator of the inheritance of Sandino, and founder of the National Sandinista Liberation Front [FSLN]," the 1987 Constitution described itself as

122. *Id.* art. 18.

123. *Id.* art. 15.

124. *Id.* art. 29.

125. *Id.* art. 27.

126. *Id.* art. 49.

127. *Id.*

128. Constitución Política de la República de Nicaragua [Cn.][Constitution], La Gaceta [L.G.] 9 Jan. 1987, as amended by Ley No. 330, Reforma Parcial a la Constitución Política de la República de Nicaragua, Jan. 18, 2000, L.G. Jan. 19, 2000 (Nicar.).

129. Decretos Ejecutivos No. 245, 9 Jan. 1987, Suspensión de Derechos y Garantías [Suspension of Rights and Guarantees], La Gaceta [L.G.], 23 Jan. 1987 (Nicar.).

created for the “institutionalization of the conquests of the Revolution and the construction of a new society that eliminates all classes of exploitation and achieves economic, political, and social equality for Nicaraguans.”¹³⁰

With respect to the Sandinistas’ property policies, the 1987 Constitution specifically recognizes the legitimacy of agrarian reform.¹³¹ Indeed, Chapter II of the Constitution embodies much of the language of the prior Agrarian Reform Laws, and proclaims that “[t]he State guarantees the success of agrarian reform, to give fulfillment to the historical revindications of the peasantry,”¹³² and “agrarian reform will abolish ‘latifundismo.’”¹³³ As discussed below, the Sandinistas would later rely on their 1987 Constitution to justify their last-ditch efforts to preserve their property reforms, including the “piñata” titling laws which have created one of the most troubling legacies of the Sandinistas’ final days in power.¹³⁴

5. The Revolution Falters: Protecting the Legacy

Although the Sandinistas passed a large amount of legislation during their eleven years in power, their efforts were often far from organized. In this regard, one of their most blatant shortcomings was the failure to adequately title the land they redistributed.

With respect to the process of recording title to land redistributed under the Sandinistas’ agrarian reform policies, Decree Number 14, like Decree Number 782 which it amended, was lacking in specifics.¹³⁵ Instead of providing for a well-defined process for the recording of title, Article 35 of the new Agrarian Reform Law simply stated that “[t]he Public Registers of Immovable Property shall inscribe the Titles of Agrarian Reform and other agreements issued by the MIDINRA.”¹³⁶ This mention of titling, however, was more than the Sandinistas had done previously. Indeed, it was only in the years following the passage of Decree Number 14, and as their power began to wane, that the Sandinistas really gave much thought to the titling process at all.¹³⁷ Having long neglected this most essential aspect of property law, the Sandinistas busied themselves in their final days following their defeat to Violeta Barrios Chamorro with the

130. Constitución Política de la República de Nicaragua [Cn.][Constitution] pmbi., La Gaceta [L.G.] 9 Jan. 1987, as amended by Ley No. 330, Reforma Parcial a la Constitución Política de la República de Nicaragua, Jan. 18, 2000, L.G. Jan. 19, 2000 (Nicar.).

131. *Id.* ch. II.

132. *Id.* art. 106.

133. *Id.* art. 107.

134. *See infra* Part III.A.5.

135. *See id.* art. 35.

136. *Id.*

137. *See Clark & Velazquez, supra* note 5, at 768–69.

passage of a series of laws, commonly referred to as the “piñata.”¹³⁸ These laws represented an attempt to give legal effect to their agrarian reform and other property redistribution schemes.¹³⁹ In the end, however, the “piñata” legislation only served to create controversy as Nicaragua’s democratic post-Sandinista governments have been faced with the task of reconciling titles granted to Sandinista land beneficiaries with claims brought by former landowners, including, to a large extent, exiles who fled the country during the civil war.¹⁴⁰

