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THE RIGHT TO FOOD AND THE AGRARIAN SITUATION IN NICARAGUA

Fact Finding Mission Report of Via Campesina and FIAN International



FIAN INTERNATIONAL

Willy-Brandt-Platz 5
69115 Heidelberg, Germany
Tel.: +49-6221-6530030
Fax: +49-6221-830545
E-mail: fian@fian.org
<http://www.fian.org>

Written by Brigitte McBain y Ralf Leonhard,
with the cooperation of Ramiro Tellez, Martin Wolpold-Bosien and Bernd Kappes.

Translation and Proofreading: Brigitte McBain, Emma Blair, Nastja Horvat

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**Brot
für die Welt**
Ein Stück Gerechtigkeit

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R:10

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Summary

On invitation of the member peasant organisation of the Agrarian and Forestry Desk (MAF) (which is also member of La Via Campesina), and of the Nicaraguan Centre for Human Rights (CENIDH), the International Fact Finding Mission visited Nicaragua from June 22nd to 29th in order to analyze the realisation of the human rights to food and the agrarian situation in Nicaragua and to verify alleged human rights violations against peasant and indigenous communities. The Mission comprised of delegates from Honduras, El Salvador, Guatemala, Germany and Nicaragua, all members of FIAN International (Food First Information & Action Network) and La Via Campesina. The Mission was carried out in the framework of the "Global Campaign for Agrarian Reform" which has been set on by La Via Campesina and FIAN since 1999.

The overall aim of the Mission was to strengthen national efforts towards the Right to Food and the Agrarian Reform in Nicaragua. The Mission also intended to investigate whether the State has been fulfilling its obligations towards international public law incurred by signing the International Covenant on Economic, Social and Cultural Rights (CESCR). With the intention to verify complaints, the delegates of the Mission visited specific cases in the Departments of Matagalpa, Chinandega, Managua and the Caribbean Coast. During these visits the delegates were to investigate the economic situation for peasant and indigenous communities, and examine whether their social rights, such as land and food rights, were being threatened or violated.

The Mission delegates had the opportunity to talk to representatives of the Ministry for Agriculture and Forestry (MAGFOR), the General Attorney of the Republic, the Intendancy for Property, the National Commission for Peace, Reconciliation and Justice, FAGO, and the Mayors of Tipitapa y Waspam. They held various discussions with a number of farming organisations, which contributed significantly towards the understanding of the agrarian situation in Nicaragua; some of these organisations include FENACOO, UNAPA, ATC, ARNIG, and CNOR. Lastly, the Mission also collaborated with various civil society organisations, such as INGES, GISSAN, Civil Coordination, and SIMAS.

GENERAL SITUATION

Over the past 40 years Nicaragua's economy has been continually shaken by political unrest and the nation is currently, in terms of GDP, considered Latin America's poorest country. However a number of natural disasters have also played a significant role in destabilizing the country. Volatile environmental conditions, including continuous droughts and floodings, have contributed to the aggravation of the economic situation. In 1998 alone Hurricane Mitch destroyed infrastructure and large portions of crops in the west and northwest of the country, and ultimately led to the death of 2400 Nicaraguans.

Nicaragua has also experienced many forms of political hardships, including dictatorship, guerrilla warfare, popular uprising, a revolutionary regime, capitalist restoration, and an economic and military war promoted by the United States; this was followed by the presidency of the Arnaldo Alemán, who's government adopted strong authoritarian tendencies. The preceding leader, Enrique Bolaños, came to power with strong international support; however the government was entrenched in a power struggle with the National Assembly dominated by Sandinists and liberals loyal to the preceding President Alemán. His politics were marked by preference for the big enterprise and big farmers. The current government in power since January 10, 2007, are subsequently responsible for an impoverished country with unfavourable social traits, high unemployment, and an ever-growing unequal distribution of wealth. Additionally, the Free Trade Agreement between Central America and the United States favours few and harms many.

Alternatively, Nicaragua has an agrarian advantage over other Central American countries, being that it's human-per square-kilometre ratio is relatively large. It is essentially still an agricultural country, with large potential for food production. Nevertheless, it faces severe problems concerning hunger, malnutrition and poverty. The relationship between population and poverty varies greatly between urban and rural areas.

In urban areas which have a greater concentration of population (58.3%), there is a smaller percentage of poverty. Contrarily, in rural areas where 41.7% of the total population lives, there is a significantly high percentage of poverty. The Central and Atlantic Regions continue to be the most impoverished; they collectively represent 57.1% of national poverty and 73.5% of extreme poverty. The Central Region has the largest number of poor (41%) and extremely poor (57.1%). Considering that these two regions combined represent 43.5% of Nicaragua's population, it highlights the extent of the country's present problems regarding malnutrition and poverty.

The Sandinist Revolution left a radically changed agrarian structure when Daniel Ortega handed the government over to Violeta Barrios Chamorro in April 1990. This ultimately meant that more than a million hectares of land with agricultural potential had changed hands. The loss of the elections of the Sandinists not only meant a change in government but also a change of the system. All transformations carried out under the revolution were questioned by the new governors. By agreeing on a pact of transition, the speed and the extent of changes were curbed and the property of those who benefited from the Agrarian Reform secured. Convinced that the Agrarian Reform would never be questioned, the Sandinists had never undergone the task to officially legalise the massive land transfers. Sixteen years after the end of the Sandinist period, the legalisation of land handed over in the Agrarian Reform framework, has still not been completed. The lack of a systematic and complete land register – there exists only a partial register in the Pacific region from 1971 – contributes to the problems created by the Sandinist practice of registering transferred land under a new number without referring to the old number in the register. Those who benefited under the reform in the 80s and 90s still do not have a legal title and therefore live in an insecure situation or have been robbed of the land which had been handed over to them during the agrarian reform.

INSTITUTIONAL OMISSION AND DELAY IN REGULATING PROBLEMS IN THE AGRARIAN SECTOR

Upon visiting various regions, the Mission was able to verify the omissions and extreme delay with which past governments have acted in the implementation of Agrarian Reform legislation. Problems already surfaced as the Sandinist Government began registering land handed over with a new number without making reference to the number registered before. This situation for those who had been assigned land continued to decline during the times of neo-liberal governments led by Presidents Chamorro, Alemán and Bolaños, when former landowners attempted to reclaim their land. Therefore the establishment of new land titles, false documents and illegal land sales became frequent. This ultimately led to forced eviction threats and a climate of harassment. This indicates that the State of Nicaragua has not fulfilled its obligation to observe the right to

food for landless families, families cultivating land and families who are beneficiaries of land under various agreements.

The problem for those to whom land had been assigned, as well as those benefited under the Agreement for Peace and Reconciliation and under others like the Las Tunas Agreements, got worse with the following neo-liberal governors: Presidents Chamorro, Alemán and Bolaños, when former landowners tried to get back their lands, notwithstanding whether they had been indemnified or not.

MISSING RECOGNITION OF INDIGENOUS LANDS AND TERRITORIES

The Mission verified that in the case of the indigenous community 'Awas Tingni', the State of Nicaragua has not complied with its obligation to recognise and legalise the lands and territory of this community.

During the visit to the community the majority of the peasant families said that the new Sandinist government has expressed its political will to deal with the agrarian problem. Yet they added that it remains to be seen how these promises will be carried out in order to effectively solve agrarian conflicts and to provide the communities with the necessary resources so that they can produce their own food.

During the meetings held with the authorities about the cases verified by the Mission, the General Attorney of the Republic, the Intendancy for Property and the Council for Reconciliation, Peace and Justice promised to give special attention to the solution of the cases presented by the Mission.

The Mission did appreciate the political decision of the Government to acknowledge that national issues must be given priority, in particular, addressing the nation's alimentary insecurity problems. The Government has launched a "Zero Hunger" program and has gone to various measures to ameliorate the situation, for example distributing productive alimentary vouchers to rural women.

The Mission considers it highly important that a specific legal framework is established in order to confront the causes for hunger and malnutrition based on the basic human right to food. Therefore the Government's move to propose a law for alimentary security and sovereignty is considered a significant and positive step by the Mission.

It was also suggested that Territorial Operative Commissions could be responsible for helping solve the agrarian conflicts through mediation and negotiation. In the special case of the indigenous communities a special vice-intendancy will be responsible for the definitive demarcation and titling of the territories of the indigenous communities in favour of their legitimate owners.

RECOMMENDATIONS

Based on the observations made by the International Verifying Mission, Via Campesina and FIAN International, is it recommended to the Government of Nicaragua:

1. The government prioritizes fighting hunger, defending the right to food, and promoting the alimentary sovereignty.
2. To solve the existing conflicts in the agrarian sector of Nicaragua, it is necessary to implement a land policy which will allow access to land, and guarantee its security and use.
3. A Territorial reorganisation is necessary, which will include the revision of the land register of the whole country and regulate properties (that at this moment show a lack of security or which show different property titles.)
4. It is necessary to follow up and strengthen the agrarian conflicts solutions. (This should be done under observance from human rights groups, including State, peasant, and indigenous organisations.)
5. To promote the economic, social and cultural rights of rural women. This will ensure land titles are handed over to women, and will additionally improve the health, educational and political situation for women.
6. The demarcation and titling of the indigenous territories, which will restore ancestral rights and prevent potential conflicts which may result when settling land problems arise.
7. Participation and transparency are essential in the planning and implementation of public policies regarding the right to food, land and rural development.

FOLLOW-UP OF THE MISSION

The current report will be handed over to the peasant and human rights organisations of Nicaragua, as well as to the relevant government institutions. The report will also be presented to; the Committee on Economic, Social and Cultural Rights of the United Nations, (to the special rapporteurs for the Right to Food, the Right to Housing and the Human Rights for Indigenous People), as well as to the Interamerican Commission of Human Rights of the OAS. The Nicaraguan government's initiatives will be monitored by the Mission to ensure the fulfilment of their pledges.

Via Campesina

viacampesina_cg@amnettgu.com

FIAN – Internacional

wolpold@fian.org

1. Introduction

FIAN International and La Vía Campesina undertook a mission to reaffirm Nicaragua's current agrarian status based on the contents of the Global Campaign for Agrarian Reform. This was conducted in order to investigate the plausibility of the agrarian reform, and to analyse the fulfilment of human rights. The mission collaborated with the Agrarian and Forestry Desk (MAF), members of La Vía Campesina, and the Nicaragua Centre for Human Rights (CENIDH). The Verifying Mission visited Nicaragua from June 22 to 29th.

FIAN is an international human rights organisation promoting the Right to Food. It was founded in 1986, has consultant status with the United Nations and has members in over 50 countries. The purpose of FIAN is to achieve the worldwide validation and observance of International Human Rights Treaties. FIAN works towards the realisation of the Right to Food of those individuals and groups threatened by hunger and malnutrition. The central office of FIAN is in Heidelberg, Germany.

La Vía Campesina is an international movement that assists farming organisations, farmers without land, rural women and indigenous communities in approximately 175 countries worldwide. The principal purpose of La Vía Campesina is to improve economic conditions, social equality, justice, the defence of land and alimentary sovereignty. The organisation also works to create sustainable and equitable agricultural production based on small and medium sized farmers. The office of the International Operative Secretary of La Vía Campesina is in Jakarta, Indonesia.

CENIDH (Centro Nicaragüense de Derechos Humanos), is an organisation that promotes, defends and protects human rights as an essential element of democracy. It offers active and moral support to those who are; defending themselves during conflicts, pro-positive mediation, educating and mobilising communications, lobbying with authorities, and sectors through investigations and the use of formal and non-formal defence mechanisms of Human Rights. The work of CENIDH is based on the Political Constitution, the Laws of the Republic, and the Universal Declaration of Human Rights, which have been ratified by the Nicaraguan government. The Centre is comprised of various departments, which include the department for Legal Matters and the department for Education and Communication. The three branch offices are based in Estelí, Juigalpa and Matagalpa.

CENIDH is part of the Nicaraguan Chapter of the Interamerican Platform for Human Rights, Democracy and Development, which was founded May 15, 2007 in a meeting which united various organisations for the defence of the Economic, Social and Cultural Rights (ESCR) in Nicaragua. These organisations prioritised their work for the realisation of the ESCR of democracy, development, and due to its importance in the country and worldwide, to environmental issues.

