



HOUSING RIGHTS IN

# NICARAGUA

REPORT



HISTORICAL COMPLEXITIES

AND CURRENT CHALLENGES

MISSION

COHRE, WCCN and CENIDH  
Joint Mission Report, 2003



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The Wisconsin Co-ordinating Council on Nicaragua (WCCN)

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**Joint Mission Report, 2003**

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## Glossary of Spanish names, terms, abbreviations and acronyms

N.B. Throughout the main body of this report, Spanish names, terms, abbreviations and acronyms are italicised to distinguish them from the English.

Spanish name or term	Spanish acronym	English name or explanation
<i>Banco de la Vivienda de Nicaragua</i>	<i>BAVINIC</i>	Housing Bank of Nicaragua
<i>Centro de Asistencia Legal a Pueblos Indígenas</i>	<i>CALPI</i>	Centre for Legal Aid to Indigenous Peoples
<i>Centro Nicaragüense de Derechos Humanos</i>	<i>CENIDH</i>	Nicaraguan Human Rights Centre
<i>Comisión Nacional de Revisión de Confiscaciones</i>	<i>CNRC</i>	National Confiscation Review Commission
<i>Comisión Nacional de Vivienda y Asentamientos Humanos</i>	<i>CONAVIAH</i>	National Commission for Housing and Human Settlements
<i>Corte Suprema de Justicia</i>	<i>CSJ</i>	Supreme Court of Justice
<i>Fondo Social para la Vivienda</i>	<i>FOSOVI</i>	Social Fund for Housing
<i>Frente Sandinista de Liberación Nacional</i>	<i>FSLN</i>	Sandinista Front for National Liberation
<i>Instituto de Vivienda Urbana y Rural</i>	<i>INVUR</i>	Institute of Urban and Rural Housing
<i>Instituto Nacional de Estadísticas y Censos</i>	<i>INEC</i>	National Institute for Statistics and the Census
<i>Instituto Nacional de Reforma Agraria</i>	<i>INRA</i>	National Institute of Agrarian Reform
<i>Instituto Nacional de Seguridad Social</i>	<i>INSS</i>	National Institute of Social Security
<i>manzana</i>	–	Central American unit of land area (1 manzana = 0.708 hectares = 1.75 acres)
<i>Ministerio de Hacienda y Crédito Público</i>	<i>MHCP</i>	Ministry of Finance and Public Credit
<i>Ministerio de Vivienda y Asentamientos Humanos</i>	<i>MINVAH</i>	Ministry of Housing and Human Settlements
<i>Oficina de Actualización de Datos</i>	–	Information Updating Office
<i>Oficina de Cuantificación de Indemnizaciones</i>	<i>OCI</i>	Indemnities Assessment Office

<i>Oficina de Ordenamiento Territorial</i>	<i>OOT</i>	Land-Use Management Office
<i>Oficina de Titulación Rural</i>	<i>OTR</i>	Rural Titling Office
<i>Oficina de Titulación Urbana</i>	<i>OTU</i>	Urban Titling Office
<i>Partido Liberal Constitucionalista</i>	<i>PLC</i>	Constitutionalist Liberal Party (of President Enrique Bolaños)
<i>Piñata, La</i>	–	In post-Sandinista Nicaragua, the name euphemistically given to the massive transfer and titling of confiscated property undertaken by the Sandinista Government in the interim period between the February 1990 election it lost and President Chamorro's inauguration in April 1990.
<i>Procurador(ía) de la Propiedad</i>	–	State Attorney('s Office) for Property
<i>Procurador(ía) General de Justicia</i>	–	Attorney General('s Office) for Justice
<i>Procurador(ía) General de la República</i>	–	Attorney General('s Office) for the Republic
<i>Salas de la Propiedad</i>	–	Property Appeals Courts
<i>Unión Nacional Opositora</i>	<i>UNO</i>	National Opposition Alliance

# Executive summary

In the year 2002, the Centre on Housing Rights and Evictions (COHRE), through its Americas Programme, joined forces with the Wisconsin Co-ordinating Council on Nicaragua (WCCN), a Nicaragua solidarity organisation based in the United States, and with the Nicaraguan Human Rights Center (*Centro Nicaragüense de Derechos Humanos, CENIDH*), based in Managua, to produce a report on housing rights in Nicaragua.<sup>1</sup> For this purpose, a COHRE-WCCN-CENIDH team undertook a joint fact-finding mission to Nicaragua in late September and early October 2002, interviewing housing rights advocates, community leaders, community-based organisations (CBOs) and non-governmental organisations (NGOs) working on housing issues, current and former Government officials, politicians, political analysts and indigenous leaders. The work of the fact-finding mission in Nicaragua was made possible in part through the logistical support, orientation and social recognition of *CENIDH*, which helped to set up interviews with many people who, under other circumstances, would have been difficult to reach. The WCCN and COHRE gathered information during a series of visits to Nicaragua in 2002. The initial draft of this mission report was revised and improved, incorporating comments and suggestions from: *CENIDH*; COHRE staff in Brazil, the US and Geneva; and *HABITAR*, the leading Nicaraguan housing rights organisation. That process resulted in the definitive Spanish version, which was then translated into English and re-edited to produce the present report.

The report begins by describing the present housing situation in Nicaragua. It then comprehensively reviews the housing policies and programmes that have been developed and implemented over the past twenty-five years, with particular focus on the *Multi-Phase Low-Income Housing Program*, which was designed by the Inter-American Development Bank (IDB) and approved in late September 2002. The report also includes a review of the present situation with respect to the right to adequate housing in Nicaragua.

A stark contrast is evident in the current housing rights situation in Nicaragua: housing conditions for the poorer segments of the population are appalling, but there are real opportunities for intervention and improvement. This is mainly because in Nicaragua – uniquely in the world – civil society organisations (that is, community-based organisations, socially-oriented movements, local and international NGOs, etc.) are the main producers of housing. Therefore, these civil society organisations, many of them women's groups, are the entities with the greatest experience in building houses – not private construction companies or State contractors. Indeed, this is one of the main findings of this report. Currently, there is tension within the Inter-American Development Bank (IDB) as it decides whether to provide financial support to private construction companies or civil society organisations. The option of financing private construction companies, which are not only new to the Nicaraguan housing scene but which are also going to drive up housing prices, would reduce the scope of the housing solutions that the

1 This report was written by Carlos Arenas (WCCN), in co-operation with Carlos Gómez and Bayardo Izaba (CENIDH), and Mayra Gómez and Leticia Osorio (COHRE). The co-authors would like to thank all those who collaborated in this project and who kindly agreed to be interviewed by the joint fact-finding mission, especially Ms Ninette Morales, Executive Director of *HABITAR* and the Red de Vivienda de Nicaragua (Nicaragua Housing Network), who provided invaluable orientation and generous support.



programme can offer. The other option, strongly favoured by the organisations that co-authored this report [COHRE, WCCN and CENIDH], is for the IDB to provide leadership and resources to civil society organisations with proven experience as housing constructors in Nicaragua. Throughout this report, we refer to the latter option as ‘society-based production of housing’.

In Nicaragua, the issue of *property* rights has an enormous impact on *housing* rights, for the vast majority of housing in the country is privately owned by the occupants. In analysing property rights, this report covers five main topics: **firstly**, it provides a comprehensive review of legal rights to property in Nicaragua from the time of the Sandinista revolution to the present. **Secondly**, it describes the current situation with regard to what is known as ‘property regularisation’ in Nicaragua. **Thirdly**, it critically reviews the two property-related cases decided by the Inter-American Commission on Human Rights. **Fourthly**, it examines the key issue of the territorial rights of Nicaragua’s indigenous peoples, including an analysis of the decision by the Inter-American Court of Human Rights (IACHR) in the *Awas Tingni* case. **Finally**, this report analyses the United States Government’s role in the design and development of the ‘property regularisation’ process in Nicaragua.

We close this report, after presenting our conclusions, by making key recommendations on housing and property issues to the Government of Nicaragua, Nicaraguan civil society, and the two most important regional actors in this context: the Inter-American Development Bank (IDB) and the Government of the United States. International financial institutions have come to play a leading role in determining the economic and social policies of many countries. In the Nicaraguan context, the IDB is not only the main source of funding for the current housing programme, but has also been in charge of setting the design parameters and priorities, as well as proposing the institutional changes in Nicaragua that were considered necessary to move the programme forward. As a result, the role of the Government of Nicaragua has been reduced to merely fulfilling the requirements set by the IDB. Historically, for better or for worse, the US Government has been deeply involved in Nicaragua’s internal affairs, the issue of property rights being no exception. Those who advocate greater respect for housing and property rights should be concerned about two dire consequences of US Government support for the property claims of its citizens and, in general, of those whose homes were confiscated as a result of the Sandinista revolution. We are referring not only to Nicaragua’s financial crisis, which is largely due to the heavy burden of indemnifying former owners of land and housing, but also to the dramatic reversal of the process of democratisation of property.

This is an ambitious report, with a wealth of information not readily found in a single source, some of it as yet unknown in Nicaragua. The joint fact-finding mission was surprised to discover that high-ranking government officials involved in the process of ‘property regularisation’ did not have a global understanding of the issues; they were even unaware of data such as the number of properties under dispute and the cost to the Government of Nicaragua. The same can be said of many civil society organisations: clearly, they have not paid enough attention to monitoring and analysing housing and property issues. Therefore, one aim of this report is to contribute to the analysis of housing and property rights in Nicaragua, and to provide information, statistics and a bibliography for further research of these issues. Ultimately, the co-authors would like this report to be used as an instrument for action, leading to improved housing conditions in Nicaragua and contributing to deepening the process of democratisation of housing and property rights for all Nicaraguans.



# Introduction

Nicaragua ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 12 March 1980. In consequence, the Government of Nicaragua is obligated to respect, protect and fulfil the right to adequate housing, without discrimination and on the basis of equality. Yet, as we shall see in this report, significant challenges remain in Nicaragua in relation to housing. In addition, the housing problems in Nicaragua cannot be separated from other issues and historically have been directly related to problems of property and land ownership. But why should it be thought important to analyse the relationship between housing and property rights in Nicaragua? The organisations that drew up this report found at least seven reasons:

1. The social revolution which succeeded in Nicaragua in 1979 radically altered the traditional patterns of inequality in urban and rural property holdings in Latin America. In spite of some abuses committed by the Sandinista Government against certain individual proprietors, the intentions and the results of the transformations introduced were largely positive and provided an opportunity for many thousands of Nicaraguans to gain access to land, a house-building lot, or housing. This situation is now recognised even by the international financial institutions. According to the Inter-American Development Bank (IDB), “Nicaragua has one of the highest indices of property owner-occupancy in the world.” The IDB further concludes that “this asset represents a strength on which interventions in the housing sphere can be built.”<sup>2</sup> The World Bank agrees: “Today, Nicaragua has one of the least inequitable distributions of land in Latin American, with small and medium farmers now controlling 75 percent of the cultivable land.”<sup>3</sup>

2 Inter-American Development Bank (IDB), *Profile II. Nicaragua (Project: Low-Income Housing Program, NI-0064)* (Washington, DC: IDB, 2001), p. 2, [www.iadb.org/EXR/doc98/pro/unio064.pdf](http://www.iadb.org/EXR/doc98/pro/unio064.pdf)

3 World Bank, *Project Appraisal Document on a Proposed Credit in the Amount of SDR 26.2 Million (US\$ 32.2 Million Equivalent) to the Republic of Nicaragua for a Land Administration Project (PRODEP)*, Report No. 22399-NI (Washington, DC: World Bank Group, 2002), p. 6.

At the same time, the World Bank calls attention to the following: “The spectre of land re-concentration and the reversion to the previous, less-equitable land distribution will remain strong until land claims affecting insecure small farmers or indigenous communities can be legally validated and enforced.”<sup>4</sup>

2. The right to property has been one of the most controversial issues on the political agenda in Nicaragua ever since the Sandinista revolution of 1979. The transformation of the property-ownership structure by means of agrarian and urban reform was a central aspect of revolutionary policy; since the 1990 electoral defeat of the Sandinistas it has continued to be important, though this is due to the processes of indemnification and/or return of confiscated properties, as well as ‘property regularisation’. Unfortunately, the abusive practices of the Sandinista Government in its latter years have cast a shadow of doubt over the legality of the most radical changes to the structure of property ownership in Nicaragua.

3. The Nicaraguan situation presents various challenges to an analysis of property rights because of the way in which the transformation was implemented and, even more importantly, the subsequent influence of US Government policies in the region (and particularly in Nicaraguan politics during the 1980s). This reality has resulted in a situation where the solution of any property dispute is now virtually beyond the control of the Government of Nicaragua. Rather, it is influenced in great measure by the US Government and its general vision of property rights around the world.

4. International financial institutions are currently working on issues of property and housing in Nicaragua. The World Bank has developed various projects related to property and recently approved an additional loan of US\$ 32.6 to the Government of Nicaragua for a land-administration project. For its part, the Inter-American Development Bank (IDB) also approved, in September 2002, a housing project to the amount of US\$ 22.5 million.

5. A very interesting peculiarity of the housing situation in Nicaragua is that the country’s civil society organisations (CBOs and NGOs) have become the main housing constructors — indeed, they are far more productive than the Government in this respect (see, for example, Tables 25 and 27 below). This has undoubtedly made a favourable impression on international financial institutions, such as the IDB, which finance housing programmes. In fact, in the design of these programmes, one can observe the tension caused by the IDB’s efforts to encourage housing construction for low-income families, while using its traditional approach of supporting private builders. Whereas this approach is aimed at creating housing and mortgage markets, the Bank (IDB) cannot ignore the patently obvious reality that the most efficient housing constructors are civil society organisations. As we shall see later in this report, the end result has been the development of a somewhat hybrid approach, drawing support from both sectors.

6. The issue of the territorial rights of Nicaragua’s indigenous peoples attracts a great deal of international attention, for various reasons. Nicaragua’s approach to the territorial rights and administrative independence of such communities was once considered exemplary. Today, however, Nicaragua stands out as one of the few Latin American countries which has not

4 See n. 3 above.

ratified Convention No. 169 of the International Labour Organisation (ILO) concerning Indigenous and Tribal Peoples in Independent Countries. Furthermore, in 2001 the Inter-American Court of Human Rights handed down its first decision related to the issue of indigenous peoples' territorial rights, based on a case originating in Nicaragua [*editor's note: the Awas Tingni case, see Subsection 5.3 below*].

7. Finally, we wish to investigate what has happened with regard to the legal ownership appeals made by the original proprietors, and what the present situation is of those who benefited from the Sandinista urban and agrarian reform.

### The structure of this report

This report is organised into the following sections. Section 1 describes the present-day housing situation in Nicaragua. Section 2 analyses the status of property rights in Nicaragua during the past twenty-five years – a complex issue. Section 3 focuses on the US Government's programme for the restitution of property confiscated by the Sandinista revolution during the 1980s. Section 4 looks into the present situation regarding 'property regularisation' in Nicaragua. Section 5 reviews the status of the territorial rights of Nicaragua's indigenous peoples, while Section 6 focuses on women's housing rights. Section 7 explores the housing policies and programmes designed and implemented in Nicaragua over the last twenty years. Finally, Sections 8, 9 and 10 present the current state of the right to adequate housing in Nicaragua, and our conclusions and recommendations, respectively.

#### Nicaragua at a glance

Population	1995	1999
Total population	4.4 million	4.9 million
Urban population (percentage of total)	54.5%	55.8%
Population growth (annual percentage)	2.9%	2.7%

#### Economy

**Currency:** Cordoba (US\$ 1 = 14.61 *cordobas*, November 2002)

**Foreign debt:** US\$ 6 209 million

**Main export products:** coffee, tobacco, seafood products and cattle

*Sources:* World Bank (2002); *El Observador Económico* No. 131 (January 2003).

### Chronology of key events in Nicaragua

- 1927-33 Nationalist leader Augusto C. Sandino organises armed resistance against United States military intervention in Nicaragua.
- 1933 The US troops leave Nicaragua. Sandino accepts a negotiated settlement.
- 1934 Anastasio Somoza Garcia, head of the National Guard created by the US military, assassinates Sandino.
- 1936 Anastasio Somoza Garcia assumes power by coup-de-état.
- 1944 Massive protests are organised against the Somoza dictatorship.
- 1956 The dictator Somoza is assassinated by an opposition poet.
- 1957 Luis Somoza Debayle, son of Anastasio Somoza Garcia, is elected President.
- 1961 Carlos Fonseca, Tomás Borge and Sylvio Mayorga found the Sandinista Front for National Liberation (*FSLN*).
- 1963 Somoza supporter René Schick is elected President.
- 1966 President René Schick dies. Anastasio Somoza Debayle is elected President.
- 1972 An earthquake destroys Managua City.
- 1976 Carlos Fonseca, founder of the *FSLN*, is killed in combat.
- 1978 Pedro Joaquín Chamorro, an anti-Somoza leader and director of the *La Prensa* newspaper, is assassinated by the dictator's agents.
- 1979 19 July: a popular uprising led by the *FSLN* is victorious against the Somoza dictatorship. An *FSLN*-headed provisional Government is appointed.
- 1982-89 The counter-revolutionary war commences, the *Contras* receiving political and military assistance from the US Government.
- 1983 A US blockade of Nicaragua is put into place.
- 1984 *FSLN*-chief Daniel Ortega is elected President by popular vote.
- 1990 The *FSLN* loses the presidential election. Violeta Barrios de Chamorro, widow of Pedro Joaquín Chamorro, is elected President representing the National Opposition Alliance (*UNO*), a coalition of opposition parties.
- 1996 The right-wing opposition candidate, Arnoldo Alemán, is elected President representing the Liberal Party. He takes office in January 1997.
- 1998 Hurricane Mitch inflicts severe damage on Nicaragua.
- 2001 The Liberal Party (*PLC*) candidate, Enrique Bolaños, a conservative, is elected President.



# Present housing situation in Nicaragua

The right to adequate housing has been formally recognised in the Constitution of Nicaragua since 1987. Indeed, Article 64 of the Constitution states: “Nicaraguans have the right to dignified housing, spacious and safe, which guarantees the privacy of the family.” The Government of Nicaragua has also ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, the reality of living conditions in Nicaragua is far from being in compliance either with the constitutional stipulation or with the international obligations assumed by the Government in respect of economic, social and cultural rights.

While no exact statistics on the present housing deficit are available in Nicaragua, it is commonly accepted that a good estimate is probably around 500 000 housing units. The last Nicaraguan housing census was carried out in 1995 and the numbers are therefore out of date. The next census is planned for 2005. For this reason, in this report we have used the preliminary data gathered in 2001 by the *Encuesta Nacional sobre Medición del Nivel de Vida, 2001* (National Inquiry on Measuring the Quality of Life, 2001) published in the second quarter of 2002 by the *Instituto Nacional de Estadísticas y Censos (INEC, National Institute for Statistics and the Census)*.<sup>5</sup>

<sup>5</sup> Instituto Nacional de Estadísticas y Censos (INEC), *Indicadores Básicos. Encuesta Nacional sobre Medición del Nivel de Vida, 2001* (Managua: INEC, 2002). See also: Mariela Fernandez, ‘Nicaragüenses viven hacinados y sin agua’, in *La Prensa*, 25 May 2002 (electronic edition).



## Types of housing

In the *Encuesta Nacional sobre Medición del Nivel de Vida, 2001*, 92.1 percent of Nicaraguans stated that they were living in houses or *quintas*;<sup>6</sup> while 4.9 percent said they were living in improvised dwellings;<sup>7</sup> 2 percent in a *rancho* or *choza*<sup>8</sup> and 1 percent in other types of housing. In urban zones, it emerged that *chozas* represented only 0.4 percent of the housing, against 4.3 percent of the housing in rural areas.

**TABLE 1** Percentage distribution of the urban and rural population by housing type (2001)

Sector	House	Improvised Dwelling	Rancho or Choza	Other types	TOTAL
Urban	93.2%	4.9%	0.4%	1.5%	100%
Rural	90.4%	4.8%	4.3%	0.5%	100%

Source: Instituto Nacional de Estadísticas y Censos (INEC), *Indicadores Básicos. Encuesta Nacional sobre Medición del Nivel de Vida, 2001* (Managua: INEC, 2002), p. 3.

## Forms of housing tenure

The following forms of housing tenure were identified: 81.4 percent of Nicaraguans stated that they owned the homes they lived in.<sup>9</sup> Only 6.6 percent of Nicaraguans were renting a house, and another 11.9 percent said they were either living in borrowed homes or under some other form of tenure. There are some interesting regional variations from this national tendency. The city of Managua had the highest percentage of people living in homes they owned (87.7 percent), while the Pacific region had the lowest percentage of home ownership (74.2 percent). Managua had the lowest percentage of people in rented homes (3.6 percent), while the Pacific region had the highest percentage (8.7 percent).

6 INEC (Nicaragua's National Institute for Statistics and the Census) defines a house as "a place of habitation which is of solid construction, built for permanent inhabitation"; and a *quinta* as "a place of habitation which is of solid construction, built for permanent inhabitation and generally located on the outskirts of a city or in a rural area." Republica de Nicaragua, *Vivienda departamentos. Vol. I. VII Censo de Población y III de Vivienda, 1995* (Managua: Republica de Nicaragua, 1997), p. v.

7 INEC defines an improvised dwelling as "a place of habitation constructed of waste material such as cardboard, pieces of tin-plate, plastics and assorted pieces of wood, etc. This category includes: mobile homes, boats, caravans, etc." Ibid.

8 INEC defines a *rancho* or *choza* as "any place of habitation built of rustic materials of little durability and generally having a roof of palm fronds, straw, etc. Ibid.

9 According to INEC, an owned home "is considered so with or without title documents, if being amortized" [that is, provided that the mortgage is being repaid]. Ibid.

**TABLE 2** Percentage of housing by form of tenure; urban vs. rural, and by region (2001)

Sector/Region	Owner	Renter	Other	Total
Nationwide	81.4%	6.6%	11.9%	100%
Urban	82.0%	7.4%	10.6%	100%
Rural	80.6%	5.5%	13.9%	100%
Managua	87.7%	3.6%	8.8%	100%
Pacific	74.2%	8.7%	17.1%	100%
Central	82.6%	7.8%	9.6%	100%
Atlantic	84.3%	4.9%	10.8%	100%

Source: Instituto Nacional de Estadísticas y Censos (INEC), *Indicadores Básicos. Encuesta Nacional sobre Medición del Nivel de Vida*, 2001 (Managua: INEC, 2002), p. 9.

As we shall see later, being the ‘owner’ of a home is not the principal housing-related problem in Nicaragua, rather the quality of housing, and problems related to the legal status of the said properties.<sup>10</sup> The quality of housing is usually determined by: the main type of construction material used in the roof, the walls and the floor; the availability of potable water, electricity and drains; and the type of fuel used for cooking. At the same time, it is important to consider the number of rooms and the physical condition of the building, etc.

## Housing conditions

In Nicaragua as a whole, only 22.6 percent of housing is in good condition. The situation is the worst in rural areas, where 90 percent of housing is in only reasonable or poor state. Even in urban zones, only 30.9 percent of housing is considered to be in good condition. At the regional level, 83 percent of housing is in reasonable or poor state.

10 It should be noted that those who consider themselves ‘owners’, even though many of them do not have definite title to their property, have the support of the respective legislation issued since 1990, which recognises the acquired rights of the beneficiaries of the Sandinista social reformation and their right to be treated as the new owners of urban and rural buildings. It is in this sense that the international financial institutions do not hesitate to call such people owners. Furthermore, it is clear to anyone who knows the Nicaraguan political reality that the process of property rights reform is irreversible and fully accepted by all the political parties.



**TABLE 3 Housing conditions; urban vs. rural, and by region (2001)**

Sector/Region	Good	Reasonable	Poor	Total
Nationwide	22.6%	46.4%	30.9%	100%
Urban	30.9%	43.5%	25.6%	100%
Rural	10.0%	50.9%	39.1%	100%
Managua	35.4%	41.7%	22.9%	100%
Pacific	20.2%	46.9%	32.9%	100%
Central	16.0%	50.3%	33.7%	100%
Atlantic	18.2%	45.5%	36.2%	100%

Source: Instituto Nacional de Estadísticas y Censos (INEC), *Indicadores Básicos. Encuesta Nacional sobre Medición del Nivel de Vida, 2001* (Managua: INEC, 2002), p. 8.

## Number of persons and rooms per house

The average number of persons living in one housing unit is five, which is extremely high. In the Atlantic coastal region, this rises to an average of 6 persons per dwelling. Nationwide, 64 percent of homes have only one or two rooms. In the Atlantic region, the corresponding figure is 67 percent.

**TABLE 4 Average number of persons per house; urban vs. rural, and by region (2001)**

Sector/Region	Number of persons
Nationwide	5.6
Urban	5.4
Rural	5.9
Managua	5.4
Pacific	5.6
Central	5.7
Atlantic	6.1

Source: Instituto Nacional de Estadísticas y Censos (INEC), *Indicadores Básicos. Encuesta Nacional sobre Medición del Nivel de Vida, 2001* (Managua: INEC, 2002), p. 7.

**TABLE 5** Number of rooms per housing unit; urban vs. rural, and by region (2001)

Sector/Region	1 room	2 rooms	3 rooms	4 rooms	Total
Nationwide	37.3%	27.1%	19.9%	15.6%	100%
Urban	32.9%	25.1%	21.3%	20.8%	100%
Rural	44.2%	30.3%	17.9%	7.7%	100%
Managua	33.5%	24.4%	18.9%	23.2%	100%
Pacific	43.6%	24.2%	19.6%	12.6%	100%
Central	33.8%	31.6%	21.6%	13.0%	100%
Atlantic	38.3%	29.4%	18.6%	13.8%	100%

Source: Instituto Nacional de Estadísticas y Censos (INEC), *Indicadores Básicos. Encuesta Nacional sobre Medición del Nivel de Vida, 2001* (Managua: INEC, 2002), p. 7.

## Electricity

Nationwide, 71 percent of homes in Nicaragua have electricity. However, very large differences remain in access to this service between the urban and rural areas, as well as between regions. Only 40.1 percent of rural homes have electricity, in comparison to 91.3 percent in urban zones. In Managua province, 98.4 percent of housing is connected to mains electricity, while in the Atlantic coastal region the corresponding figure is as low as 46.8 percent, rising to 49.9 percent in the Central region. However, the joint fact-finding team estimates that the figure cited for Managua probably includes many housing units with illegal connections that fall well below minimum permissible safety standards and therefore pose a high risk of death or injury to the users.

**TABLE 6** Percentage of homes with electricity; urban vs. rural, and by region (2001)

Sector/Region	Percentage
Nationwide	71.0%
Urban	91.3%
Rural	40.1%
Managua	98.4%
Pacific	77.8%
Central	49.9%
Atlantic	46.8%

Source: Instituto Nacional de Estadísticas y Censos (INEC), *Indicadores Básicos. Encuesta Nacional sobre Medición del Nivel de Vida, 2001* (Managua: INEC, 2002), p. 12.