Still, the Sandinistas based their last-ditch titling efforts on their own prior legislative decrees, labeling them as necessary for the “legal protection of the occupants that until now have not been included in previous property transfer programs.”¹⁴¹ In what amounted to perhaps an absurdly oversimplified process, the Sandinistas’ titling laws deemed all unrecorded property which had passed under the prior land redistribution decrees to be “property of the State.”¹⁴² Furthermore, title to this property was guaranteed in Law Number 85, the most comprehensive of the 1990 titling laws, to any Nicaraguan who, as of the February 25, 1990 date of the Sandinistas’ electoral defeat, occupied an “urban house” in any manner, including by “assignment, possession, inheritance or any other form of tenancy,” and owned no other property.¹⁴³ Similar measures, such as Laws 86 and 88, ensured title to occupants of “urban lots” and rural properties, respectively.¹⁴⁴

In granting immediate legal title to the occupants of such land, the Sandinistas’ “piñata” laws further exempted the new owners from having to prove either payment of property taxes or recording fees for these transactions. Recording was carried out free of charge by the national Notaries and Registries.¹⁴⁵ Additionally, the new measures

138. See U.S. Embassy in Nicaragua, Economic and Commercial Section, Nicaraguan Property Law—An Overview ¶ 1, <http://managua.usembassy.gov/wwwwe70.html> [hereinafter Nicaraguan Property Law].

139. *Id.* Laws 85, 86, and 88 were all passed by the Sandinistas following their February 25, 1990 electoral defeat by Violeta Barrios Chamorro. See Leyes No. 85, 29 Mar. 1990, Ley de Transmisión de la Propiedad de Viviendas y Otros Inmuebles Pertenecientes al Estado y sus Instituciones [Law of Transfer of Property of Dwellings and Other Immovable Belongings of the State and its Institutions], La Gaceta [L.G.], 30 Mar. 1990 (Nicar.); Leyes No. 86, 29 Mar. 1990, Ley Especial de Legalización de Viviendas y Terrenos [Special Law of Legalization of Dwellings and Lands], La Gaceta [L.G.], 3 Apr. 1990 (Nicar.); Leyes No. 88, 2 Apr. 1990, Ley de Protección a la Propiedad Agraria [Law of Protection of Agrarian Property], La Gaceta [L.G.], 5 Apr. 1990 (Nicar.).

140. See Nicaraguan Property Law, *supra* note 138, ¶¶ 9–15; Leyes No. 85, 29 Mar. 1990; Leyes No. 86, 29 Mar. 1990; Leyes No. 88, 2 Apr. 1990.

141. Leyes No. 85, 29 Mar. 1990, consideration 2.

142. *Id.* art. 1.

143. *Id.*; Nicaraguan Property Law, *supra* note 138, ¶ 7.

144. Nicaraguan Property Law, *supra* note 138, ¶ 7.

145. Leyes No. 85, 29 Mar. 1990 art. 10.

significantly reduced the documentary evidence that the new owners had to present in order to obtain title to their land.¹⁴⁶ Law Number 88, meanwhile, further grounded the titling provisions not only in the Sandinistas' property reform decrees, but in the 1987 Constitution.¹⁴⁷ Law Number 88 also notably cancelled any pending government indemnification bonds created by Decree Number 14, the new Agrarian Reform Law, which was not a surprising result considering the Sandinistas no longer needed the support of the opposition following their electoral upset in February 1990.¹⁴⁸

Quite predictably, the titling laws resulted in the issuance and recording of vast numbers of legal property titles in the weeks following the Sandinistas' electoral defeat, many of which were obtained with scanty documentary proof, and rather non-uniform titling practices amongst the various Registry sites.¹⁴⁹ Almost certainly sensing the impending ideological shift that would be ushered in by President Chamorro, the Sandinistas attached a foreboding warning to Law Number 85, stating that "[t]his Law is public order and the rights and benefits conferred by it are non-renouncable."¹⁵⁰ Ironically, however, the titling laws which the Sandinistas justified as necessary for "the social order, national reconciliation and the tranquility of Nicaraguan homes"¹⁵¹ did little more than create widespread confusion and major obstacles for Nicaragua's post-1990 democratically-elected presidential administrations.¹⁵²

B. Democratic Attempts to Reconcile Sandinista Land Policy

While Violeta Chamorro's assumption of the presidency in 1990 marked the end of the Sandinistas' political control of the government, their land redistribution and titling schemes have proven far more enduring. Following Chamorro's victory in the February elections, many Nicaraguans foresaw the initiation of a "Counter-Reform" aimed at correcting the expropriations and other alleged violations created by a decade of Sandinista land reform.¹⁵³ In a nation still recovering from a civil war of almost identical duration, however, the new Chamorro administration found its hands largely tied with respect to the delicate issue of property.¹⁵⁴

146. *Id.* art. 11.