The Agrarian and Forestry Desk (MAF) was founded in 2002 as a coordinator between social sectors and small agrarian and forestry producers with national NGOs (who are directly connected with activities in the agrarian sector.) MAF comprises of two networks; First, the Agrarian and Forestry Coordination (CAPFONIC), which consists of the Rural Workers Association (ATC), National Agrarian Union of Associated Producers (UNAPA), National Coordination of Retired Officials (CNOR), Federation of Forest Owners in Nicaragua FEDUBONIC, Association of Resistance in Nicaragua Israel Galeano ARNIG, and Federation of Agricultural Cooperatives R.L. (FENACOOOP). And secondly, the Agricultural Network, which consist of 42 NGOs which work in the rural sector (like the Federation Augusto Cesar Sandino FACS, Centre for Investigation, the Promotion and the Rural and Social Development CIPRES, CESADE, NITLAPAN, etc.) The two networks meet once every month and on specific occasions when required. Its agenda comprises of, but not inclusive to: the Alimentary Sovereignty and Security, the Alternative Trade, Environment and Natural Resources, the realisation of a new Integral Agrarian Reform, and the promotion of a new Law for Agrarian Reform.

The Global Campaign for Agrarian Reform, which FIAN and La Vía Campesina have been promoting since 1999, adapted the human rights tool of the Verifying Missions. The objective of these Missions is to verify charges where Human Rights to Adequate Food has been threatened or violated, due to the following reasons; non or mere partial implementation of the agrarian reform, an alternative of agrarian reform, or repression of activists and their organisations.

Therefore, the Mission's goal was to investigate whether the State of Nicaragua is abiding it's obligations to the International Covenant on Economic, Social and Cultural Rights (CESCR) with regard to agrarian reform and in particular, the Right to Adequate Food. Subsequently, the members of the Mission visited six communities, facing different types of problems; The farms San Antonio de Oaxaca, Pintada, La Suana (all in the Department of Matagalpa), the farm El Ensayo in the department of Chinandega, and the farm El Timal in the department of Managua. In these cases the problems referred to the delay in the effective application of the agrarian reform program, to the non application of various contracted agreements between different governments and sectors of civil society. They represent symbolical cases which serve as examples for general problems regarding the situation of land ownership in Nicaragua. However, this is closely linked to a variety of problems which include violent evictions, threats, negligence on behalf of the State, the invasion of land by third parties, and illegal sales of land by land traffickers. All of these problems that the agricultural sector in Nicaragua faces, severely impedes upon people's Right to Food.

Additionally, the Mission visited the Caribbean Coast indigenous community of Awás Tingni, in order to verify the charges about the delay in the recognition

and demarcation of their lands. Even though the Interamerican Court for Human Rights ordered on August 31, 2001 that the State of Nicaragua must mark out the territory of this community within 15 months, nothing has since happened. This delay is used by third parties to invade the indigenous territory and illegally take possession of their resources, which consequently severely affects the life of the indigenous community.

The members of the Mission had also the opportunity to meet social and human rights organisations, which contributed valuable information and analysis, allowing a better understanding of the agrarian reform situation in Nicaragua.

Also, the members of the Mission held talks with regional and central public servants with whom they discussed the charges pertaining to the cases. They therefore wish to express their thanks to all authorities who supported the Mission.

At the end of the Mission FIAN International held a seminar about the CESCR/Right to Food, with the participation of those organisations who are dedicated to different subject matters related to the agricultural and forestry sector.

The Mission extends a special thanks to the Nicaragua Centre for Human Rights (CENIDH) for its help in the preparation of the mission. The mission also extends its gratitude to the Agricultural and Forestry Desk (MAF) for its company during the mission, and all authorities, institutions and other civil organisations who gave their assistance and support.

The present report comprises of five separate sections: the first describes the legal framework for the realisation of the agrarian reform as a human rights obligation seen under the international obligations of international human rights law, and under constitutional regulations. The second segment of the report describes the general situation regarding hunger, poverty and land ownership in Nicaragua, (with a special reference to the Free Trade Agreement, the situation of the indigenous population and women facing poverty.) The third segment follows with a description of the public politics related to the agrarian issue, which the government is implementing, and the answer of the International Community. The fourth section of the paper presents the Mission's reports on the particular cases that were visited during the mission. On the basis of the cases visited, the fifth part analyses whether the State of Nicaragua is fulfilling its human rights obligations in the investigated cases and whether the public politics and the way they are being implemented improve or harm basic human rights. Finally, the report gives a number of recommendations to the State of Nicaragua so that it may guarantee agrarian reform and thus the realisation of the DESC and the Right to Food, for all communities in Nicaragua.

2. General Information

2.1 LEGAL FRAMEWORK

2.1.1 International Obligations

Nicaragua has adopted the principal international human rights treaties instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified in 1992, and the International Covenant on Civil and Political Rights also ratified in 1992. Article 25 of UDHR¹ and article 11 of ICESCR² protect the right of every person to an adequate level of life, including alimentation. Article 11 of ICESCR recognises the fundamental right of every person to be free of hunger and obliges the State Party of ICESCR to adopt measures and concrete programs for this purpose, and in this context the reform of the agrarian regimes is explicitly mentioned.

The CESCR Committee of the United Nations, the body which watches over the fulfilment of the ICESCR, presented a detailed and authoritative interpretation of the Right to Adequate Food for international law. The Observation establishes in the normative content of paragraphs 1 and 2 of the ICESCR: "The right to adequate food is exercised when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement."

Paragraph 8 of the General Comment explains the basic content of the right to adequate food and determines what it includes:

- The availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;
- The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

By availability one understands the possibilities for an individual either to feed himself directly from productive land or other natural resources, or well functioning distribution, processing and market systems that

1 Art. 25 UDHR: Every person has the right to an adequate living standard which secures him and his family health and wellbeing, and especially, food, clothing, housing, medical assistance...

2 Art. 11, ICESCR:
State Parties to the present Covenant recognise the right of every person to an adequate living standard for himself and his family, including adequate food, clothing and housing, and a continuous improvement of conditions for his existence. State Parties will take appropriate measures to secure the effectiveness of this right, recognising therefore the essential importance of international cooperation founded in free consent.
State Parties to the present Covenant, recognising the fundamental right of every person to be protected against hunger, will adopt, individually and through international cooperation, the measures, including concrete programs, which are needed to: a) improve the methods of production, conservation and distribution of food with the help of using fully technical and scientific knowledge, the extension of principles about nutrition and the perfection or reform of those agrarian systems in such a way that the most efficient exploitation and use of natural riches will be achieved; ...

can move food from the site of production to where it is needed in accordance with demand. (General Comment, par. 12) Regarding accessibility the CESCR considers that it encompasses both economic and physical accessibility: Economic accessibility implies that personal and household financial costs associated with the acquisition of food for an adequate diet should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. The CESCR underlines specifically that socially vulnerable groups such as landless persons or other particularly impoverished segments of the population may need attention through special programs which will guarantee the economic accessibility to food. The physical accessibility implies that adequate food must be accessible to everyone, including physically vulnerable individuals, and to people living in disaster-prone areas and other specially disadvantaged groups. The General Comment explicitly mentions at this point the indigenous population groups whose access to their ancestral lands may be threatened. (GC 12, par.13).

Based on these arguments it is obvious that the direct availability of food by cultivating productive land by oneself is part of the basic content of the right to adequate food for individuals and rural groups. The possibility of feeding oneself directly from productive land implies the economic accessibility to productive resources: direct access to land and direct access to further productive resources are needed to be able to cultivate and to have food directly at one's disposal. This implies, that access to land to cultivate and be able to feed oneself, or to make use of other natural sources of food are part of the basic content of the right to adequate food.

The Special Rapporteur on the Right to Food stated in his report presented to the General Assembly of the United Nations in 2002 the relationship which exists between access to land, agrarian reform and the right to food. The Rapporteur maintains that "the access to land and the agrarian reform must be fundamental elements of the right to food"³, because "access to land is frequently indispensable to secure the access to food and to means of livelihood, and therefore, to guarantee that individuals are free from hunger".⁴

The Rapporteur interprets paragraph 2 of Art. 11 of the ICESCR which concerns reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources, as a call to realise agrarian reforms which will promote agriculture on a small scale, as small farmers are more efficient as big ones and better protect the environment.⁵

Paragraph 15 of the General Comment establishes in this context that the right to adequate food, like any other kind of human right, imposes three types or

levels of obligations on States' parties: the obligations to respect, to protect and to fulfil. The obligation to respect the existing access to adequate food requires that States not take any measures that would prevent such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources, and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable to, for reasons beyond their control, enjoy the right to adequate food by the means at their disposal, States have the obligation to provide that right directly.

Due to the close tie of land to the right to food, these three types of obligations can be applied directly to the access to land. The States Party to the ICESCR are obliged to respect, protect and fulfil the access to land, because land forms part of the basic content of the right to food and is particularly important for men and women who are peasants, to indigenous people and persons who live in rural areas and who do not have any alternative to earn their livelihood.⁶

The obligation to respect this binds all States Party to the ICESCR to refrain from carrying out, hosting or tolerating any kind of practice which might destroy the access to land and to productive resources of an individual or a group, or which might erode the legal status of having the right to accede land. In heed of the obligation to respect the access to land, one derives the obligation to guarantee the security of the landownership and the prohibition to carry out or promote practices of forced eviction and arbitrary displacements.⁷

Public authorities are as well obliged to protect the access to land from attacks or any kind of violation of this right by third parties, such as powerful landholders, enterprises, male family members of women, and other individuals and private agents.

The obligation to guarantee the access to land, particularly implies the realisation of an agrarian reform program which gives access to land and other productive resources to those without land. Therefore, States' Party should formulate politics of agrarian reform and the corresponding indicators to carry these out (as well as use to the maximum of its available resources as indicated in Art. 2 of the ICESCR.)

3 Ibid. Par. 30

4 Ibid. Par. 24

5 Ibid. Par. 30

6 The Special Rapporteur for the Right to Food has already adopted this interpretation and thinks it obvious that governments must respect, protect and realise access to land. Ibid. Paragraph 30.

7 The human rights standards referring to the security of land ownership and to forced evictions have been treated by the CESCR in General Observation (GO) 4 and 7.

Based on historic experiences of agrarian reform programs, the Special Rapporteur for the Right to Adequate Food cited a number of important elements involved for the success of agrarian reforms, such as: a radical reduction of inequalities in the land distribution, the redistribution of land in adequate quantity and quality, the legally secure property titles, the exact and up to date registers for land ownership, the access to sufficient other inputs like credit, water, transport, educational services and infrastructure, efficient administrative services regarding land, which must be just and adequately financed, and the breaking down of political obstacles for agrarian reforms.⁸

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) represents another instrument of international law for human rights, which is also relevant for access to land and for agrarian reform. Nicaragua ratified CEDAW on July 17, 1980 and is therefore party to this convention. Article 14 stipulates: "(...)States Party shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (...) to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes." The concluding observations of February 2, 2007, express the preoccupation of the CEDAW Committee that the Convention still has not been incorporated fully into the national legislation and that there exist no legal tools which guarantee its fulfilment. The Committee also reminds that Nicaragua has delayed creating a wide legal framework to eliminate the discrimination against women and to ensure that women enjoy human rights.⁹

Nicaragua also ratified in October 1990 the Convention for the Rights of the Child, as well as the Facultative Protocols of the Convention for the Rights of the Child which refers to the participation of children in armed conflicts and also, to the sale of children, child prostitution and the use of children in pornography. The Committee in its final observations of September 21, 2005 recognised that Nicaragua is one of the poorest nations in Latin America and that it was still suffering the effects of civil war and natural disasters. Nevertheless it recommends, and here only the most important is mentioned, that the State in compliance with Article 4 of the Convention should increase its budget for the implementation of the Convention, especially for economically deprived groups, like indigenous children. Furthermore, the Committee recommended that Nicaragua should take care that the Free Trade Agreements do not affect negatively the

rights of children, especially with regard to access to appropriate medicine, and that funds saved due to debt relief should be inverted in an adequate implementation of the rights of children and other social services.¹⁰

Referring to the right to land and territory of the indigenous people, Covenant No. 169 of the International Labour Organisation (ILO), which is the main international norm in this context, has not been signed by Nicaragua.

Nicaragua signed in 1979 the American Human Rights Convention "San José Pact" and has recognised the jurisdiction of the Interamerican Court for Human Rights in February 1991. Based on this convention, the Interamerican Human Rights Convention dictated its verdict in favour of the indigenous community Awas Tingni in 2001.¹¹ But until now Nicaragua has not ratified the additional protocol to the American Human Rights Convention concerning the Economic, Social and Cultural Rights, "San Salvador Protocol" which was validated in 1999. In this Protocol the Right to Food is again pinpointed.¹² In the context of the interamerican human rights system Nicaragua also ratified in December 1995 the Interamerican Convention to Prevent, Sanction and Eradicate Violence against Women.