## Sanitation

Nationwide, only 22.6 percent of homes have flush toilets or similar sanitation, 28.9 percent have (chemically) treated latrines, 34.3 percent untreated latrines and 14.1 percent have no sanitation at all. Flush toilets are a luxury: only 2 percent of rural homes, and 5.5 percent of homes in the Atlantic coastal region, are equipped with them. Nationwide, the latrine, with or without treatment, is the predominant sanitation system, used by 63.2 percent of all homes.

**TABLE 7** Class of sanitation; urban vs. rural homes, and by region (2001)

Sector/Region	Flush toilet or similar	Latrine (treated)	Latrine (untreated)	None	Total
Nationwide	22.6.6%	28.9%	34.3%	14.1%	100%
Urban	36.2%	27.1%	31.6%	5.1%	100%
Rural	2.0%	31.7%	38.5%	27.9%	100%
Managua	50.6%	20.2%	27.1%	2.1%	100%
Pacific	17.5%	35.0%	38.0%	9.5%	100%
Central	10.6%	31.3%	35.1%	23.1%	100%
Atlantic	5.5%	25.5%	38.4%	30.6%	100%

Source: Instituto Nacional de Estadísticas y Censos (INEC), *Indicadores Básicos. Encuesta Nacional sobre Medición del Nivel de Vida, 2001* (Managua: INEC, 2002), p. 13.

## Water supply

Nationwide, 65.9 percent of homes have piped (drinking) water. This figure is fairly close to the median, as 88.0 percent of homes in urban zones have piped water against only 32.2 percent in rural areas. The corresponding figures for the Managua and Atlantic provinces are 96.3 and 32.9 percent, respectively. The joint fact-finding team notes that these figures indicate the official coverage of water-supply systems; they do not reflect real, measured access to water. (For example, in 200 settlements and dozens of (poor) suburban districts, especially in the cities of Boaco, Matagalpa and Managua, water supplies only reach users around midnight and then only for a few hours.) Nor do these figures reflect the quality of the water supplied, which, in rural areas for example, is often very poor.

**TABLE 8** Percentage of homes with piped water; urban vs. rural, and by region (2002)

Sector/Region	Percentage
Nationwide	65.9%
Urban	88.0%
Rural	32.2%
Managua	96.3%
Pacific	67.9%
Central	50.2%
Atlantic	32.9%

Source: Instituto Nacional de Estadísticas y Censos (INEC), *Indicadores Básicos. Encuesta Nacional sobre Medición del Nivel de Vida, 2001* (Managua: INEC 2002), p. 11.

## Cooking fuels

Approximately 92.3 percent of rural homes in Nicaragua burn wood for cooking, compared to 44.1 percent in urban zones. Bottled propane or butane gas is used in 48.4 percent of urban homes, as opposed to only 6.3 percent in rural areas.

**TABLE 9** Types of cooking fuel; urban vs. rural homes (2001)

Sector	Wood	Gas (butane or propane)	Other	Total
Urban	44.1%	48.4%	5.9%	100.0%
Rural	92.3%	6.3%	0.2%	100.0%

Source: Instituto Nacional de Estadísticas y Censos (INEC), *Indicadores Básicos. Encuesta Nacional sobre Medición del Nivel de Vida, 2001* (Managua: INEC, 2002), p. 14.

## Waste disposal systems

The commonest method of waste disposal in Nicaragua is burning: nationwide, 44.5 percent of homes use this method, whereas only 32.9 percent enjoy collection of solid waste by truck. Almost one in five households, 17.6 percent, just dump their waste in open spaces or in rivers. In urban zones, waste collection is the main method (54.3 percent). However, there is still a high percentage of homes that burn waste (33.9 percent) in urban zones. In rural areas, burning is the principal means of waste disposal (60.6 percent), followed by dumping in open spaces or in rivers. Truck collection of waste is practically non-existent in rural areas, at only 0.4 percent.

**TABLE 10 Percentage of urban and rural housing by method of waste disposal (2001)**

Sector/Region	Truck collection	Burning	Dumping in open spaces or rivers	Other	Total
Nationwide	32.9%	44.5%	17.6%	5.0%	100.0%
Urban	54.3%	33.9%	6.9%	4.9%	100.0%
Rural	0.4%	60.6%	33.9%	5.1%	100.0%
Managua	61.1%	29.0%	3.8%	6.0%	100.0%
Pacific	27.5%	55.3%	12.9%	4.3%	100.0%
Central	21.6%	43.6%	30.1%	4.8%	100.0%
Atlantic	14.5%	52.2%	28.0%	5.3%	100.0%

Source: Instituto Nacional de Estadísticas y Censos (INEC), *Indicadores Básicos. Encuesta Nacional sobre Medición del Nivel de Vida, 2001* (Managua: INEC, 2002), p. 12.

## Means of access to housing

In Nicaragua, 44.6 percent of homes are accessible only by unpaved roads or tracks, while 41.4 percent have paved or asphalted access roads or streets. Footpaths provide access to 11 percent of homes; rivers or the sea to 2.8 percent. In Managua, 72.1 percent of homes are accessible by paved or asphalted roads or streets. The corresponding figures for the Central and Atlantic regions are very low, at 19.9 and 16.3 percent respectively.

**TABLE 11 Types of access to housing; urban vs. rural, and by region (2001)**

Sector/Region	Paved/asphalted road/street	Unpaved road/track	Footpath	River/sea
Nationwide	41.3%	44.6%	11.3%	2.8%
Urban	57.6%	39.4%	2.5%	0.5%
Rural	16.5%	52.7%	24.7%	6.2%
Managua	72.1%	27.9%	0.0%	0.0%
Pacific	45.7%	46.1%	7.7%	0.4%
Central	19.9%	55.8%	22.1%	2.2%
Atlantic	16.3%	48.3%	17.9%	17.5%

Source: Instituto Nacional de Estadísticas y Censos (INEC), *Indicadores Básicos. Encuesta Nacional sobre Medición del Nivel de Vida, 2001* (Managua: INEC, 2002), p. 17.



2

## **Comprehensive review of property rights in Nicaragua**

In this section we review the various ways in which property rights were dealt with from the Sandinista revolution of 1979 until the end of President Arnoldo Alemán's administration in 2001. At the very outset, however, we wish to explain why we consider property rights in Nicaragua to be a complex issue. There are various reasons for this.

On the one hand, the dictatorship of the Somoza dynasty was based on the abuse of power and the violation of many rights, included the right to property. Indeed, at the time of the Sandinista revolution, the Somoza family held at least 20 percent of the land in Nicaragua and had monopolistic control of many branches of industry. Not surprisingly, opposition groups strongly denounced this abusive accumulation of property by the Somoza family dynasty, which had been in power since the 1930s.

On the other hand, the complexity of the property rights issue also stems from the way in which the Sandinistas came to power; that is, by means of a popular armed uprising. In the resulting civil war, many government buildings were destroyed, including the Public Registry Offices. For example, the Public Records Office in the city of Esteli was burned down during the fighting.

In addition, the steps taken by the revolutionary Government of the Sandinistas, as we shall see later in greater detail, involved a profound intervention in urban and rural property ownership, the aim being to redistribute as far as possible the property that had been in the hands of an entrenched elite. Furthermore, it was commonly believed in Nicaragua at that time that the revo-

lution would be eternal, so the Sandinista Government did not concern itself too much with the legal registration of the property transferences it made. For this reason, it is now virtually impossible to obtain exact figures for the lands and lots distributed under the Sandinista urban and agrarian reform.

Moreover, the need to defend the revolution against groups of paramilitary counter-revolutionaries or *Contras* – armed and organised by the US Government and operational from 1983 onwards – not only put Nicaragua on an economic war-footing, but also dictated the logic of military defence. On the border with Honduras, thousands of peasants and indigenous persons were forcibly displaced by the Sandinista People's Army with the idea of protecting them and making things more difficult for the *Contras*. Paradoxically, one result of this measure was that many peasants and indigenous persons turned against the Sandinista Government and took up arms with the *Contras*. Many rural properties were actually seized to create a frontline in the conflict. Some medium- and large-scale landowners were expropriated without due process on suspicion of having engaged in counter-revolutionary activities.

The electoral defeat sustained by the Sandinista movement in February 1990 took the revolutionary Government by surprise, and it was faced with the urgent need to swiftly legalise the many transformations made during the previous decade. Once again, the disorder – and, on several occasions, the abuse of power – which resulted raised doubts about the legacy of the revolution, which is still the subject of debate among those who believe that the Sandinista Front officials inappropriately benefited from the said 're-distribution', during what has become known as *La Piñata*.<sup>11</sup>

The experience of the Nicaraguan civil war demonstrated that, in order to end an armed conflict of such proportions and bitterness, it is essential to use the re-distribution of land as an incentive to demobilise the combatants of the warring factions. Thus, the Government of Violeta Barrios de Chamorro found itself compelled, virtually against its will, to implement agrarian reform. Once again, this process took place amid great tension, compulsory land seizures, the emergence of new armed groups, and the constant threat of a breakdown of the whole process and a return to war. Indeed, these land transfers generated conflicts that have resulted in violent deaths, and continue to do so even now.

Finally, as there are no exact figures on the properties that were subject to intervention during the Sandinista revolution, it is practically impossible to 'regularise' the properties in question – that is, to return them to, or pay corresponding indemnities to, their previous owners – in a transparent and orderly manner. Undoubtedly, this situation is a perfect scenario for abuse and corruption on the part of public officials who are charged with administering the process of 'property regularisation'.

11 *La Piñata* – a colourful papier-mâché figure (traditionally a five-pointed star) filled with sweets and other gifts that is hung up at parties for children. The children, blindfolded, try to break it open with sticks so that the goodies rain down on them. In post-Sandinista Nicaragua, *La Piñata* was the name ironically given to the massive transfer and titling of confiscated and expropriated property, including homes, agricultural plots, and businesses, which the Sandinista government conducted during the interim 'lame-duck' period between the Feb. 1990 election it lost and President Chamorro's inauguration in Apr. 1990. Within the Sandinista movement, rancour arose as *La Piñata* created new classes of 'haves' and 'have-nots'. See: <http://reference.allrefer.com/country-guide-study/nicaragua/nicaragua94.html>

David Stanfield of the Land Tenure Center at the University of Wisconsin-Madison has stated that the majority of land-tenure appeals have some legal basis, so that “this superimposition of rights lies at the core of the problem of legal tenure insecurity.”<sup>12</sup> The joint fact-finding team would caution against this analysis and believes that it is pertinent to note that the property ‘claimants’ have not always had the law in their favour. In many instances, it has been alleged that those who have laid claim to confiscated properties have had connections with, or influence upon, the respective Governments. It is said that these Governments, seeking to detract from the revolutionary period, have made undue repayments, indemnifying for a second time those from whom property was supposedly confiscated. Reportedly, some of the claimants lost their property because they had had outstanding debts to the banks that comprise the National Financial System (*Sistema Financiero Nacional*); others, it is claimed, were indemnified even though they had no right to such payments because they had previously exchanged their land or legally transferred it. In other cases, it is alleged that indemnities were assessed, not with the independent endorsement that might have justified the huge sums paid out, but only to appear to substantiate the values presented by the claimants. There have also been allegations that in countless cases of property ownership, indemnities were paid even though the title documents had remained in the name of the previous owners for several years, without the State having authenticated the acquisition, thereby facilitating a repeated indemnity payment when the next change of public employees or Government took place.

By way of illustration, the following table [*editor’s note*: which is by no means exhaustive] shows some of the many different laws related to urban and rural property which were passed from the time of the Sandinista revolution to the time of writing this report.

**TABLE 12 Key legislation relating to property ownership in Nicaragua (1979 - 2002)**

Type/No.	Subject	Date
Decree 3	Confiscation of the Somoza family’s properties	20 July 1979
Decree 25	Nationalisation of the financial system	26 July 1979
Decree 38	Clarification of and addition to Decree 3: confiscation of properties from military personnel and other allies of the Somoza regime	8 Aug. 1979
Decree 97	Law on illegal re-distribution of property	26 Sept. 1979
Decree 137	Law on nationalisation of the mining sector	2 Nov. 1979
Decree 282	Revision of the decrees applied to date: legal position of those expropriated or under investigation	7 Feb. 1980
Decree 329	Expropriation of certain rural estates	29 Feb. 1980
Decree 760	Appropriation of abandoned properties	19 July 1981
Decree 782	Law on Agrarian Reform	19 July 1981

12 David J. Stanfield, *Insecurity of Land Tenure in Nicaragua* (Madison, WI: Land Tenure Center, University of Wisconsin-Madison, 1995), p. 13.



Decree 832	Regulation of the Agrarian Tribunals	12 Oct. 1981
Agreement 8	Regulation of the Law on Agrarian Reform	16 Oct. 1981
Decree 895	Law on expropriation of abandoned urban lands	14 Nov. 1981
Decree 903	Law on expropriation of abandoned premises in the inner city (of central Managua)	16 Dec. 1981
Decree 1017	Amendments to the law on titles to plots under supervised redistribution	14 Jan. 1982
Decree 1117	Law on title to plots under supervised redistribution	21 Sept. 1982
Decree 1170	Clarification of Decrees 3, 38 and 282	30 Dec. 1982
Agreement 12	Amendment to the regulation of the Law on Agrarian Reform	26 Oct. 1983
Decree 1368	Amendments to the law on illegal redistribution of land	6 Dec. 1983
Law 14	Amendment to the Law on Agrarian Reform	13 Jan. 1986
Agreement 22	Regulation of the Law on Agrarian Reform	4 Feb. 1986
Decree 171	Amendment to the regulation of the Agrarian Tribunals	16 Mar. 1986
Law 85	Law on transfer of ownership of housing and other real estate belonging to the State and its Institutions	30 Mar. 1990
Law 86	Special law on legalisation of housing and lands	Apr. 1990
Law 87	Law on the transference of jurisdiction and agrarian procedure	5 Apr. 1990
Law 88	Law on protection of agrarian property	Apr. 1990
Dec./Law 11-90	Decree/Law on confiscation review	23 May 1990
Decree 23-91	Applicability of Decree/Law 11-90	3 June 1991
Decree 35-91	Establishment and functioning of the Land-Use Management Office (OOT)	19 Aug. 1991
Decree 36-91	Taxes on real estate	26 Aug. 1991
Decree 47-92	Re-establishment of the National Confiscation Review Commission (CNRC)	10 Sept. 1992
Decree 48-92	Expansion of functions of the Land-Use Management Office (OOT)	10 Sept. 1992
Presidential Accord 248-92		9 Sept. 1992
Decree 51-92	Establishment of the Indemnities Assessment Office (OCI)	30 Sept. 1992
Decree 56-92	Compensation system	16 Oct. 1992
Decree 31-93	Regulation of the State Attorney's Office for Property	27 May 1993
Law 180	Special law on valuation of indemnity bonds	28 July 1994
Decree 39-94	Establishment and functioning of the Urban Titling Office	13 Sept. 1994
Law 209	Law on stability of property	1 Nov. 1995
Law 278	Law on reformed urban and agrarian property (also established Property Tribunals)	16 Dec. 1997
Decree 14-98	Regulation of Law 278 on urban and agrarian property reform	13 Feb. 1998
Law 288	Law on the re-establishment of the expiry dates of Arts. 22, 24 & 95 of Law 278 on urban and agrarian property reform	24 Apr. 1998
Law 309	Law on the regulation/organisation/title for spontaneous human settlements	28 July 1999

## 2.1 Property rights during the Sandinista revolution and Government (July 1979-April 1990)

### Property transformations

The first years of the Sandinista revolution may be considered as a period of revolutionary intervention in urban and rural land-ownership, resulting in a profound transformation of the structure of property ownership to the benefit of the popular sectors. This transformation is still in place in general terms, despite all the blows. The first confiscations by the Sandinista Government were those made pursuant to Decree 3, issued one day after the revolution succeeded on 19 July 1979, and focused on properties of the dictator Anastasio Somoza and his family. One month later, under Decree 38 of 1979, National Guard personnel and allies of the Somoza regime saw their properties confiscated. The third piece of key legislation in the confiscation of properties from officials of the old regime was Decree 329 of 29 February 1979.

The Law on Agrarian Reform was enacted on 19 July 1981 by means of Decree 782 and expropriated with indemnification all properties larger than 1 000 *manzanas*<sup>13</sup> (708 hectares or 1 750 acres) in certain parts of the country and those larger than 500 *manzanas* (354 hectares or 875 acres) in other parts.

After 1984, the Sandinista Government found itself compelled to scale down its projects for general urban and agrarian reform and had to adapt itself to an extremely difficult internal and external situation, evident in a severe economic crisis.

Faced with the bitter reality of the surprise electoral defeat in 1990, the Sandinista Government decided to speed up the process of legalisation for those urban and rural properties that had been effectively redistributed during the previous years, as well as those which were under State administration but still necessitated an adequate legal framework. In spite of the universal and re-distributive character of Laws 85 and 86, the massive transference of property during this period (1990) also had, as former Sandinista vice-president Sergio Ramírez has admitted:

“a strictly political justification ... which was that the Sandinista movement could not leave power without material goods, as this would mean its annihilation ... So there was then a hurried and chaotic transference of buildings, companies, farm estates, and share participation, into the hands of third parties who were given custody of these assets in order that they might later pass them on to the *FSLN*, who ended up getting almost nothing.”<sup>14</sup>

This situation generated a huge ethical problem which enormously discredited the Sandinistas' revolutionary legacy of property redistribution. It is this which has become popularly known as the *Piñata*.<sup>15</sup>

13 The *manzana*, a unit of land area used in Nicaragua and other Central American countries, equals 1.75 acres (0.708 hectares).

14 Sergio Ramírez, *Adiós Muchachos. Una memoria de la revolución Sandinista* [Farewell Comrades. Memoirs of the Sandinista revolution] (Bogotá: Aguilar, 1999), p. 55.

15 (See: n. 11 above.) Sergio Ramírez comments bitterly: “All this was the *Piñata*, a word which, to our shame, we registered in the world's annals together with the term *Contra*; the two things which have best survived from the Sandinista revolution. The expressions, *muchachos*, and *compañero*, *compa*, *compita* [used in senses approximating to ‘mates’, ‘comrade(s)’, ‘fellow-freedom-fighter(s)’], were lost.” Ibid.

## What did the Sandinista agrarian reform achieve?

Although there is no exact data on the Sandinista agrarian reform, various analysts agree that between 2.7 and 3 million *manzanas* (1.91-2.12 million hectares or 4.73-5.25 million acres) were affected,<sup>16</sup> out of a total arable and pastoral land area of about 8 million *manzanas* (5.7 million hectares or 14 million acres), which means that some 35 percent of the land was reformed during the revolution.<sup>17</sup> The overwhelming majority of the land for agrarian reform was acquired by confiscating large unproductive properties, which went from representing 52 percent of the total land area in 1978 to only 20 percent in 1988. In contrast, the reduction in small and medium properties was very small. About 40 percent of the confiscated land was re-distributed to co-operatives; 34 percent was used to form state-owned agro-industrial companies; and 26 percent was divided between individual landless peasants. Thus, at the end of the revolution, 13.8 percent of the nation's land belonged to co-operatives, and 11.7 percent to state-owned enterprises.

**TABLE 13 Evolution of land tenure structure in Nicaragua (1978 - 1988)**

Sector/Property	1978		1988	
	area ( <i>manzanas</i> )	percentage of total	area ( <i>manzanas</i> )	percentage of total
<b>Private sector (sub-total)</b>	<b>8 072 600</b>	<b>100.0%</b>	<b>5 292 000</b>	<b>65.6%</b>
– Large properties	4 230 600	52.4%	1 653 000	20.5%
– Small and medium properties	3 842 000	47.6%	3 639 000	45.1%
<b>Reformed sector (sub-total)</b>	<b>0</b>	<b>0.0%</b>	<b>2 780 600</b>	<b>34.4%</b>
– Allocated to individuals	0	0.0%	716 700	8.9%
– Allocated to co-operatives	0	0.0%	1 115 700	13.8%
– State-owned enterprises	0	0.0%	948 200	11.7%
<b>TOTAL</b>	<b>8 072 600</b>	<b>100.0%</b>	<b>8 072 600</b>	<b>100.0%</b>

Source: Ministry of Housing and Public Credit, Rural Titling Office, as cited in *20 años después: qué pasó con la reforma agraria?* [20 years after: what happened to agrarian reform?], in *El Observador Económico*, No. 89 (June 1999), p. 19.

The Land Tenure Centre of the University of Wisconsin-Madison has calculated that about 50 percent of the lands confiscated for the purpose of agrarian reform were acquired under Decrees 3 and 38 of 1979 and Decree 329 of 1980, all three of which were issued in the first eight months of the revolution and focused on properties held by Somoza and members of his family, Government and armed forces. An additional 29 percent was acquired under the 1981 Law on

16 This is the view of World Bank and IDB officials, including Jaime Cofré (IDB). 'El proceso de transformación agraria fue frágil y vulnerable' [The process of agrarian transformation was fragile and vulnerable], in *El Observador Económico*, No. 89 (June 1999), p. 20. This opinion is shared by specialists on Nicaraguan property issues such as David J. Stanfield, investigator for the Land Tenure Center at the University of Wisconsin-Madison; see: Stanfield (n. 12 above), p. 4.

17 Jaime Wheelock, who, as Minister of Agriculture and Agrarian Reform in the Sandinista Government, was one of the key players in the agrarian reform process, maintains that intervention affected "around four million *manzanas* of land, and those properties were re-distributed, benefiting 120 000 families". Cited in 'Se sentaron las bases para un desarrollo equitativo' [Bases for equitable development laid down], *El Observador Económico*, No. 89 (June 1999), p. 28.

Agrarian Reform. A good portion of the remaining 20 percent of land acquired by the Sandinistas for agrarian reform may have stemmed from political reprisals and/or the military expediences of civil war. Undoubtedly, these measures mainly affected those small and medium landowners who were opposed to the Sandinista Government.

**TABLE 14 Acquisition of land for agrarian reform under the Sandinista Government (1978 - 1990)**

Methods of acquisition	Number of properties	Area (manzanas)
Decrees 3, 38 & 329	2 000	1 400 000
Law on Agrarian Reform (1981)	1 200	820 000
Law of Property Abandonment	252	18 230
Purchases made by the Sandinista Government	1 050	196 000
Effectively occupied under the Sandinista Government	510	300 000
Other methods	860	88 951
<b>TOTAL</b>	<b>5 872</b>	<b>2 823 181</b>

Source: David J. Stanfield, *Insecurity of Land Tenure in Nicaragua* (Madison, WI: Land Tenure Center, 1995), p. 4.

Why did so many problems arise in connection with the re-distributed properties? There are many contributory factors that help to explain the complexity of the agrarian property issue. According to Jaime Wheelock, former Minister of Agriculture and Agrarian Reform, there were three phases to the land-allocation process during the Sandinista revolution: “Firstly, simple allocation, which is the actual handing-over of the property; secondly, allocation of provisional titles, many of which were granted; and, finally, definite titles.”<sup>18</sup> A large proportion of the lands handed over during the agrarian reform process were transferred by simple allocation, another significant proportion by provisional title. After its 1990 election defeat became known, the Sandinista Government issued Law 88, “which converted the provisional titles into definite titles.”<sup>19</sup> This was a last-minute correction of an error made under the assumption that the revolution would be eternal.

## **2.2 Property rights under the Chamorro and Alemán Governments (April 1990-1996 and 1997-2001)**

During her 1989 presidential campaign, Violeta Barrios de Chamorro made a series of contradictory political promises on the property issue. The political parties that supported her under the banner of the coalition National Opposition Union (*UNO*) offered a widely diverse set of political viewpoints, with few common elements other than their general opposition to the Sandinistas.

<sup>18</sup> *El Observador Económico* (n. 17 above), p. 30.

<sup>19</sup> *Ibid.*

For this reason, in order to win popular support, Chamorro promised to respect those urban and rural property transfers which had benefited the poorer segments of the population. Therefore, the poor people who voted for Chamorro did not expect her Government to reverse the process of property re-distribution. At the same time, most of the opposition coalition leaders, many of whom had been expropriated in the 1980s, were banking on the return of their properties, or, in exceptional cases, the payment of handsome indemnities instead.

On 23 May 1990, less than one month after taking office, the Chamorro Government issued *Decreto-Ley No. 11-90 de Revisión de Confiscaciones* (Decree/Law 11-90 on Confiscation Review), the first piece of legislation to reverse the Sandinista Government's expropriations. This Decree created the *Comisión Nacional de Revisión de Confiscaciones* (CNRC, National Confiscation Review Commission), consisting of the *Procurador General de Justicia* (Attorney General for Justice) and four other persons appointed by the President. Administratively, they were charged with:

“The review of all confiscations executed by the previous Government under the laws and decrees on confiscation, expropriation or agrarian reform and those which in one way or another deprived natural and legal persons [that is, individuals and companies] of their real assets, rights and shares.” (Art. 1)

Property claimants were required to submit the title documents of their properties, or:

“... failing that, declarations of five witnesses made before the *Comisión Nacional de Revisión* [CNRC, National Confiscation Review Commission], bearing witness to the right of possession prior to the act of confiscation or intervention.” (Art. 4)

Having examined the submittal, the Commission could decide the issue by simple majority. Decree/Law 11-90 further indicated that:

“The resolution ordering the restitution of real assets or recognising some right, shall be fulfilled immediately with the use of public forces if this be necessary.” (Art. 7)

In addition, it was established that the resolution ordering the restitution:

“shall serve as sufficient title for the exercise of full rights ... or it shall be written into the corresponding Public Register if this be necessary.” (Art. 11)

Should the Commission deny the claim, the claimant would have due recourse to the legal system to continue with the claim (through an appeal, that is).

In May 1991, the Supreme Court of Justice declared Articles 7 and 11 of Decree/Law 11-90 unconstitutional, finding that disputes between individuals could only be settled through the legal system. As a result of this ruling, the work of the National Confiscation Review Commission (CNRC) was suspended. Nonetheless, the Government rapidly issued Decree 23-91, stating:

“that the judicial ruling of partial unconstitutionality handed down by the Supreme Court cannot therefore affect the firm and resolute intention of the President of the Republic to fulfil its undertaking to review and reinstate as far as possible that which was unjustly taken.” (Preamble V)

Similarly, Article 1 of Decree 23-91 clarified that:

“The applicability of Decree 11-90 is maintained to the extent that it is not affected by Ruling No. 27 on partial unconstitutionality.” (Art. 1)

Furthermore, Article 3 of Decree 23-91 stated that:

“All restitutions and physical deliveries of State properties already effectuated be respected and confirmed.” (Art. 3)

Once the work of the National Confiscation Review Commission (CNRC) had been suspended, the Presidency of the Republic collected all documentation relating to the claims submitted to the Commission and created what was called the *Oficina de Actualización de Datos* (Information Updating Office), staffed by 27 lawyers charged with organising and systematising the information contained in that documentation.<sup>20</sup> According to Dr Luis Meléndez, who co-ordinated the team’s work:

“the information was quite rudimentary, quite incomplete, for [on the one hand] everyone was submitting claims hurriedly because the deadlines for the claims were strict, and, on the other hand, in 1991 the State was not well organised and it was difficult for the claimants to obtain the documents and other requisites for formulating their claims.”<sup>21</sup>

In the year that Decree 1-90 came into force, the National Confiscation Review Commission (CNRC) ordered the return of some 2 200 properties,

“often without determining the circumstances under which the lands were occupied at that time.”<sup>22</sup>

This situation created a climate of intense confrontation throughout Nicaragua, which at that time was going through a delicate and fragile process of reconciliation. Thus, the first phase of property disputes under the Chamorro Government was fought out in the streets between those who had been expropriated during the Sandinista era and who were returning from exile, seeking revenge and the recovery of their properties at all costs, even by force, and those who had benefited from the Sandinista reforms.<sup>23</sup>

20 The formation of this team of experts is covered by Art. 8 of Decree 23-91.

21 Interview with Luis Meléndez, President of the Comisión Nacional de Revisión de Confiscaciones (CNRC, National Confiscation Review Commission), Managua, 7 Oct. 2002.

