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The Reform of Property Registration Systems in Nicaragua: A Status Report

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and Luis Salas

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Abstract

Nicaragua is in the midst of a substantial reformation of its real-property registration system. The purpose of this paper is to provide the foundation for an analysis of how that reform process might be accelerated and improved. To that end, the paper describes the current condition of the Nicaraguan registry and the changes that have been instituted to date. The Introduction and Section II review the troubled history of land reform and land registration in the country. Section III describes the authority, jurisdiction, and structure of the principal present registry – the Real Property and Mercantile Registry (RPIM). Section IV outlines the ways in which the RPIM is currently financed. Section V sets forth the ways in which the RPIM currently seeks to fulfill its responsibilities to inscribe rights and interests pertaining to land and respond to queries concerning the status of titles. Sections VI and VII catalogue the respects in which the Registry is currently being reformed. Among the dimensions of change are: the conversion of existing records to microfilm or digital form; improvement of the physical infrastructure of the RPIM; modernization of inscription and storage procedures; improvement of the Registry’s indices; education of the Registrars; and clarifying and codifying the relevant regulations. Section VIII considers the relationship between registry reform and the Nicaraguan system of “supplementary title.” Finally, Section IX outlines the ways in which disputes that arise out of the registry process currently are being resolved.

Key words: Central America; Nicaragua; property; registry

JEL Codes: K11; O13; O54

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I. INTRODUCTION

A devastating earthquake in 1972, two decades of civil strife and a crushing foreign debt have badly damaged the Nicaraguan economy. The Nicaraguan property registry was not exempt. In 1990, the institution was in disarray. Missing, outdated, and sometimes conflicting records limited the ability of the Registry to fulfill its primary mission of documenting and protecting the legal rights that registry users had inscribed. Although recent reform efforts have begun to improve the condition of the Registry, continued work will be necessary. To understand the strengths and weaknesses of the system, it is useful to briefly review the country's recent history.¹

The Somoza family took power of Nicaragua in 1934. General Anastasio Somoza had been in charge of internal security forces, the National Guard (originally established as a by-product of repeated U.S. interventions in Nicaragua). Anastasio Somoza was assassinated in 1956, whereupon his son Luis Somoza took power. Luis was in turn succeeded by Anastasio Somoza Jr. Seeds of organized discontent began sprout in the 1960's. Among the various opposition groups, the Sandinistas gained sway, and a successful general insurrection took place in early 1979.² At the time, over 40 percent of Nicaraguan territory was owned by 0.6% of the population. Only 13% of the entire population had sufficient access to land to meet subsistence needs. About 40% of the workforce were landless, migrant laborers.³

After the overthrow of the Somosas, mass confiscations and expropriations occurred as the Sandinistas sought to set up farm cooperatives and implement a socialist economic structure. It is in this context that the current "property question" first arose in Nicaragua.

¹See Strasma and Molina, "Accelerating the Resolution of Property Cases in Nicaragua, 1994," (Land Tenure Center, 1994) (recapitulating recent Nicaraguan history in the context of land tenure, agrarian reform, and the property registry). The U.S. State Department's background report on Nicaragua provides a useful framework in which to understand the current social and political issues facing Nicaragua. See U.S. State Department, Nicaragua Background Report, (Dec. 1997)

<www.state.gov/www/background_notes/nicaragua_0398_bgn.htm>

²The official political party of the Sandinistas was the FSLN, which itself was a coalition of anti-Somoza factions that eventually gained widescale popular support.

³See William C. Thiesenhusen, *Broken Promises: Agrarian Reform and the Latin American Campesino* 126 (1995).

As lands changed hands, most transactions - about 70% - were not recorded in the public registry. Indeed, the Sandinistas viewed the institution with some degree of disdain. In their eyes, it had legitimize the injustice of the Somoza era and, moreover, was a capitalist apparatus unnecessary in a socialist state. Toward the end of Sandinista rule, the outgoing government approved large and valuable property grants to its leaders and others friendly to the Sandinista cause in what came to be called the "Pinata."⁴

Violeta Chamorro, the democratically elected Nicaraguan president, had campaigned on a platform of conciliation and economic reinvigoration. Once elected, she immediately was confronted by claims brought by those whose property had been expropriated during the Sandinista period. The "confiscados" insisted that indemnification was guaranteed them by Nicaraguan law, as well as the Peace Accords.⁵ For their part, the beneficiaries of Sandinista programs also wanted to legitimize their claims, a right they claimed the Peace Accords clearly provided. President Chamorro was keenly aware of the importance of the property question. Resolving land claims would be central to Nicaragua's continued peace and economic development. She set up two independent systems to resolve claims -- one for those who currently had possession of tracks and one for those whose lands had been seized. The government also budgeted \$650 million (about two years' worth of exports) to resolve the claims.⁶ While progress was made in resolving land-related disputes, new claims continued to be filed.

The magnitude and complexity of the property question cannot be overstated.⁷ About one-fourth of all agricultural land had been expropriated. In urban areas, many of the most desirable

⁴The term "piñata" is used in a variety of contexts. At one extreme, the term can refer to all of the lands that changed hands as a result of laws 85, 86, and 88 (i.e., all of the lands distributed during the final months of Sandinista rule) -- about 2.2 million manzanas or 1.55 million hectares. Often, however, the term refers only to the seizures and appropriations of property for top Sandinista officials in the days before they left power. These appropriations included over 6,000 homes in choice locations and 76,000 hectares of rural territory.

⁵See Código Civil, Art. 617. The Peace Accords also upheld the right to own property and the principle that owners must be indemnified when the government expropriates land. The 1995 Amendments to the national constitution reiterated these principles. See Constitución de la República de Nicaragua, Art. 44 (as reformed by Ley 192, published in the Diario Oficial, Jul. 4, 1995).

⁶This amount represents money budgeted through 1995. See Carter Center, Conference on Property Issues, July 4-5, 1995 (sponsored by the UNDP and Carter Center, Atlanta, Georgia). A great deal more money has been allocated for claim resolution since that time.

⁷Published academic articles drive home this point. Many authors seem compelled to take sides in this rancorous debate. See, e.g., O. Herdocia Lacayo, The Current State of Nicaraguan Property Law, 22 Cap. Univ. L. Rev. 839 (1993); Timothy D. Lyton, Revolution, Participatory Democracy and Property, 22 Cap. Univ. L. Rev. 833 (1993); Jaime Wheelock, Changes in Agrarian Property in Nicaragua, 22 Cap. Univ. L. Rev. 853 (1993); Roberto

properties were also seized. Compounding the problem, there were often no clear public records indicating either who received expropriated land or who the previous owner was.⁸ Despite President Chamorro's initiatives and subsequent reform efforts, continued political tension, an ever-growing pool of claims, international pressure to satisfy all interests, and a history of conflict have made progress slow.

In context, then, the real property registry in Nicaragua, after years of disuse, is now part of a much larger system of institutions dedicated to the regularization of land holdings, resolution of disputes relating to land, and inscription of property rights. The goal is to create a modern, precise, and accurate record of land ownership throughout the country. Thus, a well-functioning property registry is not only an end in itself, but a necessary and fundamental component of any land regularization program.

II. AUTHORITY

Property registration in Nicaragua originated in the mortgage registry set up by the Spanish in the late eighteenth century, which employed a folio personal system.⁹ After Nicaragua's independence, the first Civil Code was passed in 1867. Title VI of Book II created a Registro Conservador.¹⁰ Pursuant to Article 695 of the Code, a set of regulations to govern the Registro Conservador was adopted in 1877.¹¹ This Registry recorded mortgages, ownership, and other interests in real property.¹² The records themselves were maintained in three volumes: a Property

Gargarella, *Distributing Ownership of the Land: The Alternatives facing the New Democratic Government of Nicaragua*, 22 Cap. Univ. L. Rev. 872 (1993).

The claims themselves also reflect the profound complexity of the issues that must be resolved. See Carter Center, Conference on Property Issues, July 4-5, 1995 (sponsored by the UNDP and Carter Center, Atlanta, Georgia) at 2-3 ("The issues include whether to return property or compensate former owners; whether current occupants of land and houses should pay for their property, and how much; how to correct the abuses of the existing laws; how the government can raise revenues to finance the bonds used to compensate former owners; and how to sort out the multiple title claims on individual pieces of property and provide legal security to occupants in the interim.") Complicating matters more is the fact that U.S. aid has been tied to satisfying the claims of former Nicaraguans who are now U.S. citizens. See id.

⁸One result is that claims of competing heirs for the same expropriated property would be filed, with no clear mechanism for determining whose claim should be reviewed.

⁹The Mortgage Registry was set up by the Spanish in each of the empire's provinces pursuant to the Royal Decrees ("Cedulas Reales") of May 9, 1778 and April 16, 1783. The colonial provincial capital in Nicaragua was Leon, and this was where the mortgage registry was established.

¹⁰See Código Civil, Tomo II, Título VI (1867). See also Reglamento del Registro Conservatorio (1877). In fact, the Civil Code was simply an adoption of the 1855 Chilean Civil Code with minor changes.

¹¹See Reglamento del Registro Conservatorio (June 16, 1877). Again, Nicaragua adopted with very few changes the registry regulations adopted by Chile in 1857.

¹²A separate office was set up in each of Nicaragua's departments. The registrar was known as the "conservador" and was responsible for making all inscriptions and maintaining the registry's records.

Registry; a Mortgage and Liens Registry; and a Registry for Preventative Annotations and Prohibitions on Sale.¹³ In keeping with the system's Principles of Legality and Publicity, secret mortgages and other interests were not legally enforceable.¹⁴

In 1904, the new Nicaraguan Civil Code came into effect.¹⁵ It replaced the Registro Conservador with the Real Property and Mercantile Registry ("Registro de la Propiedad Inmueble y Mercantil" or "RPIM"). The basis of the RPIM's authority is Title XXV of the Civil Code and the annexed regulations ("Reglamento del Registro Público"), which have been essentially unchanged since 1904.¹⁶ In addition, a number of laws govern the RPIM. The Law to Restore Judicial Records and Public Registry Entries,¹⁷ the Law to Restore Inscriptions,¹⁸ the Law of Real Property and Mercantile Registries,¹⁹ the Public Registry Fee Schedule,²⁰ and the new Organic Law of the Judiciary²¹ are among the most important.²² Several other statutes also affect the RPIM, its functions, its procedures, or the principles upon which it is based. Some examples are: the Civil Code ("Código Civil"), the Code of Civil Procedure ("Código de Procedimiento Civil"), the Commercial Code ("Código de Comercio"), the Law of Agricultural and Industrial

¹³An index tracked inscriptions in each of the three Registry books. The Property Registry tracked ownership of property. The Mortgage Registry tracked liens, mortgages, other financial interests, and servitudes that pertained to a property. The third Registry noted prohibitions, sentences, and other limitations on the sale of a property. A daily record was also kept of applications received by the Conservador. This record was the forerunner of what in the modern registry system is known as the "Diario."