147. Leyes No. 88, 2 Apr. 1990, Ley de Protección a la Propiedad Agraria [Law of Protection of Agrarian Property] art. 1, La Gaceta [L.G.], 5 Apr. 1990 (Nicar.).

148. *Id.* art. 5.

149. *See e.g.*, Clark & Velazquez, *supra* note 5, at ¶ 7.

150. Leyes No. 85, 29 Mar. 1990 art. 14.

151. *Id.* art. 1.

152. *See e.g.*, Clark & Velazquez, *supra* note 5, at ¶ 7.

153. Aragón Manzanarez, *supra* note 81, § 6.

154. *See e.g.*, Clark & Velazquez, *supra* note 5, at ¶ 8.

Recognizing the need to balance the interests of individuals who had both received and lost property under the Sandinistas' land redistribution policies,¹⁵⁵ the Chamorro administration was hesitant to accept proposals such as Law Number 130, which advocated returning all property which had passed under the Sandinista decrees to the state, which would then adjudicate claims between new and former "owners."¹⁵⁶ Instead, Chamorro began her reconciliation efforts by creating a National Confiscation Revision Commission—to be overseen by the Procurador General de Justicia and four individuals appointed by the executive—which was designed to review claims submitted by individuals whose land had been expropriated by the Sandinistas.¹⁵⁷ Next, Chamorro created the Office of Territorial Ordering in 1991 to review the validity of titles granted under two of the Sandinistas' urban property "piñata" laws, Laws 85 and 86.¹⁵⁸ In particular, the Office of Territorial Ordering was empowered to examine beneficiaries' compliance with the requirements of Laws 85 and 86, and either issue *solvencias* validating the beneficiaries' titles, or nullify their titles and begin the process of returning the property to its original owners.¹⁵⁹ Although the Office of Territorial Ordering eventually nullified approximately half of the titles granted by the Sandinistas under Law 85, it approved virtually all of those granted under Laws 86 and 88.¹⁶⁰ Finally, President Chamorro created one additional administrative agency, the Indemnification Quantification Agency, which complemented the National Confiscation Revision Commission, and was designed to value the claims of landowners whose property had been improperly expropriated by the Sandinista regime.¹⁶¹

With a new administrative framework in place, Chamorro was ready to begin work on the actual substance of her compensation proposals, such as Law Number 180, known as the "Special Law of Valuation for Payment Bonds for Indemnification."¹⁶² Chamorro's

155. See Shirley Christian, *This Land is Your Land . . . This Land is My Land*, N.Y. TIMES, Nov. 29, 1992, at A1.

156. Aragón Manzanarez, *supra* note 81, at § 6.

157. Decretos—Ley No. 11-90, 11 May 1990, Decreto-Ley de Revisión de Confiscaciones [Decree-Law of Revision of Confiscations] art. 1, La Gaceta [L.G.], 23 May 1990 (Nicar.).

158. Decretos Ejecutivos No. 35-91, 19 Aug. 1991, Creación y Funcionamiento de la Oficina de Ordenamiento Territorial [Creation and Operation of the Office of Territorial Ordering] arts. 1–2, La Gaceta [L.G.], 23 Aug. 1991 (Nicar.).

159. *Id.*

160. Nicaraguan Property Law, *supra* note 138, ¶ 7.

161. Decretos Ejecutivos No. 51-92, 30 Sept. 1992, Creación de la Oficina de Cuantificación de Indemnizaciones [Creation of the Indemnification Quantification Agency] arts. 1–3, La Gaceta [L.G.], 30 Sept. 1992 (Nicar.).

162. *Id.*; Leyes No. 180, 12 July 1994, Ley Especial de Valorización de Bonos de Pago por Indemnización [Special Law of Valuation for Payment Bonds for Indemnification], La Gaceta [L.G.], 28 July 1994 (Nicar.).