22 The Carter Center, *Nicaragua Property Disputes* (Atlanta, GA: The Carter Center, Emory University, 1995), p. 14, <http://www.cartercenter.org>

23 The violence was not confined to the low-income population. In Nov. 1992, the leader of those who had been expropriated, Arges Sequeira, was assassinated by a commando unit of former members of the Sandinista security forces.

The various struggles between the Chamorro Government and the Sandinista grassroots culminated in a process of political consensus between the two groups, shaped by the so-called *Acuerdos de Concertación* (Consensus Accords). Under these accords, and in apparent contradiction to the Chamorro Government's stated intention to return the properties confiscated during the revolution to the original owners, in August 1991 the Government issued Decree 35-91, which created the *Oficina de Ordenamiento Territorial* (OOT, Land-Use Management Office). In the preamble to the Decree, the state of affairs was recognised as follows:

"That the accords of the '2nd Phase of Economic and Social Consensus' are a product precisely of that search [the promotion of a state of law and social justice], of many days of intense negotiation between employers, workers and the Government, in seeking a consensus that would permit a just and peaceful solution to be found for the property issue in Nicaragua." (Preamble)

Decree 35-91 further stated that:

"The said Office [the OOT] will be charged, principally, with reviewing the acquisitions or transfers of real property carried out under the aegis of Laws 85 and 86 ... as well as those cases of allocation with property title issued within the concept of agrarian reform, the beneficiaries of which took effective possession of the lands between 25 February 1990 and 25 April of that same year." (Art. 1)

The work of the OOT was to study the documentation and determine whether or not the transfers of houses and lots should be adjusted to conform with the requirements of Laws 85 and 86. If the said property transfers were found to have been legal, the Office would issue the beneficiaries with a document known as *Solvencia de Ordenamiento Territorial* (Settlement of Land-Use Management). If, however, the transfers were found to have been illegal, or if there were doubts as to their legality, the matter would be passed on to the Attorney General's Office for Justice (*Procuraduría General de Justicia*) for investigation and possible sanctioning.<sup>24</sup>

However, once the Information Updating Office (*Oficina de Actualización de Datos*) had finished its work of organising the claims information, the Chamorro Government issued Decree 47-92<sup>25</sup>, restoring to its functions the National Confiscation Review Commission (CNRC, *Comisión Nacional de Revisión de Confiscaciones*). To this end:

"it was necessary to amend the organic law of the Attorney General's Office for Justice [*Procuraduría General de Justicia*] and to create the State Attorney's Office for Property [*Procuraduría de la Propiedad*]."<sup>26</sup>

In re-establishing the CNRC, Decree 47-92 stipulated that the Commission would function within the Attorney General's Office for Justice and would comprise the State Attorney for Property and two other members appointed by the Presidency of the Republic (Art. 2).

24 Decree 48-92 augmented the functions of the OOT and assigned to it facilities for reviewing rural properties as well and issuing or denying *solvencias* (documentary settlements) on the properties in question.

25 Dated 10 Sept. 1992.

26 Interview with Luis Meléndez (n. 21 above).



“The Commission will execute the administrative revision of claims submitted by private individuals in the tenor of Decree 11-90, issue its resolutions and make its recommendations to the appropriate State entity for the return of properties or the payment of indemnities as the case may be ...” (Art. 3)

To complement the work of the *CNRC*, the Chamorro Government issued a series of decrees. **Firstly**, Decree 51-92<sup>27</sup> created the *Oficina de Cuantificación de Indemnizaciones (OCI*, Indemnities Assessment Office), which would have:

“as its principal objective the valuation and calculation of properties claimed by private individuals ... who had obtained a resolution approving indemnity from the National Confiscation Review Commission.” (Art. 1)

**Secondly**, Decree 56-92<sup>28</sup> established a system of compensation by means of 15-year, dollar-pegged, interest-bearing Nicaraguan Government bonds, as compensation for:

“those patrimonial properties wrongfully appropriated or confiscated by the previous Government and which cannot possibly be returned.” (Art. 1)

The third complementary piece of legislation, Decree 31-93,<sup>29</sup> regulated the State Attorney’s Office for Property (*Procuraduría de la Propiedad*).

All the chaos with respect to the property issue generated intense conflict, including property seizures and forced evictions, mainly in the first three years of the Chamorro Government. In its 1991 Annual Report, *CENIDH* noted:

“During the year, apart from the scarcity of housing and basic services, thousands of poor citizens also faced the threat of the repeal of Laws 85 and 86 by *UNO* [National Opposition Alliance] deputies in the National Assembly, who attempted to disown the redistribution of urban property which had been achieved by these laws. Faced with such a desperate situation, thousands of people decided to seize urban lots in order to construct their own homes ... Instead of negotiating with the people to find viable alternatives, the Government’s response in many of these cases was eviction, using police violence against the people, as in the case of the ‘Tierra Prometida’ [Promised Land] and ‘Pedro Joaquín Chamorro’ settlements.”<sup>30</sup>

In its 1992 Annual Report, *CENIDH* gave the following account of the situation regarding seizures of urban lands and violent forced evictions:

“Faced with the lack of opportunities for legally obtaining a house, hundreds of *precaristas* [literally: ‘the precarious’; that is, landless/homeless squatters] formed spontaneous settlements by occupying urban lots last year. In the majority of cases, they were evicted violently by the police, who, moreover, generally acted without appropriate judicial authorisation.”<sup>31</sup>

27 Dated 30 Sept. 1992.

28 Dated 16 Oct. 1992.

29 Dated 27 May 1993.

30 *CENIDH, Informe Anual, Abril 1991-Abril 1992* [Annual Report, Apr. 1991-Apr. 1992] (Managua: CENIDH, 1992), p. 34.

31 *Id., Informe Anual, Abril 1992-Abril 1993* [Annual Report, Apr. 1992-Apr. 1993] (Managua: CENIDH, 1993), p. 38.



On the basis of such accounts, *CENIDH* concluded that the expulsions had practically become:

“a routine matter in the country’s cities and towns.”<sup>32</sup>

In its 1993 Annual Report, *CENIDH* announced that:

“according to information provided by the *Movimiento Comunal* [Communal Movement], between mid-February and early March 1994 there were 1 194 evictions, leading the *Movimiento Comunal* to publicly denounce the situation.”<sup>33</sup>

So it was that Nicaragua achieved international notoriety for the violent forced eviction, in the period from 1990 to 1994, of the beneficiaries of Sandinista urban and rural reform. For this reason, in late 1993, the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) paid special attention to the issue of property conflicts and mass evictions in Nicaragua, commenting:

“7. The Committee is also concerned at the lack of consistency and effectiveness of the programmes to regularise land ownership and to deal adequately with the problems of housing. In particular, the lack of respect for ownership of low-income dwellings under Laws 85 and 86 and the slow pace of procedures established by the Land-Use Management Office (*OOT*) create legal uncertainty for the occupants of the dwellings in question.

“8. The information received by the Committee concerning expulsions by the police of several hundred families (particularly in the Extensión La Primavera and El Boer communities in Managua) without any proposed relocation is very disturbing. Expulsions appear to be quite common and the Committee has not received any replies to specific questions asked about particular examples.

“9. The Committee requests the Government of Nicaragua to provide precise information on the incidents involving the expulsion of persons who invaded land and to inform it, before May 1994, of the measures it has adopted to deal, in accordance with the undertakings of the Covenant, with the problems of the irregular settlements. In this regard, the Committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances and in accordance with relevant principles of international law.

“10. The Committee requests that it should be provided with written replies to the concerns raised during its dialogue with the State party which, due to time constraints, remained unanswered. In particular, the Committee wishes to receive clarification as regards the situation of the removal and threatened eviction of squatters from different settlement communities.

32 See n. 31 above.

33 *CENIDH, Reporte Anual, Abril 1993-Abril 1994* [Annual Report, Apr. 1993-Apr. 1994] (Managua: CENIDH, 1994), p. 56.

“11. The Committee suggests that the State party ensure the effective implementation of Laws 85 and 86 of 1990 with a view to guaranteeing security of tenure and property title. The Committee recommends that the State party develop and implement urgently a comprehensive housing policy consistent with the State party’s obligations under international instruments.”<sup>34</sup>

The increased frequency of evictions in mid-1994, in spite of the UNCESCR’s comments, generated a political debate aimed at finding a definitive solution. For example, the National Assembly approved an anti-eviction law that was vetoed by President Chamorro but nonetheless came into effect.<sup>35</sup>

### **International mediation to resolve the issue of property conflicts**

In mid-1994, the situation started to change somewhat, thanks to the mediation of international organisations such as the Carter Center, and with a reduction in the number of violent evictions. Other favourable factors were the entry into circulation of the first indemnity bonds, and the steps taken to increase their value, including Law 180-94. From then on, as some analysts have concluded: “Property conflicts did not cease, rather they shifted to new arenas.”<sup>36</sup>

According to the Carter Centre:

“In June 1994, President Carter visited Nicaragua at the invitation of Nicaraguan President Violeta de Chamorro, the Nicaraguan National Assembly and the UNDP [United Nations Development Programme], and he was requested to assist in the matter of property rights.”<sup>37</sup>

As a result of these conciliatory efforts, the Carter Centre organised a conference in Managua on 4-5 July 1995 with a view to initiating a public debate on the property rights issue.

“The participants included members of President Violeta de Chamorro’s cabinet, the President and key committee chairpersons of the Nicaraguan National Assembly, leaders of the major political parties, members of the Supreme Court, leaders of organisations representing former property owners [*confiscados*], current occupants [*beneficiados*], workers, ex-combatants, and ambassadors from several countries, including the United States and Spain.”<sup>38</sup>

Subsequently, the political sides in the conflict reached a general agreement, the main features of which are still in place, to respect the acquired rights of those who benefited from the Sandinista social reforms and to indemnify those who were expropriated. One of the first steps

34 UNCESCR, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nicaragua*, UN Doc. E/C.12/1993/14 (1 Apr. 1994) (Geneva: UNCESCR, 1994).

35 CENIDH, *Reporte Anual, Abril 1993-Abril 1994* (n. 33 above), p. 57.

36 David R. Dye, et al., ‘Contesting Everything, Winning Nothing’, in *The Search for Consensus in Nicaragua, 1990-1995* (Cambridge: Hemisphere Initiatives, 1995), p. 24.

37 The Carter Center, *Former President Jimmy Carter Travels to Nicaragua to Assist with Property Disputes* (30 June 1995) (Atlanta, GA: The Carter Center, Emory University, 1995), <http://www.cartercenter.org>

38 Id., *Forum Helps Nicaraguans to Put Property Disputes Behind Them* (16 June 1995).

taken to exercise the rights of those who, under the aegis of Laws 85 and 86 of 1990, had benefited from the allocation of housing and urban lots was the creation of the *Oficina de Titulación Urbana* (OTU, Urban Titling Office) by Decree 39-94.<sup>39</sup> The purpose of this decree was to give formal title to those who had received documentary settlements (*solvenscias*) from the Land-Use Management Office (OOT) in respect of urban premises.

Property conflicts, however, continued to provoke large popular mobilisations for a few more years. For example, on 24 May 1995 about 25 000 *precaristas* (squatters) from the town of Masaya marched on the Presidential Palace in Managua calling for a solution to the property rights crises. At about the same time, peasants from various parts of the country occupied the campus of the Central American University for three months to demand that the Government grant them legal title to their lands.<sup>40</sup>

The agreements on the property rights issue between the various political forces were publicly ratified at a conference in Montelimar in mid-1995, and were consolidated by Law 209-95, or the ‘Law on the Stabilisation of Property Rights’, as well as Law 210-95.

Nonetheless, one of the ironies that presented itself during the Government of Violeta de Chamorro was the fact that, in spite of its interest in redressing the confiscations and expropriations of the Sandinista Government, the complete pacification of the forces involved in the conflict necessitated the implementation of a new agrarian reform. As the following table shows, between 1992 and 1994 the Chamorro Government distributed 214 083 *manzanas* (151 619 hectares or 374 645 acres) of land, with legal title, to settlers (*colonos*), ex-*Contras*, squatters (*precaristas*), ex-combatants of the Sandinista People’s Army, and repatriated refugees.

**TABLE 15 Land titles issued under Chamorro Government’s agrarian reform, 1992-1994**

Group	Area ( <i>manzanas</i> )	Percentage of total area	No. of titles	Percentage of total no.	People/land ratio
Settlers ( <i>colonos</i> )	104 200	49%	7 768	62%	19.2
Ex- <i>Contras</i>	70 525	33%	3 023	24%	33.5
Squatters ( <i>precaristas</i> )	18 620	9%	702	6%	37.9
Ex-Sandinista army	11 615	5%	455	4%	39.7
Repatriated refugees	9 123	4%	509	4%	25.2
<b>TOTAL/average</b>	<b>214 083</b>	<b>100%</b>	<b>12 457</b>	<b>100%</b>	<b>21.6</b>

Source: Deena I. Abu-Lughod (2000), p. 48.

39 Dated 13 Sept. 1994.

40 CENIDH, *Reporte Anual, Abril 1995-Abril 1996* [Annual Report, Apr. 1995-Apr. 1996] (Managua: CENIDH, 1996), p. 83.

Similarly, as part of the privatisation process, a number of state-owned farms were distributed to the workers, creating the so-called *Area Propiedad de los Trabajadores* (APT, Workers' Property Area). The following table gives an impression of how privatised state farms were distributed: 56 percent were restored to their former owners and the remaining 44 percent were divided between the workers (24 percent), ex-combatants of the Sandinista People's Army (12 percent), and ex-*Contras* (7 percent).

**TABLE 16** Distribution of privatised state farms, 1995

Beneficiary	No. of farms	Percentage	Area (hectares)	Percentage
Former owners	279	56%	101 137	40%
Workers	122	24%	77 577	31%
Ex-Sandinista army	61	12%	36 156	14%
Ex- <i>Contras</i>	37	7%	38 054	15%
<b>TOTAL</b>	<b>499</b>	<b>100%</b>	<b>252 924</b>	<b>100%</b>

Source: Deena I. Abu-Lughod (2000), p. 45.

During the Government of President Arnaldo Alemán (1997-2001), conciliatory efforts in the question of property rights continued with the issue of Law 278 of 1997, Law 288 of 1998 and Law 309 of 1999. If anything characterised the Alemán Government, however, it was the extremely high levels of corruption and personal enrichment. It is public knowledge that, during his presidency, Alemán increased his personal fortune to the extent that, by the time he left office, he had acquired a great amount of land mainly by buying out old co-operatives in the process of disintegration. At the time of writing this report, President Alemán remains under house arrest because of serious problems with the Justice authorities.

## 2.3 Property rights violations in Nicaragua condemned by the Inter-American Commission on Human Rights

Relatively few cases relating to property rights have been brought before the Inter-American System for Human Rights (that is, the Inter-American Commission and Court of Human Rights). In a recent report, COHRE identified only six cases in which the Inter-American Commission had condemned a country for violating Article 21 of the American Convention on Human Rights, which protects the right to property.<sup>41</sup> On only one occasion has the Court delivered a ruling in respect of the right to property: that is, in the case of the indigenous inhabitants of the Awas

41 Those cases were: *Comadres*, Case 10 948 (1996, El Salvador); *Saint-Julien Charles*, Case 3519 (1982, Haiti); *Leon Thebaud*, Case 3405 (1983, Haiti); *Carlos Martinez Regueiro*, Case 7788 (1987, Nicaragua); *Haydee A. de Marin et al.*, Case 10 770 (1993, Nicaragua); *Accionistas del Banco de Lima*, Case 10 169 (1991, Peru).

See: Centre on Housing Rights and Evictions (COHRE), *Enforcing Housing Rights in the Americas. Pursuing Housing Rights Claims within the Inter-American System of Human Rights* (Geneva: COHRE, 2002), pp. 24-27.

Tingni community in Nicaragua.<sup>42</sup> Two of the six cases considered by the Commission involved Nicaragua. In this section we analyse these cases.

### **Case 7788: *Carlos Martínez Riguero v. Nicaragua* (1987)**

In 1987 the Inter-American Commission condemned the Sandinista Government of Nicaragua for violations of the right to property, enshrined in Article 21 of the American Convention on Human Rights:

“by confiscating the dividends earned on shares owned by Mr Carlos Martínez Riguero of Empresa Cereales de Centroamérica S.A. (CERSA)”;

and

“by nationalizing the quarry located in the ‘Las Brisas’ subdivision belonging to Mr Carlos Martínez Riguero and by thus far failing to honor the pecuniary obligations arising out of that measure, despite the lengthy period that has elapsed”<sup>43</sup>

In this case, the claimant alleged that shares he held in a cereals company (Empresa Cereales de Centroamérica S.A.) had been misappropriated under Decree 3 of 1979, on confiscating properties from the Somoza family. The claimant then brought the case before the respective administrative bodies, which certified that his shares had been confiscated in error. He obtained a certificate in the same terms from the Ministry of Justice, which further ordered that the shares be released. Despite this, the shares were never returned to the claimant, who therefore never received the dividends generated by the same shares. The claimant also alleged that a quarry on his property had been nationalised by the Government of Nicaragua under the aegis of Decree 137 of 1979, on nationalisation of the mining sector. He alleged that the Sandinista Government had never compensated him for the loss of this property.

According to the claimant:

“The sole purpose of my complaint in Case 7788 is that the Government of Nicaragua comply with the provisions of the ‘Law on Nationalisation of the Mining Sector’ that it enacted ... Had the State of Nicaragua observed its own Decree or Law on Nationalisation of the Mining Sector, it would have endeavoured to effect that nationalisation through State purchase of the property or by means of nationalised production.”<sup>44</sup>

The Sandinista Government of Nicaragua was an active party in this case and recognised that the claimant’s shares in the cereals company had been confiscated for a short time, though they were later returned. According to the Government, the claimant was not indemnified because he did not take advantage of the legal means at his disposal but decided to absent himself from the country from 1981 onwards. The Sandinista Government concluded that:

<sup>42</sup> The Court’s decision is analysed in Sect. 5.3 of this report.

<sup>43</sup> Inter-American Commission for Human Rights, *Inter-American Annual of Human Rights 1987* (Boston: Martinus Nijhoff Publishers, 1987), p. 160.

<sup>44</sup> *Ibid.* p. 174.

“under our system of law, the regular and special remedies available to all Nicaraguans seeking to settle a legal situation are immutable.”<sup>45</sup>

The Commission concluded:

“That Mr Martinez Rigüero took all possible action to obtain fair compensation for his assets, without success, and that, further, he was prevented from continuing such action, given the *de facto* situation created by officials of the Government of Nicaragua.”<sup>46</sup>

Finally, the Commission decided:

“To recommend to the Government of Nicaragua that it take steps to reimburse, in accordance with the law, Mr Carlos Martínez Rigüero for the amounts owed to him as unpaid dividends and for the nationalisation of the said quarries.”<sup>47</sup>

#### **Case 10 770: Haydee A. de Marín et al. v. Nicaragua (1994)**

In 1994, the Inter-American Commission on Human Rights again found the Government of Nicaragua (this time, under President Violeta de Chamorro) responsible for violating private property rights as enshrined in Article 21 of the American Convention on Human Rights:

“On January 3, 1991 the Inter-American Commission on Human Rights received a complaint to the effect that in 1979 the Junta of the National Reconstruction Government [*Junta de Gobierno de Reconstrucción Nacional*] had denied Haydee A. de Marín, Leonor Marín Arcia, Orlando Marín Arcia, and María Haydee Marín Arcia their rights to possess, own and use their private properties in Nicaragua, even though there was no decree ordering confiscation of said property”.<sup>48</sup>

The Commission’s report states that in December 1990, following the change of Government, the Marín family first appealed to the Attorney General’s Office for the Republic in order to present their claim.

“However, that complaint has produced no positive results thus far”.<sup>49</sup>

According to the Commission:

“The petition filed by the complainants was based on the fact that they were not among those whose properties were, by decree, to be confiscated and that their assets had been attached and requisitioned outright, without any form of notification.”<sup>50</sup>

<sup>45</sup> *Inter-American Annual of Human Rights 1987* (n. 43 above), p. 180.

<sup>46</sup> *Ibid.* p. 194.

<sup>47</sup> *Ibid.* p. 160.

<sup>48</sup> Inter-American Commission on Human Rights, *Inter-American Annual of Human Rights 1994* (Boston: Martinus Nijhoff Publishers, 1994), p. 444.

<sup>49</sup> *Ibid.* p. 448.

<sup>50</sup> *Ibid.*

The claimants alleged that Decrees 3 and 38 of 1979, on confiscating properties from the Somoza family and its associates, were inapplicable because:

“the Marín family had neither ties with the Somocista Liberal Party, nor business or family relations with the Somoza family.”<sup>51</sup>

The case, however, did not focus only on the events of 1979, but also on events that took place after the claim was presented to the Commission, including the following:

“According to the reports provided, on January 9, 1992, one of the properties of the wronged parties, called the ‘Santa Leonor Sawmill’ ... was to be privatised ... Again, the petitioners learned from the news reports that on June 6, 1993, the shares in Compañía Combustibles Sólidos de Nicaragua, S.A. (COMSONICSA) would go up for auction. The company’s assets included the sawmill ... Although in the end the sale of that property never materialised, the properties in question were not returned to their rightful owners.”<sup>52</sup>

The claimants demanded the return of fifteen properties, including six farm estates, two sawmills and some houses and urban allotments, the majority of which, according to the claimants, were held by the Sandinista Party. Furthermore, the claimants stated that three of the farm estates were being administrated by the National Institute of Agrarian Reform (*INRA*), while the Commission stated that one of the sawmills, the ‘Santa Leonor’, was in the hands of the National Corporation of the Public Sector (*CORNAP*).

The only proof cited in the brief that Decrees 3 and 38 of 1979, on confiscating properties from the Somoza regime, were not applicable to the Marín family was a certificate issued by the Secretary General of the Attorney General’s Office for Justice, stating:

“Ms Maria Haydee Marín Arcia is not subject to any confiscation order.”<sup>53</sup>

The Commission based its decision on analysis of the following aspects:

i) Exhaustion of domestic remedies: The Commission concluded that the domestic remedies had not been effective and for this reason were considered exhausted.

“The information provided during the processing of the instant case indicates that while the domestic legal remedies have been filed they have not been effective in protecting the rights of the wronged persons, whose property is still confiscated even though no public utility was ever claimed and no fair compensation was ever paid.”<sup>54</sup>

ii) The lack of a reply from the Government of Nicaragua: The Commission concluded that the Government had not replied, for which reason it could be presumed that the acts related in the petition in fact took place.

51 *Inter-American Annual of Human Rights 1994* (n. 48 above), p. 446.

52 *Ibid.* p. 448

53 *Ibid.* p. 454.

54 *Ibid.* p. 452



“Even though over two years have passed since the Commission’s processing of the instant case began, and despite the extensions given, the Government of Nicaragua has not responded to the facts in the case.”

And the Commission continued:

“By failing to respond, the Government of Nicaragua has failed to comply with its international obligation to provide information within a reasonable period.”<sup>55</sup>

iii) The arbitrary nature of the confiscation: The Commission had no doubt that the confiscation was illicit.

“Hence, as there was no decree ordering confiscation of the properties in question, the Nicaraguan Government should have returned those properties to their rightful owners, especially since said properties were unlawfully attached and requisitioned by a Government Junta. In effect, the properties owned by the Marin family were arbitrarily usurped by the Sandinista Government Junta in 1979 and are still in State’s hands. In those 14 years, the Marin family was never paid any compensation.”<sup>56</sup>

iv) The inalienable nature of the right of property: In arguing that property rights are inalienable, the Commission cited in the first instance Article 617 of the Nicaraguan Civil Code,<sup>57</sup> Article 23 of the American Declaration on the Rights and Duties of Man, and Article 17 of the Universal Declaration of Human Rights. The Commission also quoted a United Nations independent expert on property rights, concluding that:

“in light of the instruments cited above, the right to own property can be regarded as an inalienable right.”<sup>58</sup>

v) The lack of an effective and rapid legal remedy:

“In the instant case, the petitioners were not just the victims of an arbitrary expropriation without compensations; the State also failed to provide them with simple and rapid recourse to the competent tribunals for protection against acts of Government Junta that violated their fundamental rights. In effect, the Marin family turned to the Attorney General’s Office in December 1990, and thus far the said State organ has not resolved the matter.”<sup>59</sup>

Finally, the Commission recommended that the Government of Nicaragua return the properties, indemnify the owners for loss and damage, and pay for the use of the said properties.

55 *Inter-American Annual of Human Rights 1994* (n. 48 above).

56 *Ibid.* p. 454

57 Art. 617 of the Nicaraguan Civil Code states “No one may be deprived of property except by law or a decision grounded in law. Expropriation in the public interest shall be defined by law or by a decision grounded in law, and it shall not be confirmed without prior indemnification. In case of war, such expropriation may precede indemnification.” *Ibid.*

58 *Ibid.* p. 456.

59 *Ibid.*



## Analysis of the Commission's actions and decisions in the above cases

As so little jurisprudence on property rights has been forthcoming from the Inter-American Commission, the case of *Haydee Marín v. Nicaragua* is especially important. However, the Commission's decision does little to advance the cause of economic, social and cultural rights and a social order based on more egalitarian property rights. There are neither grounds nor reasons for contesting the facts as presented by the claimants. As *Carlos Martínez Riquero v. Nicaragua* clearly demonstrates, there were abuses during the process of property transfer in Nicaragua. However, given the complexity of the property rights issue in Nicaragua, certain key deficiencies in the Commission's analysis and procedure need to be emphasised in this case:

a) The lack of transparency regarding the criteria on which the Commission accepts cases has been the subject of much criticism<sup>60</sup> and is a matter for particular concern in the present case. The claimants presented an administrative request to the Attorney General's Office for the Republic in December 1990 in order to initiate use of the internal legal remedy procedure. Almost simultaneously, however, the case was accepted by the Commission. Indeed, it accepted the case in the month following initiation of the internal remedy procedure: to be precise, on 3 January 1991.

b) On two occasions, the Government of Nicaragua requested prorogation of the deadline for delivery of its replies to the Commission's questions. In one of these requests, the Government stated:

"Due to the workload associated with the final stage of the pacification process, the change of authorities and office moves, we have been delayed in replying to several complaints cases."<sup>61</sup>

Finally, the Commission presented a draft resolution for comment and consideration by the Government of Nicaragua within the following three months. The Government delivered its replies four days after the deadline, for which reason the Commission ignored them.

c) The Commission utterly neglected the political context in which the facts arose and the period in which the complaint was made. The Commission completely ignored the way in which the Sandinistas came to power: that is, by means of an armed popular uprising, with considerable social legitimacy and with the openly expressed intention of altering the existing relationship between the country's rich and the poor. After the electoral defeat of the Sandinistas, what happened was more than a change of Government – it was also a change of political system, with completely different principles and values. In this sense, if the Commission had genuinely wished to know the real disposition of goods and properties, it could have determined this using independent sources such as human rights organisations, in order to understand the actual use to which the confiscated properties were being put. This is particularly important as the claimants themselves admitted that three of the farms were being administered by the Institute of Agrarian Reform (*INRA*).