¹⁴See Reglamento del Registro Conservatorio, Arts. 52-53, 84 (June 16, 1887). According to the Principle of Legality, only notarized documents ("escrituras publicas") may be inscribed. The notary is responsible for ensuring that the contents of the writing are correct and legitimate. The Principle of Publicity provides that only rights and interests that have been inscribed can be enforced against third parties. These same principles are enumerated in the current registry regulations. See Reglamento del Registro de Propiedad, Arts. 17, 112-129.

¹⁵The new Civil Code was prepared by a team of respected Nicaraguan jurists and approved by the Zelaya government. The drafters were influenced most strongly by the Spanish Law of Mortgages passed in 1861 and the 1869 reform of that law. Adoptions of laws very similar to the Spanish model by Costa Rica in 1887 and Guatemala shortly thereafter also influenced the Nicaraguan drafters.

¹⁶See Código Civil, Arts. 3935-3980; Reglamento del Registro Público (annex to Código Civil). Because the basic 1904 law still governs the RPIM, wholesale modernization efforts have been hindered by legal impediments relating to the authority and competence of the RPIM. It is only in the last several months that Nicaragua has begun to rework thoroughly the key laws governing the property registry system.

¹⁷Ley de Reposición de Expedientes Judiciales y Asientos de los Registros Públicos, Decreto 442 (Sept. 17, 1945) (published in the Gaceta, Diario Nacional 199, Sept. 21, 1945).

¹⁸Ley de Reposición de Inscripciones, Decreto 14 (Oct. 8, 1947).

¹⁹Ley sobre los Registros Públicos de la Propiedad Inmueble y Mercantil, Ley 80 (published in La Gaceta, Diario Oficial, 51, March 13, 1990).

²⁰See Ley de Aranceles del Registro Público en General, Decreto-Ejecutivo 40-91 (Sept. 27, 1991) (published in La Gaceta 182, Sept. 30, 1991); Reforma de los Aranceles del Registro Público, Decreto 26 (Apr. 21, 1993) (published in La Gaceta, Diario-Oficial 73, Apr. 21, 1993, at 1143-1145) (partially reforming the existing fee schedule).

²¹Ley Orgánica del Poder Judicial, Ley 260 (July 15, 1998) (published in La Gaceta, Diario Oficial 137, July 23, 1998).

²²Note that a new law on the RPIM is currently being reviewed by the Supreme Court for possible introduction to the Nicaraguan Legislature. Details of the law are not public.

Property ("Ley de Prenda Agraria e Industrial"), the General Law of the Cadastre and corresponding Regulations ("Ley General del Catastro y su Reglamento"), and the Law of Notaries ("Ley del Notariado").

The purpose of the RPIM is to provide legal security for landowners and others with property interests -- a goal it accomplishes by inscribing titles and other public documents that describe rights and interests in land.²³ A secondary function is the conservation of registry records and other documents that track property transactions and the rights and interests that they engender. Any transaction that involves the creation, transfer, modification, or cancellation of property rights must be inscribed in the RPIM to have effect on third parties.²⁴

The RPIM is administered by the Supreme Court,²⁵ which is responsible for appointing the registrars in each of the RPIM's offices, and likewise, may remove them for just cause.²⁶ In each RPIM, a registrar runs daily operations and acts independently in performing registry.²⁷ The authority of each RPIM office registrar, however, is relatively limited. The Court administers the RPIM's budget, publishes issues of the regulations and policies, and monitors the RPIM's day-to-day operations. Each Supreme Court Magistrate is assigned supervisory responsibility for at least one registry office and its registrar.²⁸

²³Like others in the Region, the Nicaraguan registry is declarative; it does not itself create rights, but only records them.

²⁴Note that the "guarantee" provided by the RPIM establishes the prima facie legitimacy and validity of any inscribed right or interest. It is not absolute and does not render the RPIM liable for injuries resulting from infringement of the right or interest.

²⁵Although the original 1904 Civil Code and Reglamento establish this institutional structure, during Sandinista period, the RPIM was administered by the Ministry of Justice and later by the Ministry of Finance. The registry system was considered an unimportant relic of capitalist ideology, and the institution was used more as a political tool than to record and publicize interests in real property. In 1990, the original institutional structure and purposes were restored. See Ley sobre los Registros Públicos de la Propiedad Inmueble y Mercantil, Ley 80 (March 12, 1990) ("Corresponde a la Corte Suprema de Justicia la dirección y control de los Registros de la Propiedad Inmueble, Mercantil y de Personas, así como el nombramiento de los Registradores y demás personal de los respectivos registros.") In 1995, the Constitution was amended to reflect the Supreme Court's authority. See Constitución Política de la Republica de Nicaragua, Art. 164(7) (reformed by Ley 192, Diario Oficial, Jul. 4, 1995) ("Nombrar o destituir a los jueces, médicos forenses y registros públicos de la propiedad inmueble y mercantil de todo el país, de conformidad con la Constitución y la ley.")

²⁶See Ley Orgánica del Poder Judicial, Arts. 64(4), 189, 203; Reglamento del Registro Público, Art. 99. In practice, the Registrar is appointed first and then makes proposals to the Court, which are generally approved.

²⁷See Ley Orgánica del Poder Judicial, Art. 187.

²⁸Since the number of RPIM offices (16) outnumbers the number of magistrates (12), some magistrates oversee more than one office. The current structure of the RPIM system hinders standardization of practices and local rules because each magistrate oversees a different office and generally approves procedural suggestions proposed by the particular registrar. At present, the offices all operate independently.

Registrars are responsible for damages caused to parties in carrying out registry functions.²⁹ This liability is legally unlimited, includes moral or non-economic injury, and extends to actions caused by registry employees and functionaries. In practice, however, establishing liability against a registrar is very difficult and the expense of the trial usually acts as a barrier to parties considering an action.³⁰ Moreover, it is often unclear how much damage the Registry actually caused. Finally, even if a registrar is found liable, the defendant is unlikely to be able to satisfy the judgment, leaving the plaintiff with a pyrrhic victory. In suits to which it is not a party, the RPIM may be called on to provide evidence.

III. STRUCTURE AND ORGANIZATION

Currently, the RPIM includes sixteen offices, one in each department of the country. When the new Law on the Judiciary comes into effect in 1999, two new offices will be created for the Region Autonoma Atlantico Sur and the Region Autonoma Atlantico Norte. As indicated above, the RPIM system as a whole is administrated by the Supreme Court, but each office functions independently.³¹

In each RPIM office, the registrar is the chief official.³² To be appointed as registrar, a candidate must be a Nicaraguan citizen, at least 30 years of age, a lawyer or notary with at least 5 years of experience, and of good public repute.³³ The registrar is appointed to a four-year term, but this may be extended.³⁴ During his tenure, a registrar may not practice law privately, nor have other public employment.³⁵ The Registrar is responsible for deciding whether applications may be processed, processing accepted applications, signing processed documents, and establishing internal office rules and procedures.³⁶

²⁹See Código Civil, Arts. 3826-3827; Reglamento del Registro Público, Arts. 97, 130-136.

³⁰In addition to the costs and slowness of a judicial process, the claimant will need to demonstrate that the Registrar made the mistake; obtaining the original documents necessary to do this may be impossible.

³¹In practice, observers have suggested that Nicaragua is really best described as having sixteen registries, rather than one registry with sixteen branches. Many also question the merits of having the RPIM dependent on the Supreme Court. Given the Court's other responsibilities, some worry that adequate attention is not given to registry reform.

³²See Ley Orgánica del Poder Judicial, Art. 187; Reglamento del Registro Público, Art. 99.

³³See Ley Orgánica del Poder Judicial, Art. 188; Reglamento del Registro Público, Art. 100.

³⁴See Reglamento del Registro Público, Art. 105.

³⁵See Reglamento del Registro Público, Arts. 101-102.

³⁶The new Law on the Judiciary amplifies these duties somewhat to facilitate more accurate and efficient record keeping. See Ley Orgánica del Poder Judicial, Art. 190.

RPIM staff are organized into departments that correspond to the stages in the inscription process. Staff training is not ideal; a 1995 report found that more than half of the registry employees only had secondary school diplomas and less than six years of work experience.³⁷

Since 1904, Nicaragua has employed the Folio Real system.³⁸ Accordingly, three separate books or registries are maintained by the RPIM: the Diario, the Folio Real, and the Registry of Persons.³⁹

The Diario tracks each document that enters and leaves the registry, noting the name of the person who submits it, the time and date of submission, the assigned document number, an abstract of the document's content, its disposition, and the time and date it leaves the registry.⁴⁰ The Registry of Persons records all births, deaths, marriages, divorces, wills, testaments, trusts, judicial orders, and other civil and legal events that affect the civil capacity of real and juridical persons.⁴¹ The Folio Real is the key registry and tracks all rights and interests pertaining to real property, including ownership, servitudes, usufructs, and leases.⁴²

Each parcel has a unique number, and all transactions relating to that parcel are tracked by reference to the parcel number.⁴³ Likewise, when a new parcel is created either through the division of an existing parcel ("desmembración") or unification of adjacent plots ("unificación"), it is assigned a number.