Law Number 180 was, in all respects, a compromise solution, which clearly acknowledged from the outset that "the solution of the property conflict in Nicaragua constitutes without a doubt one of the greatest obstacles to the reconciliation of our people."¹⁶³ Law Number 180 attempted to satisfy both sides by allowing those who had received land and title under the Sandinista regime to retain such property, while at the same time affording expropriated individuals a generous compensation package of government indemnification bonds.¹⁶⁴

In specific terms, Law Number 180 both revalued the Sandinistas' indemnification bonds and renegotiated their payment terms and interest rates, providing for repayment over a five-year period commencing in ten years.¹⁶⁵ The interest rate of the bonds was set at 3% per year for the first two years of the plan, which was to be capitalized into the principal, after which time the interest rate would slowly increase from 4.5% to 5% annually, to be payable to the bondholder on a monthly basis.¹⁶⁶ Finally, and with certain exceptions, Law Number 180 allowed the bondholders to use the bonds to purchase public utilities or pay other debts owed to the state as if they were actual money, and required banks and financial institutions in Nicaragua to accept the bonds as guarantees on loans or other debts incurred by the bondholders.¹⁶⁷ Although far from the expropriated landowners' favorite option, Chamorro's Law Number 180 at least moderately increased the value of the government indemnification bonds they received, and created a market whereby the bonds could be bought and sold at a more reasonable fraction of their actual value.¹⁶⁸

In addition to revaluing the indemnification bonds, the Chamorro administration attempted to lend some stability to the nation's property crisis through the passage of Law Number 209, entitled the "Stability Property Law."¹⁶⁹ The Stability Property Law can only be described as another example of Chamorro's balancing act, whereby she attempted to respect both the rights of the Sandinista beneficiaries and the claims of the expropriated former landowners.¹⁷⁰ Among other things, Law Number 209 increased the legal effect on the decisions of the Office of Territorial Ordering,

163. Leyes No. 180, 12 July 1994 ¶ 1.

164. *Id.*

165. *Id.* art. 2. Because Chamorro's redesigned indemnification bonds were to be paid over a fifteen-year period, they are often referred to as "fifteen-year bonds."

166. *Id.*

167. *Id.* arts. 3-7.

168. Aragón Manzanarez, *supra* note 81, § 6.

169. Ley No. 209, 30 Nov. 1995, La Gaceta [L.G.], 30 Nov. 1995 (Nicar.) (published as Leyes No. 14, 1 Dec. 1995, Ley de Estabilidad de la Propiedad [Stability Property Law], La Gaceta [L.G.], 1 Dec. 1995).

170. *Id.*

extended the timeframe by which landowners could submit claims to the National Confiscation Revision Commission, and provided for indemnification bonds for Sandinista beneficiaries who were denied *solvencias* and lost what they had thought was their land.¹⁷¹

In a final attempt to legitimize her own reforms before leaving office, Chamorro participated in the passage of a partial amendment of the 1987 Sandinista Constitution in February 1995, during the last year of her presidency.¹⁷² Amongst other democratic guarantees, Law Number 192 amended Article 44 of the 1987 Constitution to guarantee all Nicaraguans “the right of private property in movable and immovable goods, and in the instruments and means of production.”¹⁷³ Additionally, Law Number 192 grounded the nation’s past and future property disputes in the law, stating simply that the law shall be used to determine all issues involving not only expropriations and indemnification, but also the *latifundismo* so detested by the Sandinistas.¹⁷⁴

While Chamorro was only the first of the three presidents to be democratically elected in Nicaragua since the end of the Sandinista regime, it was during her tenure that the Sandinistas’ land reform policies had to be most definitively addressed.¹⁷⁵ As the years passed since the exiles fled Nicaragua and their land was expropriated by the government, it became more difficult to contemplate returning land that had either been occupied for many years by the Sandinista beneficiaries, or sold by them to those who many claimed were innocent third-party purchasers.¹⁷⁶ Still, President Arnoldo Aleman, Chamorro’s successor, campaigned successfully on a platform of protecting small Sandinista beneficiaries while returning larger tracts of land occupied by beneficiaries who failed to pay back property taxes to their original owners.¹⁷⁷ In 1997, Aleman succeeded in getting yet another “Law Regarding Reformed Urban and Agrarian Property” passed by Nicaragua’s legislature.¹⁷⁸ Aleman’s Law Number 278 required the Sandinista beneficiaries of large tracts of land to pay a property tax value determined by the

171. *Id.*

172. Leyes No. 192, 1 Feb. 1995, *Ley de Reforma Parcial a la Constitución Política de la República de Nicaragua* [Partial Reform Law to the Political Constitution of the Republic of Nicaragua], *La Gaceta* [L.G.], 4 July 1995 (Nicar.).