All the aforementioned sources of international law for human rights make it very clear that to guarantee, protect and fulfil rights is an obligation of the State of Nicaragua. Within this context, it is also important to stress that to give access to, and to control land and other productive resources to those who do not have land and suffer hunger, is an indispensable condition to ensure the Human Right to Food and other DESC for many sectors of rural population.

⁸ General Assembly of the U.N. The Right to Food. Report prepared by Mr. Jean Ziegler. Special Rapporteur to the Human Rights Commission, in accordance with resolution 56/155 of the General Assembly, of February 15, 2002. U.N. Doc. A/57/356, par. 25.

⁹ CEDAW, Final Observations of the Committee for the Elimination of All Forms of Discrimination against Women: Nicaragua, February 2, 2007.

¹⁰ Convention on the Right of the Child, Committee on the Rights of the Child, 39th session, Consideration of Report submitted by Status Parties Under art. 44 of the Convention: Concluding Observations: Nicaragua, September 21, 2005.

¹¹ See also chapter 4.6 of this report.

¹² Art. 12

2.1.2 Constitutional Standards

According to Article 182 of the Constitution of Nicaragua, the constitution is the fundamental charter of the Republic.¹³ The Constitution, treaties, conventions and international agreements approved and ratified, the laws passed by the General Assembly and other legal dispositions of inferior standing, conform the positive national law in the aforementioned order. No law, no agreement, treaty, etc. which is contrary to the Constitution or might change its disposition would have any validity. This means that in the political order of Nicaragua the ICESCR stands under the Constitution in the legal hierarchy, but above national laws.

The Agrarian Reform is recognised in the Constitution (Cap. II) as an economic right of the population of Nicaragua. Article 106 determines that the agrarian reform is a fundamental instrument to democratise property and for just distribution of land. It defines that it is an instrument which represents an important part for the promotion and global strategy for the environmental reconstruction and sustainable economic development in Nicaragua. It also guarantees the ownership of the land from peasants who are its beneficiaries, as stated by law. In Art. 107 the agrarian reform eliminates the non-productive ownership of land; it defines the expropriation with Art. 44, which regulates the right to private property for movable and immovable goods, and to instruments and means of production. But it is also stipulated that in view of the social function of property, this right is subject to limitations and obligations, due to its public utility or social interest, according to how laws regulate its enjoyment. The mentioned immovable goods can be expropriated according to law, with a prior payment in money for indemnification. In Art. 107 the agrarian reform eliminates any kind of peasant exploitation of indigenous communities and those forms of ownership are being promoted which are compatible with the economic and social objectives of the Nation as established in the Constitution. The land owning regime for indigenous communities is regulated according to the corresponding law. Art. 108 guarantees the land ownership to all those owners who cultivate the land in a productive and efficient way, establishing particular norms and exceptions, in accordance with the aims and purposes of the Agrarian Reform. Art. 109 promotes the voluntary association of peasants in agricultural cooperatives, without gender discrimination; and according to resources it facilitates the material measures necessary to increase the technical and productive capacity, in order to improve the life of the peasants. In Art. 110 the State promotes the voluntary incorporation of small and medium sized agricultural producers into the economic and social development plans of the country, under associative and individual forms. And in article 111 the peasants and further productive sectors have the right to participate in the definition of agrarian politics of transformation, through their own organisations.

With regard to the rights of the indigenous people, the Constitution of Nicaragua mentions the rights of the indigenous communities in Article 5¹⁴ and confers a special position to the communities at the Atlantic Coast, but not in the same way to those of Masaya, León and Matagalpa/Jinotega.

The Communities at the Atlantic Coast are mentioned twice: First, in Title IV, Cap. I, which treats the Individual Rights: Articles 89 and 91 treat the communities in the Atlantic Coast as indissoluble part of the people of Nicaragua and that they therefore enjoy the same rights and have the same obligations. The Communities have the right to preserve and develop their cultural identity in the national union; to give themselves their own forms of civil organisation and administer their local affairs according to their traditions. The State recognises the communal forms of ownership of land of the mentioned Communities. Equally it recognises the use and enjoyment of the water sources and forests on their communal lands. The State recognises their right to free expression of their languages, art and culture. Article 91 stipulates that the State is obliged to dictate laws with the intention to promote actions which will ensure that no person in Nicaragua will be discriminated against due to his language, culture and origin.

Second, under Title IX, Administrative Political Division, Cap. II: Art 180 again speaks of the right of the Communities at the Atlantic Coast to live and to develop themselves under the forms of social organisation which correspond to their historic and cultural traditions. The State guarantees these communities the enjoyment of their natural resources, the effectiveness of their communal ownership forms and the free election of their authorities and representatives. At the same time it guarantees the preservation of their cultures and languages, religions and customs. And in Article 181 the State promises to organise, assisted by a law, the regimen of autonomy for indigenous people and ethnic communities of the Atlantic Coast. This article concludes that the concessions and deals for exploiting rationally the natural resources which the State has been handing over for these regions, must count with the approval of the corresponding Regional Autonomous Council.

For the realisation of the human right to food, Article 63 of the Constitution of Nicaragua underlines the State obligation to protect the right of the population of Nicaragua to be protected against hunger. Furthermore, the State must promote programs which ensure an adequate availability of food and its just distribution. Other parts of the ICESCR find their equivalence in Article 57 – Education, Article 59 – health, and Article 64 – adequate housing.

¹³ Constitution of the Republic of Nicaragua. Political Constitution of 1987, including: Law for Partial Reform of the Political Constitution of the Republic of Nicaragua – Law No. 192 of February 1, 1995

¹⁴ Art. 5, par. 3: “The State recognises the existence of the indigenous people who enjoy the rights, obligations and guarantees consecrated in the Constitution, and especially those to maintain and develop their identity and culture, have their own modes of social organisation and to administer their local affairs; as well as to maintain the communal ownership forms for their land and the enjoyment and use of this land, all in accordance with the law. For the communities at the Atlantic Coast the structure of autonomy is established in the present Constitution. ”

Considering the provisions of the Constitution as mentioned above it remains quite clear that the population of Nicaragua counts with a solid legal framework on national level which allows the demand to realise an agrarian reform and the fulfilment of the right to food as human rights.

2.2 GENERAL SITUATION AND THE AGRARIAN QUESTION IN NICARAGUA

2.2.1 Hunger and Poverty

Nicaragua with a GNP per capita of 700 US\$, is the second poorest nation in Latin America and the Caribbean. Only Haiti has a lower GNP per capita.

Nicaragua is still a fundamentally agricultural country, with a large potential for food production. Nevertheless it faces serious problems of hunger, malnutrition and poverty." The distribution of the population and of poverty is unequal between the urban and the rural areas: in the urban area there is the highest population concentration (58.3%), but it shows a low poverty margin, whereas in the rural area it is the opposite: to 41.7% of the population as a whole, a high margin of extreme poverty is attributed. The Central and Atlantic regions remain the most impoverished ones in the country; between the two they sum up to 57.1% of national poverty and 73.5% of extreme poverty. The central region is the one that has the biggest number of poor people (41%) and of the extreme poor (51%), even though both regions have almost half (43.5%) of the total population and therefore the problems of the present alimentary and nutritional insecurity."¹⁵

According to the Food and Agricultural Organisation of the United Nations, alimentary security is a "situation in which all persons have, in every moment, access to nutritive and not contaminated food, in order to lead a healthy and active life." In Nicaragua approximately one third of the population does not enjoy this privilege. Our country "shows vulnerability in the access, availability, consumption and biological use of food necessary for the balanced and secure development for life".¹⁶

The problem in Nicaragua is not the lack of food, but the lack of buying power of wide sectors of the population. About 1.2 million people suffer hunger because they do not have the necessary resources to consume the 2200 daily calories which are recommended by the Panamerican Organisation for Health (OPS). Their average intake is approximately 1740 calories. Based on information by FAO and own data, the Ombudsperson for Children and Adolescents informed in November 2004 that 45% of the population do not eat vitamins, iron and vital minerals in sufficient quantities.¹⁷

"In the rural areas the population consists of agricultural workers who receive part of their food from the production of basic grains for their auto consumption, and a small production of meat and milk cattle in some zones, and therefore the begin of the raining period and how the rains develop are decisive factors in the availability of their food and therefore of the alimentary security of their households".¹⁸

Roughly 29% of the 5.4 million inhabitants of Nicaragua suffer some kind of malnutrition due to the lack of basic food.¹⁹ The FAO put Nicaragua on a list of 38 countries which "pass through situations of humanitarian emergency".²⁰ In Latin America, Nicaragua is among those seven countries with the highest percentage of sub-nourished people. To the most affected sectors belong women, children and indigenous groups.

A national survey concerning the size of school children, published by the government in 2004, shows that 27,21% of the children in Nicaragua under 5 years old suffer chronic malnutrition because they have not been alimented well since their birth, as their parents lack economic resources.²¹ This number shows a considerable increase since the 1986 survey, when there were 23.9%. 20,7% of the children in first school year show deficits in body growth and psycho-motor development due to malnutrition, a fact which in some municipalities in the North like San José de Cusmapa, Telpaneca, Totogalpa, San Lucas and coffee growing areas affect more than 50% of the children between 5 and 6 years of age, as stated in the report.

During the past years, the offer of food increased in Central America almost 20%. But in Nicaragua the increase was only 10%, according to data of the FAO. Moreover, the poorest do not consume the more nutritious foodstuff.

"The national indicators of nutrition and consume of micronutrients have shown improvement in the urban areas of the country, whereas in rural areas the levels of deterioration have duplicated in almost all cases, whereby these have been indicated as vulnerable zones with problems of public health, like chronic malnutrition which affects up to 27.2% of the children between 6 and 9 years of age at a national level".²²

Both, people employed, as well as those unemployed and sub-employed, confront a crisis of buying power. In July 2006, the average price of the Basic Foods Basket reached C\$3,193.51, which meant an increase of 8% compared with the preceding month. The strong increase was attributed in the first place to the price increase of fuel. While the price of basic consumer products continued to rise, salaries remained stagnant. At present, one needs almost two minimum salaries in

15 Famine Early Warning System Network (FEWS NET): Situation of Alimentary Security, April 2006

16 Global Program for Food of the United Nations, October 2005

17 CENIDH, 2004-2005

18 FEWS Nicaragua: Situation of Alimentary Security, April 2006

19 UNDP, Human Development Report, 2004

20 Report: The state of alimentary security in the world", 2003

21 Second National Survey for Size of First Grade School Children, coordinated by MECD and MINSA, Managua 2004.

22 FEWS Nicaragua: Situation of Alimentary Security, April 2006

order to buy a basic food basket.

TABLE 1
INDEX OF REAL SALARIES BY CATEGORY (1996=100)

	2001	2006	Variation
Workers	67,9	64,1	-5,6%
Services	79,1	71,8	-9,2%
Administrative	100,4	88,2	-12,2%
Directors	104,9	108,7	3,6%
Technical and Professional Personnel	103,8	117,1	12,8%

Source: Central Bank of Nicaragua

The data of the Central Bank confirm what those employed with salaries do feel subjectively: even though the salary does rise in nominal terms, it has increasingly less value.

"The average national salary covers one and a half basic basket (153% coverage). In exchange this coverage decreases when we compare it with the noted minimum wage (not official), which shows a coverage of 56% of the basic basket of 53 products. In December 2005, the cost of the basic food basket, according to data of the National Central Bank was 2,794.83 Córdoba (163.14\$). The observed minimum wage (...) was 1,562.6 Córdoba. But this situation gets worse when we consider those salaries below the average like in the case of the agricultural sector (31%) and central government (34%) which corresponds to public employees as teachers and in the health, security sectors, etc...." ²³

In relative terms, this means that Nicaragua is the most expensive country in the region: "When compared, Nicaragua is the country which shows the highest arrears in the minimum wage with regard to its Central American equivalents. On an average the country has the lowest minimum wage in the region with 85\$ a month, and it has only more than Bolivia in Latin America which has an average minimum wage of 53.75\$. Chile and Costa Rica are leaders regarding the minimum wage with 660 and 450\$ respectively in Latin America; they have even more than Mexico (US\$ 118.2), Argentine (US\$ 200) and Brazil (US\$ 95)". ²⁴

The most recent census of poverty in Nicaragua followed at the end of 2006 without being published. The last official statistics are from 2003 and refer to 2001.