In real-property registry books, the record for each parcel is kept separately. The record is composed of two pages, each with three columns.⁴⁴ The left page tracks inscriptions of property rights in the center column. Gravamens are noted in the left-most column and cancellations in the right column. The right page tracks mortgages in a similar way with the gravamen against

³⁷See Steven E. Hendrix and Steven J. Leisz, *Land Registration for the Urban Poor of Nicaragua: A Status Report with Recommendations* (Land Tenure Center, University of Wisconsin-Madison, Jul. 1995), at 15 ("Within the registry, 59 percent of personnel are women, 63 percent have only a high school education, with less than 5 percent having a university degree. 60 percent receive about US\$1200 per year in salary. 60 percent of employees have less than six years experience, with this being divided equally between 0-2 years experience (20 percent), 2-5 years experience (20 percent) and 4-6 years (20 percent). Low salaries create incentives for employees to seek supplements in the forms of bribes just to pay living expenses.")

³⁸Previously, the Registro Conservador was organized by the Folio Personal system by which land transactions are tracked according to the parties involved and not the parcel. This system is inferior to the Folio Real system because all rights and interests pertaining to a particular tract are not immediately obvious to a third party.

³⁹See Reglamento del Registro Público, Art. 149 (as reformed by Decreto 1856, published in *La Gaceta*, Diario Nacional 183, Aug. 1971).

⁴⁰See *Ley de Reposición de Expedientes*, Arts. 23-24; *Ley de Reposición de Inscripciones*, Arts. 6-7.

⁴¹See *Código Civil*, Arts. 3962-3963.

⁴²The Folio Real combines two separate registry books, one for real property rights, and the other for mortgages.

⁴³See *Ley de Reposición de Expedientes*, Arts. 16-30; *Código Civil*, Arts. 3951-3961.

⁴⁴See Reglamento del Registro Público, Articles 6, 19, 152.

the property noted in the left column, the terms of the mortgage in the center, and cancellations on the right. When the space on a page is exhausted, a note is entered, indicating the book, folio and page where the record continues. Similarly, the new location cross-references the original record location. Computerization of registry records obviates the need for such cross-referencing.

Each registry book is indexed. The Diario is indexed by date and party name. The Folio Real is indexed both by parcel ("finca") and by party name. Nonetheless, the indices in many registries have not been kept current, creating "holes" that hinder title searches and increase legal insecurity.

Most registry books are maintained manually.⁴⁵ Even in the best RPIM offices, the accuracy of the information is doubtful. Geographic information about property, for example, is provided by registry users and is usually neither tied to a physical cadastre nor independently verified. Other information may be out-of-date. Because the system lacks internal controls, even good-faith users may present false information that they received from others, thereby maintaining errors. In some cases, the same parcel has two or more independent records, and several parties may claim to possess good title.

The physical condition of the records in many offices is poor. A central focus of recent reform efforts has been the conversion of paper records to microfilm.⁴⁶ The degradation of RPIM books and documents is attributable not only to their age, but also to the fact that a central tenet of Nicaragua's registry system has been that registry records are public documents.⁴⁷ Even after the advent of photocopying technology, people who requested registry documents or information were permitted to examine the originals, raising concerns about records security.⁴⁸ Some RPIM offices, including the one in Managua, now provide users copies of original records, or keep

⁴⁴See Reglamento del Registro Público, Art. 153.

⁴⁵Beginning in 1994, RPIM records were microfilmed with a view to begin automating the system as part of project sponsored by USAID. The Zona Central Norte was completed in 1994; the Zona Atlántico in 1995; and the Zona Pacífico in 1995/1996.

⁴⁶Currently, a new initiative to update microfilm records is beginning. Previously, microfilm was used simply as a means to protect deteriorating paper registry records. Existing Nicaraguan law prevented the use of microfilm for consultations, certifications, and other daily registry functions. The new registry law under review by the Supreme Court would change these rules to allow microfilm or other media (e.g., optical disks) to have a status equal to the traditional paper records.

⁴⁷See Código Civil, Art. 3940; Reglamento del Registro Público, Art. 1.

⁴⁸The practice of allowing users to access original records created opportunities for fraud. Registrars have the authority to implement rules to promote records security and ensure that records are conserved. See Reglamento del Registro Público, Art. 112.

records of the persons who gain access to the originals. Finally, in some areas, registry records have been lost, stolen, or destroyed. During the Sandinista period, the records in four departments -- Chinandega, Estelí, Masaya, and Matagalpa -- were completely destroyed. Despite efforts to recreate the lost registries, the accuracy and completeness of current records is suspect.

Another problem facing the Nicaraguan registry concerns its physical infrastructure. RPIM office buildings are in general disrepair, making daily operations and record conservation more difficult.

Information within the RPIM system as a whole is not centralized, and the RPIM offices are not linked electronically.⁴⁹ To access information about a parcel, one must visit the local RPIM office to consult the appropriate records. This decentralized structure results in higher transaction costs and risks in the credit market, effectively limiting the total amount of credit available. If, for example, a small farmer mortgages two properties in two departments to obtain credit for seed and fertilizer, the creditor must write a contract that identifies both properties as security and then register its rights in each of the two corresponding RPIM offices.⁵⁰ If the creditor does not immediately register its interest, it runs the risk that another creditor will register a lien or mortgage interest first and gain repayment priority in the case of default.

Creditors who seek to rely on the registry run other risks as well. A title search prior to the approval of a loan may not detect the existence of a prior security interest.⁵¹ For example, a previous creditor's application may be already accepted but not yet processed. Such documents are not indexed and, hence, to search through pending requests may be impossible. Moreover, since the order of these documents must be preserved to maintain their registration priority, requests to read through them may be rejected.⁵² Alternately, the owner of the property may attempt to obtain two loans simultaneously in which case no previous interest could be discovered. Thus, the cost of obtaining credit increases, pricing some potential borrowers out of

⁴⁹Although no current plans exist to centralize the registry system, or to place all records on a single server, plans to implement a national network to facilitate access to RPIM records are proceeding. The effect of such a network for users is nearly identical to creating a centralized property registry.

⁵⁰Banks and other creditors must register their interests in each department where the land being used as security is located. See Código Civil, Arts. 3772, 3813, 3816, 3936.

⁵¹To mitigate this danger, banks will request a certification for the property proposed to be used as security from the relevant RPIM office, but in addition conduct their own check at the RPIM of interests in the property.

⁵²In theory this should not be an issue since each application should have an ordered document number that could be used to maintain the correct order of inscription.

the market,⁵³ and creditors are much more cautious about approving loan applications, limiting land owners access to credit.

A history of corruption in the RPIM has compounded the institution's other problems. The Supreme Court, in its efforts to clean up the system, has been forced to discharge several RPIM staff and registrars in the last three years in response to complaints that the officials accepted bribes.

IV. FINANCES AND FUNDING

The budget for the RPIM is prepared and approved by the Supreme Court. The money is part of the Court's general budget, which is appropriated by the National Assembly and legally guaranteed to be no less than four percent of the general national budget.⁵⁴ Monies allocated to the RPIM are then divided among the sixteen offices.⁵⁵

The total RPIM annual budget is approximately \$750,000. Most of this money is used for salaries and for the day-to-day operations of the registries.⁵⁶ Reform efforts have been financed independently, often with the help of foreign governments and agencies.

The RPIM also collects fees for the services it provides. All fees are determined by the Arancel de los Registros, which is set by the national legislature. According to the most recent Arancel,⁵⁷ fees may be either fixed or proportional to the value of the property.

The size of the fee also depends on the character of the desired service.⁵⁸ Net revenues for the registry system as a whole are approximately \$2,500,000 annually.⁵⁹ All of these revenues currently go to the national treasury.

⁵³In Nicaragua, credit is expensive. While interest bearing accounts pay between six and seven percent interest, rates on loans range up to 16 percent. This gap of up to 10 percent can be contrasted to the United States where the difference between prevailing mortgage rates and deposit savings rates is usually about 4 percent. Moreover, Nicaragua has no long-term credit market and no secondary-mortgage market, and the Central Bank requires that relatively high reserve ratios be maintained by private lenders -- all indications that credit availability is tight.

⁵⁴See Constitución de la Republica de Nicaragua, Art. 159 ("...El Poder Judicial recibirá no menos del 4% del Presupuesto General de la República.") The new law on the judiciary confirms this amount. See Ley Orgánica del Poder Judicial, Art. 84.

⁵⁵Generally, each registrar proposes a budget, which is then summarily approved by the full Court.

⁵⁶Some observers have suggested that the distribution of funds among the RPIM offices does not appropriately reflect their workloads. They suggest that a national registry oversight committee would be in a position to allocate funds so as to alleviate this problem.

⁵⁷The current fee schedule was established in 1991, and partially reformed in 1993. See Ley de Aranceles del Registro Público en General, Decreto-Ejecutivo 40-91 (Sept. 27, 1991) (published in La Gaceta 182, Sept. 30, 1991); Reforma de los Aranceles del Registro Público, Decreto 26 (Apr. 21, 1993) (published in La Gaceta, Diario-Oficial 73, Apr. 21, 1993, at 1143-1145).

V. FUNCTIONS AND OPERATIONS

The RPIM is charged with inscribing rights and interests pertaining to real property. In addition, the RPIM provides certifications and responses to inquiries relating to land status, ownership, or encumbrances. The RPIM also cooperates with other government agencies to inscribe newly granted titles, issued as part of land regularization efforts.⁶⁰

With respect to increasing public awareness of registry rules and procedures (a secondary function of the registry system), the system has had mixed success. The general public is largely ignorant of the RPIM, its purpose, its usefulness, and the services it provides. For notaries, the Supreme Court sponsors training programs that deal with the RPIM, its functions, mode of operation, and governing laws. Because Nicaraguan law requires notaries to sign inscription application documents,⁶¹ such training programs indirectly assist the general public who contract notaries to assist them.⁶²

A. Registry Usage

Because the RPIM is not centralized, precise statistics concerning the numbers of inscriptions and other solicitations handled by the system are not easy to find. Registry use varies by department and the time of year. In Managua, the RPIM receives approximately 200 applications each day, or 4,000 applications monthly. This represents approximately 40% of the national workload of approximately 500 applications each day, or 10,000 applications each month.

The RPIM employs 148 people, including the registrars. Given that some of these staff are office administrators and do not assist with inscriptions, the workload for each operator and registrar is heavy.⁶³

⁵⁸Note that the registry fee is often only one of many that must be paid to execute a land transaction. The closing costs for a purchase-sale agreement typically include, among other things, notary and mortgage fees.