173. *Id.* art. 2.

174. *Id.*

175. David Gonzalez, *Among Unpaid Wages of a Revolution: Competing Claims on Land in Nicaragua*, *N.Y. TIMES* (Late Edition), Sept. 10, 2000, at 14.

176. *Id.*

177. See U.S. Embassy, Economic and Commercial Section, U.S. Property Claim Office, <http://managua.usembassy.gov/wwwhcomp.html> [hereinafter Property Claim Office].

178. Ley No. 278, 26 Nov. 1997, *Ley Sobre Propiedad Reformada Urbana y Agraria* [Law Regarding Reformed Urban and Agrarian Property], *La Gaceta* [L.G.], 16 Dec. 1997 (Nicar.).

National Confiscation Revision Commission and the Indemnification Quantification Agency, which was later to be transferred to the land's original owners in the form of government indemnification bonds.¹⁷⁹ Additionally, under Law 278, if the Sandinista beneficiaries did not pay the amount required under the act, the state could foreclose on the property and return it to the original landowners.¹⁸⁰ The filing deadline for claims by original landowners was December 2000.¹⁸¹ Claimants who had not filed by this date could still challenge the validity of the beneficiaries' title in the Nicaraguan courts if they felt the beneficiaries did not receive title in accordance with the loose requirements of the Sandinista "piñata" laws. However, as the U.S. Property Claim Office at the U.S. Embassy in Managua notes, "[t]his is a prolonged and costly procedure that puts the claimant at the mercy of the often corrupt and inefficient court system."¹⁸² Thus, even under the provisions enacted during the Chamorro and Aleman administrations, for the vast majority of those who lost their land under the Sandinistas, the fifteen-year bonds have been the closest they have come to having their property disputes officially resolved.¹⁸³

Taking office over a decade after the Sandinistas left power, current Nicaraguan President Enrique Bolaños has focused more on fighting corruption and attracting foreign investment to Nicaragua than on resolving Nicaragua's property crisis.¹⁸⁴ But with the title to as much as 25% of rural properties and 10% of urban properties still disputed, Nicaragua's property crisis is still not entirely resolved.¹⁸⁵ Although many property claims have simply disappeared with the passage of time, new proposals continue to be introduced periodically along political lines.¹⁸⁶ Indeed, as recently as February 2005, the Sandinista FSLN party proposed a new law known as the "Law to Create a Superintendency of Reformed Urban and Renewal Property," which called for further efforts to legalize the disputed titles of beneficiaries to land expropriated during the 1980s.¹⁸⁷ Sensing a possible threat to Nicaragua's democratic progress, the U.S. Congress signaled its disapproval of the new law by raising the possibility that it would cut U.S. foreign aid to Nicaragua if the new law were to pass.¹⁸⁸

179. Nicaraguan Property Law, *supra* note 138, ¶ 10.

180. Property Claim Office, *supra* note 177.

181. *Id.*

182. Nicaraguan Property Law, *supra* note 138, ¶ 12.

183. *Id.*

184. *Property Reforms Worry U.S.*, CARIBBEAN UPDATE, Feb. 1, 2005.

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

While the threat of civil war in Nicaragua has declined significantly over the past fifteen years, new problems have arisen in the property context, such as the rise of urban squatter settlements, and the way to organize title to such property in a democratic Nicaragua.¹⁸⁹ And while foreign investors have shown renewed interest in Nicaragua, the lingering property and titling uncertainties the country continues to face remain impediments to all development in Nicaragua, both foreign and domestic.¹⁹⁰ Additionally, although Nicaragua's fifteen-year democracy has received much acclaim from the international community, political upheavals continue to occur.¹⁹¹ In 2003, Arnaldo Aleman, Nicaragua's former president, was sentenced to twenty years house arrest for corruption and the theft of approximately \$100 million from the national treasury.¹⁹² Current President Enrique Bolaños, who served as Aleman's vice president, has also had to deal with attempts by Aleman and former Sandinista leader Daniel Ortega to undermine his authority and impeach him in the national legislature since the beginning of his presidency in 2002.¹⁹³ Indeed, it was only with the strong support of the United States, and a visit by U.S. Deputy Secretary of State Robert Zoellick to Nicaragua in October 2005, that Aleman and Ortega vowed to step back and permit Bolaños to govern during the last year of his presidency.¹⁹⁴ Unfortunately for Bolaños, the new-found support has been too little too late, and there remains little opportunity for Bolaños to enact any meaningful change before Nicaraguan voters return to the polls in November 2006.¹⁹⁵