TABLE 2
NICARAGUA: TENDENCIES OF POVERTY, 1993-1998-2001 (%)

Year	Total Poor					
	National		Urban		Rural	
	Incidence	Change	Incidence	Change	Incidence	Change
1993	50,3		31,9		76,1	
1998	47,9	-2,4	30,5	-1,4	68,5	-7,6
2001	45,8	-2,1	28,7	-1,8	64,3	-4,2
Year	Extremely Poor					
	National		Urban		Rural	
	Incidence	Change	Incidence	Change	Incidence	Change
1993	19,4		7,3		36,3	
1998	17,3	-2,1	7,6	+0,3	28,9	-7,4
2001	15,1	-2,2	6,1	-1,5	24,7	-4,2

Source: Nicaragua EMNV 1993, 1998, 2001. (a)

(a) "Total Poor" in this report includes the extremely poor; therefore the extremely poor are subsumed under the category poor. (b) The incidence measured by the Counting Index (Po) is part of the population whose total consumption falls under the poverty line.

"Even though the poverty decreased significantly more in rural areas than in urban ones, the poverty and extreme poverty continue to be oppressively rural affairs. More than two thirds of the rural inhabitants are poor compared to less than one third in the urban areas. Also more than 25% of the inhabitants in rural areas show extreme poverty against about 6% of urban residents". ²⁵

Although according to official numbers, the percentage of poor has decreased, the absolute number those suffering from poverty is today higher than ten years ago due to the increase in population.

The World Bank defines that a person is poor when he/she has less than 2\$ a day and extremely poor when having less than 1\$.

The numbers of the World Bank, cited by official sources, define poverty taking consumption as only indicator. The government restricts itself to measure poverty by family expenditure, which is the easiest way to evaluate the economic level of a household. Furthermore, it is a system which shows the most favourable results. The Foundation for the Global Economic Goal (FIDEG), an institution directed by the ex-minister of Foreign Commerce of the Sandinist government, Alejandro Martínez Cuenca, uses three methodologies to measure poverty, „with the aim to approximate as much as possible a diagnosis of this reality: The method of Basic Unsatisfied Necessities (NBI), through which households are classified according to access to a number of important satisfying factors (quality of housing, access to drinking water and sanitation, school assistance and capacity of sustaining the household). By income or poverty line one understands the capacity of the household to buy a basic basket of goods and services. The integrated method of poverty

²³ FIDEG: Economic Observer, Nov. 2006, Edition 171

²⁴ Ibid.

²⁵ World Bank: Nicaragua. Report about Poverty, 2003

(MIP) considers being poor not only those who lie under the poverty line but also those who also present Basic Unsatisfied Necessities. That is to say that though the focus of poverty line measures the variations in the conditions of poverty in a short term, the focus of the Basic Unsatisfied Necessities does so for the long term.²⁶ This method leads to even more alarming results. For 2006, FIDEG speaks about 70% poverty and 35% of extreme poverty, respectively.

And the poverty tends to perpetuate itself because structures in the rural area have not improved. Access to health, drinking water and education cannot always be ensured for the rural population. About 800,000 children in school age do not attend classes and the functional illiteracy rate is growing. According to a study carried out by the Ministry of Education, Culture and Sports, about 900,000 people between 15 and 45 are functional illiterates. This group of women and men represent two thirds of the working force of Nicaragua.

The World Bank in its report puts the focus on the tender spot: "Amongst investments in human capital, education is the most critical related to the reduction of poverty and to improve productivity. Primary education and the literacy programs are key interventions in Nicaragua. An increase in coverage is needed and an improvement of the primary school quality, precisely the focus of the next program of Education for All (EFA). The literacy education for adults needs to improve focusing on young adults (15-24 years) with the highest rates of potential output, both private and social".²⁷

2.2.2 Agrarian Structure

2.2.2.1 Historic evolution of the land problems²⁸

When the FSLN reached power it declared the agrarian sector as priority. It wanted to promote this sector on a big and capital intensive scale, modify the land ownership and the mechanisms of accumulation. In this proposal there were different 'big periods' according to the economic and military situation. In 1979/80 the Sandinist government concentrated on confiscating the possessions of Somoza and his allies, and on the nationalisation of banks, exterior and interior commerce, and the exploitation of natural and mineral resources. In order to maintain control the State created the Area of People's Property (APP).

To solve the problem of the land the proposal was 1) give the confiscated properties to cooperatives, 2) confiscate big private estates in order to incorporate them to the State property, 3) colonise land at the agricultural frontier and the Atlantic region. Furthermore the proposal

was not only to attack the big estates but also the smallholdings with the purpose to promote cooperative organisation of peasant settlements or associative enterprises. Agricultural labourers and peasants were organised by the ATC in syndicates and the peasants the peasants in Sandinist Agricultural Cooperatives (CAS). Also credit and service cooperatives (CCS) were founded to receive credits.

In the second period from 1981 till 1984 a radicalisation of the State proposal happened, as pressure by the United States was building up, with a rising increase of military actions. There was still more emphasis on building cooperatives for the peasants or/and workers as part of the Sandinist program to reach their own agricultural model. In 1981 UNAG was founded, the National Union of Cattle Breeding Farmers which became the speaker for the non-antisandinist peasantry.

In July 1981 the Law for Agrarian reform was passed, which allowed the State to confiscate any kind of property for three reasons: 1-idleness and abandonment; 2-being traditionally land being rented; 3-being situated in a zone which had been declared Zone of Agrarian Reform by the State. The application of the Agrarian Reform had the intention to capitalise the state ownership, fortify the cooperative movement and militarily defend the revolution. Therefore, handing over land gave advantage to those who became members of the Sandinist Agricultural Cooperatives, lived in areas of military conflict, or who organised themselves in self-defence. During the elective campaign in 1984, the Sandinist government handed over 1,250.000 manzanas land in the framework of the Agrarian Reform, with an individual property title, benefiting 35.000 peasant families.

The third phase from 1985 to 1987 was more dedicated to guarantee the survival of the revolution, therefore the government searched for an alliance with the peasants. The government proposed to reform the use of land, allotting the Pacific to the agricultural export, the Atlantic for the exploitation of forests and tropical produce, and the North to cultivate coffee and breed cattle. Under this new line of planning there was amongst others a decrease in the subsidiaries of products for basic consumption. In June 1985 UNAG led an occupation of land in Masaya which initiated an opening for the distribution of land to individuals. In the end, the Sandinist government had to recognise the internal opposition of peasants.

In the fourth period until 1990, in the middle of 1988 the government adopted a program of structural adjustment with very severe measures, but even these did not lead to the desired effect of economic stimulus. At this time the North American intervention decreased making way for the counter revolution; in the end the Sandinist government negotiated with the Contras and called for predated elections in February 1990. The Peace Agreements required the suspension of the confiscations, whereby the Sandinist government was obliged to hand over the State land. Therefore, in 1988 298.000 manzanas were handed over, mainly

26 Living Conditions and of Poverty in the cities of Mangua, León y Granada, August 1992-1999, Sonia Agurto; published in the Economic Observer, Ed. No. 96, January-February 2000

27 World Bank. Nicaragua. Report about Poverty, 2003

28 This chapter is based on the report of Roberto Stuart et al: 1st annex to the Intermediate Project Evaluation: "Right to Land and to Productive Resources". Written for the Popular Assistance of Norway. SIMAS 2005

to individual peasants and those organised in CCS and in 1989 – in full electoral campaign – another amount of manzanas a little higher than the one mentioned was handed over. Confronting an economic crisis and a series of other problems like for example a force of 20.000 counter revolutionaries, the pressure of the United States and with a diminished social basis, the FSLN lost the elections with a 54% vote in favour of the Opposing National Union.

2.2.2 Present Agricultural Structure

The Sandinist Revolution left a radically changed agricultural structure when Daniel Ortega handed over power to Violeta Barrios de Chamorro in April 1990. More than 1 million hectares land used for agricultural production had changed hands. The preferred form by the revolutionary model was the already mentioned Sandinist Agricultural Cooperative (CAS), which meant a complete collectivisation. The handing over of land plots to individual producers was really the exception which became general in the second half of the 80s after thousands of farmers, affected by evictions and acts of war swelled up the ranks of the counter revolutionaries. The agro-industrial production concentrated in state land (Areas of People's Property APP), which in their majority had been confiscated from the Somoza family and its allies.

The electoral defeat of the Sandinists did not only signify a change of government but also a change of the system. All transformations which had taken place were questioned by the new governors. By means of a pact of transition it was achieved to limit the speed and profundity of the changes, as well as to assure the ownership of those benefited under Agrarian Reform. The large majority of these did not have legal property titles, as the titles of the Agrarian Reform had not been registered in the property register. In order to guarantee the stability in the rural areas and to assure a minimum of conditions to be able to produce, the former and the new governments gave guarantees to the thousands of beneficiaries of the Agrarian Reform.

Ironically, with the new conservative government, the Agrarian Reform picked up speed as thousands of soldiers of the Sandinist Popular Army (EPS) and members of the counter revolutionaries, which were demobilised in the context of the Peace Agreements, received land. Furthermore, the State farms were privatised or handed over to the farm workers in order to form the Property Areas of Workers (APT). In the middle of the 90s, the small and medium sized producers held together more than 70% of the land as farms and generated more than 60% of agricultural production, not only with regard to internal consumption but also for export.²⁹ As a whole, between 1979 and 1997, about one third of

the total of rural families (about 324 thousand families) had benefited by Agrarian Reform with a little less than one third (2 million 302 thousand manzanas or 28%) of the total of the agricultural land.³⁰

It is important to recall this history because it shows that the massive land distribution itself – even though it is a necessary condition for a more just agricultural politics -, still does not guarantee the Right to Food.

TABLE 3
EXTENT OF THE AGRARIAN REFORM PROCESS
(1979-1997)

Types of beneficiaries	Number (in 1000)	Area handed over (1000s of mzs)
1. Cooperativists Sandinist period	48,5	895
2. Individuals Sandinist period	12	431
Sandinist subperiod	(60,5)	(1326)
3. Nicaragua Resistance	18,5	465
4. Demobilised EPS y MINGO	3,6	80
5. "Recontras"	3,3	35
6. "Recompas"	0,7	13
7. Area Property of Workers	18	142
Subperiod Chamorro government	(44,1)	(735)
8- Traditional farm workers	4,4	135
9. Others	3,1	106
Total	112	2302
(% of national totals)	35	28

Source: Baumeister, *Peasant Initiatives*

The Sandinist Agrarian Reform intended to rescue the peasants from their traditional backwardness by creating cooperatives. Producers were obliged to associate themselves to become subjects of Agrarian Reform. Credits and technical assistance were linked to the associative form of work. Three reasons mainly led to the failure of this type of reform:

- The producers, used for generations to work individually, did not accept with sufficient agility the new form of work. The little readiness and capacity to organise themselves led to the development of new forms of bigwigs in the organisation of the cooperatives and fuelled the hostility of many producers against the revolutionary government.
- The Sandinist functionaries and technicians did not react with sufficient comprehension to the difficulties which arose in the cooperatives.

29 To convert the tragedy of Mitch into an opportunity for the human and sustainable development of Nicaragua. Proposal for the Reconstruction and Transformation of Nicaragua, Civil Coordination for Emergency and Reconstruction, Managua, May 1999.

30 Baumeister

- The cooperatives, as representatives of the collectivist ideology of the new system, became targets of the counter revolutionary aggression. Therefore, the cooperatives organised themselves more as defence collectives than as productive projects. Furthermore they were obliged to contribute a certain percentage of their members to the battalions of the Sandinist Popular Army.

Thus, at the end of the war, the majority of the cooperatives were destroyed or de-capitalised. This explains why it was so easy to undo the cooperative movement and to dismember their farms. For the peasants, peace did not guarantee tranquillity, but instead replaced the impairments of armed conflict by those of the new economic politics.

2.2.2.3 Agrarian Counter Reform

Convinced that the Agrarian Reform would never be questioned, the Sandinists did not make an effort to legalise properly the massive transfers of land. Sixteen years after the end of the Sandinist area, the legalisation of land handed over in the framework of the Agrarian Reform has not been completed. The lack of a systematic and complete property register – there exists only a partial register in the Pacific region of 1971 – adds up to the problems created by the Sandinist practice to register land handed over under a new number without referring to the former number in the register.

When Arnaldo Alemán became president in 1997, old land owners, encouraged by the return of the Liberal Constitutional Party, tried to recuperate their land, notwithstanding having received indemnification or not. In various cases, the former landlords - assuming to achieve a favourable verdict - evicted by force peasants from the land. In these cases the government did not fulfil its obligation, to protect the rights of those evicted.