⁵⁹In Managua, which accounts for 40% of the RPIM's activity, annual revenues are approximately US.\$1,100,000. With costs averaging about one-third of revenues, the RPIM represents an enormous source of revenues for the Nicaraguan government.

⁶⁰This cooperation is facilitated by an independent office set up by the Supreme Court in accord with a national initiative known as the National Cadastre, Titling, and Registry Program or "PNCTR" (from the Spanish).

⁶¹See Código Civil, Arts. 3941, 3946.

⁶²Most parties hire a notary to assist them in preparing an inscription application. Many users also use notaries to access other registry services and to conduct title searches. However, this is not legally necessary, and many do not.

⁶³Observers have noted that this heavy workload and low pay scale engender a low morale among many RPIM staff and contributes to delays in the processing of documents. See Steven E. Hendrix and Steven J. Leisz, Land

B. Inscription

Nicaraguan law does not require that interests in real property be registered, but unregistered rights and interests are not legally enforceable against third parties.⁶⁴ To initiate the inscription process, an interested party must first prepare an inscription application. The application consists of a notarized affidavit and supporting documents that describe the relevant parcel, the right or interest to be inscribed, and the beneficiary of such right or interest.⁶⁵ The application must also indicate how the beneficiary acquired the right or interest.⁶⁶

Once prepared, the party submits the application to the appropriate RPIM office -- that is, the one located in the same department as the parcel of land. As in other Central American registry systems, the RPIM cannot register titles or other interests *sua sponte*. Instead, the process must be voluntary.⁶⁷ The RPIM employee who receives the application performs a perfunctory check to determine whether the legal formalities have been met. Chief among these is proof of payment of the appropriate registry fee.^{68, 69}

If the document passes the pre-presentation check, it will be officially accepted into the registry. Depending on the office, an automatic time/date stamp machine will be used to mark the document and assign it an official document number,⁷⁰ or this information will be recorded

Registration for the Urban Poor of Nicaragua: A Status Report with Recommendations (Land Tenure Center, University of Wisconsin-Madison, Jul. 1995), at 18.

⁶⁴See Código Civil, Art. 3937, 3948; Reglamento del Registro Público, Art. 26.

⁶⁵See Código Civil, Arts. 8946, 3952; Reglamento del Registro Público, Art. 8. Initial inscriptions require much greater detail with regard to the property description, while subsequent transactions involving the parcel need only refer to its unique number and note any relevant changes. See Código Civil, Art. 3952; Reglamento del Registro Público, Art. 9.

⁶⁶As in other Central American systems, the legal concept of "Tradition" is central in establishing a bona fide interest in real property. See Código Civil, Art. 3936. Supplementary title and government grant are the two other means by which property rights may be obtained. See Código Civil, Arts. 3939; 3941. Mortgage interests are created by means of notarized contracts between the owner of a property and a creditor. See Código Civil, Arts. 3771-3772.

⁶⁷See Código Civil, Art. 3944; Reglamento del Registro Público, Art. 5.

⁶⁸Either registry stamps are attached to the application, which can then be canceled by the intake staff, or the applicant presents a canceled invoice.

⁶⁹Until the fee has been paid, then, the application cannot be submitted and lacks a document number and any official priority vis-à-vis other documents. Thus, in theory, it is possible that an application is dropped off at the Registry, which, though correct in substance and presented in good faith, lacks sufficient funds to cover the appropriate fee. If, prior to the presentation of the correct amount, another document is received that relates to the same parcel, the "later" document will actually obtain priority over the former.

Because registry service fees are based on the value of the property and/or transaction, it is possible that the registry staff will discover that the fee paid is inadequate only later – i.e., after reviewing the content of the application. In such a case, the application is returned for payment, but maintains its priority.

⁷⁰About half of the RPIM offices have an automatic time/date stamp machine.

manually on the document and in the Diario.⁷¹ Where the manual system is still used, the process of creating the Diario differs between offices. Harmonizing these systems is one project currently being pursued by the RPIM, under the direction of the Supreme Court. Whichever system is used, the applicant receives a receipt of submission with a similar time/date stamp and document number.

Nicaragua follows a "race" priority system, that is prior tempore, potior jure.⁷² Documents presented first have priority over those that are presented later. Hence, the Diario plays an important role in determining which parties ultimately may claim rights with respect to a tract.

After acceptance into the system, documents are sorted according to their subject matter and distributed to registry operators who examine them thoroughly for validity.⁷³

The operator in charge of each case also conducts a title search for the relevant property, checking to see that no reason exists to prevent the inscription. In most of Nicaragua, this process is still not automated. If deficiencies or errors are noted, the document is returned to the submission window, where the applicant may pick it up. Errors may either be "subsannable" or "insubsannable." The former may be fixed by the applicant without forfeiture of the document's priority number. Examples of such errors are: a missing parcel number for a neighboring tract, failure to identify the owner of a neighboring tract, or the misspelling of the name of a former owner of the land. For serious errors, the application is rejected. Serious errors include intentional efforts to inscribe a fraudulent conveyance, or knowingly falsifying a document. Any subsequent application relating to the transaction must be resubmitted separately and will receive a distinct (later) document number.

Once the initial review is completed, the operator will record the size and location of the property. Notations indicating that old mortgages have been paid in full and the corresponding liens canceled, inscriptions of new mortgage interests, as well as persisting servitudes and other interests will also be made as appropriate. Once completed, a corresponding notation is entered

⁷¹In some RPIM offices where a "manual" system is used, entries are typed on separate sheets and these are then assembled into a book that forms the Diario.

⁷²See Código Civil, Arts. 3946-3966; Reglamento del Registro Público, Arts. 16, 24-25, 53.

⁷³See Reglamento del Registro Público, Art. 17. In theory, this check is supposed to examine the content of the application, rejecting applications that contain false information or are otherwise deficient. In reality, applications are often approved without verification. In 1995, a study of the RPIM system by the Supreme Court revealed that eighty percent of applications were not properly checked. A 1998 follow-up review by the Court reveals that, although the situation has improved, the problem persists.

on the original application. This notation includes the time, date, document number, and location (book, folio, and page) where the transaction is officially recorded.

Following the inscription, the book where it is made must be presented to the Registrar who reviews it and, by signing, dating, and stamping it with the RPIM seal, give the inscription final approval. The application document is also stamped with the RPIM seal and signed by the Registrar. Next, the registry indices are updated. During the last three years, Nicaragua has been successful in bringing many of these indices up to date. Many departments now have digitized indices, which can be searched by the parcel number or name of the property owner.

The application is then returned to the submission section where a notation of the inscription is made in the Diario.⁷⁴ The interested party retains this stamped title as a receipt of registration and proof of ownership.

In Managua, the inscription process typically lasts between 30 and 60 working days.⁷⁵ The inscription may take even longer outside Managua.⁷⁶

VI. CURRENT PROJECTS AND REFORM EFFORTS

A. National Reform Plan

In the early 1990's, the RPIM was sorely in need of reform. Its infrastructure had been neglected, its operating procedures were outmoded, office equipment was obsolete, and key legislation governing the RPIM dated from the beginning of the century. Rather than augmenting land tenure security, the RPIM itself often created insecurity by inscribing documents incorrectly or, even worse, inscribing titles to parcels which already had registered owners. The RPIM's inefficiency in handling documents further weakened its public credibility. The lack of standardization between the various RPIM offices also tended to lower the public's confidence in the property registry system. Finally, the registry's paper records were deteriorating, and those of some departments had been destroyed.

In 1992, the Nicaraguan government incorporated registry reform into a much larger project -- the Land Regularization and Technology Project ("Proyecto de Ordenamiento y Tecnología"

⁷⁴In practice, this step is often not completed.

⁷⁵In "rush" cases, inscription can be completed in much shorter time, although it is unclear what constitutes a "rush" case and how "rush" applications are chosen or distinguished from standard applications.

⁷⁶Nicaraguan notaries claim that payments made to Registrars and registry operators to speed inscription are common and, by this means, the total transaction time can be shortened to one to two weeks, that is five to ten working days. This claim has not been verified.

or "POT"). The POT sought to address a variety of problems relating to land tenure and land transfers, including the massive government-sponsored agrarian reform initiatives from 1981 through 1990, as well as the implementation of modern agricultural methods and technology. The POT had two principal components. One focused on agricultural technology, while the other, the National Cadastre, Titling, and Registry Program ("Programa Nacional de Catastro, Titulación y Registro" or "PNCTR"), focused on issues relating to land regularization. Among these issues was reform of the RPIM. With funding from the World Bank, the primary sponsor of the POT,⁷⁷ the Swiss government through COSUDE, and national funds, work on the PNCTR began in earnest in 1994.

The PNCTR had three broad goals with respect to the RPIM: (1) establish a framework for modernization of the system, (2) safeguard registry records through the use of microfilm and computer technology, and (3) improve the physical infrastructure and resources available to the RPIM. To accomplish these objectives, the Supreme Court created a new office, the Sub-Componente Registro Público ("SRP").⁷⁸

The SRP developed a National Registry Reform Plan, which included the development and implementation of a pilot project for registry reforms,⁷⁹ the formulation of a new registry law, and preparation of the necessary conditions for subsequent reform efforts. Among the specific goals of the Reform Plan are the following:

- Construction or remodeling of registry offices.⁸⁰
- Acquisition of equipment -- e.g., computers, office furniture, microfilm cameras and viewers -- necessary for the reform effort.⁸¹
- Set up a basic training curriculum for professional and technical registry staff.
- The conversion of paper documents to microfilm in order to better store and maintain existing RPIM records. With initial microfilming complete, the next step is to update microfilm records and begin instituting their use in lieu of paper records.

⁷⁷The World Bank contributed \$44 million to the project overall, with smaller contributions from a number of other governments and international donors.

⁷⁸Strictly speaking, the RPIM itself does not sponsor any reform initiatives. Instead, the SRP develops specific reform goals consistent with the PNCTR and in conjunction with other Nicaraguan and international agencies.

⁷⁹Masaya was the first site chosen as a pilot project.

⁸⁰In the longer term, the plan calls for integration of registry and cadastre offices. At present, cadastre and RPIM offices in several departments are being placed in the same buildings.

⁸¹RPIM offices have not yet been computerized, but plans are afoot to design an automated registry system in Masaya.