60 ILSA, *Sistema Interamericano para la Protección de los Derechos Humanos. Aportes para una Evaluación* [Inter-American System for Human Rights. Contributions to an Evaluation] (Bogotá: ILSA, 1994).

61 Inter-American Commission on Human Rights (n. 48 above).

d) The Commission's analysis reflected its total unawareness of the complexity of the process of returning properties confiscated by the Sandinista revolution to their previous owners. If they had been more familiar with the context, they would have known that in ordering the return of the properties involved in the litigation without having verified in whose hands they were at that time, they were repeating the errors committed only a few years earlier by the National Confiscation Review Commission (*CNRC, Comisión Nacional de Revisión de Confiscaciones*). Those errors had sparked large social protests among the low-income population that had benefited from the Sandinista reforms. It was particularly important for the Commission to ensure that it was familiar with the context, for it was judging events that occurred twelve years earlier.

e) The legal reasoning was based on the Nicaraguan Civil Code, the basic text of which was not modified either by the Sandinistas or in the Political Constitution, but which was reformed and reflects the Sandinista vision with respect to property rights. This is one of the principle shortcomings of the judgement. Instead of taking advantage of the opportunity to establish innovative jurisprudence, the Commission adopted the traditional stance, maintaining the *status quo* that prevails in the context of Latin American tribunals and has made them one of the principal obstacles to social change in the region.

Finally, it is important to recall that the Inter-American Commission has not always received the acceptance and prestige that – fortunately for the human rights cause – it now enjoys.<sup>62</sup> This case, arguably, is one of the last examples of a kind that prevailed in the Commission until the mid-1990s, awaking much distrust within the community of human rights organisations. Fortunately, that distrust has now faded with the growing independence and professionalism of the Commission members, and the renewed vigour of the bodies of the Inter-American System for Human Rights.<sup>63</sup>

62 ILSA (n. 60 above).

63 Lynne M. Baum, 'El Sistema Inter-Americano de derechos humanos: Evaluación' [The Inter-American System for Human Rights: Evaluation], in *El Otro Derecho*, #18 (1998), pp. 139-192.



# US Government's role in the restitution of property confiscated by the Sandinista Government

## 3.1 Historical background

In 1993, a group of Republican US Senators, led by Senator Jesse Helms, Chairman of the Senate Foreign Relations Committee, began to show unusual concern about the confiscation of properties from US citizens in various parts of the world. For this reason, the Republican staff conducted a study entitled *Confiscated Property of American Citizens Overseas: Cases in Honduras, Costa Rica and Nicaragua*.

That study was based on information provided by the US State Department in 1989 on the expropriation of US citizens around the world. Some 1 350 cases of confiscation were reported in Nicaragua alone, leading to the conclusion that “the problem of expropriation of American properties was particularly serious in Latin America.”<sup>64</sup> For this reason, the Republican staff

64 Republican Staff of the US Foreign Relations Committee, *Confiscated Property of American Citizens Overseas: Cases in Honduras, Costa Rica, and Nicaragua*, Republican Staff Report to the Committee on Foreign Relations, United States Senate (Washington D. C.: US Government Printing Office, 1994), p. 1.

initially chose to study expropriation cases in the three Central American countries where the most information was available: Nicaragua, Honduras and Costa Rica. Curiously, the resulting report accuses the Chamorro Government of showing a lack of political will to resolve the issue of expropriations. According to the report:

“After the suspension of US aid to Nicaragua in 1992, the Chamorro Government made a few token gestures to expedite the thousands of confiscated property cases, including the well-publicised settlement of several high-profile confiscations. However, after US aid was released, progress ended. Overall, genuine progress has not been made, and political commitment by the Chamorro government to resolve these expropriation cases has been non-existent.”<sup>65</sup>

This line of reasoning seems overly simplistic, given the political reality in Nicaragua, which at that time was undergoing a process of extremely delicate political transition. The Republican authors even went on to assert that:

“The strongest evidence of the Chamorro government’s lack of political will is the fact that 34 properties belonging to 32 Americans are occupied by Nicaraguan government entities, such as the Ministry of Health and Education. This number does not include homes or properties confiscated or occupied by individual members of the Sandinista People’s Army or the Sandinista National Police.”<sup>66</sup>

For this reason, the report recommended that:

“The United States should terminate all foreign assistance to the Nicaraguan government until at least 75 percent of all cases are fully resolved. Despite receiving \$867.8 million dollars in direct assistance and \$284.8 million in forgiven debt since President Chamorro’s inauguration in early 1991, the government of Nicaragua has resolved less than 12 percent of the known property claims of US citizens.”<sup>67</sup>

Some critics of the report have indicated that at least 21 high-ranking officers of the Somoza National Guard, who now hold United States citizenship, are on the list of US citizens with property claims which was drawn up by the Republican staff of the US Senate.<sup>68</sup>

Concrete steps taken by the Republican Senators to speed up the US property claims centred on the modification of two amendments to Section 527 of the US Foreign Relations Authorization Law: the Hickenlooper and Gonzalez Amendments. The Hickenlooper Amendment dates from 1961, shortly after the Cuban revolution, and authorised the US President to suspend all assistance to any government that had nationalised, expropriated or seized properties belonging to US citizens. This Amendment was only applied twice, against Ceylon and Ethiopia. The Gonzales Amendment, adopted in 1971, authorised the US President to veto the approval of multilateral

65 Republican Staff of the US Foreign Relations Committee (n. 64 above), p. 33.

66 Ibid. p. 34.

67 Ibid. p. x.

68 Chuck Kaufman and Lisa Zimmerman, *US Policy Threatens Nicaraguan Property Settlement* (Hartford, CT: Hartford Web Publishing, 1997), <http://www.hartford-hwp.com/archives/47/305.html>

bank loans to those countries that had nationalised, expropriated or seized properties belonging to US citizens. The Gonzales Amendment came into effect during the nationalisations in Peru (1968) and Chile (1971) and has been applied 18 times, 17 times against Ethiopia and once against the Congo.<sup>69</sup>

Senator Jesse Helms led the campaign for these amendments to be modified so that their application by the US State Department would be obligatory. He argued that the executive branch had neglected to apply them for the intended purpose of protecting US citizens whose property had been confiscated. The Nicaraguan situation was the prime target for Senator Helms in moving for modification of the amendments, which is why, when expounding the reasoning behind the proposed legislation, he noted: "It is a high time that the State Department started putting American interests first. We do not have an embassy in Nicaragua to kowtow to that government. We have an embassy there to look after American interests there."<sup>70</sup>

What is now known as the Helms-Gonzales Act was approved in 1994, making it obligatory for the US State Department to apply the law punitively against any country that has expropriated US citizens. For such a country not to be subjected to sanctions, the State Department must issue a waiver annually, on the grounds that the US national interest is being served or that sufficient progress is being made in reinstating the confiscated property or paying adequate compensation. The Helms-Gonzales Act is retroactive in force and therefore applicable to the confiscation of properties in Nicaragua by the Sandinista Government.

And so, since 1994, the United States has put intense pressure on the Government of Nicaragua to resolve property claims presented by US citizens. However, one can only be surprised at the poor quality of the US congressional debates on this matter and the lack of understanding of just how complex the Nicaraguan property issue is. For example, in the US House of Representatives in late 1995, during a hearing on the evaluation of democracy in Nicaragua, Dan Burton, Chairman of the House Committee on International Relations, made the following comments:

"I am very concerned about American properties that have been confiscated ... Now we are going to give them millions of dollars after we supported them in their fight for freedom and democracy in Nicaragua, yet US citizen's properties have been confiscated and that problem has not been resolved ... There is a great deal of consternation among the Congress of the United States about giving US financial aid while the Nicaraguan government is screwing American citizens. I believe very strongly that this message ought to be sent to the Nicaraguan Government ... The President needs to be very strong when he talks to the Nicaraguan Government. The \$39.3 million President Clinton requested in foreign aid to Nicaragua probably far exceeds the amount of money that would be given back in the form of property that was confiscated from Americans. If this is the case, then they don't need our money anyhow, because they have already taken more than their share in property. We need to make that case and I hope you will make it very clear."<sup>71</sup>

69 Republican Staff of the US Foreign Relations Committee (n. 64 above), pp. 2-3.

70 Ibid. p. 50.

71 US House of Representatives, *Evaluation of Democracy in Nicaragua. Hearing before the Subcommittee on the Western Hemisphere of the Committee on International Relations, House of Representatives. One Hundred Fourth Congress, first session on November 8, 1995* (Washington, DC: US Government Printing Office, 1995), pp. 25-26.

The Helms-Gonzales Act has opened the door to the restitution of all properties confiscated by the Sandinista revolution, especially to those Nicaraguans who take US citizenship and then present a claim for the restitution of their properties. This situation has created even greater uncertainty regarding property ownership, as it facilitates the presentation of new property claims as more and more Nicaraguans become US nationals.

### 3.2 The Property Claim Office of the United States Embassy in Nicaragua

When President Violeta Barrios de Chamorro took office in 1990, “less than twenty United States citizens had filed property claims with the US government.”<sup>72</sup> By 1992, this number had increased to 420; by 1994, 650 US citizens had made claims on 1 350 properties in Nicaragua, of which only 154 cases (just under 12 percent) had been resolved.<sup>73</sup>

Once the Helms-Gonzales Act had been approved, in 1994, property restitution or compensation claims by US citizens were vigorously supported by the US Government, which threatened to obstruct the approval of loans from multilateral banks. Such property claims were facilitated by the opening of an office for handling claims within the United States Embassy in Managua, which was staffed by three full-time personnel, one consular official and two Nicaraguan employees.<sup>74</sup> Subsequently, and especially with the inclusion of persons who had been Nicaraguan nationals at the time of confiscation but who had since acquired US citizenship, the number of claims by US citizens soared.<sup>75</sup> From the start, the Embassy took an active role in encouraging people to present their claims at the new office; for example, by placing notices in Miami newspapers and magazines.<sup>76</sup>

In 1994, the US State Department established a certification process for monitoring not only the progress made resolving Nicaraguan property disputes involving US citizens, but also the implementation of economic reforms recommended by international financial institutions such as the World Bank and the International Monetary Fund. Since then, the State Department has consistently waived the application of sanctions against the Government of Nicaragua, initially for reasons of US national interest, but later because of the progress made in resolving property disputes. In November 2001, the website of the US Embassy in Managua gave the following update:

72 The Carter Center, *Nicaragua Property Disputes* (n. 22 above), p. 10.

73 Republican Staff of the US Foreign Relations Committee (n. 64 above), p. 33.

74 United States Embassy in Nicaragua, US Property Claim Office, <http://usembassy.state.gov/managua/wwwhcomp.html>

75 According to the Carter Center: “Although international law stipulates that a government may espouse only those properties owned by persons who were citizens at the time of expropriation/confiscation, the United States chose not to use the espousal principle, but instead to support all of those claims of newly-naturalised citizens even after the confiscation.” The Carter Center, *Nicaragua Property Disputes* (n. 22 above), p. 3.

76 See: Kaufman and Zimmerman (n. 68 above).



“The last count of pending property claims include 874 US citizen claims currently filed with the Embassy by 278 US citizens (some individuals have more than one claim). Since the electoral defeat of the Sandinistas in 1990, Nicaragua has resolved over 3 540 US citizen claims (of which 1 677 were been filed with the Embassy).”<sup>77</sup>

By the end of 1995, indemnity bonds worth US\$ 124 million had been issued to US citizens.<sup>78</sup> By June 2001, this figure had increased to US\$ 283 million, over 30 percent of the total of US\$ 924 million in indemnities paid out by the Government of Nicaragua to that date.<sup>79</sup>

### 3.3 The role of the United States Government in developing systems for resolving property disputes

For better or worse, the US Government, through its Agency for International Development (USAID), has been the main driving force behind the present system for resolving Nicaraguan property disputes. For example, according to a US State Department official, the draft law on privatisation of the state telecommunications company, *TELCOR*, which was to be sold off mainly for the purpose of paying the first indemnity bonds to former owners, was written with the assistance of Price Waterhouse, a private-sector US corporation, under contract to USAID.<sup>80</sup> The indemnity bond capitalisation system and the reforms which greatly expedited the process of dispute resolution in the mid 1990s was developed at the Land Tenure Center of the University of Wisconsin-Madison by Prof. John Strasma, one of USAID’s principal consultants on property issues in Nicaragua.<sup>81</sup> Also, the creation and establishment of the Property Tribunals was strongly promoted by the United States Government.<sup>82</sup>

77 US Embassy in Nicaragua, US Property Claim Office (n. 74 above).

N.B. According to a US embassy source in Managua, on 31 Dec. 2002, 892 US citizen claims remained to be resolved. Since Jan. 1995, 498 US citizen claims registered at the Embassy had been fully resolved, with another 369 partially resolved. Since 1995, a total of 3 805 US citizen claims had been resolved, though not all of these had gone through Embassy channels.

78 US House of Representatives (n. 71 above), p. 15.

79 For further information, see: Sect. 4 of this report.

80 According to Anne Patterson, Assistant Secretary of State for Central America, in her testimony before the US Congress, “[US]AID had a very excellent programme with Price Waterhouse, which provided technical advice in the drawing up the *TELCOR* privatisation law.” US House of Representatives (n. 71 above), p. 18.

81 John Strasma and Javier Molina, *El sistema de evaluación y compensación de la propiedad confiscada en Nicaragua entre 1970 y 1990: evaluación y opciones para agilizarlo* [The evaluation and compensation system for properties confiscated in Nicaragua between 1970 and 1990] (Madison, WI: University of Wisconsin-Madison, 1994); id., *Aspectos del problema de la propiedad en Nicaragua; evaluación y recomendaciones* [Aspects of the Nicaraguan property issue, evaluation and recommendations] (Madison, WI: University of Wisconsin-Madison, 1995); John Strasma, *Conflictos de la propiedad en Nicaragua* [Nicaraguan property disputes] (Madison, WI: University of Wisconsin-Madison, 1996).

82 Giving testimony before the US Congress, the Secretary of State for Latin American, Peter Romero, stated: “The US Government has emphasised to the Government of Nicaragua the importance of establishing property courts ... and the Embassy is committed to working with the Government of Nicaragua to ensure that these mechanisms function efficiently and transparently.” US House of Representatives, *Hearing before the Subcommittee on the Western Hemisphere of the Committee on International Relations House of Representative. One Hundred Sixth Congress, first session on September 29, 1999. Serial No. 106-64* (Washington, DC: US Government Printing Office, 1999), p. 42.

However, the leading role played by the US Government in Nicaraguan property issues contrasts sharply with its lack of interest in other aspects of property rights in the country, particularly the territorial rights of Nicaraguan indigenous peoples. Much criticism has been levelled at certain US citizens who have illegally acquired properties in indigenous peoples' territories along Nicaragua's Atlantic coast, including some keys and islands that are ancestral properties of the Miskito (or Misquito) indigenous people. These persons have started offering these properties for sale to other US citizens via the Internet. So far, the US Government has refrained from getting involved in efforts to stop this expropriation of indigenous peoples' properties. Indeed, opposition by indigenous rights activists cost the life of Mr Francisco Garcia, husband of Ms Maria Louisa Acosta, a lawyer and one of the most important defenders of indigenous peoples' rights in Nicaragua. The joint fact-finding mission interviewed Ms Acosta, who confirmed that the killers had come to assassinate her, did not find her at home and therefore shot her husband instead.<sup>83</sup>

83 Interview with Maria Luisa Acosta, Director of the Centro de Asistencia Legal a Pueblos Indígenas (CALPI, Centre for Legal Aid to Indigenous Peoples), Managua, 30 Sept. 2002.





## Present situation regarding ‘property regularisation’ in Nicaragua

As we have seen, the ‘regularisation’ of properties confiscated by the Sandinista revolution has involved the creation of a vast and complex administrative apparatus charged with managing that process. This apparatus includes entities that are part of the *Ministerio de Hacienda y Crédito Público* (Ministry of Finance and Public Credit), the *Procuraduría General de la República* (Attorney General’s Office for the Republic) and the judicial system. Some of these entities are dedicated to resolving claims made by expropriated former owners; others are dedicated to extending and clarifying titles to those properties which could not be returned to their former owners, the vast majority of which are in the hands of persons with limited incomes.

In the following six sub-sections, we summarise and assess the work of these entities, using the latest information available from each of them.

## 4.1 The National Confiscation Review Commission (CNRC)

The National Confiscation Review Commission (CNRC, *Comisión Nacional de Revisión de Confiscaciones*) is “like the main entrance to the property rights issue”,<sup>84</sup> as Luis Meléndez, until recently CNRC President, graphically described it to the joint fact-finding mission. Mr Meléndez said the resolutions issued by the CNRC are “like a passport to go to the next office.”<sup>85</sup> Indeed, every kind of claim that relates to property purported to have been confiscated under the Sandinista Government must first be presented to the CNRC.

The number of property claimants appearing before the CNRC grew from 5 824 in December 1997 to 7 494 in August 2002, which means that, on average, 334 new claims were brought each year during that five-year period. In the same period, the number of properties claimed rose from 14 167 to 19 889, an average of 1 144 additional properties per year.

In 1994, the CNRC resolved only 27.6 percent of the claims presented to it. By 1997, the proportion of claims resolved had increased to 94 percent, and it remained at this level until the end of 2002. A USAID consultant who, in 1994, evaluated the activities of the CNRC found that “verification of the legal status of the properties under claim constitutes one of the most serious problems which faces the CNRC in resolving the claims.”<sup>86</sup>

**TABLE 17 Progress made by the CNRC in resolving property claims (March 1994 – August 2002)**

Parameter	March 1994	Dec. 1997	Aug. 2002
Total no. of properties under claims presented to the CNRC	5 288	14 167	19 889
Total no. of claims resolved by the CNRC	1 459	13 098	18 547
Total no. of indemnities resolved	1 305	12 018	14 784
Total no. of claims denied	12	495	2 592
Total no. of property returns resolved	142	585	1 171

Source: Strasma and Molina, *Comisión Nacional de Revisión de Confiscaciones* (CNRC, National Confiscation Review Commission), 2002.

In resolving an average of 94 percent of the cases presented during the last six years, the CNRC shows a very impressive level of efficiency. As of August 2002, the CNRC had ordered indemnification in respect of 14 784 properties (that is, 74 percent of the claim cases resolved), had denied indemnification in 2 592 cases (that is, 13 percent of the resolved cases), and had ordered the return of 1 171 properties (that is, 5.8 percent of the resolved cases). Overall, then,

84 Interview with Luis Meléndez (n. 21 above).

85 Ibid.

86 John Strasma and Javier Molina, *El sistema de evaluación y compensación de propiedad confiscada en Nicaragua entre 1970 y 1990: evaluación y opciones para agilizarlo* (n. 81 above), p. 11.

the CNRC had favourably resolved (by ordering indemnification or return of properties) some 80 percent of the cases and had denied 13 percent; the remaining 7 percent were still pending. As of August 2002, final payments of the indemnities ordered had been made in respect of 9 147 properties (that is, 62 percent of the properties involved in the resolved cases), amounting to a total of US\$ 975.6 million. Those indemnities which, as of August 2002, had already been authorised but had not yet been paid would probably require an additional sum of about US\$ 370 million, excluding the value of the 1 342 claims still pending at that date as well as new claims yet to be presented for consideration.<sup>87</sup>

**TABLE 18 Summary of the status of claimants, properties claimed and indemnities paid (December 1997-August 2002)**

Parameter	Dec. 1997	Dec. 1998	Dec. 1999	Dec. 2000	Dec. 2001	Aug. 2002
Total no. of claimants	5 824	6 397	6 698	7 306	7 457	7 494
Total no. of properties claimed	14 167	15 562	16 471	19 124	19 729	19 889
Total no. of claimed properties covered by CNRC resolutions	13 098	14 634	15 757	17 926	18 520	18 547
Total no. of properties involved in claims cases as yet unresolved by CNRC	1 069	928	714	1 198	1 209	1 342
Total no. of properties returned by CNRC	585	795	846	1 017	1 106	1 171
Total no. of property claims denied by CNRC	495	1 038	1 693	2 627	2 851	2 592
Total no. of properties in respect of which CNRC had awarded indemnities	12 018	12 801	13 218	14 282	14 563	14 784
Total no. of indemnities actually paid	4 636	5 880	6 788	7 772	8 427	9 147
Total value of indemnities (million US\$)	589.0	669.8	735.3	802.0	934.5	975.6

Source: *Comisión Nacional de Revisión de Confiscaciones* (CNRC, National Confiscation Review Commission), September 2002.

The cost of these indemnities has been exorbitant for a nation confronting a profound economic crisis and with multiple social needs unsatisfied. The debt on account of property indemnities has generated a severe crisis in Nicaragua's weak state finances by raising the overall internal debt to some US\$ 1 700 million, 55 percent of which represents the amount paid in indemnity bonds.<sup>88</sup>

87 *The Procuraduría de la Propiedad* (State Attorney's Office for Property) calculates that the amount to be paid out in indemnities will be US\$ 1 500 million – José Adán Silva, 'Enorme jarana por 'piñata' Sandinista' [Enormous jamboree due to Sandinista 'piñata' (see: n. 11 above)], in *La Prensa*, Managua, 30 July 2002 (electronic edition).

The Attorney General's Office for the Republic has started to publicly reveal its disapproval of the exorbitant amounts paid out in indemnities over the last few years. In early Feb. 2003, *Procurador General* (Attorney General) Francisco Fiallos lamented: "My hand aches from signing indemnities for confiscated properties." Fiallos added: "Yes, it hurts, obviously, but what am I to do? It's a legal order that must be obeyed. There is no option but to go on paying the debt out of everyone's purse, yours and mine included." – José Adán Silva, 'Fiallos: me duele la mano de firmar indemnizaciones' [Fiallos: my hand aches from signing indemnities], in *La Prensa*, Managua, 6 Feb. 2003 (electronic edition).

88 José Adán Silva, 'Crece deuda por 'piñata'' [Debt mounts due to 'piñata' (see: n. 11 above)] in *La Prensa*, Managua, 5 Feb. 2003 (electronic edition).

The following table shows the nationalities of those indemnified and the amounts paid in the different types of bonds:

**TABLE 19 Nationality of those indemnified and value of bonds issued as of June 2001**

Nationality of recipient	Standard bonds (US\$)	Series 'A' bonds (US\$)	Total issued (US\$)
German	961 218.87	342 778.80	1 303 997.67
Canadian	561 803.36	37 660.79	599 464.15
Danish	–	832 068.57	832 068.57
Spanish	1 127 637.59	10 068 401.15	11196 038.74
Guatemalan	214 791.69	580 879.07	795 670.76
Dutch (Netherlands)	–	18 859.58	18 859.58
United Kingdom	–	197 756.68	197 756.68
Italian	–	1 162 690.45	1 162 690.45
Honduran	49 996.72	–	49 996.72
Mexican	50 605.16	543 098.77	593 703.93
Nicaraguan	166 271 967.63	456 369 918.90	622 641 886.53
United States	46 279 986.63	237 477 774.27	283 757 760.90
Salvadoran	–	179 308.30	179 308.30
Venezuelan	–	1 416 756.14	1 416 756.14
<b>GRAND TOTAL</b>	<b>215 518 007.65</b>	<b>709 227 951.47</b>	<b>924 745 959.12</b>

Source: *Ministerio de Hacienda* (Ministry of Finance). Web: <http://www.hacienda.gob.ni/tesoreria/estadisticas.htm>

A few days after members of the joint fact-finding mission met with *CNRC* President Luis Meléndez, a political storm blew up around the Commission's authorisation of the return of one of the properties in which the Somoza family were shareholders. In the resulting scandal, the *Procurador General de la República* (Attorney General for the Republic), Francisco Fiallos, ruled that the *CNRC* President must be removed from his post, and the decision in favour of the Somoza family was revoked.<sup>89</sup>

89 Jorge Loáisiga Mayorga, 'Cementera vuelve a familia Somoza' [Cementera returned to Somoza family], in *La Prensa*, Managua, 17 Oct. 2002; Octavio Enríquez and Luis Galeano, 'Revocación y destituciones' [Revocation and dismissal], in *El Nuevo Diario*, Managua, 17 Oct. 2002; id., 'Notifican revocación de devolución a los Somoza' [Revocation of property restitution to Somozas announced], in *El Nuevo Diario*, Managua, 18 Oct. 2002; Eloisa Ibarra, 'Todos sabían caso Cementera' [Everyone knew about Cementera case], in *El Nuevo Diario*, Managua, 21 Oct. 2002; id., 'Procuraduría patina' [Attorney General's Office slips up], in *El Nuevo Diario*, Managua, 22 Oct. 2002; José Adán Silva, 'PRG alega 'ignorancia' en caso Cementera' [PRG pleads 'ignorance' in Cementera case], in *La Prensa*, Managua, 22 Oct. 2002; Eloise Ibarra, 'Investigan tráfico de influencias con Cementera' [Nepotism in Cementera case under investigation], in *El Nuevo Diario*, 23 Oct. 2002 (electronic editions).

## 4.2 The Land-Use Management Office (OOT)

Between 1991 and July 2001, a total of 146 291 cases involving urban and rural properties redistributed under the aegis of Laws 85, 86 and 88 were submitted to the *Oficina de Ordenamiento Territorial* (OOT, Land-Use Management Office) for review. As of July 2001, 129 246 of these cases (that is, 88 percent of the total submitted) had been reviewed by that Office.

**TABLE 20 Land-Use Management Office (OOT) – cases submitted, reviewed and pending (1991-July 2001)**

Legislation (area)	Cases submitted	Cases reviewed	Cases pending
Law 85 (housing)	12 080	11 850	230
Law 86 (lands)	124 070	111 986	12 084
Law 88 (Agrarian Reform)	10 141	5 410	4 731
<b>TOTAL</b>	<b>146 291</b>	<b>129 246</b>	<b>17 045</b>

Source: *Oficina de Ordenamiento Territorial (OOT)*.

Web: <http://www.hacienda.gob.ni/propiedad/ooot/estadisticas/2001/XGEN.htm> - julio

Of the 129 246 cases reviewed by the OOT, 106 907 (that is, 83 percent) were approved; that is, in those cases documentary settlements were issued to the beneficiaries of the Laws 85, 86 and 88. As of July 2001, 8 238 (that is, 6.3 percent) of the submitted cases had been denied. At the time of writing, the remaining cases were under appeal before the OOT.