The beneficiaries of the reform, who still did not have a legal title, continue to live with a precarious situation, or, like in the described case of the El Ensayo farm, were deprived of the land which had been handed over to them in the framework of the Agrarian Reform.³¹ Also groups who do not have titles have difficulties to obtain credits and have problems when selling the plot. The massive titling in the area of the transition (February to April 1990) and during the government of Violeta Barrios de Chamorro (1990-1997) did not suffice to legalise all the land distributed. Additionally, the government of Arnaldo Alemán introduced new criteria for the restitution and indemnification. In May 2000 the General Assembly approved a government project which reforms the laws of property 278 and 288, and creates property courts which are meant to solve about seven thousand property conflicts which still remained pending at that moment.

The Property Courts, which started work on May 8, 2000, and the new law answer mainly the pressures exerted by the United States which backs claims by its confiscated citizens in their majority old allies of the Somoza family or former officials of the ex National Guard who acquired citizenship shortly after going into exile. In the majority of the about 800 pending cases in court, when the new law was passed, the former property owners refused the payment of indemnification and insisted in the restitution. Without doubt, this legislation again created a situation of insecurity for those who were benefited by the Agrarian reform.

After passing the Law 278 about reformed urban and agrarian property, on December 16, 1997, insecurity in regard to land has increased. This law revokes the former practice of indemnifying the old owners and gives the title to the beneficiaries of the Agrarian Reform: it determines that the land holders lose the right to title, if the original owner has not been indemnified. This law was applied for the first time in mid April 2006 in the case of the coffee farm Jorge Vogl, situated in El Crucero, about 20 km south of Managua. The approximately 460 persons who had lived there for 20 years had to hand over the land to Alejandro Somoza, a nephew of Anastasio Somoza Portocarrero, son of the last dictator. The land holders were indemnified with 1.4 million Córdobas, a sum which amounts to about 240\$ per person. In June 2000, the president of the Association of those Confiscated, Lucía Solórzano, achieved to recuperate the farm El Callado, of 800 manzanas, also in El Crucero, and to evict about one hundred families who were beneficiaries of the Agrarian Reform. The same is happening with other properties in the hands of cooperatives.

It has to be pointed out that the first cooperatives which were dismembered and bought were those situated near the Pacific coast. There were private investors of all political parties and high officials of the army who bought land with high tourist potential at bargain prices. Of about 3,200 agricultural cooperatives with their 60,000 members which existed in 1990, only 600 survived until 2000, according to information received from UNAG. The Civil Coordination for Emergency and Reconstruction spoke out 3,600 and 350 respectively. This discrepancy was explained by the existence of a number of cooperatives which were already dissolved, but where the farm itself had not been officially dismembered.

The majority of the cooperatives were already de-capitalised in 1990 and did not produce or were only cultivated for subsistence. For the government of Violeta Barrios de Chamorro there existed two alternatives to solve the situation: give technical and economic support or to permit the fragmentation in plots and sale. A solution of "slow death" was chosen: to promote the division in plots and to postpone the sale. Law Nr. 278/95 prohibits the sale of Agrarian Reform land for a period of time of 5 years. Only when two thirds of the members should decide so, it can be sold. Also, in

31 See chapter 4.4



special cases, INRA could authorise the sale. As there was no economic support, the majority of the cooperatives entered a process of accelerated decomposition. There started a phase of marketing with a sales promise. The legal figure of cession of community permits the inscription of individual lots and their sale. This, with the aggravating fact that a promise to sell does not have the same value like a legal title.

TABLE 4
AGRARIAN STRUCTURE

Farms	Size	Area	% proprietors	% land
281 670		8,232.724 mzs.	100%	
266 000	< 200 mzs.	5,355.445 mzs	94%	65%
15 000	200-500 mzs.	2,237.709 mzs.	5%	27%
670	> 500 mzs.	639.570 mzs.	1%	8%

Source: CIPRES, based on official numbers

Also the APT sector was seriously affected. When the UPEs were privatised in favour of the workers, these did not receive the definite register as they had not paid. To receive the title, they had to appeal to the court and make a payment. On the other hand, banks did not give them any credit. If they wanted to sow, they had to go to the profiteers who charge an average interest rate of 5% monthly. Without adequate financing, the idle land could not be reactivated, became an economic debit and accelerated sales. To this problem adds up the bankruptcy and disappearance of the National Development Bank which gave credit to the rural sector, and the privatisation of those centres of storage which ENABAS (National Supply Company) had in order to build up reserves and to guarantee stable prices to the peasants. Of 130 storage centres which existed during Sandinist times, only five were left in 2006, and all in private hands.

In the former government of Enrique Bolaños, in accordance with his businesslike thinking, no cooperatives were founded but peasant enterprises. The basic idea is the same: small scale farming does not have any future. But the ideology is different. If a cooperative has the aim to guarantee a dignified life to its members, the enterprise has the objective to maximise the profits. Therefore, in the five years, 2001-2006, a large number of new cooperatives were founded. Sinforiano Cáceres, president of the National Federation of Cooperatives (FENACOOOP) speaks of 6,000 registered cooperatives and 1,500 active ones, of which 620 are members of FENACOOOP. These are not any more collectives, but instead cooperatives of different types: agricultural, agribusiness, agro industrial, saving and credits, and multisector ones.

The politics of the Bolaños government, even more than those proceeding, prevailed in its paternalistic style, very contrary to politics based on human rights. Even though Liberals as well as Sandinists in the General Assembly called for ordering the matter with the help of

an Agrarian Legal Framework, the government did not take any initiative. The second negative factor was the marked tendency of the liberal government to attend to their adherents. This meant that the State did not render its services to a person who needed it, but according to political affiliation or friendship. Loans were given to friends or political friends, even though there was not enough economic backing, and not to the producers who most needed it.

2.2.2.4 Land Legality

At the end of 2006, roughly 1.5 million hectares of land showed some kind of legal irregularity. This corresponds to 47.9% of the land with agricultural potential, according to number cited by UNAG. Those affected are mainly small and medium sized producers as well as cooperatives.

The lack of property title means that the producer does not have access to credit at a private bank. The majority of banks do not give credit to the sector of agrarian reform, even though one might have a registered land title, according to complaints made by UNAG.³²

The regulative territorial process is extremely slow. There are farms which are claimed by three or more people with titles from different periods. There also exist falsified titles or those achieved through bribes. Additionally, there are a growing number of claimants with United States citizenship, who due to the pressure exercised by their embassy, are enjoying a preferential treatment. They are almost all former nationals of Nicaragua who went into exile after the Sandinist triumph and acquired the nationality of the country of their choice. The number of 300 pending cases in 1990 increased fivefold until 2005. Now there are about 1500 "North Americans" who are claiming land.

2.2.2.5 The agricultural production

The agricultural and forest sector employs about 38% of the economically active population and generates 65% of the exports of the country, without taking into account the agribusiness part.³³ The production of basic grains, excepting rice, is almost exclusively in the hands of small and medium producers, as well as cooperatives.

TABLE 5
DISTRIBUTION OF THE AGRICULTURAL PRODUCTION
ACCORDING TO SOCIAL SECTOR

	Conventional private sector	Smallholders, cooperatives and associative enterprises
Corn	10%	90%
Beans	10%	90%
Vegetables	15%	85%
Vegetables and Fruits	15%	85%
Sesame	10%	90%
Cattle	20%	80%
Coffee	60%	40%
Rice	65%	35%

Source: UNAG, FENACCOOP, UNAPA, MAG, PNUD, 1996

In the decade 1994-2004, the production of some products increased significantly: beans 11.44%, sugar 11.33%, corn 10.6%, poultry 9.86%, coffee 8.8%, meat 2.76%.³⁴ The relatively good prices that were paid for these products on an international level stimulated the production. However, the increases were not due in first place to the increase of productivity, but to the increase of the cultivated areas with their corresponding impact on the agricultural frontier.

The agricultural activity, according to numbers of FENACCOOP, used about 1.1 million hectares. Approximately 80% of this is dedicated to the production for internal consumption, mainly of basic grains, which are cultivated under an extensive system. The remaining 20% serve for to grow traditional products for export with low levels of productivity, when compared with other Central American countries.³⁵

32 Interview with Ariel Bucardo

33 CENAGRO, 2001

34 Ibid.

35 Proposal of the agricultural sector to influence the negotiations regarding an agreement of association between the European Union and Central America. FENACCOOP, Managua, September 2006

TABLE 6
SOCIOECONOMIC BURDEN OF SMALL
AND MEDIUM PRODUCERS

Concepts	Small and Medium	Big	Total
Agricultural Producers	96	4	100
Land in farms	70	30	100
Foodstuff	60	40	100
Basic Grains (VBP)	78	22	100
Cattle by head	65	35	100
Poultry by head	83	17	100
Pigs by head	89	11	100
PEA Agricultural 2004	82	12	100
PIB Agricultural	60	40	100
Agricultural Export	55	45	100
Net Foreign Exchange	60	40	100

Source: CIPRES; based on data from III CENAGRO (2001), MAGFOR and Central Bank

"The volume of production and exports of the country can be duplicated without cultivating more land, but with the increase of productivity and giving more attention to what is being produced. Starting in 2000 there are new products which are increasingly important, like: oil producing plants, vegetables, cacao and fruit to name a few".³⁶ Moreover, if loans are offered to the peasants, they can cultivate land that is at present idle due to lacking finances.

"The agro industrial development has been limited and is marked by a weak linkage with primary production and the transformation processes. The most important agro industries are still sugar, rice mills, coffee processing, the meat industry and milk production, and recently the processing of fruit (juices) and of sesame".³⁷

2.2.2.6 Credit politics

In Nicaragua nobody cultivates without external financing. Some do not wish to risk their accumulated reserves for the new agrarian cycle; others do not have any reserves. It is a well known that the peasantry in Nicaragua does not dispose of the necessary capital to lift-off. With the privatisation of the banks, in particular of the National Development Bank which gave rural loans through its extensive network of subsidiaries, the small farmers were left without any source for getting finances. The Fund for Rural Credit, created in 1998 for the small and medium producer, is managed by the Institute for Rural Development at a very low level. A soft credit which considers the precarious situation of many peasants does not exist.

2.2.2.7 The Free Trade Agreement

On March 11, 2006, the Free Trade Agreement (CAFTA+RD) between the United States, Central America (excepting Costa Rica) and the Dominican Republic was introduced. Since the beginning of negotiations, NGOs, social movements, but also Church bodies manifested their opposition to the Agreement, as they feared that it would unilaterally favour the United States and large enterprises. "CAFTA + RD are a matter of liberalisation and the rights of direct foreign investments, which are specially those of the transnational enterprises and finance capital. Furthermore it treats the rights of intellectual property, the liberalisation of government purchases, extend even more privatisation of public services, the free entry and the right to work for company executives and technicians. But it does not offer any kind of answer to the global appearance of migratory workers: free entry, temporary workers, and workers without legal visa in the United States, to name a few".³⁸

In fact, the fears of the Jesuits were not unfounded: "Central America had to open its markets to the basic grains which the United States are producing, whereas this nation did not accept to negotiation the reduction or suppression of subsidies to the production and export of these basic grains. CAFTA maintains customs barriers which are not tied to customs fees (sanitary and phytosanitary) and Central America is in a technologically inferior situation to comply with these barriers. To this one must add the unforeseeable antiterrorist barriers."³⁹

Sinforiano Cáceres, President of the National Federation of Cooperatives (FENACOO), gives an illustrative example: "The worst with CAFTA is, and that might affect us all our lives, that they did not recognise the asymmetry so that products they produce and those we produce can really compete. Let's have a look at rice, for example. The United States are the fifth biggest rice producer in the world. A producer in the US has a cost of 9.4\$ to produce a sack (quintal) of rice. A producer in Nicaragua, from the Sébaco valley, from our cooperatives, has a cost of 8.45\$ to produce this sack. This means that regarding rice we could compete. But this will not happen because the US producer can sell and will sell his sack of rice for 7.65\$. Why can he sell cheaper than his production cost? Because he receives a subsidy from his government, and when he place in port a metric ton of rice (22 sacks) for sale here at 179 \$, he already received for this ton a 230\$ subsidy."⁴⁰

Cáceres fears that about 180.000 peasant families might lose their economic basis, as their products will be without any kind of production in a few years time: "In the Free Trade Agreement there are winning products

³⁸ Declaration of the Commission of the Social Apostolicism of the Province of Central America of the Company for Jesus. "Why we say NO to the ratification of the Free Trade Agreement between the United States, Central America and the Dominican Republic", published in Envío No. 272, Managua, November 2004.