- The maintenance and conservation of existing registry records until such records can be microfilmed or converted to digital form.
- To obtain local and international technical assistance with the modernization effort.
- To support INRA, the agency responsible for regularizing titles derived from Laws 85, 86, and 88.
- The design and implementation of an automated system that can be adopted throughout the RPIM.⁸² Currently, pilot systems are being developed in the departments of Managua and Masaya.⁸³
- Establishment of up-to-date departmental indices of property owners as a precursor for the creation of a national title index and the safeguarding of current registry records through the use of microfilm.

Two other longer-term goals of the program are to standardize registry procedures among the independent RPIM offices, and to integrate geographic information from the new cadastre with the legal information maintained by the registry.⁸⁴ Work on these goals will continue during the second phase of the project, which begins in 2000 and will conclude in 2005.

B. The European Community Project for Registry Reform

The European Union has recently set up a registry reform component to a larger on-going justice reform project in Nicaragua ("Proyecto de Fortalecimiento de la Administración de Justicia en Nicaragua: Componente Registral").⁸⁵ Like other projects, the broad goals of the reform effort are to increase judicial security with respect to land tenure and transactions, and to

⁸²Automation is crucial to eliminate bottlenecks in the inscription process. For example, the use of a manual Diario impedes the rate at which documents can be accepted. The use of automation, however, depends on changing the legal framework in which the RPIM operates; this is one goal of new registry reform draft legislation presently being reviewed by the Supreme Court.

⁸³Outside of these departments, the registry process is not automated.

⁸⁴The idea of unifying cadastral records with those of the property registry is not new. See *Ley de Actualización y Mantenimiento del Catastro Nacional* (December 23, 1970) (published in *La Gaceta, Diario Oficial*, 17, Jan. 21, 1971), Arts. 2-4 (requiring all land-related titles to be accompanied by the cadastre plan number and prohibiting those which lack such information from being registered). See also generally *Reglamento de la Ley de Actualización y Mantenimiento del Catastro Nacional* (Sept. 25, 1971). The intervention of natural disasters, civil war, other government priorities, and institutional inertia prevented realization of the goal.

⁸⁵See *Proyecto de Fortalecimiento de la Unión Europea, Informe sobre la Actividad Registral del Proyecto de la Unión Europea: Fortalecimiento de la Administración de Justicia* (presented to the Nicaraguan Supreme Court, July 16, 1998). Note that this project is not related to that of the SRP. The lack of coordination between the new EU

increase social stability by reducing the incidence of land-related disputes, invasions, and fraud. In two respects, however, the EU project is unusual. First, the EU program views registry reform as an end in itself, instead of merely a "necessary corollary" of land titling or other broader reforms. Second, automation (the implementation and use of computers and other technology) is not the centerpiece of the project. Instead, the project has four areas of emphasis: (1) institutional development,⁸⁶ (2) educating and profesionalizing the registrars, (3) improving the existing folio real system, and (4) law reform - the clarification and codification of registry principles.⁸⁷

Corresponding to these four reform areas, the project has defined ten specific project goals:

- augmenting national legislation,
- improving the enforcement of registry-related laws,
- initiating specific training for registrars,⁸⁸
- ensuring that the registrar enjoys true independence in carrying out official functions,
- elimination of corruption,
- increasing the number of registrars and registry staff and their skill level,⁸⁹

initiative and ongoing PNCTR, sponsored in large part by the World Bank, has given rise to concern about whether the projects may be duplicative or in conflict. Some even worry that a clear institutional vision may be lacking.

⁸⁶In this regard, the main obstacle that the project seeks to address is the perceived current lack of public faith and trust in the RPIM. One result of this "legitimacy deficit" is a cycle in which landowners and others with interests in real property choose not to inscribe those rights.

⁸⁷One current problem is that evidence provided by the RPIM of rights and interests is not taken as full and complete proof in cases where rights are contested. At least one reason is the imprecise and sometimes incorrect information proffered by registry users. Geographic descriptions of land that are not based on geodetic reference points, for example, can create situations in which the boundaries of registered parcels overlap. Errors tend to persist as subsequent owners recycle the information they received as buyers of the property. Also contributing to the unreliability is the fact that 70% of the titles inscribed in 1990 acquired under Laws 85, 86, and 88 contain inexact parcel descriptions. (These titles were derived from the documents received by beneficiaries of the Sandinista Agrarian Reform, which either lacked parcel descriptions entirely, or contained vague, incomplete information.) See Stanley et al., *Land Information Sources in Latin America: Vol. II: Central American Countries* (June 1996) (prepared for the Land Tenure Center, University of Wisconsin-Madison), at 46.

Another, related problem that has been mitigated recently is that owners obtain supplementary title for their lands rather than pay the costs and wait the time necessary for regular inscription. While avoiding the relatively high cost of a full title search may be desirable, the Nicaraguan registry often has not canceled former titles in such cases, creating situations in which several people claim ownership of the same parcel. See Steven E. Hendrix and Stephen J. Leisz, *Land Registration for the Urban Poor in Nicaragua: A Status Report with Recommendations* (Land Tenure Center, University of Wisconsin-Madison, 1995), at 18.

A fully-functional registry system would reduce these problems, thereby lowering the number of conflicts overall. If the fact that a right was inscribed in the Registry were equivalent to full and complete proof of such right, there would be little reason to contest the issue in an expensive judicial process. Moreover, when conflicts did arise, those aspects that related to property rights could be settled quickly and efficiently.

⁸⁸Some Nicaraguan registrars still lack any legal degree or training.

- improving registry indices,
- replacing manual processes with mechanized ones,
- improving regulation of mortgages,
- and implementating a funding mechanism that directs part of registry revenues to further the aims of reform.

The project began full operations in January 1999 and is due to be concluded in 2001. It is directed by two registrars, one Spanish and the other Nicaraguan, and an EU project head. The project has its offices on the Supreme Court grounds.

VII. RELATED INITIATIVES

A. National Cadastra

The Nicaraguan Institute for Territorial Studies ("Instituto Nicaraguense de Estudios Territoriales" or "INETER") is the government agency responsible for maintaining Nicaragua's national cadastra.⁹⁰ Although it existed previously,⁹¹ the importance of the cadastre increased significantly in 1970.⁹² To emphasize the importance of integrating cadastre and registry information,⁹³ the National Assembly mandated that official cadastral records accompany any contract that refers to the sale of real property.⁹⁴ Moreover, to register property rights, the applicant must present the appropriate cadastral map to the registrar, who, in turn, must record the corresponding cadastra number, which, like the RPIM parcel number, uniquely identifies the property in question.⁹⁵

⁸⁹Development of human resources is crucial to Nicaraguan registry reform. During Nicaragua's civil war, the property registry suffered not only from a lack of maintenance, precision and verification of its records (and in extreme cases physical destruction), but also from the attrition of skilled registry workers. Those that remained in the system too often became corrupt, further weakening the institution and undermining its credibility. With new plans to modernize, the RPIM needs trained technical staff and professionals who can put the plans into practice.

⁹⁰In particular, the Cartography Office ("Dirección General de Cartografía"), which is in charge of mapping the country, and is in effect, the national cadastre office, is located within INETER. See Reglamento de la Ley de Actualización y Mantenimiento del Catastro Nacional, Art. 3.

⁹¹See, e.g., Ley de Catastro e Inventario de Recursos Naturales, Decreto-Ejecutivo 139 (Apr. 8, 1967).

⁹²In December, the National Assembly passed a new initiative to update and maintain a complete national cadastre. See Ley de Actualización y Mantenimiento del Catastro Nacional (Dec. 23, 1970) (published in La Gaceta 17, Jan. 21, 1971).

⁹³See Ley de Actualización y Mantenimiento del Catastro Nacional, Art. 1.

⁹⁴See Ley de Actualización y Mantenimiento del Catastro Nacional, Arts. 2, 3.

⁹⁵See Ley de Actualización y Mantenimiento del Catastro Nacional, Arts. 3, 8, 11.

Because of intervening natural events and political upheaval, the national cadastra contemplated in the 1970 law never came to fruition. Renewed enthusiasm for the project developed in the early 1990's as a way to help address land tenure insecurity and the national "land question."

The PNCTR, in addition to registry reform, encompassed the updating of national land maps and the creation of a multipurpose cadastra. Corresponding to the SRP created by the Supreme Court, INETER created a Subcomponente Catastro, which was charged with carrying out the goals of the PNCTR. It was hoped that the cadastra would not only help to resolve land conflicts, but could also facilitate land regularization in rural areas, access to credit for agricultural technology and modern production methods, as well as land-use and development planning.

The Subcomponente Catastro has focused on several goals.⁹⁶ Setting up a new geodetic network to enable accurate mapping of the country was one. Such a network of fifty stations was in place by early 1996.⁹⁷ With the requisite control points in place, a Canadian firm, Geographic Air Survey, was hired to take aerial photographs of areas including the Pacific and Central Departments of the country.⁹⁸ From these photographs, taken at 1:40,000 scale, orthophotos scaled at 1:10,000 were elaborated. Satellite images were used to prepare maps at a scale of 1:25,000 for rural zones and other regions that had not been aerially photographed. Accurate maps presently exist for about 20 percent of the country.

To facilitate the creation and maintenance of a meaningful, integrated cadastre from the newly obtained geographic data, INETER staff have been trained in the use of GPS and GIS, computer applications for cadastral work, basic mapping, project management, and English. Central cadastre offices in Managua were refurbished, and new offices were built in six regions. In addition, the PTA-OPA has authorized the purchase of computer and communications equipment necessary to maintain the cadastra and to permit the sharing of cadastral information through an on-line network.

⁹⁶Information was provided by INETER staff and a report entitled "Proyecto de Tecnologia Agropecuaria y Ordenamiento de la Propiedad Agraria: Evaluacion del Subcomponente Catastro en el Periodo 1994-1998."

⁹⁷The work was completed by a private company: TEC. The United States Defense Mapping Agency coordinated the gathering of geographic data generated by the stations and satellite mapping. The process of complementing this network with additional altimetric control points to generate accurate topographical maps has begun, but is not yet completed. Current projections aim to have the network in place by mid-1999.

⁹⁸Thirty percent of the contracted area was eventually covered by satellite images, because inclement weather made aerial photos impossible.