**TABLE 21 Land-Use Management Office (OOT) – cases approved, denied and under appeal (1991-July 2001)**

Legislation (area)	Cases approved	Cases denied	Cases under appeal	Total cases reviewed
Law 85 (housing)	8 479	3 034	337	11 850
Law 86 (lands)	97 500	4 455	10 030	111 986
Law 88 (Agrarian Reform)	928	749	3 733	5 410
<b>TOTAL</b>	<b>106 907</b>	<b>8 238</b>	<b>14 100</b>	<b>129 246</b>

Source: *Oficina de Ordenamiento Territorial (OOT, Land-Use Management Office)*.

Web: <http://www.hacienda.gob.ni/propiedad/ooot/estadisticas/2001/XGEN.htm> - julio

### 4.3 The Urban Titling Office (OTU)

Between 1994, the year in which the *Oficina de Titulación Urbana* (OTU, Urban Titling Office) was established, and July 2001, that Office issued a total of 33 538 title documents. Seventy percent of these titles were to properties in the city of Managua. About 13 percent of the total number of titles were issued pursuant to the pacification agreements. However, taking into account that, as of July 2001, the number of cases involving urban housing and lands that had been submitted to and approved by the Land-Use Management Office (OOT) had reached 105 979, we can conclude that only 31 percent of the urban property conflicts resolved by the OOT resulted in the OTU issuing titles to beneficiaries.

**TABLE 22 Urban Titling Office (OTU) – titles to urban lands drawn up and issued (1994 - July 2001)**

City/Agreement	1994	1995	1996	1997	1998	1999	2000	July 2001	TOTAL
Managua	380	1 277	1 341	6 330	5 281	3 686	3 181	1 020	22 796
Pacification Agreements	–	392	719	270	281	1 447	661	538	4 308
Chinandega	–	–	–	–	–	1 046	2 489	667	4 202
León	–	–	–	–	–	545	1 080	37	1 662
Granada	–	–	–	–	–	–	60	198	258
Masaya	–	–	–	–	–	–	36	183	219
<b>TOTAL</b>	<b>380</b>	<b>1 669</b>	<b>2 060</b>	<b>6 600</b>	<b>5 562</b>	<b>6 724</b>	<b>7 507</b>	<b>3 036</b>	<b>33 538</b>

Source: *Oficina de Titulación Urbana* (OTU, Urban Titling Office). Web: <http://www.hacienda.gob.ni/propiedad/otu/otu.htm>

### 4.4 The Rural Titling Office (OTR)

In the period from 1992 to July 2001, the *Oficina de Titulación Rural* (OTR, Rural Titling Office) issued 38 344 titles to lands totalling just over 1.5 million *manzanas* (approx. 1 million hectares or 2.6 million acres). Sixty percent of these titles, accounting for 55 percent of the total land area thus titled, were issued in the period from 1992 to 1996. Under the Alemán Government, the rural titling process was reversed rather than advanced. It must be stressed that, in the figures given here, no distinction is made between titles to those properties that were previously subject to Sandinista agrarian reform and those that were later redistributed under the Chamorro Government's agrarian reform.

**TABLE 23 Issue of titles to rural land (1992-July 2001)**

Period	Area ( <i>manzanas</i> )	Percentage of total area	No. of titles	Percentage of total no. of titles
1992-1996	843 206	55.2%	23 056	60.1%
1997 - July 2001	683 534	44.8%	15 288	39.9%
<b>TOTAL</b>	<b>1 527 740</b>	<b>100.0%</b>	<b>38 344</b>	<b>100.0%</b>

Source: *Oficina de Titulación Rural (OTR)*. Web: <http://www.hacienda.gob.ni/propiedad/otr/2001/julio.htm> - resumen

The joint fact-finding mission has reason to believe that the majority of these rural property titles were issued during electoral periods to fulfil the agreements on demobilisation, mainly of former members of what is now known as the ‘Nicaraguan Resistance’ [*editor’s note*: that is, the *Contras*]. However, the Governments of Chamorro, Alemán, and now Bolaños have failed to give equally high priority to the cases of the beneficiaries of Laws 85 and 86. Although these cases are older by far, there is no prospect of settlement as yet. What stands out is that some of the ex-*Contras* who were issued rural titles sold those properties back to the original owners at very low prices. The State thus incurred heavy losses, for it distrained on these properties [*editor’s note*: that is, seized them in order to enforce payment of debts] because their owners were heavily in arrears to banks. The fact-finding mission also heard allegations that a small group of ex-*Contra* leaders often do follow-up deals on these lands, sometimes with the apparent collusion of Government officials.

## 4.5 The State Attorney’s Office for Property

The *Procuraduría de la Propiedad* (State Attorney’s Office for Property) seeks to prosecute holders of urban and rural properties who were not the intended subjects of urban and agrarian reforms, but took advantage of Laws 85, 86 and 88 to enrich themselves. Thus, the role of this Office is to recover for the State, by judicial means, all those properties and goods that are in the hands of people who benefited from Laws 85, 86 and 88 without fulfilling the stipulated requirements, as judged by the Land-Use Management Office (*OOT*). Cases dealt with by the State Attorney’s Office for Property are therefore remitted to it by the Land-Use Management Office. In the period from 1995 to December 2001, 6 814 cases were thus remitted. In the same period, the State Attorney’s Office for Property also received 602 direct claims from former owners, making a total of 7 416 cases.<sup>90</sup>

As the Co-ordinator of the State Attorney’s Office for Property admits, results so far have been discouraging: in only 20 cases have sentences been handed down ordering the return to the State of properties “wrongfully obtained” in regard to Laws 85, 86 and 88.<sup>91</sup> In the great majority of such cases, the judicial system, with its enormous processing backlog, is obviously the bottleneck that restricts their resolution. However, it is practically impossible to measure how

90 It should be noted that the statistics of the State Attorney’s Office for Property do not appear to have been systematically compiled and can therefore only be considered as approximate.

91 Interview with Magali Bravo, Co-ordinator of the State Attorney’s Office for Property, Managua, 3 Oct. 2002.



many of the cases sent to the State Attorney's Office for Property really are abuses by beneficiaries, and how many are thus remitted because the defendants lack the money to effectively defend their rights and are therefore considered to be defrauders. Indeed, many defendants are evidently at a serious disadvantage, being financially unable to hire a lawyer and properly appeal their case through the administrative channel of the Land-Use Management Office (OOT) before their case is sent to the State Attorney's Office for Property. That Office acknowledges that this is a problem.<sup>92</sup>

**TABLE 24 Cases brought before the State Attorney's Office for Property (1995-2001)**

Type of case	No. of cases
Law 85	2 230
Law 86	3 925
Law 88	659
Other claims	602
<b>TOTAL</b>	<b>7 416</b>

Source: *Procuraduría de la Propiedad* (State Attorney's Office for Property), 2002.

## 4.6 The Property Tribunals

The Property Tribunals have had a turbulent history. It is important to note that the Nicaraguan legal system is fraught with partisan disputes between judges and magistrates in the country's two main political camps: the Sandinistas (*FSLN*) and the Liberals (*PLC*). The Property Tribunals were created by Law 278 of 1997, which, in Article 69, established that the Supreme Court of Justice (*CSJ*) should create Property Appeals Courts (*Salas de Propiedad*) within the Appellate Tribunals (*Tribunales de Apelaciones*), integrated by "Judge Arbiters" (*Jueces Árbitros*) and each consisting of a panel of three Titular Judges and three Deputies. The territorial competence of these Property Tribunals was also left within the jurisdiction of the Supreme Court. The Property Tribunals hear in the second instance "those appeals which are lodged contrary to resolutions pronounced in respect of property in the cases to which the present Law refers, both in the ordinary judicial route and in the arbitral judgement."<sup>93</sup>

Due to a lack of financial and human resources, the Property Tribunals were not installed until 2000, when four Property Appeals Courts were established. While the joint fact-finding team was visiting Nicaragua in late September and early October 2002, the Nicaraguan Supreme Court (*CSJ*) was publicly debating whether or not it was convenient to maintain these Tribunals. According to *CSJ* data cited in the national newspaper *La Prensa*, in their two years of operating, the Property Tribunals had resolved only 83 cases. Given this figure and considering that, by

<sup>92</sup> See n. 91 above.

<sup>93</sup> Law 278 of 1997, Art. 69.



July 2002, the total cost of these Tribunals had reached just over US\$ 400 000, the CSJ calculated that the average cost of each case resolved was US\$ 4 800.<sup>94</sup>

In late November 2002, it was announced that the Supreme Court had decided to close down three of the Property Appeals Courts in the country's interior, leaving only one in operation in the capital city of Managua. CSJ Magistrate Fernando Zalaya told *La Prensa* that, since opening, these three Courts had received only 500 cases.<sup>95</sup> CSJ President Alba Luz Ramos, quoted in the same *La Prensa* article, stated:

“Only one [Property Appeals Court] will be left for the whole of Nicaragua because that single remaining court will hear scarcely 150 cases. There are courts such as Matagalpa which had only six cases, León had 20, and here there are about 40 cases for each court; meanwhile one Appellate Tribunal hears more or less 1 500 cases, while its judges earn the same amount. That is a waste of money.”<sup>96</sup>

The only Property Appeals Court left operating is dominated by judges bearing allegiance to the Sandinista Front, a fact which has been fiercely condemned.<sup>97</sup>

94 Freddy Potoy Rosales and José Adán Silva, ‘Pedirán cierre de tribunals’ [Closure of tribunals to be urged], in *La Prensa*, Managua, 19 July 2002 (electronic edition).

95 José Adán Silva, ‘FSLN agarra la propiedad’ [FSLN holds on to property], in *La Prensa*, Managua, 21 Nov. 2002 (electronic edition).

96 Ibid.

97 Ibid.



# **Territorial rights of Nicaraguan indigenous peoples**

## **5.1 Indigenous peoples in Nicaragua**

In Nicaragua there are two regional sectors of indigenous peoples with distinct historical characteristics: those of the Pacific and Central regions, and those of the Atlantic region. The principal difference between these two sectors relates to their different patterns of colonisation, which gave rise to their distinct identity and organisational processes. The preservation of traditional culture is most apparent among the indigenous communities of the Atlantic Coast region and is largely due to their isolation; that is why their identity as an indigenous population is so evident. In the Pacific and Central zones, the surviving indigenous communities have developed other types of resistance to a complete assimilation into the prevalent national culture. Thus, these indigenous populations are in a “process of recovery and rescue” of their traditional identity.<sup>98</sup>

98 Interview with Jorge Frederick, National Co-ordinator of the Movimiento Indígena de Nicaragua [Indigenous Movement of Nicaragua], and board member of Yatama, Managua, 30 Sept. 2002.

There has been no formal census of Nicaragua's indigenous peoples, and population estimates differ according to the source. The war that raged in Nicaragua during the 1980s mainly affected the Atlantic Coast indigenous communities along the Honduran border. Many of their people found themselves compelled to flee to that country, and only returned once the war was over. This further complicating the process of determining the indigenous population of the Atlantic Coast region. Moreover, the definition of 'indigenous' may be problematical in some regions of Nicaragua, where indigenous identity is beginning to flourish amid numerous communities which were long considered by external observers to be communities of 'peasants' (*campesinos*). As Roque Roldán Ortega has aptly stated:

"The imprecision which may well exist in the concept of indigene does not appear to be of much consequence in the statistical determination of the indigenous population of the Atlantic Coast region, though it is so, without a doubt, as soon as one attempts to shed light on concrete information regarding the nation's indigenous population."<sup>99</sup>

Hence, we must consider, as does the Indigenous Movement of Nicaragua (*Movimiento Indígena Nicaragüense*), that indigenous peoples may account for 14 to 15 percent of the total Nicaraguan population of five million; that is, approximately 700 000.<sup>100</sup> This figure may be somewhat over-estimated, however, given that the indigenous population of the Atlantic Coast region has been estimated to be just over 150 000.<sup>101</sup>

## 5.2 Recognition of indigenous peoples' territories in Nicaragua

The first reference to indigenous communities in the Republic of Nicaragua is the Harrison-Altamitano Treaty between that country and the United Kingdom. The treaty established the concession of property titles to Nicaragua's Miskito communities, although the titles were actually granted to individuals. Between 1915 and 1920, more than 80 000 hectares (198 000 acres) were registered and 60 title documents issued, which are still preserved in the Public Registry Office at Bluefields, the only such office in the Atlantic Coast region.<sup>102</sup>

For the greater part of the 20th century, the relationship between the State and the indigenous peoples in Nicaragua followed the general pattern in Latin America. That is to say, a basic tenant of policies designed to assimilate the indigenous communities was the destruction of their collective forms of property ownership. In the 1960s, in the context of border conflict between Nicaragua and Honduras, titles to 62 500 hectares (154 000 acres) were issued to Nicaraguan indigenous communities under the Agrarian Law of 1963 when they decided to return to, and form part of, Nicaragua.<sup>103</sup>

99 Roque Roldán Ortega, *Legalidad y derechos étnicos en la Costa Atlántica de Nicaragua* [Legality and ethnic rights in the Atlantic Coast region of Nicaragua] (Bogotá: Gaia Foundation, 2000), p. 23.

100 Interview with Jorge Frederick (n. 98 above).

101 Roque Roldán Ortega (n. 99 above).

102 Inter-American Court of Human Rights. Background decision and reparations in the case of the *Mayagna (Sumo) community of Awas Tingni v. Government of Nicaragua*. Judgement of 31 Aug. 2001, [www.corteidh.or.cr/serie\\_c/index.html](http://www.corteidh.or.cr/serie_c/index.html)

103 Ibid., testimony given by the Director of the Land-Use Management Office (OOT) to the Inter-American Court of Human Rights.

Initially, Sandinista revolutionary policies did nothing to alter this situation until, for numerous reasons, many Miskito indigenous communities in the Atlantic Coast region took up arms against the Sandinista Government. This led to a reappraisal of the relationship between the State and the indigenous peoples, which culminated in a ground-breaking recognition of indigenous communities' rights to autonomy and territory. These were codified in the Nicaraguan Constitution of 1987 and, more specifically, in Law 28 of 1987, the *Estatuto de Autonomía de la Costa Atlántica* (Statute of Autonomy of the Atlantic Coast). Nicaragua was now considered to be in the vanguard of indigenous rights protection in Latin America.

Since 1987, however, a paradoxical situation has arisen in Nicaragua. Even though the constitutional reform of 1995 augmented the constitutional rights of indigenous communities, no progress seems to have been made towards the practical development of legal instruments necessary to give force to the rights enshrined in the Constitution and the Statute of Autonomy.<sup>104</sup> For many years, the only legal instrument that referred specifically to the issue of titles to indigenous territories was the Law on Agrarian Reform (Law 14 of 1986), enacted one year before the Constitution and the Statute of Autonomy of the Atlantic Coast were adopted. The Law on Agrarian Reform accords no special character to indigenous property, beyond the terms established in the Civil Code. According to Roque Roldán Ortega:

“The lands occupied by the indigenous peoples of the Atlantic Coast region have been seen as national lands, fiscal lands, lands freely at the disposal of the State, and as such they have been handed over to peasants who have settled in those areas. The indigenous communities have been granted titles to the lands, but these are titles of the same character as the lands given to the peasants.”<sup>105</sup>

In the 1990s, the Government of Nicaragua began tackling the issue of indigenous territorial rights as a result of various land-related projects in the Caribbean region, including the Nicaragua Atlantic Biological Corridor project [*editor's note: part of the larger Mesoamerican Biological Corridor project*] developed by the World Bank. One of these projects financed the study entitled *Diagnóstico General sobre la Tenencia de la Tierra en las Comunidades Indígenas de la Costa Atlántica* (General Analysis of Land Tenure in the Indigenous Communities of the Atlantic Coast), written by three renowned investigators specialised in the region. This study was the culmination of a participatory process involving the indigenous communities themselves, who, for the first time, could voice their territorial demands and see them systematically demarcated on maps. As a result, the various communities decided to form a bloc in pressing their demands, without entering into discussion on any of the inter-communal territorial

104 For a detailed presentation of constitutional standards in relation to Nicaraguan indigenous peoples, including those introduced in the 1995 constitutional reform, see: Myrna Cunningham, ‘La autonomía regional multiétnica en la Costa Atlántica de Nicaragua’ [Regional multi-ethnic autonomy in the Atlantic Coast region of Nicaragua], in Miguel A. Bartolomé and Alicia M. Barabas (eds.), *Autonomías étnicas y estados nacionales* [Ethnic autonomy and nation states] (México, D.F.: Instituto Nacional de Antropología e Historia, 1998), pp. 275-303. For a detailed review of Nicaraguan legislation on indigenous peoples, see: Movimiento Indígena Nicaragüense (MIN, Nicaraguan Indigenous Movement) and the Centro de Asistencia Legal a Pueblos Indígenas (CALPI, Centre for Legal Aid to Indigenous Peoples), ‘Diagnóstico de la legislación nacional sobre los pueblos indígenas de Nicaragua y exposición de motivos de la presentación del Convenio 169 como anteproyecto de Ley ante la Asamblea Nacional de Nicaragua’ [Analysis of national legislation on Nicaraguan indigenous peoples, and explanation of motives for presenting Covenant 169 as a draft bill to the National Assembly of the Republic of Nicaragua], [http://calpi.nativeweb.org/doc\\_5.html](http://calpi.nativeweb.org/doc_5.html)

105 Testimony of Roque Roldán Ortega, cited in the sentence handed down by the Inter-American Court in the *Awás Tingni* case.

disputes. The view prevalent in the Government and other circles of Nicaraguan society that the Atlantic Coast region was unoccupied land had finally come to an end. According to the authors of the study:

“In the case we are considering, not only did the World Bank supply funds to support an investigation and social processes which brought its own mandate under pressure, but that investigation also formed part of a wider effort directed at persuading the Government of Nicaragua to develop a more tolerant position in respect of the cultural rights and natural resources of the indigenous peoples. The Government of Nicaragua reluctantly accepted the study, but only after facing the prospect that [if they did not] the World Bank might freeze funds earmarked for other projects.”<sup>106</sup>

Since then, the World Bank appears to have transformed itself into an ally of Nicaraguan indigenous communities in pursuing their territorial claims. According to Maria Luisa Acosta, Director of the Managua-based *Centro de Asistencia Legal a Pueblos Indígenas* (CALPI, Centre for Legal Aid to Indigenous Peoples), this shift, though self-contradictory in nature, has been undertaken with some certitude.<sup>107</sup> In Nicaragua, the World Bank is currently developing the Land Administration Project (*Proyecto de Ordenamiento de la Propiedad*, PRODEP). One component of this project relates to the territorial rights of indigenous communities in the Atlantic Coast region of Nicaragua.<sup>108</sup> A pilot project on demarcation and titling of indigenous communities is being developed, although a law on the delineation of indigenous communities has yet to be adopted. Various actors have convinced the World Bank that it should proceed with this project, even though the Bank has frozen around US\$ 800 000 earmarked for the Atlantic Biological Corridor because the State of Nicaragua has not enacted a law on the issue of land titles to indigenous communities. According to Lilliam Jarquín of PRODEP, the pilot project “is directed at the demarcation and titling of those communities who have no serious conflicts and whose cases can be resolved under the existing legislation”, calculated to be 10 percent of all the Atlantic Coast communities.<sup>109</sup>

On 13 December 2002, the National Assembly of Nicaragua adopted Law 445 on “the regulation of communal property of the indigenous peoples and ethnic communities of the autonomous regions of the Atlantic Coast of Nicaragua, and of the Bocay, Coco, Indio and Maíz Rivers” (*Ley del régimen de propiedad comunal de los pueblos indígenas y comunidades étnicas de las regiones autónomas de la Costa Atlántica de Nicaragua y de los Ríos Bocay, Coco, Indio y Maíz*). This law, published in the State Gazette No. 16 of 23 January 2003, regulates the responsibility of institutions in recognising the communal property rights of the indigenous populations of the Atlantic Coast Autonomous Region. The new law also defines the land tenure system, legalisation and titling procedures, and the responsibilities of communal, municipal, regional and national authorities in respect of indigenous peoples’ territories.

106 Galio C. Guardián et al., ‘Derechos, recursos y memoria social de lucha: Reflexiones sobre un estudio acerca de los derechos territoriales de las comunidades indígenas y negras de la Costa Caribe de Nicaragua’ [Rights, resources and social memory of struggle: Reflections on a study concerning the territorial rights of the indigenous and black communities of the Caribbean Coast of Nicaragua], in *Wani. Revista del Caribe Nicaragüense*, # 29 (2002), p. 6.

107 Interview with Maria Luisa Acosta (n. 83 above).

108 World Bank, *Project Appraisal Document* ... (n. 3 above); interview with Lilliam Jarquín, co-ordinator of the PRODEP component relating to the issue of indigenous peoples’ territorial rights, Managua, 8 Oct. 2002.

109 Ibid.

### 5.3 The Awas Tingni case

The territorial situation of Nicaragua's indigenous communities has been further complicated as national and transnational companies have been given access to these territories in order to exploit their natural resources. It is against this background that the now famous case of the Mayagna (Sumo) community of Awas Tingni developed.

This small community in Nicaragua's Atlantic Coast region started seeking legal recognition of their ancestral territorial rights when they found themselves affected by a logging concession which the Government of Nicaragua had granted to a foreign timber company. The case also shows the international coalition of American indigenous peoples in action, supporting community demands and ensuring that the case reach the Inter-American Commission on Human Rights. The Commission not only upheld the claim of the Awas Tingni community, but also decided to bring the case before the Inter-American Court of Human Rights (IACHR). On 31 August 2001, the Court resolved the Awas Tingni claim<sup>110</sup> and, in an historic precedent, established an innovative interpretation of private property rights favouring indigenous peoples in the Americas, specifically those in Nicaragua.<sup>111</sup> The Court stated:

"148. Through an evolutionary interpretation of international instruments for the protection of human rights, taking into account applicable norms of interpretation and pursuant to article 29(b) of the Convention –which precludes a restrictive interpretation of rights–, it is the opinion of this Court that article 21 of the Convention protects the right to property in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property, which is also recognised by the Constitution of Nicaragua.

"149. Given the characteristics of the instant case, some specifications are required on the concept of property in indigenous communities. Among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community. Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognised and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.

...

110 The sentence was not made public until 17 Sept. 2001. See: CEJIL, *Corte Interamericana emite sentencia a favor de una comunidad indígena de Nicaragua* [Inter-American Court rules in favour of a Nicaraguan indigenous community] (San José: CEJIL press release, 20 Sept. 2001), [www.cejil.org/Prensa/TIN.htm](http://www.cejil.org/Prensa/TIN.htm)

111 Note that the Nicaraguan dailies did not give much space to the judgement. In fact, only *El Nuevo Diario* published the Inter-American Court's decision. See: Joaquín Torres, 'CIDH falla a favor de indígenas' [IACHR pronounces in favour of indigenous people], in *El Nuevo Diario*, Managua, 19 Sept. 2001.



“151. Indigenous peoples’ customary law must be especially taken into account for the purpose of this analysis. As a result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration.

“152. As has been pointed out, Nicaragua recognizes communal property of indigenous peoples, but has not regulated the specific procedure to materialize that recognition, and therefore no such title deeds have been granted since 1990 ....

“153. It is the opinion of the Court that, pursuant to article 5 of the Constitution of Nicaragua, the members of the Awas Tingni Community have a communal property right to the lands they currently inhabit, without detriment to the rights of other indigenous communities. Nevertheless, the Court notes that the limits of the territory on which that property right exists have not been effectively delimited and demarcated by the State. This situation has created a climate of constant uncertainty among the members of the Awas Tingni Community, insofar as they do not know for certain how far their communal property extends geographically and, therefore, they do not know until where they can freely use and enjoy their respective property. Based on this understanding, the Court considers that the members of the Awas Tingni Community have the right that the State carry out the delimitation, demarcation, and titling of the territory belonging to the Community; and abstain from carrying out, until that delimitation, demarcation, and titling have been done, actions that might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographical area where the members of the Community live and carry out their activities.

“Based on the above, and taking into account the criterion of the Court with respect to applying article 29(b) of the Convention (*supra* para. 148), the Court believes that, in light of article 21 of the Convention, the State has violated the right of the members of the Mayagna Awas Tingni Community to the use and enjoyment of their property, and that it has granted concessions to third parties to utilize the property and resources located in an area which could correspond, fully or in part, to the lands which must be delimited, demarcated, and titled.

“154. Together with the above, we must recall what has already been established by this court, based on article 1(1) of the American Convention, regarding the obligation of the State to respect the rights and freedoms recognised by the Convention and to organize public power so as to ensure the full enjoyment of human rights by the persons under its jurisdiction. According to the rules of law pertaining to the international responsibility of the State and applicable under International Human Rights Law, actions or omissions by any public authority, whatever its hierarchic position, are chargeable to the State which is responsible under the terms set forth in the American Convention.

“155. For all the above, the Court concludes that the State violated article 21 of the American Convention, to the detriment of the members of the Mayagna (Sumo) Awas Tingni Community, in connection with articles 1(1) and 2 of the Convention.”

In its portion of the judgement requesting actions to be taken, the Court stated:

“164. For the aforementioned reason, pursuant to article 2 of the American Convention on Human Rights, this Court considers that the State must adopt the legislative, administrative, and any other measures required to create an effective mechanism for delimitation, demarcation, and titling of the property of indigenous communities, in accordance with their customary law, values, customs and mores. Furthermore, as a consequence of the aforementioned violations of rights protected by the Convention in the instant case, the Court rules that the State must carry out the delimitation, demarcation, and titling of the corresponding lands of the members of the Awas Tingni Community, within a maximum term of 15 months, with full participation by the Community and taking into account its customary law, values, customs and mores. Until the delimitation, demarcation, and titling of the lands of the members of the Community have been carried out, Nicaragua must abstain from acts which might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area where the members of the Awas Tingni Community live and carry out their activities.”

Miskito lawyer Armstrong Wiggins, of the US-based Indian Law Resource Center, has aptly commented that: “The battle that this small Mayagna community fought for its rights marks a turning-point in the defence of the territorial rights of the Atlantic Coast indigenous peoples.”<sup>112</sup> One of the main consequences of this judgement was that the Inter-American Court recognised that indigenous communities without title to their land may nonetheless have right of ownership, precisely as established in ILO Convention 169. Nicaragua, however, is one the few Latin America countries which has yet to ratify Convention 169. In this sense, if the State of Nicaragua were ordered to issue land titles to its indigenous communities, those titles would become the means of proof of ownership and not merely a recognition thereof. Such, in accordance with this judgement, is already guaranteed in common law.

At the time of writing this report, Nicaragua has yet to comply with the Inter-American Court’s judgement. Negotiations with the State of Nicaragua on its compliance have been extremely slow due to a lack of political will on the part of the Government of Nicaragua. This was especially true of the Government of President Arnoldo Alemán. Indeed, Alemán completely ignored the judgement and made no public pronouncement in relation to it.<sup>113</sup>

Only under President Enrique Bolaños did the Government initiate negotiations with the Awas Tingni community on effective compliance with the judgement. On 16 April 2002, in the presence of Inter-American Court representatives, the Government and the indigenous community establishing a programme of periodic bilateral meetings. At the time of writing this report,

112 Armstrong Wiggins, ‘El caso Awas Tingni o el futuro de los derechos territoriales de los pueblos indígenas del Caribe nicaragüense’ [The Awas Tingni case, or the future of the territorial rights of the indigenous peoples of the Nicaraguan Caribbean coast], in *Wani, Revista del Caribe nicaragüense*, # 30 (2002), p. 7.