³⁹ Ibid.

⁴⁰ Cáceres, 2006

³⁶ Ibid.

³⁷ Ibid

and losing products. The products which are relative winners are those which are not produced in the United States, but in Central America and Nicaragua. The main one of these products is coffee, but coffee is not part of the Free Trade Agreement, its commerce functions under different international norms. Other "winning" products are peanuts and sesame. Losing products will be all those which are produced in the United States and in Central America, and which will compete due to the Agreement. They are: maize, rice, beans and milk products, all these are part of our daily basic diet, and on which the small and medium sized production is concentrated in Nicaragua."⁴¹

At present, peasants in Nicaragua produce beans not only for the whole population, but also for export to El Salvador and Costa Rica. When beans are exposed to a competition with subsidised products or produced as monoculture, the product ceases to be profitable. The same applies to maize. One could already observe measures of disloyal competition by the government during these past years: when the harvest was collected, big quantities of maize were imported which inundated the market and lowered the price to a level below cost of production.

These politics and the Free Trade Agreement dispositions which affect the production of basic grains can be considered as violation of the Right to Food.

2.2.2.8 The indigenous people

The six different groups of indigenous people in Nicaragua, with just over 400,000 people, represent 9.5% of the country's population.⁴² In their majority they live in the Northern Autonomous Atlantic Region (RAAN). The biggest communities are the Miskitos y Mayagnas, also known as Sumus. There also live Ramas in the region of Bluefields, Southern Autonomous Atlantic Region (RAAS), as well as Masays, Subtiavas and Matagalpas in the Departments of Masaya, León y Matagalpa/Jinotega, respectively.

The autonomous regions received in 1987 an autonomous status, after a certain agreement between the Sandinist government and the indigenous population. Nevertheless, the following governments needed more than a decade to pass the regulatory law. This is why the government could hand over in 1993 mining, forest and fishing licenses to big enterprises with foreign capital for the exploitation of the riches of the Atlantic Coast without consulting the autonomous authorities. According to numbers of the Ministry for Development, Industry and Commerce (MiFiC), for more than 75% of the autonomous territory licences have been handed out.

At the same time, the Caribbean region remains the poorest one in the country. There is not one community at the Coast which does not have a high level of hunger

and malnutrition. The prosperity exploited by the enterprises, does not reach the families. As the Atlantic Coast serves as corridor for the drug traffic between Colombia and the United States, the commerce which most prospers are drug trafficking. "The Central and Atlantic regions remain the most impoverished ones in the country, the two showing 57.1% of the national poverty and 73.5% of extreme poverty".⁴³

There remains the institutional weakness which always marked the region. Roads are few and vulnerable to weather conditions. Under these circumstances the commercial exchange is difficult and the communities depend heavily upon auto consumption of their products. When the harvest is very good, it rots because it cannot be sold. When it is bad, there is hunger. Therefore, hunger periods are frequent phenomena on the Atlantic Coast.

In 2005, the Miskito and Mayagnas inhabitants along the river Coco in the Waspán municipality suffered a severe hunger period. Rats had finished off three quarters of their harvest. Moreover, "a severe raining period and tropic storms caused inundations which were the reason why thousands of indigenous migrated to the Republic of Honduras. Hurricane Beta left 56,000 damaged people in the RAAN and 5,000 in RAAS, which worsened the hunger problem in the communities along the river Coco".⁴⁴ The central government launched an emergency plan for Waspán through its National System for the Prevention, Mitigation and Attention to Disasters (SINAPRED) with money from the World Food Program (PMA), United Nations Children's Fund (UNICEF), FAO, World Health Organisation (WHO) and the United Nations Development Program (UNDP).

With regard to the environmental politics in the autonomous regions, the often expressed promise if the government to preserve the natural resources, is openly contradictory to the permissiveness of the authorities confronted with the massive migration of those damaged by hurricane Mitch to the Bosawas biosphere in the North of the country. In the Bosawas region there lives approximately 20,000 Miskitos and about 12,000 indigenous Mayagnas, whose communal land is being increasingly threatened. Even though human rights organisations consider that due to humanitarian reasons it cannot be allowed that settlers be expelled, the massive influx represents a direct result of the passivity of the authorities and sets dangerous precedents for the future. Since the times of Somoza, the extension of the agricultural frontier has been an escape valve for the government for the pressure of the landless peasants. The most important natural reserve in Nicaragua is now scenery for land invasions and trafficking of titles of possession and promises for sales. Thousands of affected who did not receive any kind of help from government settled in this reserve where cutting wood is strictly forbidden.

41 Ibid.

42 Interamerican Development Bank, 2000

43 Famine Early Warning System Network (FEWS NET), Geneva /New York, April 25, 2006

44 CENIDH, 2005

Of a total of 22 millions hectares of wood which covered the country in the times of Sandino's struggle, only 3.2 million have survived until the end of the century. Even though wood cutting has caused climatic upheavals and it is evident that the gravity of natural disasters has increased, the exploitation goes on. Contraband has multiplied and the illegal export of wood continues.⁴⁵

2.2.2.9 Women facing poverty

The patriarchal character of the society has formed strong customs even more in the lower sectors of society and in the rural areas. If food is scarce in a family, the last one eating is the woman because she serves first her husband and children. There is no accurate data regarding women facing poverty in Nicaragua, but it is clear that women deal with the greatest hardships.

In gender politics one can observe a marked chasm between discourse and reality. Women basically don't have access to credit and agricultural technology. According to a study of FIDEG, women produce between 25% and 30% of agricultural production, not only for auto-consumption but also for the national and international markets. But they only own about 10% of the land and receive less than 10% of rural credits. Only 12% of women working in agriculture have access to technical instructions and only 2% to technical assistance.

Women receive lower salaries than men; they show higher levels of poverty and girls' education is the first to be sacrificed. This means that in order to achieve equality as stipulated in the Constitution, severe action is needed.

Practically all agencies of cooperation have gender programs or work with groups of women. The better use of the factor work and especially of female work is considered an important contribution in the strategy against poverty. Nevertheless, in the strategy against poverty, prepared for the Consultative Group, women do not figure, except as transversal material which cannot be left unmentioned.

Notwithstanding official plans cannot omit to mention that women are more discriminated against: "birth rates amongst adolescents in the country are among the highest in Latin America; but these are even higher with the poor, who have less access to family planning and suffer much higher reproductive risks".⁴⁶ The carelessness regarding consequences of sex without protection has another grave consequence: "the occurrence of HIV/AIDS – even though it is the lowest in the region – has been increasing specially amongst very young women".⁴⁷

3. Public Politics

3.1 THE HIPC INITIATIVE AND THE FIGHT AGAINST POVERTY

In 1996, the World Bank and International Monetary Fund launched an initiative to alleviate the external debt to the poorest and most indebted countries. The *Heavily Indebted Poor Countries Initiative*, better known under HIPC, was assisted by the international network Jubilee 2000 and by the G7 summit in Cologne in 1999. Nicaragua, when being elected as beneficiary of the first debt condonation, saw itself obliged to present plans to eradicate or reduce poverty and to invest budgets intended to pay interests for the debt in health and educational programs. "Nicaragua is committed to devote the resources freed by the present exceptional treatment of the debt on priority areas identified in the country's poverty reduction strategy".⁴⁸ The IMF on his part supplanted its notorious adjustment packages - *Enhanced Structural Adjustment Facility* (ESAF) - of strictly neoliberal pattern by a poverty reduction program - *Poverty Reduction and Growth Facility* (PRGF).

To comply with these conditions, the government of Arnaldo Alemán presented a draft document to the National Council for Economic and Social Planning (CONPES) in January 2000 and in July of the same year, it sent a Poverty Reduction Strategy (ERP) to the World Bank. In October 2000, the document was translated into Spanish. This Refined Strategy of Economic Growth and Poverty Reduction (ERCERP) contemplates few specific measures against poverty, a part of the supposition is that the fundamental ways to reduce poverty is economic growth and the increase of productivity. For development of the rural sector, the so called Pillar 1, US-\$ 485.6 million were assigned, which is about 42.24% of the budget for the first five years.⁴⁹ The NGOs pointed out the weakness of this Pillar, due to its strong focus in infrastructure, but also due to the imprecise way, in which the productive sector of the country is being handled, specially the small rural producers and the small and medium sized enterprise. Pillar 1 is based on the following five components: The privatisation of state enterprises for public service, the modernisation and integration of the rural economy, the promotion of small and medium enterprise, the development of the Atlantic Coast and the promotion of strategic productive conglomerates, better known under its English name "cluster".

The Irish NGO Trocaire carried out an evaluation of this strategy, funded by the International Fund Agricultural Development (IFAD). In its conclusions, the document stresses the lack of solid proposals for the fight against rural poverty: "Given the precarious alimentary situation in the rural areas, a program meant to guarantee the alimentary security is essential, but is not included in the

45 Proposal for the Reconstruction and Transformation of Nicaragua.

46 Government of Nicaragua (2001), Refined Strategy for Economic Growth and Poverty Reduction, Managua, p.20

47 Regional Network of Social Watch, p. 163

48 Agreement between Nicaragua and Club of Paris, 2001

49 Government of Nicaragua (2001), Refined Strategy for Economic Growth and Poverty Reduction, Managua, p.66

strategy.”⁵⁰ Also in the gender aspect, ERCERP shows to be quite weak. Trocaire deplores that the focus on gender is not transversal: “In the discussion about poverty, the women are considered as a vulnerable group which needs special attention. Later on, in the very same pillars of the strategy, the interventions for women are reduced to social measures, above all in health. This is surprising, as some of the planned measures in Pillar 1, like for example those which promote the strategic sectors of tourism and Maquila, have an impact on the situation of women, as the labour force used in these sectors is mainly feminine. Women in these sectors are not mentioned and the document in general mentions them only in their role as mothers and the ones responsible for human procreation”.⁵¹

The network Social Watch reaches critical conclusions: “There is no coherency between the discourse and the agenda of projects and programs. For example, they speak about the enormous importance of supporting the MYPES, but less than 0.2% of the resources are allocated”.⁵² Furthermore, a good part of the measures were not really new: “The biggest part of the projects and programs already existed or was being executed, only their name was changed and the term poverty included. The actions did not start from an evaluation of what had been done and how it impacts poverty.”⁵³

Thus ERCERP did not give the promised results. Its impact on poverty is hardly visible and the very same governmental authorities doubt that the reduction of the poverty index is a result of ERCERP”.⁵⁴

3.2 NATIONAL DEVELOPMENT PLAN WITHOUT SPECIFIC MEASURES AGAINST POVERTY

In 2003, the government of Enrique Bolaños introduced the National Development Plan, which substituted ERCERP. This plan was approved by the donor community at the meeting of the Consultative Group in October 2003. The abolition of the Ministry of Social Action (MAS) also ended the program for alimentary security which this ministry administered.

This NDP has caused much controversy. The organisations of civil society, local authorities and representatives of the universities, integrated in the Lobby Group South-North (GISN) oppose the focus of the NDP due to the negative impact which it might have in rural areas and territories which have been marked as having low potential, this means the poorest regions.

The NDP defines seven strategic sectors in which Nicaragua has comparative advantages in already developed territories or which have been marked as having high potential in order to facilitate the production and export. Business conglomerates will be

founded (“clusters”) based on foreign investments and the insertion in the flows of liberalised commerce. The public resources will be injected into the improvement of infrastructure and public services in these municipalities to serve the set of businesses of the conglomerates. The foreign investments are seen as motor for development. For the internal market and its impact on the national economy, there are hardly any resources. The actions meant for the areas of low potential are limited to the provision of basic public services and the social protection to reduce poverty. Economist Adolfo Acevedo Vogl, amongst others, has the opinion that in order to fight poverty it is necessary to redistribute: “That the increase might have a ‘wide basis’ the “poor must have growing possibilities of habilitation and productive restructuring”, which is quite difficult to harmonise with a “strategy which underlines the primacy of the (...) market in sectors like the exterior commerce, finances and agriculture”.⁵⁵

Trocaire adds: “The other big criticism by civil society is the unbalanced importance which is given to the economic growth without considering the distribution of resources and income. Even though the NDP can lead to an economic growth, the civil society pointed out that it could even more worsen the dissimilarities, above all when taking into account that it does not include any measures of affirmative action towards those groups which historically have been excluded from development processes, like women, indigenous people, afro-descendant communities, and disabled persons”.⁵⁶

GISN has elaborated a counter proposal based on an endogenous development and peasant economy, small and medium rural producers, small and medium enterprise (PYME) and food security. Foreign investments should be selective in function of compatibility with the territorial development plans and the endogenous focus. With this scheme, the government would ensure functions of coherence, equity and redistribution to achieve a balanced development and poverty reduction.