The project was originally due to be completed within five years (i.e., by December 1998), but was extended through December 1999. Despite significant advances in a number of areas, more work is needed. In particular, although the geodetic reference points have been fixed, geographic area maps must still be completed. In addition, field teams must collect information about parcel boundaries in order to complete the process of delineation and assignment of parcels.⁹⁹ Pilot projects have been set up in Masaya and five other districts to develop efficient mechanisms to survey parcels and create maps.¹⁰⁰ The cadastre also has yet to be computerized; that process is just beginning. Consequently, the PNCTR has been scheduled for a second phase, which will begin in 2000.

B. Land Titling

The other main focus of the PNCTR, in addition to registry reform and the national cadastra, is land titling.¹⁰¹ In charge of this function is the Nicaraguan Institute for Agrarian Reform ("Instituto Nicaraguense de Reforma Agraria" or "INRA"), which has set up a special office, the "Subcomponente Titulacion," to execute the Project. In particular, through this office, INRA determines to whom titles should be awarded using cadastral, preexisting registry, and other information provided by interested parties.

Projects aimed at land titling and regularization have been of long-term interest both within the national government and the judiciary and in the international community. The "land question" in Nicaragua derives in large part from the confiscations and distributions of private property during the Sandinista period (1979-1989), and later, the hurried titling of property during the last months of the Sandinista government¹⁰² When Chomorro took office, the legal

⁹⁹Delineation is the most important work involved in the Project because it involves the integration of existing legal (registry) information with cadastral data. Often, the descriptions of property contained in the registry are imprecise and make landholdings appear larger than they are in fact. As the Cadastre is updated, true land areas will replace incorrect information. As a result of this effort, some current owners may "lose" property.

¹⁰⁰The other pilot projects are in Chinandega, Las Minas, Nueva Guinea, and Puerto Cabezas. Efforts thus far have been successful. In the future, INETER plans on incorporating a variety of data in the cadastral maps including tax information, population densities, infrastructure development, and land use information.

¹⁰¹Within the POT as a whole, land titling is the central objective. Registry reform and cadastre development are necessary to achieve this end.

¹⁰²Three key laws authorized this massive redistribution of property. Ley 85/90 provided that current possessors of homes or other living quarters with good-faith color of title ("ánimo de dueño") could obtain title to such property. See Ley de Transmisión de la Propiedad de Viviendas y Otros Inmuebles Pertencientes al Estado y sus Instituciones, 85/90. Law 86/90 allowed occupants of lots that had been administered by the state to gain ownership in order to allow them to construct homes. See Ley Especial de Legalización de Viviendas y Terrenos, 86/90. Finally, Law 88/90 enabled those who had obtained provisional title to rural parcels as part of the Sandinista 1981

status much of Nicaragua's territory was in doubt. In an attempt to create greater legal certainty, regularize land titles, minimize the chance of violence, and enable the country to begin redeveloping a productive economy and infrastructure,¹⁰³ President Chamorro prioritized land regularization. The POT and PNCTR were the result of this policy, as were the National Commission for the Review of Confiscations ("Comisión Nacional de Revisión de Confiscaciones" or "CNRC"),¹⁰⁴ the Office for Quantification of Indemnization ("Oficina de Cuantificación de Indemnización" or "OCI"), the Urban Title Office ("Oficina de Titulación Urbana" or "OTU"), and the Territorial Organization Office ("Oficina de Ordenamiento Territorial" or "OOT").

Laws 209 and Law 278, enacted in 1995 and 1997, were meant to facilitate a final resolution to the number of disputes arising from the aforementioned confiscations.¹⁰⁵ Law 209 established that possessory and land-use rights acquired under previous agrarian reform initiatives could be converted to permanent title, and provided an expedited process for doing so.¹⁰⁶ Law 278 restructured the relevant government institutions, and streamlined the process by which all land grants, compensation awards, and related decisions could be reviewed. Such cases involved more than 40 percent of Nicaragua's population as well as hundreds of foreign claimants.

Under the current regime, former landowners -- known alternately as "Confiscados," "Afectados," and "Expropiados" -- bring their claims to the CNRC, which assesses whether the land in question should be returned to the claimant, and, if not, whether the former owner is entitled to indemnification. In cases where a right to indemnification is established, the OCI determines the amount due.¹⁰⁷ Compensation is paid in the form of special bonds ("Bonos de

Agrarian Reform Law, to gain full and clear title to their property. See Ley de Protección a la Propiedad Agraria, 88/90. Law 88 was the most controversial because it granted ownership to many lands that had previously been owned, yet contained no specific provisions about indemnifying previous owners. Law 88 was repealed by Law 133, passed by the Congress in 1992, but partially vetoed by President Chamorro.

¹⁰³During the Sandinista period (1979-1989), gross domestic product (GDP) declined every year. At the same time, hyperinflation developed. Although inflation was reduced from its 1988 high of 36,000%, GDP continued to fall through 1994 while adjustment measures were taking effect.

¹⁰⁴See Decree-Ejecutivo 11-90.

¹⁰⁵See Ley de Estabilidad de la Propiedad, Ley 209 (published in La Gaceta, Nov. 30, 1995); Propiedad Reformada Urbana y Agraria, Ley 278 (published in La Gaceta, 239, Dec. 16, 1997). One reason for the laws was to legitimize the land regularization process that had been previously implemented by Presidential Decree. Related to both laws, are Article 617 of the Civil Code and Article 44 ratified as part of the 1996 Amendments to the Nicaraguan Constitution, which guarantee rights of ownership and prohibit confiscation.

¹⁰⁶Parts of Law 209 were subsequently found to be unconstitutional because they did not provide for adequate judicial review of decisions rendered by land administration agencies.

¹⁰⁷See Decree 46-91.

Pago por Indemnización" or "BPI"), which can be traded in world debt markets or used to pay certain tax obligations.¹⁰⁸

Parties who acquired parcels pursuant to Law 85 or Law 86 may go to the OOT and OTU, respectively, to regularize their title claims. Beneficiaries under Law 88 may bring claims to the Office of Agrarian Titling.¹⁰⁹ Where appropriate, the party will be awarded a permanent title that may be inscribed in the RPIM.

One key aspect of Law 278 has not yet been implemented – namely, the state-sponsored arbitration tribunals for land disputes, which the law calls on the Supreme Court to administer. The law contemplates the appointment and training of 50 mediators and 250 arbitrators. The Central American Project, drawing on the resources of the Harvard Negotiation Project, has offered to assist the University of Leon and INCAE in training the newly appointed officials.

An important recent development in the land regularization program is the consolidation of its administrative structure. Whereas previously the OTU, OOT, and OCI were each administered independently, a single Property Office ("Intendencia de la Propiedad") within the Nicaraguan Treasury ("Ministerio de Hacienda y Crédito Público" or "MHyCP") now coordinates their activities.¹¹⁰ The Property Office also oversees the Rural Titling Office ("Oficina de Titulación Agraria" or "OTR"), which, according to a separate decree (Decree 56-98), replaces INRA as the office responsible for agrarian titling.¹¹¹ INRA is now officially responsible for agrarian land policy.

The new Property Office also oversees work to create an integrated registry-cadastre that can facilitate the normalization of land titles and the clarification of land ownership. The normalization process involves several steps:

- (1) completing geo-referenced cadastral maps in areas where clear titles are lacking or in doubt,

¹⁰⁸Initially these debt instruments, which carried a 3% interest rate and have a twenty-year term, traded for only a fraction of their value in secondary markets. Currently, the bonds pay between 3 and 5 percent interest and have a term of 15 years. Their value has improved.

¹⁰⁹This office recently replaced INRA in handling these claims. See explanation of Decree 56-98, *infra*.

¹¹⁰See Reglamento de la Ley 290 - Ley de Organización Competencia y Procedimientos del Poder Ejecutivo, Decreto-Ejecutivo 71-98 (published in La Gaceta, Oct. 30, 1998), Arts. 80, 102-105 (establishing the Intendencia de la Propiedad within the MHyCP, and giving it jurisdiction over the OTU, OOT, and OCI). INRA, which had been an autonomous agency in charge of titling in accordance with the PNCTR and POT, became a component of the Agriculture and Forest Ministry ("MAGFOR"). See Ley 290 (published in La Gaceta, Diario Oficial, 102, June 3, 1998).

¹¹¹See Reglamento de la Ley 290 - Ley de Organización Competencia y Procedimientos del Poder Ejecutivo, Art. 106.

- (2) completing a survey of current occupancy and records held by occupants,
- (3) comparing the collected information with existing registry records,
- (4) harmonizing the information through administrative means, including informal dispute resolution wherever possible,
- (5) issuing new titles corresponding to parcels marked on the cadastra,
- (6) assisting with the registration of these titles,
- (7) facilitating indemnification of former owners whose lands were legally expropriated, and
- (8) noting areas where disputes or conflict persist.

The land regularization project has been supported since late 1994 by international donors and foreign governments, including: the United Nations Development Project (or UNDP), which provided US \$1,132,100 for urban titling; the Swiss government, which has provided about one million dollars; the Inter-American Development Bank (IDB), which has provided US \$2.8 million in non-reimbursable grants; and USAID, Japan, Canada, and Holland.¹¹²

The project is entering its second phase. Phase one aimed to implement a workable system to resolve land disputes. At the same time, the project sought to modernize the registry system so that "advances in the field" were not lost or later undone through unplanned or faulty administration.¹¹³ Overall, the project has been quite successful in reducing the number of existing disputes. Phase Two seeks to focus more on ensuring that newly-issued titles are registered in the RPIM.

C. New Law on the Judiciary

Enforcement of property rights in Nicaragua has long been a problem.¹¹⁴ A pre-requisite to any enforcement action is that the rights are registered.¹¹⁵ Unfortunately, many land owners and

¹¹²The interest of all of these donors in registry reform is largely motivated by their position as "interested users," who need an efficient system for their program to be successful.

¹¹³According to many observers in Nicaragua, this latter goal of registry reform and modernization was not given the same priority as settling the actual disputes. Nonetheless, the advances made since 1994 have been impressive. Starting from a set of disorganized and imprecise records, an obsolete and completely manual system, and an infrastructure on the verge of collapse, the RPIM had to be rebuilt and redesigned practically from scratch.