113 On 15 Oct. 2002, one month after the Inter-American Court (IACHR) pronounced its judgement, the Awas Tingni community held a press conference at CENIDH headquarters in Managua, denouncing President Alemán’s administration for its silence in this case. See: Rafael Lara, ‘Alemán ignora la sentencia del CIDH’ [Alemán ignores IACHR judgement], in *El Nuevo Diario*, Managua, 16 Oct. 2001.



however, no appreciable progress has been made.<sup>114</sup> Indeed, for this reason the Awas Tingni community requested, on 19 July 2002, that the Inter-American Court take precautionary measures. On 6 September 2002, the Court conceded to this request, deciding as follows:

“To require the State to adopt, without further delays, what measures are necessary to protect the use and enjoyment of the ownership of the lands belonging to the Mayagna Awas Tingni Community and the natural resources existent thereon, specifically those tending to avoid immediate and irreparable damages resulting from the activities of third parties who have settled in the Community’s territory or who exploit the natural resources existing on the same, until the delineation, demarcation and definitive titling previously ordered by this Court has been completed.”<sup>115</sup>

The Government has requested a new analysis of the Awas Tingni community. There have been considerable delays in the process of reaching agreement on the terms of reference for this study, which is to be conducted by a consultancy, and in the process of contracting consultants. They are to be paid from the funds of the World Bank’s *PRODEP* project (see Section 5.2 above), the Bank having come out in support of this process.

Clearly, for quite some time there will continue to be protracted delays in the resolution of the territorial claims of Awas Tingni – and, by extension, of all Nicaragua’s indigenous peoples. Nevertheless, the defining moment has arrived for Nicaragua to decide this issue of indigenous communities’ territorial rights once and for all. At hand are the successful experiences of other Latin American countries, such as Colombia and Brazil, in recognising their indigenous peoples’ territorial rights and consequently issuing titles to considerable land areas to the indigenous communities who inhabit them. Nicaragua should finally seize the day and strengthen unity in diversity – if it takes the wrong road, the country will undoubtedly find itself facing unending conflicts.<sup>116</sup>

114 Minutes of bilateral meetings on the implementation of the IACHR’s judgement in *Awas Tingni v. Government of Nicaragua*, Managua, 16 and 22 Apr. 2002; Bilwi, 29 Apr., 28-29 May & 22-23 July; and Managua 2 Sept. 2002; Carlos González and Heberto Jarquín, ‘Denuncian incumplimiento de sentencia CIDH en caso Awas Tingni’ [Non-compliance with IACHR judgement in Awas Tingni case denounced], in *La Prensa*, Managua, 10 June 2002; Sergio León, ‘Mayagnas analizaron sentencia’ [Mayagnas analyse judgement], in *La Prensa*, Managua, 26 June 2002; Rafael Lara, ‘Gobierno sin pagar a indígenas Awas Tingni’ [Government withholding payment from Awas Tingni indigenes], in *El Nuevo Diario*, Managua, 13 July 2002.

115 Decision of the Inter-American Court of Human Rights, 6 Sept. 2002. Provisional Measures requested by the representatives of the victims in respect of *Mayagna (Sumo) Community of Awas Tingni v. Government of Nicaragua*, [www.corteidh.or.cr/serie\\_e/index.html](http://www.corteidh.or.cr/serie_e/index.html)

116 As the Spanish version of this report neared completion, the National Assembly of Nicaragua approved Law 445 of 2002, *Ley del régimen de propiedad comunal de los pueblos indígenas y comunidades étnicas de las regiones autonómicas de la Costa Atlántica de Nicaragua y de los Ríos Bocay, Coco, Indio y Maíz* [Law on the regulation of communal property of the indigenous peoples and ethnic communities of the autonomous regions of the Atlantic Coast of Nicaragua, and of the Bocay, Coco, Indio and Maíz Rivers]. However, this event passed unnoticed in the media, as they were focusing on the detention of ex-President Arnoldo Alemán on serious corruption charges. Law 445 was first published in the *La Gaceta. Diario Oficial* [the official State gazette] of 23 Jan. 2003.



6

## Women's housing rights

### 6.1 Women's situation in relation to housing and property

Women constitute just over half (52 percent) of the Nicaraguan population. Women head the household in 39 percent of urban homes and 28 percent of rural homes. Most of these women raise children and shoulder economic responsibility for the home without a male partner to assist them.<sup>117</sup>

The family in Nicaragua has been severely affected by the extremely difficult economic situation created by the structural adjustment policies and economic market reforms that the Government has implemented over the past ten or more years. Consequently, many families have had to adopt drastic survival strategies in order to contend with the constant deterioration of economic conditions and the dismantling of social welfare networks. One such strategy is for the whole extended family (parents, children, grandparents, aunts and uncles, cousins, etc.) to live under one roof so that they can afford and share responsibility for the household expenses. This partly explains why Nicaraguan households are generally so large, as we saw in Section 1. The economic crisis has clearly had an impact on the quality of home life.

117 Sonia Agurto and Alejandra Guido Cajina, *Mujeres: Pilares fundamentales de la economía nicaragüense. Análisis de la participación de la mujer en la economía nicaragüense 1995/96-2000* [Women: fundamental pillars of the Nicaraguan economy. Analysis of women's participation in the Nicaraguan economy 1995/96-2000] (Managua: FIDEG, 2001), p. 4.

Another economic survival strategy is that a family member decides to emigrate to neighbouring Costa Rica or, not as commonly, to the United States. Such expatriates work abroad in order to send financial assistance to the family members back home and thus supplement their income. That the Nicaraguan economy has not collapsed is partly due to the important contribution by such workers. Indeed, it is often asserted in Nicaragua that the country's main export product is manual labour.

Over the past ten years, the fabrication and assembly industry has become the main source of new jobs in Nicaragua. Currently, between 40 000 and 50 000 persons work in such factories, most of which produce export garments for the US market. The vast majority of workers in these *maquilas* are women.<sup>118</sup>

At the level of civil society organisations, the Nicaraguan women's movement is now the country's foremost social movement, largely due to its independence, autonomy, and capacity to network and mobilise. In nearly all municipalities one finds well-organised women's groups, with a wealth of experience that is difficult to find in other countries.<sup>119</sup>

## 6.2 Domestic violence as a violation of the right to adequate housing

COHRE [the Centre on Housing Rights and Evictions, which co-authored this report] has identified terms in which the relationship between issues of women and housing can be analysed:

"Domestic violence clearly violates the right to adequate housing. (...) A woman who is being abused in her home lacks security of tenure, a cornerstone of adequate housing. As the violence in her home persists or escalates, fear and insecurity are instilled as she knows that ultimately she may have to flee her home to escape the violence. As we shall see, if a woman does leave, it is likely that she is left with no security of tenure at all. In turn, domestic violence renders the home inhabitable as the home no longer guarantees the safety of all of its occupants; this too constitutes a breach of the right to adequate housing."<sup>120</sup>

Domestic violence is one of Nicaragua's main public health problems. COHRE has noted that:

"The risk of homelessness for women who leave situations of domestic violence is particularly acute because in many circumstances temporary or emergency respite in the form of 'women[']s shelters' may be difficult to access."<sup>121</sup>

118 Comisión Nacional de Zonas Franca [CNZF, National Commission for Free-Trade Zones], *Memorias 1997-2001* [Memoranda 1997-2001] (Managua: CNZF, 2001); Witness for Peace, *Behind the Seam: Maquilas and Development in Nicaragua* (Washington, DC: Witness for Peace, 2001).

119 Sofia Montenegro, 'Un movimiento de mujeres en auge: Nicaragua' [A thriving women's movement: Nicaragua], in Ana Leticia Aguilar et al. (eds.), *Movimiento de Mujeres en Centroamérica* (Managua: La Corriente, 1998).

120 COHRE, *Home is Where the Hurt Is. An Economic and Social Rights Perspective on Violence Against Women*, p. 12, Geneva: COHRE (1998) (submitted to the Special Rapporteur on Violence Against Women, Ms Radhika Coomaraswamy).

121 Ibid. p. 15.

Currently, in all of Nicaragua there is only one such shelter for women who have been subjected to domestic violence: it is located in Managua and administered by the *Ocho de Marzo* [8<sup>th</sup> of March] Women's Collective.

The autonomous Nicaraguan women's movement has been working for over a decade to ensure that domestic violence be understood and approached as a public health problem, and to ensure that adequate national policies be adopted to address this issue. Founded in 1992, the *Red de Mujeres contra la Violencia* (Network of Women against Violence) has become one of the most active women's organisations in the country. Every year, it conducts public education campaigns on domestic violence.<sup>122</sup>

One of the biggest successes of the women's movement has been the establishment of the *Comisaria de la Mujer y la Niñez* (Commissariat for Women and Children).<sup>123</sup> Even though the Commissars for Women and Children have functioned less than perfectly, the women's movement sees them as one of its most concrete achievements.

### 6.3 Women's access to and control over financial resources

COHRE has pointed out that:

"Just as domestic violence violates the right to housing, housing violations can contribute to violence against women in the home."<sup>124</sup>

A similar reciprocity is valid in the context of women's lack of access to, and control over, economic resources, and the resulting inadequate living conditions, including inadequate housing conditions.

With regard to access to financial resources, another national women's group in Nicaragua, the *Comité Nacional Feminista* (National Feminist Committee), recently indicated that:

"While we women have gained important opportunities for participation and institutionalisation as a result of the said transition and democratic liberalisation, these facts have no correlation with the national economy and the country's economic policies. Women continue to be without guaranteed access to the most important means of production; we do not have lands, productive credits, businesses and economic development initiatives relevant to the country, and our efforts in this direction are systematically rendered invisible."<sup>125</sup>

122 Mary Ellsber, et al., 'The Nicaraguan Network of Women Against Violence: Using Research and Action for Change', in *Reproductive Health Matters*, No. 10 (1997), pp. 82-91; Violeta Delgado, 'The Experiences and Achievements of the Women's Network against Violence', in *Envío*, Vol. 22, No. 261 (2003), pp. 11-20.

123 A special law-enforcement agency for crimes against women or children.

124 COHRE, *Home is Where the Hurt Is* (n. 120 above).

125 Comité Nacional Feminista, *Feminismo y globalización: Apuntes para un análisis político desde el Movimiento. Convención Feminista Volver al escándalo y la transgresión – Por una agenda propia y autónoma* [Feminism and globalisation: notes for a political analysis from the Movement. Feminist Convention returns to scandal and transgression. For its own autonomous agenda] (Managua: CNF, 2003).

The women's movement in Nicaragua and in Latin America as a whole has recently become interested in the issue of property titles in the name of women. The pioneering work of Carmen Diana Deere and Magdalena León has strengthened this interest, stimulating discussion of the issue within women's groups throughout Latin America.<sup>126</sup> Deere and León propose that women should systematically take advantage of current projects on property titling, which the World Bank is promoting in a bid to ensure that joint titles become established. Joint titles are issued in the name of both the man and the woman in a legally registered or common law marriage.

Susana Lastarria-Cornhiel of the Land Tenure Center, University of Wisconsin-Madison, recently co-ordinated a research project in three countries, including Nicaragua, with the aim of assessing how joint titling has progressed with World Bank support.<sup>127</sup> The report concluded that in Nicaragua, in the period from 1992 to 1997, only 7.8 percent of all property titles issued were joint titles in the name of women and their 'permanent' male partners.<sup>128</sup> It is important to bear in mind that the very concept of the joint title caused a great deal of confusion within the Rural Titling Office (*OTR*), which is responsible for issuing and administering titles. Not surprisingly, there was similar confusion among the beneficiaries themselves, with some 25 percent of agrarian joint titles being issued, not to marriage partners, but to members of the same family (for example, a parent and his or her child, or two siblings)!<sup>129</sup> This corrupted the whole notion of gender equality, which was the ideal being striven for in improving women's access to land and housing.

The issuing of joint titles is a process which, without doubt, can be further advanced in Nicaragua, especially at the urban level, providing that the community-based organisations and national NGOs that produce housing are able to forge alliances with the women's rights movement in order to concretise and extend joint titling, or individual titling in the name of women. Fortunately, various NGOs that produce housing, including *HABITAR*, have great experience in urban housing authorisation and titling processes.

Women's organisations such as the Xochilt-Acalt Women's Centre also have some experience applying affirmative action (or 'positive discrimination') policies, whereby certain housing delivery or improvement programmes can only be accessed if the property in question is titled in the name of a woman.<sup>130</sup> That women's group has even come up with architecture from a gender perspective: housing designs developed by and for women in accordance with their practical needs.

In conclusion, then, Nicaragua is a country with great potential for analysing issues and finding innovative solutions in the context of women and housing.

126 Carmen Diana Deere and Magdalena León, *Empowering Women. Land and Property Rights in Latin America* (Pittsburgh: University of Pittsburgh Press, 2001).

127 Lastarria-Cornhiel et al., *Joint Titling in Nicaragua, Indonesia, and Honduras: Rapid Appraisal Synthesis* (Madison, WI: Land Tenure Center, University of Wisconsin-Madison, 2003).

128 Ibid. p. 7.

129 Ibid.

130 Sofia Montenegro and Elvira Cuadra, *Las claves del empoderamiento. Sistematización de diez años de experiencia del Centro de Mujeres Xochilt-Acalt* [The keys to empowerment. Systematisation of ten years of experience within the Xochilt-Acalt Women's Centre] (Malpaisillo: Xochilt-Acalt, 2002).



# Nicaraguan housing policies and programmes over the past 25 years

## 7.1 Housing policies and programmes under the Sandinista Government (1979-April 1990)

The effectiveness of any housing policy is generally measured in terms of the number of new housing units constructed. During ten years of Sandinista Government, about 28 000 homes were built,<sup>131</sup> an average of 2 800 per year. That hardly seems impressive at first sight, but if we are to fully understand the Sandinista housing policies and their social impact, we should also take account of additional factors that, in other situations, are not usually present. To be specific, the distinguishing feature of Sandinista housing policy was that it succeeded, through a variety of programmes, to benefit members of the most disadvantaged segments of society. As we saw in Section 1 of this report, there was an unprecedented increase in the number of urban and rural home-owners.

131 Kosta Mathéy, 'Nicaragua', in id. (ed.), *Housing Policies in the Socialist Third World* (London: Mansen, 1990), p. 87.



Housing was not the Sandinista Government's top priority when it came to development strategies; it was important, but took third place after health and education. The Sandinista revolution found itself facing a devastating panorama of unsatisfied needs, and every kind of limitation to overcoming them. Some writers have stressed that the literacy programme, which benefited some two million Nicaraguans, turned out to be less costly than the construction of 2 000 homes, but benefited the same number of families.<sup>132</sup> The 1982-83 housing budget was about 3 percent of GDP, and even though it was reduced to 0.5 percent in 1986 and 0.4 percent in 1987, it still accounted for 10 percent of the total social investment.<sup>133</sup>

The Ministry of Housing and Human Settlements (*MINVAH, Ministerio de Vivienda y Asentamientos Humanos*) was guided by a simple principle: the "equitable distribution of limitations."<sup>134</sup> For this reason, within the scope of attempting to meet the overall housing needs, those of the popular sectors had to be given priority. The goal was to improve housing conditions for those members of society whose situation was most critical, as well as groups of workers with housing needs, in production-related sectors and at the chosen lower extremes of development.<sup>135</sup> The Sandinista Government's housing programme also gave preference to those involved in the export sectors of agriculture and fishing, forestry and mining.<sup>136</sup> The civil war became an additional factor which necessitated a change of priorities on the housing agenda, efforts having to be focused on the construction of temporary accommodation for those displaced by the conflict.

In housing terms, two distinct periods of Sandinista Government can be identified: 1979 to 1986, and 1986 to 1989. During the former period, 25 777 housing units were constructed in Nicaragua. In the latter period, the economic crisis and the war had so completely de-capitalised the Ministry of Housing and Human Settlements that a minimal number of new housing units were built. Instead, the Ministry developed what were known as 'progressive urbanisation projects', providing 33 985 plots, each with a very basic home,<sup>137</sup> which could be progressively improved by individual owners, with the active participation of the community. Also in this period, basic services were provided to 3 885 already inhabited plots.<sup>138</sup>

One of the main successes of the Sandinista revolution was to give free rein to the creative and productive force latent in civil society in order to realise housing projects and other socially-oriented schemes. Thus, in the course of the 1990s, a dynamic social movement focused on society-based production of housing emerged and came to maturity. At the same time, one of the principal shortcomings of the Sandinista revolution was the inadequate institutionalisation and registration of the urban and agrarian reforms undertaken, as reflected in the chaotic process whereby property titles were issued to the beneficiaries of those reforms.

132 Mathéy (n. 131 above), p. 74.

133 Ibid.

134 Mirna Curutchet, *Vivienda y Participación en Nicaragua Sandinista* [Housing and Participation in Sandinista Nicaragua] (Córdoba: Facultad de Arquitectura y Urbanismo, Universidad Nacional de Córdoba, 1987), p. 51.

135 Ibid.

136 Mathéy (n. 131 above), p. 74.

137 Luis Bolaños Prado and Thelma Martínez Vargas, *Primer intento de análisis subsectorial sector construcción, subsector vivienda* [First attempt at sub-sector analysis: construction sector, sub-sector housing] (Managua: Nitlapán-UCA, 1995), p. 5.

138 Ibid.

**‘Maria Luisa Ortiz’ Women’s Co-operative, Mulukukú: an organisation for women housing constructors**

*“In 1984-85, as part of the revolutionary project, it was decided to establish settlements in various places for people displaced by the war, because the Contras had begun to attack. The campesinos [rural dwellers, or peasants] started suffering so much that the settlements had to be organised. Mulukukú was born as a camp for displaced persons. But given Mulukukú’s location and the history of the revolutionary Government, it was decided to create not only a settlement here but also a development centre to give aid to the campesinos. And so there was a bank here, a town hall, there was the INRA (National Institute of Agrarian Reform), the INSS (National Institute of Social Services), all the State institutions were set up here. And it was developed as a centre of attention for campesinos and displaced persons.*

*“In 1988 we were lashed by Hurricane Mitch, and nothing remained of Mulukukú the settlement. We were left in the open air. So it happened that we women of the co-operative trained to work in a workshop making blocks. Three organisations came to help us so that we could produce blocks for housing construction: Habitat, CEPAD and Productores por la Paz [Producers for Peace].*

*“Really, we women of the co-operative started out as builders, as block-makers – we are block-makers. Our trade is block-making and carpentry. After we got help building houses, the ten of us, with the aid of a master builder, built forty houses that first time. After finishing those forty houses, we managed to get financing to build forty more for forty other women, as housing was very badly needed. Those women, helped by the same system we had used to build our own houses, built their houses too. After that, they made blocks for all the buildings; more than 500 houses were put up here. Later, we got financing to set up a carpentry shop. The blocks are not so much in demand now as when we were building Mulukukú. We also managed to get assistance to build latrines, and now we have 250 latrines in the community. We also dug wells at a time when there was no water in the river: now we have fourteen wells in the community. That’s why I say we are builders by profession – you name it, we build it.”*

(WCCN interview with Grethel Sequeira, President of ‘Maria Luisa Ortiz’ Women’s Co-operative, Mulukukú, June 2002.)



## 7.2 Housing construction programmes under the Chamorro and Alemán Governments (April 1990-1996 and 1997-2001)

From 1990 to 1995, nearly the whole period of President Violeta Barrios de Chamorro's Government, 12 806 new homes were constructed in Nicaragua. New actors of considerable energy were arriving on the housing scene: national and international NGOs involved in housing construction processes. In the same period, whereas the Chamorro Government built only 5 397 housing units (42 percent of the total), national and international NGOs built 7 409 units (58 percent of the total). Of the Government-built housing units, approximately 82 percent were contracted to private builders, while supervised owner-construction programmes accounted for the remaining 18 percent. Furthermore, about 40 percent of the State-funded housing was designed for the medium and high-income segments of the population. In contrast, the NGOs used owner-construction programmes to build 100 percent of their housing units, and these were aimed exclusively at the low-income segment.

**TABLE 25 Housing units built by the Chamorro Government or national and international NGOs (1990-1995)**

Entity	Programme name/type	No. of units constructed	Method
Min. of Construction & Transport	Disarmament Plan	1 972	Private builders
Min. of Construction & Transport	Wounded and Incapacitated	297	Private builders
BAVINIC, (public sector) Housing Bank of Nicaragua	Free market housing	214	Private builders
BAVINIC, (public sector) Housing Bank of Nicaragua	Social interest housing	1 956	Private builders
Min. of Construction & Transport	Natural Disasters	890	Supervised owner-construction
BAVINIC	Supervised owner-construction housing	68	Supervised owner-construction
International NGOs	Various projects	2 166	Supervised owner-construction
National NGOs	Various projects	5 243	Supervised owner-construction
<b>TOTAL</b>	—	<b>12 806</b>	—

Source: *Comisión Nacional de Vivienda y Asentamientos Humanos (CONAVIAH*, National Commission for Housing and Human Settlements), 1995.

The delivery of housing construction plots, one of the options chosen by the Sandinista Government in initiating progressive owner-constructed housing programmes, was drastically reduced under the Chamorro Government. Indeed, in the period from 1990 to 1995, it handed over only 4 567 plots, nearly 90 percent of them to demobilised former members of the *Contras* or the Nicaraguan armed forces.

**TABLE 26 Housing plots delivered by the Chamorro Government (1990-1995)**

Entity	Programme name/type	Allocations	Percentage of total
Min. of Construction & Transport	Disarmament Plan	4 005	87.7%
Min. of Construction & Transport	Natural Disasters	107	2.3%
BAVINIC, (public sector) Housing Bank of Nicaragua	Social interest housing	455	10.0%
<b>TOTAL</b>	–	<b>4 567</b>	<b>100.0%</b>

Source: *Comisión Nacional de Vivienda y Asentamientos Humanos (CONAVIAH*, National Commission for Housing and Human Settlements), 1995.

In 1996, shortly before its electoral defeat, the Chamorro Government prepared a document entitled *Plan de Acción Nacional sobre Vivienda y Asentamientos Humanos 1996-2000* (National Action Plan on Housing and Human Settlements, 1996-2000), which was presented to the 1996 United Nations Conference on Human Settlements (Habitat II) in Istanbul.<sup>139</sup>

The National Action Plan on Housing and Human Settlements was inherited by the Government of President Arnoldo Alemán when it took office in January 1997. However, his administration showed not the slightest interest in developing the plan or in maintaining the existing levels of co-ordination between public-sector entities, civil society organisations, and international co-operation agencies. On the contrary, if anything characterised the Alemán Government it was its obsessive persecution, open and direct, of national and international NGOs. Furthermore, the high levels of corruption which characterised his administration affected the housing plans of State entities and even the international co-operation organisations.

In 1998, Nicaragua was devastated by Hurricane Mitch, the worse hurricane to hit Central America in the 20th century, which destroyed about 20 000 homes in Nicaragua. For this reason, many international donors focused their resources on providing emergency aid for housing reconstruction. Judging by results in the post-Mitch period, Nicaragua's community-based organisations and national NGOs were again the leading housing producers, accounting for 46.6 percent of reconstruction. International co-operation agencies took second place, at 31.4 percent of reconstruction. Altogether, we can see that these national and international non-state actors provided a massive 78 percent of the housing (re-)constructed after the emergency. Central Government was responsible for only 19.2 percent, and local Government for only 2.8 percent, of the new housing.

139 Republica de Nicaragua, Instituto de Vivienda Urbana y Rural, *Informe de las Condiciones de los Asentamientos Humanos en Nicaragua* [Report on conditions of human settlements in Nicaragua] (2000). Document submitted to the Special Session of the UN General Assembly (Istanbul+5), [http://www.habitat-lac.org/paises/doc/nic/informe+5\\_nic\\_es.htm](http://www.habitat-lac.org/paises/doc/nic/informe+5_nic_es.htm)

**TABLE 27 Housing (re-)constructed by the Alemán Government or national and international NGOs following Hurricane Mitch (1999-2000)**

Entity		No. of housing units built	Percentage of total
Government	Central Government	1 573	19.2%
	Local Government	233	2.8%
NGOs	Civil society (CBOs and national NGOs)	3 808	46.6%
	International co-operation agencies	2 565	31.4%
<b>TOTAL</b>		<b>8 179</b>	<b>100.0%</b>

Source: Ninette Morales (2002).

In 1998, the Nicaraguan Ministry of Construction and Transport was charged with taking steps towards the construction of new housing. According to the Ministry:

“With the aim of significantly reducing the qualitative and quantitative housing deficit, whilst improving the provision of basic services at the national level, the government strategy for the [housing] sector will be focused on [the following]: strengthening the intermediation process for private internal savings in a sustainable form geared to investment in this sector, with the goal of gradually reducing dependence on external resources ... The goal is to realise more than twenty thousand new housing actions per year.”<sup>140</sup>

According to the World Bank, in 2000 the Alemán Government spent only US\$ 10 million on housing, the lowest of all the sums it spent on the various social programmes.<sup>141</sup> In the document entitled *Nicaragua Poverty Assessment*, published by the World Bank in early 2001, the Bank expressed the following criticism of the Government of Nicaragua’s housing programmes:

“In Nicaragua, there are practically no evaluations of experiences with housing projects. Housing spending is US\$ 10 million a year, which is one fifth of primary level recurrent education spending and ten times as much as pre-school. Although almost 80 percent of the poorest in Nicaragua live in homes with dirt floors creating unsanitary conditions, targeting criteria of housing projects is for low income families with re-payment capacity. Thus, these resources are not targeted to the poorest. Given the opportunity cost of scarce resources, these funds would be better spent on programs directed at improving health, nutrition and education services targeted to the poor.”<sup>142</sup>

The Inter-American Development Bank (IDB) took a more pro-active stance: in 1998, it first expressed an interest in financing a national housing programme in Nicaragua, and then began

140 Ministerio de Construcción y Transporte de Nicaragua [Nicaraguan Min. of Construction and Transport], [http://sicom.or.cr/asocmct/mct.htm#DIRECCIÓN%20GENERAL%20DE%20VIVIENDA%20Y%](http://sicom.or.cr/asocmct/mct.htm#DIRECCIÓN%20GENERAL%20DE%20VIVIENDA%20Y%20)

141 World Bank, ‘Nicaragua Poverty Assessment: Challenges and Opportunities for Poverty Reduction’, in *Volume I: Main Report. Report No. 20488-NI* (Washington, DC: World Bank Group, 2001), p. 30.

142 Ibid. p. 37.

discussing conditions for such a loan with the Alemán Government. Having taken note of the IDB's interest, the Government swiftly produced a draft law on the creation of a new *Instituto de Vivienda Urbana y Rural (INVUR)*, Institute of Urban and Rural Housing). The law was approved before the end of the year (1998). However, no resources were assigned to the new entity, nor were its functions specified, so it existed only on paper until the year 2000.