In yet another twist of Nicaraguan politics, the country's fourth round of democratic post-Sandinista elections might very well bring FSLN leader Daniel Ortega, who was a mastermind of the Sandinista land reform, back to the executive office.¹⁹⁶ Such a result would not be entirely surprising given the election of a number of left-leaning presidents throughout Latin America in recent years.¹⁹⁷ The trend of

189. See Leyes No. 309, 17 June 1999, *Ley de Regulación, Ordenamiento y Titulación de Asentamientos Humanos Espontáneos* [Law of Regulation, Ordering, and Titling of Spontaneous Human Settlements], *La Gaceta* [L.G.], 28 July 1999 (Nicar.).

190. Condoleezza Rice, Sec'y of State, Remarks at the Signing of the Millennium Challenge Compact with Nicaragua (July 4, 2005).

191. Frances Robles, *Embattled President Says Troubles are Behind Him*, *MIAMI HERALD*, Dec. 11, 2005, at 12A.

192. *Id.* See *Nicaragua's Creeping Coup*, *WASH. POST*, Oct. 3, 2005, at A16.

193. *Nicaragua: Bolaños Impeachment Becomes Less Likely*, *MIAMI HERALD*, Sept. 13, 2005, at 10A [hereinafter *Bolaños Impeachment*].

194. Joel Brinkley, *U.S. Envoy Goes to Nicaragua to Back Embattled Leader*, *N.Y. TIMES*, Oct. 5, 2005, at A6.

195. *Id.*

196. Tim Harper, *Latin America's Leftist Leaders*, *TORONTO STAR*, Jan. 29, 2006, at A12.

197. See *Bolivia: Evo Morales Inaugurated as President*, *NOTISUR-S. AM. POL. & ECON. AFF.*, Feb. 3, 2006.

electing leftist presidents in Latin America has already swept Chile, Argentina, Brazil, and Venezuela, and perhaps culminated in the election of indigenous peasant coca-leader Evo Morales in Bolivia in December 2005.¹⁹⁸ Promising to initiate sweeping reforms, including the nationalization of the nation's hydrocarbon resources, Evo Morales has made many Latin America-watchers nervous about what his victory could mean for the rest of the region.¹⁹⁹

Although Morales initially promised not to nationalize the property of transnational companies in Bolivia, many observers foresaw his pre-inauguration visits to Cuba and Venezuela as a sign of his potentially revolutionary policies. Indeed, less than six months into his presidency, Morales returned to Havana, and on April 29, 2006, entered into the "Bolivarian Alternative for the Americas," along with the presidents of Cuba and Venezuela, in an effort to create a socialist free trade alternative to the models offered by the United States.²⁰⁰ The cause for concern among foreign investors increased substantially the following day, on May 1, 2006, as Morales ordered the Bolivian military to take control of the country's vast natural gas fields as part of his newly-announced plan to partially nationalize the country's energy industry.²⁰¹ Under Morales' plan, foreign energy companies operating in Bolivia must sign new contracts with the Bolivian state-run energy company within six months, or face expulsion from the country.²⁰² Moreover, Morales' partial nationalization of his country's natural gas fields appears to be just a first round of expropriations, as he stated publicly on May 1, 2006, that "This is just the start . . . tomorrow or the day after it will be mining, then the forestry sector, and eventually all the natural resources for which our ancestors fought."²⁰³ Although some commentators distinguish Evo Morales' win in Bolivia as a peasant revolution, still others view his success as offering hope to Nicaragua's own ethnic party, Yapti Tasba Masrika Nani (YATAMA), which has recently made efforts to form a coalition with non-indigenous parties, including the FSLN.²⁰⁴

198. *Id.*

199. *Id.*

200. *Bolivia Strengthens Ties to Cuba and Venezuela with Trade Deal*, INT'L HERALD TRIB. (Apr. 30, 2006).