¹¹⁴One result in Nicaragua has been the growth of unofficial land markets that operate inefficiently and often to the disadvantage of Nicaragua's poorest citizens. See Steven E. Hendrix and Steven J. Leisz, *Land Registration for the Urban Poor in Nicaragua: A Status Report with Recommendations* (Land Tenure Center, University of Wisconsin-Madison, July 1995), at 34; Stanfield, "Insecurity of Tenure in Nicaragua" (Land Tenure Center Research Paper 120, University of Wisconsin-Madison, 1995).

¹¹⁵See Código Civil, Art. 683.

others with rights in real property lack registered title.¹¹⁶ Perhaps more important, any attempt to enforce one's rights requires the use of an overburdened court system and outdated procedural codes.¹¹⁷

The new Organic Law of the Judiciary ("Ley Organica del Poder Judicial"), which took effect in January of 1999, restructures the Nicaraguan Judiciary and aims to strengthen its institutions.¹¹⁸ The law lays the legal groundwork for registry automation and improved records security by giving the Supreme Court authority to create a new set of registry regulations that will be consistent with and foster these objectives.¹¹⁹

VIII. SUPPLEMENTARY TITLE (ADVERSE POSSESSION)

The rules pertaining to supplementary title in Nicaragua are similar to those of other countries in the Region. The label, however, is different: the Nicaraguan civil code refers to the process as positive prescription ("prescripción positiva").¹²⁰ The requirements for acquiring ownership or use rights over real property by positive prescription are the following:¹²¹

- Color of Title

A claimant must proffer a title on which his possessory interest, and his prescriptive claim are based.¹²² Apparent or putative title counts to fulfill this requirement so long as

¹¹⁶For example, at present, the percentages of land lacking title and that having multiple titles are unknown. Land tenure in Nicaragua has been the subject of many reports. *See, e.g.*, Stanfield and Hendrix, *Ownership Insecurity in Nicaragua*, 22 *Cap. U.L. Rev.* 939 (1993); Stanfield, "Insecurity of Tenure in Nicaragua" (Land Tenure Center Research Paper 120, University of Wisconsin-Madison, 1995).

¹¹⁷*See, e.g.*, Hendrix, *Property Law Innovation in Latin America with Recommendations*, 28 *Boston College Int'l & Comp. L. Rev.* 1 (1995); Hendrix, *The Crisis of Land Law and Policy in Nicaragua*, 29 *Comp. Jur. Rev.* 3 (1992); Strasma and Molina, *Accelerating the Resolution of Property Cases in Nicaragua*, 1994 (Land Tenure Center, University of Wisconsin-Madison, 1994).

¹¹⁸One important example of this process of strengthening the judiciary is the creation of a commission within the Court in charge of monitoring and supporting career tracks within the judiciary. The Commission will also make proposals to the full Court regarding appointments and promotions. *See* *Ley Orgánica del Poder Judicial*, Arts. 65, 70, 145-168. The Judicial School (a new, official auxiliary organ of the Supreme Court) provides another example of this effort. *See* *Ley Orgánica del Poder Judicial*, Arts. 73, 78-82.

¹¹⁹*See* *Ley Orgánica del Poder Judicial de la Republica de Nicaragua*, Art. 187.

¹²⁰*See* *Código Civil*, Art. 869 ("La adquisición de cosas o derechos en virtud de la posesión, se llama prescripción positiva...."); Art. 871 ("Pueden adquirir por prescripción positiva, todos los que son capaces de adquirir por cualquier otro título....")

¹²¹*See* *Código Civil*, Art. 888.

¹²²*See* *Código Civil*, Art. 890.

the claimant obtained it with good reason to believe it was legitimate.¹²³ A later showing that it was not valid does not defeat a prescriptive claim.

- Good Faith

The claimant must have acquired the property in good faith – i.e., with no actual knowledge or good reason to believe that the property was being acquired fraudulently, or that the land already had an owner. Good faith is only required at the moment of acquisition; subsequently it is presumed.¹²⁴

- Tranquil Possession

Tranquil possession means non-violent possession. The property must be acquired peacefully.¹²⁵ Possession acquired or maintained by force or violence is ineffective for a claim of prescription. Only time after violence has ended may count toward the necessary time for a claim to ripen.¹²⁶

- Continuous Possession

Possession must be uninterrupted.¹²⁷ "Interruptions" include giving up or being deprived of enjoyment of the property for more than a year, judicial orders, and actual or constructive recognition by the possessor of the rights and/or interests of another party over the land.¹²⁸ A prescriptive right of possession may be registered after one year.¹²⁹

- Public Claim of Right

To be "public possession," the claim must either be obvious to an interested party, or be registered in the RPIM.¹³⁰ In other words, possession of the property at issue must be "open and notorious." Concealed possession is ineffective to support a prescriptive claim.¹³¹

¹²³See Código Civil, Art. 1781.

¹²⁴See Código Civil, Art. 891.

¹²⁵See Código Civil, Art. 892.

¹²⁶See Código Civil, Art. 895.

¹²⁷See Código Civil, Art. 893.

¹²⁸See Código Civil, Arts. 926-930 (defining interruptions and exceptions).

¹²⁹See Código Civil, Art. 897.

¹³⁰See Código Civil, Art. 894.

¹³¹See Código Civil, Art. 896.

A prescriptive claim becomes actionable after ten years of possession in accordance with the requirements just described.¹³² Mere tolerance of the claimant by the rightful owner is insufficient for a prescriptive claim to ripen; the possession must be adverse to the rights of others.¹³³

If a possessor lacks title to his property, he may still acquire ownership rights through the process of "extraordinary prescription."¹³⁴ The requirements are the same as for regular positive prescription with two exceptions. First, the requirement that the claimant proffer title is absent. Second, the claim ripens only after thirty years.

Prescriptive rights have no force against third parties unless they are inscribed in the RPIM.¹³⁵ The right of former owners to reclaim their property, however, is never extinguished.¹³⁶ Thus, rights gained through prescription are never absolutely certain.

To obtain a judgment that he can register in the RPIM, a possessor must present his claim for a prescriptive right to a local judge.¹³⁷ The claim must describe the property, its location, boundaries, size, and value, as well as any existing legal rights or interests that pertain to it; the name, address, other information about the claimant; and the manner in which the claimant acquired the property.¹³⁸ Proof that all property taxes have been paid is also required.¹³⁹ Three neighbors must also corroborate the facts presented in the claim. Notice of the claim is then posted in the newspaper.

The appearance of a registered owner will cause the claim to be dismissed. If no opponents to the claim present themselves, or if any opponents who appear are defeated in a hearing and the notice period expires, the judge will approve prescriptive title and order the RPIM to inscribe it.¹⁴⁰

Prescriptive titles are sometimes granted in Nicaragua without scrupulous satisfaction of the legal requirements. As a result, cases abound of parcels with three or more registered title owners, each of whom may trace his title back to some "legitimate" source, whether a court order

¹³² See Código Civil, Art. 897.

¹³³ See Código Civil, Art. 897.

¹³⁴ See Código Civil, Art. 897.

¹³⁵ See Código Civil, Art. 898.

¹³⁶ See Código Civil, Art. 896 ("El derecho de reivindicar los bienes confiscados es imprescriptible."); Reglamento del Registro Público, Art. 140.

¹³⁷ See Código Civil, Art. 887; Reglamento del Registro Público, Art. 137.

¹³⁸ See Reglamento del Registro Público, Art. 138.

¹³⁹ See Reglamento del Registro Público, Art. 137.

¹⁴⁰ See Reglamento del Registro Público, Arts. 139-140.

in a claim for positive prescription, agrarian reform laws, or a traditional chain of title described in RPIM records.

Although positive prescription is meant to keep land productive, it sometimes has the opposite effect. Landholders are sometimes forced to spend large amounts of money obtaining eviction orders to eject squatters, fearing that, if the squatters are allowed to remain, they will eventually seek prescriptive title.¹⁴¹ This problem has been compounded in recent years by the formation of organized groups that encourage invasions of privately held land. The combination of defensive owners and defiant squatters often leads to violence. The result is that many landless peasants who formerly subsisted on small plots within larger estates have been forced off the land and have become nomadic, often migrating to urban areas and straining a fragile and underfunded national social support structure.

IX. DISPUTES

A. Dispute Resolution Mechanisms

Land-related disputes in Nicaragua are numerous, but may be classified into three major groups. The most numerous, complex, and often intractable disputes are those that involve expropriations and land redistribution. As described above, these are handled by a variety of administrative agencies whose decisions may be reviewed by the courts.

The second group of disputes involves disgruntled registry users who bring actions directly against the RPIM. Any decision taken by the registrar may be challenged in the local district court. If the claimant loses, he may appeal.

The third category consists of ordinary property disputes. They include boundary disputes between neighbors who have legal titles describing overlapping parcels, cases involving mortgage creditors, conflicts between parties claiming competing title, and cases where property owners seek to eject squatters. These disputes are also resolved in the courts, according to the Code of Civil Procedure ("Código de Procedimiento Civil" or "CPC").¹⁴²

¹⁴¹Ownership cannot be obtained against a rightful owner who presents himself to contest a prescriptive claim.

¹⁴²The Code was first enacted in 1905 and is based on the 1880 Spanish Code of Civil Procedure.

The CPC provides for two processes: the ordinary process used for most land-related disputes, and a summary process that may be used in foreclosure actions, attachment actions, landlord-tenant disputes, and actions to partition property.¹⁴³

The ordinary process involves three major phases. In the pretrial phase, the complaint is filed. A complaint must state a valid cause of action, all relevant facts, the evidence to be presented, and the names and addresses of all parties that will be served.¹⁴⁴ Complaints that do not comply with these requirements may be dismissed by the judge reviewing them. The defendant may then raise exceptions, which may either give rise to a dilatory appeal ("incidentes") or cause the action to be dismissed ("nullidades").¹⁴⁵ Following the resolution of exceptions, the complaint must be answered.

Even before the answer is officially filed, however, the judge in civil and agrarian cases will convene a meeting of both parties and their representatives in an effort to resolve the dispute by mediation.¹⁴⁶ Even if such a negotiated resolution appears impossible, the judge must certify that the effort was made in good faith before the suit may proceed.