For the Alemán Government, the artificial creation of the *INVUR* yielded political benefits at the local and international levels. It also conveniently masked the fact that the Government had no coherent housing policy and had failed to make any real progress with the National Action Plan, which the Chamorro Government had presented at the Habitat II conference in Istanbul in 1996. In 2000, the Alemán Government produced a document evaluating its 'implementation' of the National Action Plan. This evaluation was submitted to the 25th Special Session of the UN General Assembly in New York in June 2001 (five years after Habitat II, and therefore referred to as Istanbul+5). On that occasion, Nicaragua was represented by Mr Marco Aurelio Sanchez, then director of *BAVINIC* (the public-sector Housing Bank of Nicaragua), who made the following statement:<sup>143</sup>

"The housing situation of the Nicaraguan population is extremely deficient, both quantitatively and qualitatively, and is even more problematic in rural areas of the country. To resolve this issue, His Excellency, President of the Republic of Nicaragua, Dr Arnoldo Alemán Lacayo, has declared that it is necessary to establish a national policy for the housing sector. In view of this, the Institute of Urban and Rural Housing (*INVUR*) was created in June 1998."<sup>144</sup>

Clearly, the Alemán Government hoped to impress the international community by presenting the creation of the *INVUR* as a success. However, as we have already seen, the *INVUR* was a paper tiger at that time, and the Government's efforts to improve the housing situation had been minimal.

143 Marco Aurelio Sanchez, *Intervención de la Delegación Oficial del Gobierno de Nicaragua al Vigésimo Quinto Período Extraordinario de Sesiones de la Asamblea General, New York* [Statement of the Official Delegation of the Government of Nicaragua to the 25th Special Session of the General Assembly, New York] (New York: UNGA, 2000), <http://www.un.org/ga/habitat/statements/docs/nicaraguaS.html>

144 Ibid.

**Red de Vivienda de Nicaragua [Nicaragua Housing Network]:  
a federation of civil society organisations for housing and human settlements**

The Housing Network was set up in 1994, an initiative of various civil society organisations [CBOs and national NGOs] working on housing and human settlements, the aim being to share their experiences. Work on the Network started in the run-up to the second UN Conference on Human Settlements [Habitat II in Istanbul], held in 1996.

Since their foundation, the organisations that make up the Network have been involved in the direct production, construction, technical assistance and supervision of more than 10 000 homes in Nicaragua, and have managed resources for international co-operation in the vast majority of these housing projects. In October 2002, the newly founded organisations that had started to work in the Housing Network were affiliated in a federation; they are: *Asociación para el Desarrollo de Carazo – ADECA* [Association for the Development of Carazo<sup>145</sup>]; *Centro de Estudios y Promoción del Habitar – HABITAR* [HABITAR Centre for Studies and Promotion of Habitation]; *Centro de Promoción del Desarrollo Local – CEPRODEL* [Centre for Promotion of Local Development]; *COLMENA*; *Grupo Sofonias*; *Hábitat para la Humanidad-Nicaragua* [Habitat for Humanity - Nicaragua]; *Masaya sin Fronteras – MASINFA*; *ODESAR*; and *POPOLNAH*.

The Federation's objectives include:

- Communication between, and co-ordination of, member organisations on focal points and experiences of their work, which should contribute to increasing efficiency and effectiveness in order to facilitate access to adequate housing in sustainable human settlements, with priority for the low-income segment of the population.
- Fostering complementarity between civil society organisations in order to create synergies in the areas in their care, and to draw increasing attention to housing issues.
- Strengthening the presence and functioning of civil society organisations in urban and rural housing management on the national and local levels.
- Promoting joint working between civil society and the State, favouring processes of citizens' participation in local and sector-management of housing and human settlements.
- Making proposals to the State regarding policies, plans, legislation, and local and national programmes, in order to meet the housing demand and to ensure the consolidation of human settlements, with priority for the low-income segment of the population.

Source: Red de Vivienda de Nicaragua [Nicaragua Housing Network], Managua, October 2002.

145 Carazo, part of southwest Nicaragua, is one of the country's administrative departments (or provinces).

### 7.3 Housing programmes under the Bolaños Government (January 2002 to present)

#### The approval process for the IDB housing-programme loan

It would be no exaggeration to state that Nicaragua's new housing programme, presented by the Government of President Enrique Bolaños only a few months after taking office, was designed in its entirety by the Inter-American Development Bank (IDB). As we have already seen [in the closing paragraphs of Subsection 7.2], the IDB had been negotiating a new housing programme with the Alemán Government since 1997.<sup>146</sup> The resulting programme was finally approved by the IDB on 25 September 2002. However, according to one IDB official:

"The programme faced a central difficulty, which was the lack of an institutional frame of reference, which could also be read as the existence of an institutional frame of reference inadequate for embarking on an enterprise of this kind."<sup>147</sup>

Indeed, the IDB insisted that the Government of Nicaragua meet a series of pre-conditions and undertake certain institutional reforms as prerequisites for the approval of the loan. It also required the Government to issue a policy letter expressing interest in developing a housing programme with IDB resources and in accordance with a number of principals previously stipulated by the IDB.

As was to be expected, in the run-up to the 2001 presidential elections both candidates promised to solve the housing problem. Enrique Bolaños, the Liberal Party candidate who eventually emerged as the winner, took the programme then being developed by the IDB and negotiated with the Government and turned it to his electoral advantage. Bolaños even promised the following in one of his campaign documents:

**"Strengthening the INVUR:** I shall consolidate the Institute of [Urban and Rural] Housing in order that it may foster the construction of popular housing. To this end, we must first clarify, guarantee, and issue titles for, property rights.

**"The Social Fund for Housing (FOSovi):** I shall create a fund of 650 million *cordobas* [approx. US\$ 45 million] to subsidise and finance the construction of 50 thousand housing solutions [that is, housing units]. Subsidies will be granted for the rehabilitation, improvement, construction or replacement of housing in rural zones of extreme poverty.

**"Basic Housing Programme:** I shall invest 520 million *cordobas* [approx. US\$ 35 million] in the construction of at least 100 thousand basic houses for the same number of families in rural zones of extreme poverty. The Government will provide the materials and the community the labour.

<sup>146</sup> IDB, *Profile II. Nicaragua* (n. 2 above).

<sup>147</sup> Jaime Cofré, 'Financing housing projects', transcription of a presentation given at the seminar *A decent roof – a battle strategy for the reduction of poverty*, organised by CONAPRO and the Konrad Adenauer Foundation at the Hotel Real Intercontinental Metrocentro, Managua, 4 Oct. 2002.

**“Drinking Water and Sanitation:** I shall invest 2 535 million *cordobas* [approx. US\$ 175 million] to increase the national coverage of access to drinking water and sanitation, in urban and rural zones.”<sup>148</sup>

The mechanism designed to give the impression that this programme was a genuine product of Nicaraguan society was a ‘think-tank’ that would comment on the IDB’s housing plans. The group, dubbed the *Foro de liderazgo nicaragüense-estadounidense* (the Nicaraguan–US Housing Policy Leadership Forum), was partly financed by the US Department of Housing and Urban Development and co-ordinated by the Institute for Policy Implementation of the Graduate School for Public Affairs at the University of Colorado at Denver. In 2001, the Forum organised three workshops in Nicaragua on the country’s housing policies, but only leaders from the private sector were invited. Significantly, Nicaragua’s main housing constructors – the civil society organisations (CBOs and NGOs) that are energetic actors in the housing sphere – were not invited to participate in these gatherings of ‘leaders’ in the field of Nicaraguan housing issues.

According to the official report on the Forum’s work:

“The Forum’s participants agreed that Nicaragua must implement a comprehensive housing agenda. It must put in place an effective legal regulatory and institutional framework that responds to the nation’s need for housing capital and the nation’s commitment to expand housing for low-income households. Simultaneously, it must initiate several pilot projects to test the effectiveness of strategies to expand access to capital and to respond to the housing needs of the poor ...”<sup>149</sup>

The Inter-American Development Bank has also been clear on the way in which the approval procedure for loan was developed:

“Assisted by the Bank, [the] Government completed in January 2001 the draft of a law acceptable to IDB that specifies the functions of INVUR and details the steps to close BAVINIC.”<sup>150</sup>

Not until early 2002 did the Nicaraguan National Assembly start discussing the legislation on *INVUR*. On 8 February 2002, the President of the Commission of Transport, Construction and Infrastructure, David Castillo, informed the press that the law would be approved in March, making possible the approval of a US\$ 40 million loan from the IDB.<sup>151</sup> In reality, the National Assembly approved the Organic Law of the Institute of Urban and Rural Housing (*INVUR*) on 3 May 2002.<sup>152</sup> On that occasion, the outgoing *BAVINIC* Director and new *INVUR* Director, Róger Lacayo, gave the following account of *BAVINIC*’s closure:

148 Enrique Bolaños Geyer, *Equidad: inversión en capital humano y reducción de la pobreza*. Enrique Bolaños Geyer, *Candidato a la Presidencia de la República por el PLC* [Equity: investment in human capital and poverty reduction. Enrique Bolaños Geyer, PLC Candidate for the Presidency of the Republic], Managua, 27 Aug. 2001.

149 University of Colorado at Denver, *Expanding Housing Opportunities in Nicaragua. A Summary of the Recommendations of the Nicaraguan-US Housing Policy Leadership Forum 2001-2002*, (Denver, CO: Institute for Policy Implementation, Graduate School of Public Affairs. University of Colorado at Denver, 2002), p. 4.

150 IDB, *Profile II. Nicaragua* (n. 2 above), p.5.

151 Edgard Barberena, ‘Dictaminan ley que transforma BAVINIC’ [Law enacted which transforms *BAVINIC*], in *El Nuevo Diario*, Managua, 9 Feb. 2002 (electronic edition).

152 William Briones Loásiga, ‘Diputados aprueban ley creadora del INVUR’ [Representatives approve law on creation of *INVUR*], in *La Prensa*, Managua, 4 May 2002 (electronic edition).



“The Government was advised [by the IDB] to dissolve the Bank, and in exchange they [the IDB] are going to give us a very large loan at a very low interest rate and with a very long amortization period.”<sup>153</sup>

On 12 June 2002, the National Assembly officially published Law 428, the Organic Law of the *INVUR*,<sup>154</sup> which indicated that the new Institute would be “the regulatory organ for urban and rural housing” (Art. 3, para. 1) with the task of “elaborating the national housing policy” (Art. 3-a). Simultaneously, Law 428 created the *Fondo Social de Vivienda (FOSOVI)*, Social Fund for Housing, charged with “establishing direct subsidies to the individual beneficiaries” (Art. 4, para. 1). Finally, in early August 2003, President Bolaños issued Decree 73-2002, formally regulating Law 428.<sup>155</sup>

At the time of writing this report, National Assembly regulation of the *FOSOVI* is still pending. According to the IDB official responsible for the housing programme, such regulation was not originally envisaged, but the National Assembly decided otherwise.<sup>156</sup>

### The IDB housing-programme loan approved

The *Multi-Phase Low-Income Housing Program*, as approved by the IDB on 25 September 2002, calls for a loan of US\$ 22.5 million in the first, three-year phase.<sup>157</sup> Depending on results at the end of this period, a second phase may be initiated, with an additional US\$ 20 million loan. The first phase also includes a US\$ 300 000 donation by the Austrian Government (Hurricane Mitch disaster relief fund) and a US\$ 2.5 million contribution by the Government of Nicaragua itself.

The IDB’s own analysis in the final programme document highlights two very interesting aspects. Firstly, the IDB gives prominence to the role played by NGOs in housing construction, recognising that “NGOs have been the most visible suppliers of low-cost housing, producing around 1 500 units per year”<sup>158</sup> Secondly, the IDS emphasises several strengths of the Nicaraguan situation which facilitate the design of a housing programme for low-income families:

“... the country has some strengths on which effective interventions can be built: (a) a very high share of households (above 80%) have rights to the property they live on (although a minority have registered title); (b) building and land costs are extremely low even relative to household incomes, and – thus – a small subsidy could bridge the affordability gap to galvanize demand, (c) a rich network of NGOs has developed from international assistance, while many municipalities have the capacity to operate simple housing interventions; and (d) housing microfinance – the credit technique best suited to reaching low/moderate-income households – has started and offers a base for expansion.”<sup>159</sup>

153 Benjamín Blanco, ‘BAVINIC llama a morosos a reestructurar sus deudas’ [BAVINIC calls on defaulters to restructure their debts], in *La Prensa*, Managua, 1 July 2002.

154 *La Gaceta. Diario Oficial* [the official State gazette], pp. 4109-4118, Managua, 12 June 2002.

155 *La Gaceta. Diario Oficial*, pp. 5273-5277, Managua, 12 Aug. 2002.

156 Cofré (n. 147 above).

157 Inter-American Development Bank, *IDB approves loan of US\$ 22.5 million for housing programmes in Nicaragua* (IDB press release, 25 Sept. 2002), <http://www.iadb.org/exr/PRENSA/2002/cp21302c.htm>

158 Inter-American Development Bank, *Multi-Phase Low-Income Housing Program. First Phase. NI-0064. Loan Proposal* (Project 1111/SF-NI, approved on 25 Sept. 2002) (Washington, DC: IDB, 2002), p. 1.

159 *Ibid.* p. 2 (of 7) of Executive Summary.

According to the IDB, “The overall objective is to improve housing conditions of low- and moderate-income households by providing subsidies, deepening markets, and strengthening institutions in the sector”.<sup>160</sup> The resources are distributed as follows: US\$ 18.5 million (78.6 percent) in investment; US\$ 2.5 million (14.7 percent) to strengthen institutions; US\$ 1 million (3.9 percent) in political reform and technical assistance; and US\$ 500 000 in financial costs.

**TABLE 28 Cost breakdown of the Multi-Phase Low-Income Housing Program (First Phase)**

Component	IDB × US\$ 1000	Austrian Mitch Fund × US\$ 1000	Local × US\$ 1000	TOTAL × US\$ 1000	Percentage of total
1. Investment	18 509	300	1 071	19 880	78.6%
1.1 Group Subsidy	10 558	0	721	11 279	44.6%
1.2 Individual Subsidy	5 201	0	350	5 551	21.9%
1.3 Land Tenure Regularization	1 000	0	0	1 000	4.0%
1.4 Administrative Cost (Subsidies)	1 750	0	0	1 750	6.9%
1.5 Environmental Risk Maps	0	300	0	300	1.2%
2. Institutional Strengthening	2 470	0	1 251	3 721	14.7%
2.1 Training & Information System	871	0	0	871	3.4%
2.2 HSRE (Housing Strategy Research & Evaluation) Unit	350	0	0	350	1.4%
2.3 Publicity Campaign	400	0	0	400	1.6%
2.4 Management Support INVUR	849	0	1 251	2 100	8.3%
3. Policy Reform & Technical Assistance (TA)	1 000	0	0	1 000	3.9%
3.1 Housing Microfinance	250	0	0	250	0.9%
3.2 Land Tenure Regularization (TA)	150	0	0	150	0.6%
3.3 NHS and Action Plan	300	0	0	300	1.2%
3.4 Dissolution of BAVINIC	300	0	0	300	1.2%
<b>Sub-total</b>	<b>21 979</b>	<b>300</b>	<b>2 322</b>	<b>24 601</b>	<b>97.2%</b>
4. Financial costs	521	0	178	699	2.8%
4.1 Interest	296	0	0	296	1.2%
4.2 Credit Commission	0	0	178	178	0.7%
4.3 Supervision and Inspection	225	0	0	225	0.9%
<b>TOTAL</b>	<b>22 500</b>	<b>300</b>	<b>2 500</b>	<b>25 300</b>	<b>100%</b>
Percentage per source	88.9%	1.2%	9.9%	100%	

Source: Inter-American Development Bank (2002).<sup>161</sup>

<sup>160</sup> IDB, *Multi-Phase Low-Income Housing Program* (n. 158 above), p. 1 (of 7) of Executive Summary.

<sup>161</sup> Ibid. p. 15.

As the IDB document indicates, “In order to reach different housing sub-markets and income groups, the investment component has two modalities: the ‘group subsidy’ and the ‘individual subsidy.’”<sup>162</sup> For the group subsidy, the IDB is to provide US\$ 105 million and the Government of Nicaragua US\$ 721 000. The IDB claims that “In total, the [group] subsidy will reach about 17 500 households in the first phase and an additional 17 500 is estimated for the second phase — totaling 5% of Nicaraguan families.”<sup>163</sup>

## Group subsidies

According to the IDB, the group subsidy is exclusively targeted at low-income households: “The Program targets two-thirds of subsidies to families earning below the Government’s poverty line (US\$155 per month) ... through the group subsidy.”<sup>164</sup> As the name of this subsidy suggests, such households will be able to apply for it collectively, through NGOs and municipalities previously qualified for this purpose by *INVUR* and referred to by the IDB as “Auxiliary Entities”.

The group subsidy may only be used for the following: “home improvement and expansion (subsidy amount: up to US\$ 600), replacement of a core unit on the lot owned by the family (subsidy amount: US\$ 1 300), and purchase of a newly constructed core unit (subsidy amount: US\$ 1 300).”<sup>165</sup> As the IDB points out: “This last use will only be financially possible for these poor families with counterpart contributions from participating Auxiliary Entities (NGOs and municipalities).”<sup>166</sup> One of the most important requirements for access to such a subsidy is that the beneficiary family, or an NGO or municipality acting as an Auxiliary Entity, must hold full legal title to the property which is to be improved or to the land on which a new building is to be constructed.<sup>167</sup> In order to improve the regulation of property rights in Nicaragua, the IDB also indicates that: “By the end of construction, titles must be transferred and registered in the name of the individual household beneficiaries.”<sup>168</sup>

For access to a group subsidy, the household is also required to complete it by making a downpayment of 15 percent of the subsidy amount. For subsidies up to US\$ 600, the downpayment would be US\$ 90; for subsidies up to US\$ 1 300, the downpayment would be US\$ 195. The programme does not specify a minimum subsidy amount.

The IDB envisages the process of granting a group subsidy as follows:

“A municipality or NGO acting as an Auxiliary Entity [AE] assembles a group of households suffering from poor or no housing with sufficiently low income (below US \$155 per month) to qualify for the Program. This group of households most often will consist of 50 to 200 families in an existing low-income community located in an area of low or medium environmental risk. The AE will then make an initial consultation with *INVUR* to confirm the eligibility in

162 IDB, *Multi-Phase Low-Income Housing Program* (n. 158 above), p. 3 (of 7) of Executive Summary.

163 Ibid. p. 2 (of 7) of Executive Summary.

164 Ibid. pp. 4-5 (of 7) of Executive Summary.

165 Ibid. p. 9.

166 Ibid. in footnote 1 (p. 9).

167 The IDB acknowledges that this requirement will exclude some 70% of potential beneficiaries from the programme. See: Cofré (n. 147 above).

168 IDB, *Multi-Phase Low-Income Housing Program* (n. 158 above), p. 9.

principle of this project. Based on this preliminary qualification, the AE will then work with families to prepare plans and estimates for the construction work, taking into account the amount of the subsidy, the commitment of self-help labor and materials of the families, the need for any environmental mitigation, and any other resources available. In this regard, some AEs are likely to be able to supplement Program and household resources with technical assistance or cash resources. The AE then submits this project proposal including plans and estimates, information on the families, and environmental data to INVUR. INVUR analyzes the eligibility of the families, the environmental data, the finance of the package, and the construction work involved against Program norms and for feasibility. With INVUR's approval, the subsidy unit within INVUR (FOSovi) disburses the approved subsidy amount to an account maintained and managed by the AE in progress payments (typically three – 40%, 40%, 20%) as construction occurs. FOSovi verifies these construction expenses mainly through presentation of receipts by the AE, but also through physical inspection. Skilled workers contracted by the AE conduct the specialized parts of the building and supervise families in their self-help work.”<sup>169</sup>

### Individual subsidies

For individual subsidies, US\$ 5.2 million is available in IDB funds, plus US\$ 350 000 from the Government of Nicaragua. According to the IDB final document, the individual subsidy “serves low- and moderate-income households earning up to \$350 per month [and is granted] through microfinance and finance institutions (qualified as Auxiliary Entities).”<sup>170</sup> Furthermore, “the individual subsidy is meant as a contribution to a low/moderate-income family that will primarily fund their housing solution through other means (savings and a loan).”<sup>171</sup> Thus, households will complete the individual subsidy both with a market-rate loan from a microfinance entity or financial institution participating in the programme and with a downpayment of 15 percent of the subsidy amount. The individual subsidy is for purposes including “home improvement and expansion (subsidy amount: up to US\$600), construction of a new core unit on a lot owned by the family (US\$1,300), and purchase of a new unit built by developers and construction contractors (US\$1,300).”<sup>172</sup> Another requirement for access to an individual subsidy is that “The house can reach a maximum of 60 square meters with a market value of no more than US\$10,000.”<sup>173</sup>

Significantly, the IDB further clarifies that “the individual subsidy will stimulate the involvement of the for-profit private sector in social housing, including manufactured homebuilders, developers, microfinance institutions, and others”.<sup>174</sup> According to one IDB employee, “The Bank actually considers the subsidy a means of buying time, because basically, it’s a question of establishing, through the people’s incomes, the financing of housing through credit and through savings and loan programmes.”<sup>175</sup>

169 IDB, *Multi-Phase Low-Income Housing Program* (n. 158 above), p. 17.

170 Ibid. p. 3 (of 7) Executive Summary.

171 Ibid. p. 10.

172 Ibid.

173 Ibid.

174 Ibid.

175 See: Cofré (n. 147 above).

Apart from applications for individual subsidies via microfinance entities or financial institutions involved in the programme, IDB envisages other means of access:

“Sometimes, a developer (or manufactured homebuilder) will recruit moderate-income families interested in buying their product (a core unit in a new subdivision constructed by this builder or a manufactured home) and send these families to a financial institution qualified as an AE (the same bank providing construction and take-out finance to the project, in the case of a subdivision) to apply. In either case, the applicant presents construction plans and estimates, and opens a bank account (in the AE itself, if the AE is a commercial bank) to accrue the required downpayment in cash. The AE then reviews this application and pre-qualifies the family as eligible for both the subsidy from the Program and a loan from the AE. The AE then submits the package electronically to INVUR, which reviews the AE’s analysis of the income of the family, environmental eligibility, financial feasibility of the project, and the construction work involved against the Program’s norms. With INVUR’s approval, FOSovi disburses the approved subsidy amount to an account maintained and managed by the AE in progress payments as construction occurs. FOSovi verifies these construction expenses through presentation of receipts by the AE for individual families, and through presentation of receipts and, as necessary, physical inspection for developer subdivisions. The AE must disburse the household’s downpayment and the loan amount against the construction work before the subsidy is expended.”<sup>176</sup>

The second programme component is institutional strengthening, basically focusing on technical support and management of *INVUR* and a public relations campaign to promote and explain the programme to the low-income families. The third programme component is directed at policy reforms and other types of technical assistance, particularly the ear-marking of US\$ 150 000 for land tenure regularisation. According to the IDB, “technical assistance will support studies of land tenure during the first phase of the Program in order to incorporate the cost of regularization into the subsidy during the second phase of the program.”<sup>177</sup>

At the time of writing this report, the IDB programme is actually being implemented. Even though civil society organisations active in the housing sphere were not informed or taken into account in developing the programme, they are evidently seeking a way to access relevant information and thus prepare themselves for participating in the programme in the best possible way.

176 IDB, *Multi-Phase Low-Income Housing Program* (n. 158 above), p. 18.

177 Ibid. p. 13.



## **Present situation of the right to adequate housing in Nicaragua**

The UN Committee on Economic, Social and Cultural Rights (UNCESCR) has identified seven key aspects which define adequate housing and which are to be considered when evaluating whether a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) is meeting its obligations under the Covenant. In its General Comment No. 4 on the Right to Adequate Housing (Art. 11(1) of the Covenant), the Committee provides a very useful analysis of the Covenant as it relates to the right to adequate housing (see Annex B of this report). In this section, we evaluate the degree to which the Government of Nicaragua has complied with its obligations under the Covenant.

### **a. Legal security of tenure**

The Committee notes that: “Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.” As this report has shown, Nicaragua’s record on housing ownership is exceptionally good: at the national level, 81 percent of Nicaraguan households own their homes. Nonetheless, the lack of legal security of tenure remains an issue for serious concern. Even though violent mass evictions, which were prevalent in the early 1990s, are now a thing of the past, urban



and rural home-owners still live in ever-present fear of losing their properties or of being evicted from the properties that they received from the State under the Sandinista Government.

Forced evictions do still take place in Nicaragua, but are generally regarded as isolated incidents and therefore do not provoke any public outcry. *CENIDH* [The Nicaraguan Human Rights Center, which co-authored this report] has documented many such cases in its successive annual reports on the Nicaraguan human rights situation. Furthermore, on *CENIDH*'s invitation, a fact-finding mission from FIAN International [*editor's note*: a human rights organisation concerned with the right to food] visited Nicaragua in August 2002 and documented a series of forced evictions among peasant communities in Altagracia municipality on Ometepe Island. These followed the destruction of 11 homes by the police, and the forced eviction of two agricultural co-operatives in Chinandega municipality.<sup>178</sup>

Many households do not possess adequate legal title to their homes, and this forms an enormous barrier to accessing credit. Thus, the lack of tenure security significantly limits their opportunities for economic improvement. In 2002, the WCCN [The Wisconsin Co-ordinating Council on Nicaragua, which co-authored this report] and the International Foundation for the Global Economic Challenge (FIDEG) investigated the social impact of microcredit in Nicaragua. They found that 85 percent of those who have been given credit by microcredit entities have been barred by traditional banks because they cannot provide the guarantees that such banks demand — especially urban or rural property titles.<sup>179</sup> Lack of title also limits access to the home-improvement subsidies provided under the IDB's *Multi-Phase Low-Income Housing Program*, as potential beneficiaries are required, among other conditions, to possess full legal title to the properties in which they live. Indeed, the IDB itself recognises that about 70 percent of the potential beneficiaries will be excluded from the programme because they do not have such title.<sup>180</sup>

As this report has shown, the issuing of property titles to those who benefited from the Sandinista social reforms of the 1980s has progressed very slowly, in marked contrast to the efficiency with which claims to property confiscated in the same period have been resolved. During the joint fact-finding mission to Nicaragua, we saw various public announcements published by President Enrique Bolaños and the Mayor of Managua, Herty Lewites, promising the accelerated issuing of titles to several hundreds of families in the capital. However, it is hard to say whether these announcements will be translated into concrete steps in the immediate future, or whether they are merely empty statements for political ends.<sup>181</sup>

178 FIAN, *Informe de la Misión Investigadora FIAN Internacional. El Derecho Humano a la Alimentación en Nicaragua* [Report of the FIAN International fact-finding mission. The human right to food in Nicaragua] (Managua: FIAN, 12 Aug. 2002).