201. Simon Romero and Juan Forero, *Bolivia's Energy Takeover: Populism Rules in the Andes*, N.Y. TIMES, May 3, 2006, at A8.

202. Roland Gribben, *Chavez's Oil 'Revolution' Spreads to Bolivia: The Drive to Maximise National Control Over Natural Resources in Latin America has Gained Speed but Remains a Delicate Manoeuvre*, DAILY TELEGRAPH (UK), May 3, 2006, at City.

203. *Id.*

204. See Raúl L. Madrid, *Indigenous Parties and Democracy in Latin America*, 47 LATIN AM. POL. & SOC'Y 161, 161, 165 (2005).

While many in the international community view the rise of indigenous political parties as a precursor to the sort of mass expropriations and land confiscations undertaken in Nicaragua under the Sandinista leadership and in Bolivia under Evo Morales, others see their rise as an opportunity for Latin America's poorest citizens to finally participate in the political process.²⁰⁵ Instead of simply bringing leftist politicians to power, advocates of the indigenous peasant revolutions view these parties as a means of encouraging democracy among people who have little experience with, or confidence in, such ideals.²⁰⁶ Thus, as Nicaragua's own elections near, the international community would be wise to distinguish between the country's poor, and overwhelmingly indigenous, population and the FSLN leaders who seek yet another opportunity to return to power and further bolster the controversial reforms they first began over two decades ago.

IV. LOOKING AHEAD: THE NEED FOR REAL PROGRESS

Over the past three, and soon to be four, trips to the polls, Nicaragua as a nation has become more comfortable than ever before with notions of democracy and foreign investment. At the same time, however, history is never far away as the FSLN and the old Sandinista leadership await any opportunity to return to power. As the country faces another presidential election in November 2006, it is important that the international community attempt to preserve the progress that has been made, in particular, in settling property claims and attracting foreign development to Nicaragua.

With respect to the property claims, it is clear that Violeta Barrios Chamorro was the most successful of Nicaragua's post-Sandinista presidents in healing a nation scarred by more than a decade of civil war and mass property confiscations. Still, President Chamorro was largely restricted in the amount of change she could institute given the fact that Nicaragua's new democracy was quite fragile throughout her entire term in office. Additionally, Nicaraguan politics under Chamorro's successors, Presidents Aleman and Bolaños, has not been an entirely positive, nor democratic experience. President Aleman, in particular, spent much of his presidency pilfering Nicaragua's state coffers, while President Bolaños' anti-corruption platform was hijacked by an unexpected coalition between Aleman and the FSLN's Daniel Ortega. As a result of the instability that has persisted in Nicaragua, even after its much-celebrated transition to "democracy," the expropriation and nationalization

205. *Id. passim.*

206. *Id.*

policies undertaken by the Sandinistas have not been even close to reversed. Many of the exiles who, according to the Sandinistas, "abandoned" their property have not returned to Nicaragua. Those exiles who have returned to their homeland have not received land, but rather severely devalued government indemnification bonds in exchange for their losses.

As Nicaragua awaits this year's presidential elections, there is renewed hope that the country can finally move forward on a number of fronts. Although time has shown that Nicaraguan politics is far from predictable, a number of factors suggest that the country may soon enjoy greater success in strengthening its democracy and promoting its economy. First, despite the fact that Bolaños is now widely considered to be a "lame duck" president,²⁰⁷ his ability to survive the power struggle orchestrated by Aleman and Ortega has vindicated his attempts to fight government corruption in Nicaragua. Moreover, in light of the leftist political climate sweeping Latin America as a whole, the strong support that Bolaños received from the United States during his recent political crisis proves that the international community is still very much interested in Nicaragua's future. Nicaragua, therefore, stands in a positive position to attract increased foreign aid if its next leader remains committed to furthering Bolaños' goals of fighting corruption and promoting democracy in the country. Additionally, with every new presidential election in Nicaragua comes the realization that both the Somoza dynasty and the Sandinista regime are parts of an increasingly distant past. Nicaragua's future leaders, therefore, should benefit from the fact that they are not forced to operate under the painful memories of the Revolution that constrained Violeta Chamorro during her presidency. Rather than passing legislation that simply attempts to avoid public unrest by giving validity to the past policies of the Sandinista regime, such as Chamorro's Law 180 and Aleman's Law 278, Nicaragua's future presidents should instead finally be able to focus on reforms that actually begin a new chapter in the country's history.