Trocaire doubts that the contemplated measures of the NDP in favour of peasants – promoting associative forms, titling of land and the development of a rural low cost credit system – will take effect. In reality, in practice there has been very little progress in the countryside. The rural credit depends on programs implemented by international NGOs and titling of disputed land is extremely slow.

It is obvious that producers with money are the ones who have been given preference by the Bolaños government. But the macroeconomic growth has been quite moderate. For the five year period 2002-2006, the economy of Nicaragua grew by a 3.2 percentage each year or 0.6% per inhabitant. What induced this growth, according to an analysis of economist Oscar René Vargas, was not foreign investment, but the total of foreign

50 Trocaire, p.39

51 Trocaire, p. 38

52 Regional Network of Social Watch, p. 153

53 Ibid

54 Ibid, p. 163

55 Acevedo Vogl (2003), p.3

56 Trocaire, p. 40

exchange remittances to families. The investments of a total of US-\$ thousand 26 millions were slightly lower than those which the government of the predecessor Arnoldo Alemán (1,146 mrd) registered. Moreover, more than half of these investments “reached Nicaragua with one clear purpose: to buy existing enterprises and not to create them: to appropriate the riches accumulated by the people of Nicaragua during the years and not to generate new growth deals and create employment.”⁵⁷

According to Vargas, the main support of the economy are the remittances to families which were five times higher than investments. In total, during the past five years the emigrants sent US-\$ 4,447 thousand millions to their families in Nicaragua. 70% of these came from the United States, another 20% from Costa Rica.

More than a million nationals of Nicaragua is working abroad and the massive emigration to the United States and to Costa Rica is still going on, because the creation of employment in Nicaragua is insufficient. Maquila, which in government plans offers an alternative for the rural workers and small producers, has created only 50.000 jobs in 10 years. This type of employment is precarious and only something for the young.

The negative evaluation of the economic successes of the Bolaños government is shared by Carlos Alberto Benavente Gómez, ex-executive of the Foundation Augusto César Sandino (FACS): “Even the multilateral financial bodies have recognised the failure of the adjustment programs: in Nicaragua, the international cooperation and the remittances to families have served to maintain the macroeconomic balance; the economic growth apart from being unequal, has been insufficient because it is lower than the growth rate of the population.; the internal debt has increased as a result of fraudulent actions and corruption; the very small, small and medium sized enterprises continue to be confronted with difficulties in obtaining credits, technical assistance and necessary institutional conditions; the exploitation of natural resources and the environmental deterioration have worsened; public services are getting worse all the time, and all this aggravated due to the persistent vulnerability towards external phenomena like the rise in oil prices”.⁵⁸

3.3 DEBT RELIEF DOES NOT INFLUENCE SOCIAL EXPENDITURE

The condonation of external debt in the framework of the HIPC initiative started in 2005 when Nicaragua could erase from its books 2,928 millions of US\$ of a total debt of US-\$ 6,584 millions registered in 1999. The relief was substantial as Nicaragua had to pay an average of \$262.7 millions interest per year (between 1994 and 1998). After the relief, servicing the external debt decreased to US-\$ 87 millions. But the government did not fulfil its promise to dedicate freed funds exclusively to social purposes. A good part was used to pay the internal debt which had grown extremely, mostly due to rescuing private banks.

The rehabilitation of six private banks and the emission of State bonds (Cenis) was one of the transactions which caused most discussions, as some civil servants and private bankers were able to multiply their personal property with one stroke at the cost of the taxpayer. The tax load is carried by those who consume.

“The total payment of the public debt amounted to about 58.7% of the tax income in 2003, and 47.9% in 2004, whereas only the payment of the Internal Debt amounted to 46.3% and 39.4% of those incomes, respectively. Against this and in order to compare relative priorities, the percentage of the total income of the government, which was dedicated to the total expenditure to reduce poverty, was only about 37% of these in 2003, and 36% in 2004”.⁵⁹

In the same period of time (2000-2005) in which the old debt was reduced, Nicaragua accumulated US-\$ 1.691 millions of new debts. Thus in December 2005, it owed US\$ 5.347 millions of public external debt, which is the equivalent to 380% of the country's exports.

3.4 THE “ZERO HUNGER” PROGRAM AND THE BILL ALIMENTARY AND NUTRITIONAL SOVEREIGNTY AND SECURITY

3.4.1 The Alimentary Productive Program (PPA)

This program, popularly called Program Zero Hunger, has been introduced by the new government in order to fulfil its promise to fight poverty and thus reach the first goal of the Millennium Development Goals of the United Nations: eradicate extreme poverty and reduce hunger to Zero. Originally, the government wanted to administrate the flagship of the program – the productive voucher – through NGOs which had the technical network for this. The idea was also that the NGOs would contribute part of their resources and that additional resources for the program would be achieved. But what happened was that the NGOs did not fulfil this hope and started to criticise certain technical elements of the program. They also began to question the way how the new government acted as being sectarian, secrete and authoritarian.

⁵⁷ Vargas, Oscar, René, The economic growth under the Bolaños government, published in “Confidential”, May 31, 2006

⁵⁸ Carlos Alberto Benavente Gómez: World Food Summit “ten years later”, Managua, 2006

⁵⁹ Acevedo Vogl: „The investment in Children and the fulfilment of the “Millennium Development Goals”, Managua, 2005, p. 28

The program is based on the CIPRES' experience with 3,500 beneficiary families. 500 cows were handed over in 3 years and the multiplication of these rendered 50% of the milk for a city near their community. Another example is that after installing a hundred bio digesters 50% of cooking wood could be saved. Orlando Nunez, director of CIPRES was named director of the CSSA, but in February of 2007 President Daniel Ortega took over himself the executive leadership of the Council and Orlando Nunez remained as advisor to the program.

The program is now administered by Magfor and directed by the Council for Alimentary Security and Sovereignty (CSSA) and it focuses on the 170,000 poorest rural families, of which 75,000 shall be attended after prior selection. Apart from the Productive Voucher, the program also has other components like the Educative Voucher and the Health Voucher, which are administered by the corresponding ministries. The program Zero Hunger started officially in June 2007 with the first handing over of the Productive Voucher.

The principal aim of the program Zero hunger is therefore the rehabilitation of the peasant economy in such a form that food production will be boosted and will thus supply rural communities and the country as a whole in the future. The main instrument of this program is the Alimentary Productive Voucher, which consist not only of a package of goods, but also helps to organise, capitalise, educate and give technical assistance to poor peasant families. The goods will be handed over to the families, but remain property of the women. The objective of the voucher is that each family in Nicaragua gets milk, meat, fruit, vegetables and grains, and that in the long run there will be a surplus that can be sold on a national level and for export.

The selected families receive a package of goods that consists of animals for reproduction, seeds, plants, bio digester, revolving credit, training and technical assistance in various fields, for example: gender, health, animal feeding, cooperatives, environment, selling. Each Voucher has the value of 2,000 US\$, of which 1.500 consist in the goods that the family receives and 500 US\$ for the technical assistance, training and operational costs for the organisation and implementation of the voucher. The benefited family must return 20% of the value of the voucher for the formation of a rural Savings Bank.



TABLE 7
BUDGET FOR ALIMENTARY PRODUCTIVE PROGRAM
GENERAL BUDGET FOR 15.000 FAMILIES PERIOD OF EXECUTION: 2007 (YEAR 1)

Nr.	Concept	Unit of Measures	Quantity per Voucher	Quantity per families 15.000	Cost per Unit US\$	Total Cost per Families	Families per Year 1 15.000,00
Component 1: Global Plan of Capitalisation for 15.000 families							
I.Agricultural Package							
1.	Cow pregnant	Unit	1	15.000	450,00	450,00	6.750.000,00
2.	Sow pregnant	Unit	1	15.000	170,00	170,00	2.500.00
3.	Chicken	Unit	5	75.000	6,50	32,50	487.500,00
4.	cocks	Unit	1	15.000	6,50	6,50	97.500,00
5.	Barbed wire	Unit	4	60.000	24,70	98,80	1.482.000,00
6.	Staples	Pounds	16	240.000	0,23	3,68	55.200,00
7.	Chicken Wire	Roll	1	15.000	20,00	20,00	300.000,00
8.	Food for Pigs	Sacks	3	45.000	15,00	45,00	675.000,00
9.	Concrete	Sacks	6	90.000	6,50	39,00	585.000,00
10.	Zinc Plates	Plate	6	90.000	12,75	76,50	1.147.500,00
11.	Blocks	Unit	200	3.000.000	0,10	20,00	300.000,00
12.	Nails	Pounds	5	75.000	0,18	0,90	13.500,00
13.	Biodigester	Unit	1	15.000	290,00	290,00	4.350.000,00
14.	Seeds Marango	Bag	1	15.000	10,00	10,00	150.000,00
15.	Plants Morera	Batch (300)	1	15.000	45,90	45,90	688.500,00
16.	Sugar Cane	Ton	0,5	7.500	70,00	35,00	525.000,00
17.	Taiwán	Batch	0,5	7.500	50,00	25,00	375.000,00
18.	Oranges	Unit	11	15.000	1,00	1,00	15.000,00
19.	Lemon	Unit	1	15.000	1,00	1,00	15.000,00
20.	Avocado	Unit	1	15.000	1,50	1,50	22.500,00
21.	Mango	Unit	1	15.000	1,25	1,25	18.750,00
22.	Nispero	Unit	1	15.000	1,50	1,50	22.500,00
23.	Vegetables	Batch	1	15.000	10,00	10,00	150.000,00
24.	Trees	Unit	5	75.000	1,00	5,00	75.000,00
25.	Multinutritional Block		1	15.000		10,00	150.000,00
Subtotal Productive Package						1.400,03	21.000.450,00
II.Training							
26.	Training	Workshop	4	60.000	10,00	40,00	600.000,00
Subtotal Training						40,00	600.000,00
III.Transport							
27.	Transport	Trips	10	150.000	5,00	60,00	900.000,00
Subtotal Transport						60,00	900.000,00
Subtotal Component 1:				1.500,03			22.500.450,00
Component 2: Management and Administration of Productive Voucher							
I.Execution of Alimentary Productive Voucher (Overhead)						500,00	7.500.000,00
Total General Budget for 15.000 Families Per Year						2.000,03	30.000.450,00

The government plans to attend to 15,000 families per year up to a total of 75,000 families in 5 years. The total cost of the Program is calculated to 30 million \$ per year. As the communities must select the families which will be beneficiaries, the government is setting up different Coordination Instances on area, municipal and departmental level. These new Councils of Civil Power, which according to information received are integrated almost only by persons politically close to the government, will write up the lists and take the steps to select the beneficiaries of the Productive Voucher.

Even though there is a lot of enthusiasm with regard to the Program, there is also scepticism and critique especially about how the new government does its planning and administration. Apart from the fact that NGOs working in the social agricultural sector feel they are not being considered and heard in this important process, already in July 2007 there were voices like the one of the mayor of Matiguás who said that this place faces extreme poverty and that the program had not even been announced. Representatives of some indigenous communities of Coco and Bocay complained that they weren't involved in the Program Zero Hunger. They said that the government help did not cover their needs and even if it does help some families (for example in the territory of the river Bocay, 77 Productive Vouchers were given out to the same number of families, where there are 4.000 families which need assistance), the structural problems must be solved to combat the situation of hunger which they are facing.⁶⁰ The official side answered that the Program is a long term intention, and that it has just started.

It is certain that the hopes for results of the Program are very ambitious and that it remains to be seen whether it will take effect and repercussion in the long run. Therefore it would be advisable to carry out an independent monitoring of the program to find out if CSSA is doing a good job and whether it is economically feasible to reach the aim to reduce hunger and to achieve production levels in order to satisfy the national necessities and in this way make a large part of imports redundant.

3.4.2 Food and Nutrition Security and Food Sovereignty Bill

After many failed attempts over more than a decade, the National Assembly of Nicaragua is going to vote the Food and Nutrition Security and Food Sovereignty Bill. After the World Food Summit in 1996, one of the first NGOs to lobby this Project was the Women's Movement Amanda Espinoza (Amnlae), whose present president Dora Zeldón already in 2002 when she was Member of Parliament, had already been working towards the realisation of this law.

But only in October 2006, the Commission in charge to follow up the Strategy to Reduce Poverty proceeded to dictate the Food and Nutrition Security and Food Sovereignty Bill under certain aspects which refer to the legal framework of the Constitution⁶¹, and to the international treaties signed by Nicaragua with regard to alimentary security⁶².