179 WCCN-FIDEG, *El impacto social del microcrédito en Nicaragua. Percepción de prestatarios y prestatarias de siete microfinancieras* [Social impact of microcredit in Nicaragua. Perceptions of men and women borrowers from seven microfinance entities] (Managua: WCCN-FIDEG, 2003). Note that although some microfinance entities contribute to the financing of people living in poverty, a significant number of such people cannot even obtain microcredit because their financial situation is extremely fragile and vulnerable.

180 See: Cofré (n. 147 above).

181 Interview with Gerald Pentzke, Director of Urbanisation at Managua City Hall, Oct. 2002; Arturo McFields, 'Lewites promete entregar 11 mil títulos de propiedad' [Lewites promises to issue 11 000 property titles], in *La Prensa*, Managua, 10 Sept. 2002; Vladimir López, 'Títulos para asentamientos' [Titles for settlements], in *El Nuevo Diario*, Managua, 11 Sept. 2002; Mariela Fernandez, 'Gobierno saca de clavos a Lewites' [Government pulls out Lewites' nails], in *La Prensa*, Managua, 11 Sept. 2002; José Adán Silva, 'Comienza legalización de asentamientos en Managua' [Legalisation of Managua settlements begins], in *La Prensa*, Managua, 6 Nov. 2002.



Similarly, the legal situation as regards the land tenure of Nicaragua's indigenous communities continues to be very uncertain. On the one hand, the Government's lack of commitment and sincerity in failing to comply with the Inter-American Court's judgement in the *Awas Tingni* case does not inspire any optimism. On the other hand, we applaud the constructive efforts of indigenous peoples' organisations and their supporters. We also recognise that, in this particular context, the World Bank's *PRODEP* project has greatly furthered the indigenous cause by helping to bring about the approval of a law permitting the issue of collective titles to the indigenous territories of the Atlantic Coast region. Of course, the granting of such titles should be extended to indigenous peoples living in all parts of Nicaragua.<sup>182</sup>

## **b. Availability of services, materials, facilities and infrastructure**

The Committee notes that: "An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services."

This report has shown that, overall, some 34 percent of households in Nicaragua do not have access to piped drinking water; in this respect, the Atlantic Coast (33 percent) and the Central region (50 percent) are the two most disadvantaged regions. Overall, some 29 percent of homes are without mains electricity supply; yet the situation is far worse in rural areas, where only 40 percent of households have mains electricity. Not surprisingly, but no less worryingly, wood is still the predominant fuel for cooking in Nicaragua: it is used in 92 percent of rural and 44 percent of urban homes. Electricity as a cooking fuel is found in less than 6 percent of urban households and is practically non-existent in rural areas. Furthermore, sanitary services are in a lamentable state in Nicaragua, with only 22 percent of homes having flush toilets. Latrines are, by far, the most widely used form of sanitation. It is a matter of particular concern that 14 percent of households in the country have *no* form of sanitation whatsoever, as the health implications for those who live in such homes are considerable.

In conclusion, the Government of Nicaragua still has a great deal to do in order to improve the availability of the facilities that are essential to guaranteeing health, security and comfort in Nicaraguan homes. We appeal to the Government to directly address the serious regional disparities in access to basic domestic infrastructure; in this respect, the Atlantic Coast and Central regions require special attention. In particular, the Atlantic Coast region continues to suffer the most extreme poverty and neglect. Furthermore, it is obvious that the Government of Nicaragua should immediately develop an ambitious and effective plan to bring adequate sanitation to that segment of the population that is presently deprived of such facilities.

182 Interview with Maria Luisa Acosta (n. 83 above); interview with Lilliam Jarquín (n. 108 above).

### c. Affordability

The Committee notes that: “Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.” As this report has shown, a very interesting peculiarity of the Nicaraguan housing situation is that only 6.6 percent of households rent their homes. However, it is a cause for concern that the cost of public amenities such as water, electricity and telecommunications have increased in recent years due to their privatisation.

The Committee further notes that: “States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs.” As we noted in our discussion of the IDB’s *Multi-Phase Low-Income Housing Program*, this programme provides for group and individual subsidies.<sup>183</sup> The group subsidy is targeted at the extreme low-income bracket, while the individual subsidy is targeted at the low and medium brackets. The co-authors of this report, however, seriously question the current dogma that microfinance is the model solution to the housing problem.

Microfinance entities can make a fundamental contribution towards relieving the housing problems of the most vulnerable population segments, but it is debatable whether they offer the magic remedy to such problems. In this sense, the subsidies referred to by the Committee are still topical, even though many may regard them as outmoded. The reality in Nicaragua, and in many other countries where poverty has reached such extreme levels, is that an important segment of the population living in absolute poverty finds it impossible even to generate minimal savings and/or gain access to microfinance services.

In 2002, the above-mentioned WCCN-FIDEG investigation into the social impact of microcredit in Nicaragua found that 46 percent of microcredit users live below the poverty line and that, of these poor users, 20 percent [that is, 9.2 percent of all microcredit users] live in extreme poverty.<sup>184</sup> As these figures clearly demonstrate, even though a segment of the extremely poor population does have access to microcredit, this segment is still far too limited. Until this situation dramatically improves, the Government of Nicaragua, rather than handing out individual housing subsidies to the middle class, is obliged to subsidise those extremely poor people who are excluded from microcredit, so that even they can access adequate housing. In conclusion, the co-authors of this report call upon the Government of Nicaragua and the responsible IDB officials to modify the second phase of the *Multi-Phase Low-Income Housing Program*, significantly extending the scope of the group subsidy to benefit the poorest segments of the population.

183 According to one IDB official: “We are accompanying these subsidy programmes with the idea, particularly for the low-income sectors, of developing microcredit, which we believe presents a series of opportunities. We are also supporting the idea of developing the mortgage markets, particularly focusing on the middle class. However, in this respect, we believe that conditions in Nicaragua do not yet lend themselves to linkage, and it can therefore be stated that the growth of the mortgage market in Nicaragua is directed at the high-income sectors, and for high- or medium-high-class housing.” [Our translation] Jaime Cofré, ‘Financing housing projects’, transcription of a presentation given at the seminar *A decent roof – a battle strategy for the reduction of poverty*, organised by CONAPRO and the Konrad Adenauer Foundation at the Hotel Real Intercontinental Metrocentro, Managua, 4 Oct. 2002.

184 See: WCCN-FIDEG (n. 179 above).

## d. Habitability

The Committee notes that: “Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.” As this report has emphasised, one of Nicaragua’s most pressing housing problems is that the vast majority of the housing stock is of extremely sub-standard quality, unsafe and unhealthy. The general shortage of space is particularly worrying, with an average of five persons per housing unit. Moreover, about 37 percent of homes have only one room, and only 27 percent have two rooms. Some 30 percent of homes are in a bad state of repair, and a further 46 percent are only in a moderate state of repair. The fact that 32 percent of homes are located in risk zones implies that, for a very large number of Nicaraguans, the home does not provide physical safety to its occupants. In such conditions, it is evident that a high percentage of Nicaraguans are being denied what the Committee refers to as the “right to live somewhere in security, peace and dignity.”

## e. Accessibility

According to the Committee, accessibility to housing includes the following aspects:

**Firstly**, the Committee notes that: “Adequate housing must be accessible to those entitled to it.” This sentence might give the impression that some people are not entitled to adequate housing. This would be quite wrong, for the Committee has emphasised that: “The right to adequate housing applies to everyone.” ‘Accessibility’ can be understood in the economic or physical sense. In relation to the former sense, as a home is a relatively expensive item, we recommend that the State of Nicaragua gives priority in its housing policies and programmes to those segments of the population that experience the greatest shortage and have the most urgent needs. For the same reason, the Government is to be criticised for housing programmes which only benefit the middle and upper classes. Of course, they also have the right to adequate housing, but in general their financial situation allows them to access housing which is far better than the grossly inadequate dwellings that most of the country’s poor have to inhabit. As this report has shown, the vast majority of the housing programmes implemented by the Housing Bank of Nicaragua (*BAVINIC*) in the 1990s targeted the middle and upper classes. In order not to exacerbate the Nicaraguan housing crisis, we strongly urge that such a policy should not be repeated.

**Secondly**, the Committee notes that: “Disadvantaged groups must be accorded full and sustainable access to adequate housing resources.” As this report has shown, the housing programmes implemented since 1990 clearly do not do not fulfil this requirement. The *Multi-Phase Low-Income Housing Program*, developed by the IDB and only recently initiated, corrects that anomaly in many ways. Nonetheless, the co-authors of this report are seriously concerned about the sustainability of the resources invested in respect of housing. If the IDB’s priorities change and new resources are not provided, the programme may well grind to a halt. This is exactly what has happened in other Latin American countries, for example, where the IDB and the World Bank generously financed justice-reform programmes: the two banks subsequently cut back on their credits to this sector and, as a result, the implemented reforms have now been dismantled.

The Government of Nicaragua should therefore develop a long-term strategy clearly defining the sources of financing for housing construction targeted at disadvantaged population segments.

**Thirdly**, the Committee notes that: “... such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere.”

Finally, the co-authors of this report note with great interest how, in this respect, the Government and people of Nicaragua have responded with solidarity in emergency situations caused by natural disasters including flooding, hurricanes, volcanic eruptions and earthquakes. Particularly noteworthy was the major housing programme of the early 1990s, which focused on providing housing to people incapacitated during the civil war of the 1980s. A similar programme benefited the victims of the devastation caused by Hurricane Mitch in 1998.

## **f. Location**

According to the Committee, the location of housing comprises the following two main aspects:

**Firstly**, accessibility to sources of employment and to social services. In this respect, the Committee notes that: “Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities.” In countries where the economic situation is as difficult as it is in Nicaragua, the home is not just the place where people live, but where a great number of them also work, due to the setting up of small businesses. In general, Nicaragua has seen its social services deteriorate significantly since 1990, when it adopted the structural adjustment programmes insisted upon by the International Monetary Fund and the World Bank.

**Secondly**, housing must not be located in the vicinity of sites that pose a health hazard. In this respect, the Committee notes that: “... housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.”

## **g. Cultural Adequacy**

The Committee notes that: “The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.” In this respect, the joint fact-finding mission concludes that Nicaragua’s civil society organisations [that is, community-based and non-governmental organisations] are contributing significantly to the interpretation and widening of this concept of the cultural adequacy of housing. We advocate that the Committee take account of this in its future pronouncements on Nicaragua. On their part, the Government of Nicaragua and international financial institutions such as the IDB and the World Bank, in developing housing policies and programmes, should take account of the cultural identity and diversity of the civil society organisations that produce housing.

It is in this sense that housing production can be instrumental in transforming communities from passive beneficiaries of housing provision into key players in the process. In organising Nicaraguan communities for housing production there is the potential to generate democratic, participatory processes. These give free rein to the creative forces within communities and can develop into integrated projects which, in turn, effectively address the same communities' unsatisfied needs. Nicaraguans have a great deal of experience in this field. In this report we have highlighted a single, shining example: the 'Maria Luisa Ortiz' women's co-operative in Mulukukú, a feminist co-operative established around a housing construction project in the aftermath of Hurricane Mitch. Having met the housing needs of this remote community, the co-operative went on to set up and maintain the best health clinic and the finest educational programmes in their region.

# Conclusions



If adequate housing is to be provided for all, if longstanding property conflicts are to be resolved, and if the burning issue of the territorial rights of indigenous communities is to be properly addressed, this is the moment of decision for Nicaragua. It is a moment which presents many opportunities, but only if it is positively exploited, to the benefit of the neediest and/or the most excluded segments of society, such as the indigenous communities. If not, the result will be just more social frustration.

Nicaragua's civil society organisations (CBOs and NGOs) should unite in demanding that the Inter-American Development Bank give top priority to the society-based production of housing, instead of production by commercial construction companies. The civil society organisations have abundantly demonstrated their wealth of organisational skills and their capacity to build. All new funds for housing programmes should be invested in the neediest and most excluded population segments.

Nicaragua should develop legislation that recognises the territorial rights of the indigenous communities in different parts of the country. Nicaraguan civil society should support these efforts unequivocally. Neighbouring countries have made great advances which should be built upon to alleviate the doubts, fears, incomprehension and misunderstandings regarding the recognition of indigenous communities' rights. Approval of Convention No. 169 of the International Labour Organisation, now one of the most important international instruments relating to indigenous communities' rights, should be a common goal of all Nicaraguan civil society, working in league with the indigenous organisations. Nicaragua must not be allowed to miss this unique opportunity to establish the legislation that can ensure that indigenous communities benefit by being granted legal title to their ancestral lands.

The time is also ripe for a definitive solution to the vexed question of property rights in Nicaragua, for a final stop to be put to the reversal of the democratisation of property ownership. Approximately one billion US dollars has already been paid out in indemnities; this is a fiscal blood-letting of the State of Nicaragua which cannot go on indefinitely. Furthermore, the fact that the Government has even started to return the properties of the Somoza family should sound the alarm, that it is now necessary to critically examine the entire process of confiscation review. Civil society organisations need to conduct a social audit of the process of revision and reversion of confiscations.

The fact that civil society organisations (CBOs and NGOs) are the main housing producers in Nicaragua should not be seen as the privatisation of a social policy that, in principle, should be made and implemented by the State. What is so innovative in Nicaragua is that the involvement of CBOs and NGOs in housing construction strengthens their capacity to organise themselves and generate proposals and responses to the multiple social needs of the popular sectors.

Ms Ninette Morales, who has best systemised the issue of society-based housing production in Nicaragua, puts it as follows:

“A key element in society-based production of housing is the users’ participation in the housing management process, which in turn involves them in the production and distribution [processes]. This [involvement] facilitates social control of these processes and, therefore, safeguarding of the users’ interests, especially in view of speculative processes, which tend to artificially increase the final price of the property produced and reduce production costs at the expense of quality.”<sup>185</sup>

Arguably, the primacy of society-based housing production in Nicaragua is the result of social forces that were unleashed by the Nicaraguan social revolution of the 1980s – forces that may not be readily found in other social contexts. Nonetheless, the State continues to play an essential role in the financing and development of a national housing policy. In this process, however, the involvement of civil society organisations and their capacity and experience in housing construction for the neediest population segments must be taken into account. If not, the Government’s efforts will be fruitless, or at least far less efficient.

The unfavourable economic conditions that have prevailed in Nicaragua over the last few decades could be advanced as an explanation for the deficient state of the country’s housing stock. To the joint fact-finding mission, however, two other factors have become evident: (1) the lack of coherent and progressive housing policies over the past two decades; and (2) the continuing uncertainty about property rights and titles, which should be regarded as an important aspect of the deteriorating quality of life for Nicaraguans. Recently, under the leadership of the Inter-American Development Bank (IDB), the Government of Nicaragua accepted a loan for a most ambitious housing programme, the *Multi-Phase Low-Income Housing Program*, designed by the IDB. Although this is an important step, the co-authors of this report are gravely concerned that the social policy for housing has been subordinated to the agendas and priorities of international financial institutions, rather than resulting from a real commitment by the State to give housing the priority it rightly deserves, and from a national consensus on housing policy.

185 Ninette Morales Ortega, ‘La producción social de vivienda en Nicaragua’ [Society-based production of housing in Nicaragua], in *Jornada Nacional Vivienda Mínima Digna. Memoria* (Managua: International Organisation for Migrants – Housing and Urban Development Secretariat, USA, 2002), p. 17.



# Recommendations



## 10.1 Recommendations to the Government of Nicaragua

- a. Promote legislation to put a final stop to the reversal of the democratisation of property that originated in the 1980s.
- b. Accelerate the process of issuing urban and rural property titles.
- c. Fully comply, in a transparent manner, with the judgement of the Inter-American Court of Human Rights in the Awas Tingni case.
- d. Support the approval by the National Assembly of legislation recognising indigenous peoples' territories, applicable to indigenous communities throughout the country.
- e. Create a State Office charged specifically with furthering dialogue between the State and Nicaraguan indigenous peoples, such as exists in almost every Latin American country having an indigenous population.
- f. The UN Committee on Economic, Social, and Cultural Rights, in its General Comment No. 4 (see Annex B of this report), states that:

“... many of the measures required to promote the right to adequate housing would only require the abstention by the Government from certain practices and a commitment to facilitating ‘self-help’ by affected groups.”

This observation by the Committee is especially true in the Nicaraguan context. The Government of Nicaragua should abstain from developing housing policies targeted at the medium and high-income segments of the population, and focus on assisting civil society organisations, with the participation of Local Government.

- g. The co-authors of this report endorse and adopt the recommendations of the Nicaragua Housing Network with regard to decent homes and sustainable human settlements as set out in the document of the Civil Co-ordinator for the Emergency and Reconstruction entitled *La Nicaragua que queremos* [The Nicaragua that we want]. We especially emphasise the following recommendation:

“ ... to make more visible and give greater value to the efforts of the men and women inhabitants of urban and rural areas to build housing using their own resources, and to create mechanisms and instruments which facilitate access by the organised population to the means, such as urbanised land, technical assistance and financing, for the improvement or

construction of their own housing by the method of society-based production, with the aim of improving the quality of self-built housing and reducing the social and economic costs.”<sup>186</sup>

## **10.2 Recommendations to Nicaraguan civil society organisations**

- a. Support indigenous organisations in their efforts to secure ratification of ILO Convention No. 169, and the approval of a law recognising indigenous peoples’ territories, applicable to indigenous communities throughout the country.
- b. Perform a social audit of the ‘property regularisation’ process and the privatisation of old State enterprises.

## **10.3 Recommendations to the Government of the United States**

- a. In the 1980s, the Government of the United States created and heavily financed the armed counter-revolutionary forces, or Contras. In the same way that the Government of the United States insists on reparations for its citizens who had their property confiscated during the Sandinista revolution, the Government of the United States should indemnify Nicaraguan society for damage to property caused by the Contras during the civil conflict, which greatly contributed to Nicaragua’s economic deterioration. Such indemnities could be channelled into housing programmes.
- b. The Government of the United States should abstain from promoting claims for indemnity by those who were Nicaraguan citizens at the time of the confiscation and only afterwards became US citizens. This situation has become a persistent source of political and economic destabilisation in Nicaragua, and does not contribute to the institutionalisation of the country, as each year the Government of Nicaragua must make a special effort to obtain the United States Government compliance certificate in this respect.
- c. The Government of the United States should support the efforts for issuing of collective property titles to indigenous territories in Nicaragua.
- d. The Government of the United States should focus its aid on the programmes of civil society organisations that produce housing, and not impose support for privileged segments of the population.

186 Coordinadora Civil para la Emergencia y Reconstrucción (CCER), *La Nicaragua que queremos. Enfoques y prioridades para una estrategia resultado del proceso de consulta, debate y análisis* [The Nicaragua that we want. Focal points and priorities for a strategy resulting from a process of consultation, debate and analysis], (Managua: CCER, 2001), p. 30.

## **10.4 Recommendations to international financial institutions**

- a. The IDB should unreservedly and unequivocally recognise that Nicaraguan civil society organisations (community-based and non-governmental organisations) are the main producers of housing in the country. Consequently, the IDB should allocate all the resources earmarked for the second phase of its housing programme, the Multi-Phase Low-Income Housing Program, as group subsidies for housing construction by the said civil society organisations.
- b. The IDB should exploit every opportunity for dialogue with the civil society organisations involved in housing construction, with the aim of ensuring effective implementation of the housing programmes already developed, and thus develop plans for further interventions in the housing sphere.
- c. Given that the IDB is interested in alterations to the legal and political framework of the housing sector, it should help to create opportunities for civil society organisations involved in housing production to present their proposals and have them taken into account in the policies that the IDB envisaged adopting.



# Annexes

## ANNEX A Interviews

1. Acosta, Maria Luisa. Director of the Centro de Asistencia Legal a Pueblos Indígenas (CALPI, Centre for Legal Aid to Indigenous Peoples). Interview held in Managua, Sept. 2002.
2. Bravo, Magali. Co-ordinator of the State Attorney's Office for Property, Attorney General's Office for the Republic. Interview held in Managua, 3 Oct. 2002.
3. Castellón, Afonso. Executive Secretary of the Association of Owners of Confiscated Property. Interview held in Managua, 7 Oct. 2002.
4. Frederick, George. President of the Movimiento Indígena de Nicaragua and member of the group Yatama. Interview held in Managua, 30 Sept. 2002.
5. Jarquín, Lilliam. Land Administration Project, PRODEP. Interview held in Managua, 8 Oct. 2002.
6. Lacayo, Róger. Director of the Institute of Urban and Rural Housing. Interview held in Managua, 3 Oct. 2002.
7. Meléndez, Luis. Director of the National Confiscation Review Commission. Interview held in Managua, 7 Oct. 2002.
8. Morales, Ninette. Director of HABITAR and Red de Vivienda de Nicaragua (Nicaragua Housing Network). Interview held in Managua, 1 Oct. 2002.
9. Pentzke, Gerald. Director of Urbanisation at Managua City Hall. Interview held in Managua, 7 Oct. 2002.
10. Picado, Enrique. Member of the Nicaraguan National Communal Movement. Interview held in Managua, 7 Oct. 2003.
11. Sánchez, Rafael. Director of the Office of Property Supplies. Interview held in Managua, 7 Oct. 2002.
12. Sequeira, Grether. President of 'Maria Luisa Ortiz' women's co-operative. Interview held in Mulukukú, June 2002.
13. Torres, Emilia del Carmen. Congresswoman President of the Commission of Population and Development. Interview held in Managua, Oct. 2002.
14. Wheelock, Jaime. Sandinista Revolutionary Commander and ex-minister of Agrarian Reform and Agricultural Development. Interview held in Managua, 8 Oct. 2002.
15. Zambrana, Ricardo. Coordinadora Civil. Interview held in Managua, 4 Oct. 2002.

## **Annex B General Comment No. 4 of the United Nations Committee on Economic, Social and Cultural Rights on the Right to Adequate Housing**

1. Pursuant to article 11 (1) of the Covenant, States parties “recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1989/22, para. 312) and fourth sessions (E/1990/23, paras. 281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987) including the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987<sup>1/</sup>. The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities<sup>2/</sup>.

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing<sup>3/</sup> article 11 (1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.

4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11 (1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed<sup>4/</sup>. There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

6. The right to adequate housing applies to everyone. While the reference to “himself and his family” reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed house-

holds or other such groups. Thus, the concept of ‘family’ must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.

7. In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This “the inherent dignity of the human person” from which the rights in the Covenant are said to derive requires that the term ‘housing’ be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.”

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute ‘adequate housing’ for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

- (a) **Legal security of tenure.** Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;
- (b) **Availability of services, materials, facilities and infrastructure.** An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

- (c) **Affordability.** Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;
- (d) **Habitability.** Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing<sup>5/</sup> prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; that is, inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;
- (e) **Accessibility.** Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;
- (f) **Location.** Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;
- (g) **Cultural adequacy.** The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernisation in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, *inter alia*, modern technological facilities, as appropriate are also ensured.



9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights — such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based organisations), the right to freedom of residence and the right to participate in public decision-making — is indispensable if the right to adequate housing is to be realised and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognised in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating 'self-help' by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

12. While the most appropriate means of achieving the full realisation of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in para. 32 of the Global Strategy for Shelter, "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures." Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure co-ordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, *inter alia*, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasise the need to “provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing.” They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in ‘illegal’ settlements, those subject to forced evictions and low-income groups.

14. Measures designed to satisfy a State party’s obligations in respect of the right to adequate housing may reflect whatever mix of public and private-sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of ‘enabling strategies’, combined with a full commitment to obligations under the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realise the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy for Shelter (paras. 66-67) has drawn attention to the types of measures that might be taken in this regard and to their importance.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases the Committee is particularly interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved helpful should thus be provided.

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

18. In this regard, the Committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

19. Finally, article 11 (1) concludes with the obligation of States parties to recognise “the essential importance of international cooperation based on free consent.” Traditionally, less than 5 percent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

\* Contained in document E/1992/23.

1/ *Official Records of the General Assembly, Forty-third Session, Supplement No. 8, addendum (A/43/8/Add.1).*

2/ Commission on Human Rights resolutions 1986/36 and 1987/22; reports by Mr Danilo Türk, Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137-139); see also Sub-Commission resolution 1991/26.

3/ See, for example, article 25 (1) of the Universal Declaration on Human Rights, article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, article 27 (3) of the Convention on the Rights of the Child, article 10 of the Declaration on Social Progress and Development, section III (8) of the Vancouver Declaration on Human Settlements, 1976 (*Report of Habitat: United Nations Conference on Human Settlements* (United Nations publication, Sales No. E.76.IV.7 and corrigendum), chap. I), article 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No. 115).

4/ See footnote 1/.

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The Centre on Housing Rights and Evictions (COHRE), in partnership with the Wisconsin Coordinating Council on Nicaragua (WCCN) and the Nicaraguan Human Rights Center (CENIDH), undertook an extensive fact-finding mission to Nicaragua in late September and early October 2002. This joint report is one result of that fact-finding mission and addresses the stark contrast which is evident in the current housing rights situation in Nicaragua. Housing conditions for the poorer segments of the population are appalling, but there are real opportunities for intervention and improvement.

This report demonstrates how the issue of property rights has an enormous impact on housing rights in Nicaragua, for the vast majority of housing in the country is privately owned by the occupants. In analysing property rights, this report provides a comprehensive review of legal rights to property in Nicaragua from the time of the Sandinista revolution to the present. It describes the current situation with regard to what is known as 'property regularisation' in Nicaragua, and it critically reviews the two property-related cases decided by the Inter-American Commission on Human Rights. The report also examines the key issue of the territorial rights of Nicaragua's indigenous peoples, including an analysis of the decision by the Inter-American Court of Human Rights (IACHR) in the Awas Tingni case. Finally, this report analyses the United States Government's role in the design and development of the 'property regularisation' process in Nicaragua.

This report makes key recommendations on housing and property issues to the Government of Nicaragua, Nicaraguan civil society, and the two most important regional actors in this context: the Inter-American Development Bank (IDB) and the Government of the United States.

**The Centre on Housing Rights and Evictions (COHRE)** is an independent, international, non-governmental human rights organisation with its International Secretariat in Geneva, Switzerland. COHRE undertakes a wide variety of activities supporting the full realisation of housing rights for everyone, everywhere. In this regard, COHRE actively campaigns against and opposes forced evictions wherever they occur or are planned and works in all regions of the world toward the realisation of the right to adequate housing. Visit: [www.cohre.org](http://www.cohre.org)

**The COHRE Americas Programme** is based in Porto Alegre, Brazil, and actively works to promote and protect housing rights in the Americas, through activities including fact-finding missions, housing rights training seminars and litigation before national, regional and international forums.

**The Wisconsin Coordinating Council on Nicaragua (WCCN)** is dedicated to promoting economic and social justice in Nicaragua through alternative models of development and activism. WCCN is an independent, nation-wide, not-for-profit, membership-supported organisation based in Madison, Wisconsin, USA. Visit: [www.wccnica.org](http://www.wccnica.org)

**The Nicaraguan Human Rights Center (CENIDH)** is committed to the defence and promotion of human rights in Nicaragua, with a special focus on economic, social and cultural rights. It is based in Managua, Nicaragua. CENIDH's work includes legal defence, education, training and outreach regarding human rights in Nicaragua. Visit: [cenidh@ibw.com.ni](mailto:cenidh@ibw.com.ni)



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