The trial phase consists of the presentation of evidence, which may be both testamentary and documentary.¹⁴⁷ In the final phase, the verdict is rendered. Suits that have stalled because of lack of action by the plaintiff are automatically dismissed.¹⁴⁸

Appeals may be made from lower court rulings. In a few sorts of suit, a higher court must review the lower court's decision.¹⁴⁹ In all, the ordinary process is long and expensive to both parties.

Land disputes subject to summary process are resolved in "executive trials." These resemble ordinary suits, except that the amount of time required to complete each stage is substantially

¹⁴³See Código de Procedimiento Civil, Arts. 1476-1480, 1429-1451, 1529-1585.

¹⁴⁴See Código de Procedimiento Civil, Art. 1021-1022.

¹⁴⁵See Código de Procedimiento Civil, Arts. 237-242. The distinction between the two types of exception is that dilatory challenges merely argue that the claim is not yet ripe, or wrongly accuses the named party, whereas a final exception, argues that the claim cannot be brought at all. An example of such a challenge would be *res judicata*. Final exceptions, however, need not be made before answering the complaint. Hence, a *res judicata* claim need not be made until just before a judgement will be rendered. See Código de Procedimiento Civil, Arts. 819-828, 1038-1040. Note that a party who loses more than three dilatory challenges may be fined in order to discourage meritless delay tactics. See Código de Procedimiento Civil, Arts. 243-244.

¹⁴⁶See Ley Orgánica del Poder Judicial, Art. 94.

¹⁴⁷See Código de Procedimiento Civil, Arts. 1090-1093.

¹⁴⁸See Código de Procedimiento Civil, Art. 397.

¹⁴⁹See generally, Código de Procedimiento Civil, Arts. 458 et seq., 2046-2056.

shorter. Attachment is the most common situation in which an executive trial is used.¹⁵⁰ Typically, a creditor seeks to protect his security interest while his underlying claim is being resolved. The only issue in the proceeding is whether the debt instrument is legitimate. If it is, the property pledged as security can be seized, placed into receivership, or attached. This order will be inscribed as an "anotacion preventiva" in the RPIM, which will prevent the property from being sold by the debtor pending the resolution of the creditor's principal claim. Appeals from executive trial may be made upon the posting of bond for the property at issue.¹⁵¹

B. Illustrations

Set forth below are some examples of common property disputes and the manner in which they are likely to be resolved.

Multiple Titles

i) González is interested in buying land from Gómez near the coast. Gómez presents an apparently valid title to the property, but González, not satisfied, hires a notary to conduct a complete title search and obtain a certification from the local RPIM office. All appears correct, and the purchase-sale agreement is signed and consummated. Two weeks later, González, who resides in Managua, receives a phone call from a Mr. Barrios, who claims to have a legitimate title to lands including Mr. González's new property.

While common, the legal resolution of such cases is unclear. Often, the new owner chooses to "wait and see" rather than invest more resources against what may turn out to be a ghost claim. Many in Nicaragua suggest that organized groups watch the registry for property transactions and then attempt to extort new owners into settling meritless claims in order to "avoid problems."¹⁵²

ii) No one in Nicaragua knows exactly how much land is registered in the RPIM. Estimates range from two to six times the total area of the country. This implies that most land has more than one registered owner. This confusion derives to a large extent from the Agrarian Reform initiatives during the 1980's and the subsequent conversion of use rights granted on

¹⁵⁰See Código de Procedimiento Civil, Arts. 586-599.

¹⁵¹See Código de Procedimiento Civil, Art. 600.

¹⁵²Some stories are reminiscent of 1930's organized crime in the U.S., which would sometimes force legitimate business and property owners to pay "insurance" simply to avoid the possibility of trouble.

confiscated and expropriated lands to ownership titles. In fact, despite seizure by the state, many of these lands continued to be registered in the names of former owners. When new titles were issued, the old ownership records were not canceled, giving rise to two separate chains of title pertaining to the same tracts. These chains also sometimes subdivide, as land passes informally from parents to children, each of whom takes apparent title to the whole property.¹⁵³

The legal resolution of these cases may take years, and is highly charged politically. Moreover, because so many titles exist, RPIM records are neither taken seriously by the public nor treated as decisive proof of ownership by the courts.

To take the most simple example, assume WE-B Banana, a Nicaraguan exporter of bananas, had its land confiscated in 1981. Subsequently, five families were granted use rights to the land, and in the early 1990's each family obtained a title to one-fifth of the property. Demanding the indemnification that they never received, the former owners of WE-B bring a claim against the current owners. Under existing law, the state will provide WE-B with indemnification through an administrative process, and the current owners will prevail in quieting title to the parcels.¹⁵⁴

iii) Boundary disputes represent a third source of controversy common in Nicaragua. These disputes can arise when two or more parties have titles that use descriptions not tied to geodetic reference points, or when two or more parties obtain parcels from the same seller who partitions his parcel but fails to provide a clear map of the subdivision. If the parties are unable to reach an amicable solution, a judicial process will be necessary. The outcome, however, is uncertain. It is hoped that the new cadastre will minimize these conflicts.

Ejectment

Landholder L discovers that a family F has set up a small shack on L's property and is cultivating beans. The ease with which L can oust F depends on how long F has been on the property. If F has been on the land less than three months, L can obtain police assistance without

¹⁵³A separate but related problem is that even when a tract is divided among children, the boundaries of the tract are often not clear. Claims may develop between family members and, because rights are so amorphous, creditors are unwilling to extend credit for agricultural and other improvements necessary to increase the land's productivity.

¹⁵⁴The degrees of complication in such cases are infinite. Even in this simple case, simply granting orders for indemnification of WE-B and quiet titles for the five current owners is only the first step. WE-B and the government must still agree on a value, and the amount must be paid. This payment will be in the form of bonds under the current system. The current owners, too, continuously face the risk of being sued for their land. One case between a former claimant is not decisive against other potential claimants. In practice, title can never be decisively quieted.

resort to a legal action.¹⁵⁵ If F has been on the land for more than three months, but less than one year, L can obtain a judicial order in a summary process that the police will enforce against F. If F has resided on L's property for more a year, an ordinary judicial process will be required.¹⁵⁶ In the last-mentioned case, L may be liable to F for the value of any improvements made to the land by F, if F can show that they were made in good faith.

Anecdotal evidence suggests that the need to use more expensive judicial processes often arises in Nicaragua because local police who enforce evictions are sympathetic to the squatters. Even after a final court judgment is obtained, enforcement of it may take weeks or months.

Fraudulent Conveyances

Like other countries in the Region, Nicaragua suffers from organized schemes to sell property fraudulently. Once such a conveyance occurs, the legitimate owner may only be entitled to financial compensation from the party that committed the fraud and/or the notary that approved it. The good-faith buyer of such a property is not liable.

Administrative Error

There are two major types of administrative error. First, the RPIM may mistakenly reject an inscription application. Second, the RPIM may process an inscription application incorrectly, either failing to properly register the applicant's rights, or inscribing rights to which he is not legally entitled.

When the registrar or RPIM staff recognizes a problem before a document has left the office, corrections may be made *sua sponte*.¹⁵⁷ Once a document leaves, however, the interested party must request that the change be made.¹⁵⁸ In either case, the RPIM completes the transaction free of charge to the party. Though errors can be corrected and formerly rejected applications inscribed, these changes only have effect against third parties from the time they are actually made.¹⁵⁹ Changes do not "relate back" to the original date of presentation -- a fact that can cause

¹⁵⁵See Reglamento de la Policía, Art. 20.

¹⁵⁶The case is called an "acción de reivindicación."

¹⁵⁷See Reglamento del Registro Público, Art. 88.

¹⁵⁸See Reglamento del Registro Público, Art. 89. Where more than one party is affected by the change, all must agree to it. This requirement can give rise to its own set of legal actions since parties that benefit from errors are unlikely to want them rectified.

¹⁵⁹See Código Civil, Art. 3947.

significant injury to the party who finds that a mortgage has been placed on the property, or that it has been sold to a third party during the intervening period.

Where damages result from the omission or mistake, the registrar may be held liable in a civil action for monetary damages if it can be shown that the mistake was in fact committed by the RPIM office, and was not the result of an error made by the notary who signed the application, or the applicant himself.¹⁶⁰

Priority Cases

Nicaragua is a “race” jurisdiction. In other words, the first person to inscribe a right or interest in real property has priority over those who come later.

Priority is an important issue to creditors. In Nicaragua, creditors are able to protect their security interests during the time between approval of a loan and its execution by inscribing in the registry a special notation. The notation must describe the contractual promise of the loan recipient and the bank's agreement to provide the money. Once the loan is executed, but the priority of the creditor's interest will relate back to the initial notation. To illustrate, consider a hypothetical purchase-sale agreement.

A agrees to purchase B's home. B's mortgage will be canceled at the closing and A's creditor C will inscribe a new mortgage at that time. Upon agreeing to finance the purchase, C inscribes the intent to issue a mortgage the loan provisionally. This notation protects C from the possibility that A secretly contracts with another creditor with the intent to borrow twice on the same property. The second creditor will likely become aware of C's agreement with A and will refuse to provide a second mortgage, but, if not, C's interest will have priority. Similarly if the seller were to try to obtain credit against the home, C's claim would have priority over B's creditor. If C does not inscribe the loan provisionally, C runs the risk of losing priority to another creditor who extends a loan without begin aware of C's agreement with A.

¹⁶⁰See Reglamento del Registro Público, Art. 130-131. Criminal actions may also be brought in accord with the law. See Reglamento del Registro Público, Art. 133.

Public Land Disputes

Where parties claim land on public lands, title is unavailable. Nonetheless, the party may be able to obtain use rights in a quasi-lease arrangement.¹⁶¹ The extent to which these rights may approximate full ownership, and the terms of the "lease" are often disputed.

Where lands are declared to be public lands, existing land owners must be appropriately compensated through the legal process of expropriation by eminent domain.¹⁶²

¹⁶¹Nicaragua's indigenous groups for example lease lands on their state-granted reserves. Cf. Constitución de la Republica de Nicaragua, Art 89 (guaranteeing community lands to Atlantic Indigenous Peoples).

¹⁶²See Constitución de la Republica de Nicaragua, Art. 44 (as reformed by Ley 192, Diario Oficial, Jul. 4, 1995).