Despite Nicaragua's optimistic prospects in the next elections, neither the international community nor the country's truly democratic candidates should doubt the fragility of the current climate. Indeed, for the international community, recent elections throughout Latin America should highlight the fact that many leftist groups have traded in their guns from the 1980s for a trip to the ballot box and an opportunity to inaugurate their revolutionary policies the "democratic" way. From Venezuela to Bolivia, democratically-elected leaders are either instituting or considering a

207. See *NICARAGUA: Opposition Ratchets Up the 'Desafuero' Campaign*, LATIN AM. WKLY. REP. (Latin Am. Newsl., London, Eng.), Oct. 4, 2005, at 14.

number of revolutionary policies, including land reform and expropriations, after securing a majority of votes in fair elections monitored by the international community.²⁰⁸ And in Nicaragua, where Daniel Ortega and the very same Sandinista leaders who gave birth to a bloody revolution were among the first to form a political party, the international community should be especially cognizant of the potential for a return to Sandinista rule.

Nicaragua's greatest, and perhaps only, prospect for lasting democracy requires that it attract large-scale foreign investment. Rather than simply remaining the beneficiary of foreign aid, Nicaragua requires private foreign investment in order to truly develop. While aid packages are granted and rescinded in accordance with the whims of foreign governments, private foreign investment can anchor investors' prospects to those of the nation itself. This fact is nowhere more evident than in Nicaragua's neighbor to the south, Costa Rica, which is widely recognized as the poster child of both foreign investment and democracy in Latin America.²⁰⁹ But before foreign investors will truly be willing to do business in Nicaragua, they must be convinced that their investments will be secure. Not surprisingly, this guarantee will, in many ways, require Nicaragua to reconcile its past with its future. First, Nicaragua's next president must work with the legislature to once and for all resolve all remaining title discrepancies. Obviously, it is far too late to substantially alter the policies begun by President Chamorro in Law 180, and continued by President Aleman in Law 278. Indeed, the period by which expropriated landowners had to submit claims under Law 278 has already passed by over five years. Instead, and whether or not he or she agrees with such rulings, Nicaragua's next president must ensure that the titles to all property in Nicaragua reflect the decisions of Chamorro's administrative agencies as to the identity of the true owners. More importantly, land title in Nicaragua has to be easily searchable so that foreign investors wishing to purchase property can easily determine the legality of their transactions. Finally, for Nicaragua to attract any meaningful degree of foreign investment, there must be reasonable assurances that the country will enjoy some level of stability in the coming decades. All the progress in the world will mean little to foreign investors if there is a sizeable chance that the next administration will reverse course and expropriate their valuable holdings.

It is worth noting in conclusion that the above scenario represents a seemingly insurmountable dialectic: for democracy in Nicaragua to be truly successful, the country requires the sort of

208. See *Bolaños Impeachment*, *supra* note 193.

209. See generally Michael Knox, *Continuing Evolution of the Costa Rican Judiciary*, 32 CAL. W. INT'L L.J. 133, 133-34 (2001).

development that only foreign investment can bring, while at the same time, foreign investment will not be attracted to Nicaragua until it democratizes. In the absence of a clear solution, foreign investment and true democracy in Nicaragua will require risk-taking on both sides. For his part, President Bolaños has made great strides in fighting corruption and keeping the FSLN at bay. The international community, and the United States in particular, will do everything possible to prevent a hijacked election, or an FSLN victory, in November. After that, Nicaragua's best hope is that these efforts usher in a new administration committed to democracy and foreign investment, and that, for foreign investors, this will be enough to induce them to take Secretary Baker's proverbial "one more look" at Nicaragua.²¹⁰

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210. See *supra* text accompanying note 9.

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