The project was presented to the Plenum of Congress and sent back to a special commission for its revision and to reach an agreement between the different political parties. The renewed presentation is planned for August 2007. The decision of 2006 referred to certain vital points of the Food Security, amongst others that the right to food is guaranteed to the whole of the population "respecting the respective cultures and the different ways of peasants, fishermen and indigenous people regarding agricultural production, marketing and management of rural regions, in which women do play a fundamental part...."⁶³ It also says that the new law must "convert itself in State Politics, and that it is therefore because it is public concern and social interest it is an obligatory and unavoidable fulfilment, therefore the government elected for the corresponding presidential period should take the law into consideration of the General Budget of the Republic and execute it in the corresponding ministries' strategies." And it continues: "This bill of law is an answer to the necessity for a specific regulation which will develop and constitute this matter in an harmonic way, because in Nicaragua there does not exist a specific common regulation which will promote what has been stipulated in the Political Constitution, the International Agreements and Treaties signed by the State of Nicaragua, all of which will be pass to become politics of the State, with legal force, once this Law of Alimentary and Nutritional Sovereignty and Security has been approved, and will thus be converted in public agenda and social interest and obligatory and unavoidable for those governing at the moment."⁶⁴

60 Newspaper El Nuevo Diario, July 6, de 2007: „Zero Hunger“ does not cover indigenous communities.

61 Article 63: „The right of the Nicaraguans to be protected against hunger. The State promotes programs which will secure an adequate availability of food and an equal distribution of this food.“

62 Human Rights Declaration, Art. 25. ICECSHR, Art. 11. World Food Summit (1996, 2002). Regional (Plan Puebla Panamá 2001) related to Alimentary Security

63 Sentence of the Special Commission for the Follow up to the Strategy to reduce Poverty, p. 6

64 Ibid. Sentence p.7

The proposed law apart from the alimentary sovereignty also included the subject of alimentary security. This refers to the aspect that the State must implement its programs, incentives etc. in such a way to guarantee both the protection of the inherited culture how food is produced, with regard to variety of seeds, plants, etc. (that is, to biodiversity), but also the traditional peasant production. Furthermore it includes an article about non-discrimination⁶⁵ and a very strong Citizen Participation.⁶⁶

A very important point in the new bill is the subject related to the ownership of land. The Chapter II⁶⁷ says: "To promote processes to accelerate the legalisation of land for small man or woman producers, for indigenous communities and to facilitate the access to land for peasant women, as title holder in her own right in individual or communal form." Considering that in Nicaragua the matter of property is a severe problem to be solved and there are many court cases to be processed revolving around the matter land, one cannot say whether there will be conformity about this paragraph, even though the proposed bill was passed by the Commission in the past legislative period.

Chapter III of the proposal refers to the organisation of a National System of Alimentary and Nutritional Food Sovereignty and Security for the implementation of the corresponding Politics and Strategies integrated by different bodies which are in charge:

- CONASSAN; National Commission for Food and Nutrition Security and Food Sovereignty
- SESSAN; Secretary for Food and Nutrition Security and Food Sovereignty to the Presidency of the Republic
- COTESSAN; Technical Committee on Food and Nutrition Security and Food Sovereignty
- Regional Commissions for Food and Nutrition Security and Food Sovereignty
- Municipal Commissions for Food and Nutrition Security and Food Sovereignty

One article which led to a strong polemic was the prohibition to accept alimentary aid, which might contain Genetically Modified Organisms (OGM).⁶⁸ In view of all these points which are still being questioned it remains to be seen whether the bill will be discussed and passed this year.

3.5 PRESIDENTIAL DECREE "GENERAL FRAMEWORK OF LAND POLITICS"

In 2006, the government of President Bolaños passed Presidential Decree Nr. 70-2006 which constitutes a "General Framework of Land Politics".⁶⁹ This Decree represents an important tool for the implementation of a Land Policy in Nicaragua. As it is not a law but a presidential decree, it remains to be seen whether the new government will adopt it and apply it as a whole or in parts as one part of its political development programme.

In this Decree, the Ministry for Agriculture and Forests (MAGFOR) "...will be responsible to promote the formation and functioning of inter-institutional and inter-sectional mechanisms of coordination, for the formulation of specific politics, strategies, plans and instruments which will lead to the implementation and true fulfilment, as well as the monitoring and evaluation of effects and impacts when being applied."

The fundamental motive for the Presidential Decree was the recognition that "the ownership of land is an important element for economic stability, good governance and social harmony in the country, as a priority of the State of the Republic is to improve present conditions of insecurity, with the intention to promote economic and social development of the country."⁷⁰ Apart from the necessity to treat the problems of restructuring the land holding and regulating the property rights (par. III), paragraph IV refers to the importance of the strategic land resources at present and in the future, which demands an integrated land policy.

Another important point treated in paragraphs V and VI is the question of the environment and as measure to "curb the environmental degradation", is suggested, "...to promote a change in productive culture and a major public-private coordination in the different visions of how to intervene in the territory."⁷¹ Further important matter is that the par. IX explicitly states that "the General Framework of Land Politics focuses its action on the gradual and integrated solution of the problems tied to the landholding ownership, in order to initiate a serious, sustainable campaign with a view of the common welfare, to achieve stability in regard to land property." The Decree also establishes that the institutions which form the competent body for Magfor and will be carrying out the General Framework for Land Policies, constitute a "System of Land Administration" (SAT).

In an Annex to this Decree, general objectives for its execution are stated. On an international level these are: The Reinforced Strategy for Economic Growth and Poverty Reduction (ERCERP), the Declaration of Istanbul, in which the legal insecurity of land ownership was identified as one of the main challenges to be considered, and the targets in the framework of the

65 Proposed Bill Title I, Art. 3, g

66 Proposed Bill Title I, Art. 3, o

67 Art. 5, 3.

68 Proposed Bill Art. 5, 8

69 La Gaceta – Official Daily Newspaper, 8-11-2006, No. 217, pp.8580-8599

70 La Gaceta, No. 217, p. 8580 pár. I

71 La Gaceta, No. 217, p. 8580 pár. VI

Millennium Development Goals, with which the United Nations Members States committed themselves to reduce poverty and to improve living conditions.

On a national level the Decree takes into account the lessons learnt from the effects and impacts which were the result of the applied politics until now, with regard to the land concerned. As causes, which were not considered in the implementation of agrarian land politics, it mentions warlike conflicts and sudden changes in the economic model of the country; the weakness and instability of the key institutions for managing land; the distributive and titling process for land which was impaired by the lack of recognition by successive governments; the legal insecurity; the way persons were benefiting who lacked productive capacity; unsustainable use of land; speculative land market; renewed concentration of idle big land holdings; environmental damage; lack of coordination of institutions involved in the land management; and a very important factor: "Land as resource has been used as a tool to tackle the different political and social pressures, thus causing the loss of its real value as means of production;..."⁷²

The Decree later on defines the General Framework of Land Politics in a general way, the institutional framework and basic concepts which are considered to be relevant in this context. There is a detailed description of "The Land seen in its Integrity", the "Use of Land", the "Land Ownership" and the "Security of Ownership", followed by "Forms of Property and their Exercise", the "Administration of Land", the "Regulation" and the "Function of Property". In this paragraph, the Decree refers specially to the relevant article of the Constitution of Nicaragua, Art. 103, in which the property forms "must be guaranteed and stimulated without discrimination to produce riches and all these under their free realisation, must fulfil a social function".

Chapter III of Decree Nr. 70-2006 stipulates the reigning principles of the General Framework of Land Politics, where in Guiding Principle I – "Guarantee of Property Rights" repeats that all the different forms of property submit to the superior interests of the nation and fulfil a social function. Another important Guiding Principle is VI, which refers to the Environmental and Economic Sustainability. Here the aim is to "slow down and revert the environmental degradation ..." and Guiding Principle VII repeats the Priority of Public Interest and says that "Land fulfils a social, economic and environmental function..." Guiding Principles IX and X have special importance. Nr. IX refers to "Equity of Gender" and promotes that the State will give priority to "invest women with capacities and resources to promote their access and effective empowerment regarding land, natural resources, administrative services and assistance in production." Guiding Principle X is dedicated to the "Social and Ethnic Pluralism of the Nation"; the State "recognises the existence of the indigenous communities

who enjoy the rights, duties and guarantees covered under the Political Constitution of Nicaragua...; it also stipulates the communal forms of property of their lands and their use, enjoyment and possession in accordance with Law."

Chapter IV of the Decree describes the "Guiding ideas of the General Framework for Land Policies". This chapter treats the subject of a lacking efficient property registry system, and that it is thought, that "there exists a causality relationship between a secure ownership and the socioeconomic development of rural households of the poor sectors and the poor ones with potential." Therefore, it is necessary according to Guiding Principle 1, the "Structuring of landholdings and consolidation of property rights for land" which will provide above all a legal and physical security to those owning rights of land. As an important task in this context, the following has been pointed out: "To achieve the development goals of the country, it is necessary to regulate the unending production of laws relating to the then actual situation, to end the incomplete and obsolete proceedings, to improve the legal administration so as to increase confidence of the population in the legal procedures, which moreover are slow and costly, to reduce the vulnerability and instability of the Institutional Framework."⁷³

The Guiding Idea Principle 2 in this context refers to the different connections and relations with other Public Politics (land use, gender equity, forest development, water resources, legal food security, population, etc.).

The objectives of the General Framework for Land Policies are described in Chapter V, in which the observations of the preceding chapters are expressed as specific goals to be realised by the State. Chapter VI defines the "Strategic Outlines and Actions of the General Framework for Land Policies". At the end, Chapter VII stipulates the "Managing Instruments of the Framework ..." so that the proposed goals can be reached. There exist a series of instruments which enable to implement the General Framework for Land Policies and which includes current valid politics, prevailing laws (for example: General Law for Land Register, General Law for Environment and Natural Resources, Law for Regulation, Structuring and Titling of Spontaneous Human Settlements, Law for Citizen Participation, Law concerning Reformed Urban and Agrarian Property, etc.), as well as law proposals, programs, projects and existing institutions, planning, organisations and civil society (only to mention a few). As an important aspect one must point out the Decree for "Citizen Participation" mentioned on the last page, which says "With regard to the ownership of land, specifically when proposing laws, and in the processes to regulate the ownership, the participation of different actors in the productive sector is necessary. There must grow a close connection between the beneficiaries, State and municipalities to guarantee the viability of structuring the ownership of land. The participation of

72 La Gaceta, No. 217, p. 8583, 8.

73 La Gaceta, Decree 70-2006, p.8591

the citizens in the definition of the problems, determination of priorities and resolution of conflicts are decisive to legitimize the decisions and to advance in the different stages of the process.”⁷⁴

In the context of the Strategic Guidelines and Actions of the General Framework for Land Politics, one has to mention specially the Strategic Guiding Line 11: “To propose mechanisms for land access for households of the lowest income with a housing and productive purpose”⁷⁵ which refer to the matter of poverty in both rural and urban sectors. It is distinguished between producers with land market access and those who do not have it, these are the poorest peasants and the landless peasants and it is suggested to outline “other mechanisms of land politics, aimed at the poorest group of households which are excluded from the market”.



⁷⁴ La Gaceta, Decree Nr. 70-2006, p. 8599

⁷⁵ La Gaceta, Decree Nr. 70-2006, p. 8597

4. Report about the cases visited

4.1 SAN ANTONIO DE OAXACA FARM, DEPARTMENT OF MATAGALPA

In 2002, a group of 54 agricultural workers (37 men and 17 women) took legal action against the owner of the farm William Benavides Chavaría in view of unpaid wages. The local judge decided in favour of the workers' group, stipulating that instead of payment, the farm "San Antonio" of 259 manzanas be handed over to them. But in February 2003 it was invaded by 43 peasants who said to have a letter of assignation which had been given to them by the government based on the "Las Tunas Agreement".⁷⁶ Since then different acts of human rights violations occurred, like evictions, people being beaten, hurt and various persons detained. Furthermore, since that date the workers could not make use of the property. The group has undertaken a number of negotiations with different State institutions, organized protests and demanded a solution in several instances at the State and national level (ILO, Property Intendancy, Ministry of State and others). They have only received promises to solve the problem; the last promise was made by the National Secretary of the FSLN that in the next days they would receive the definite land title.

4.2 FARM LA PINTADA, DEPARTMENT OF MATAGALPA

In 1990, a group of 48 peasant families received a rental contract from the State with a purchase option for the La Pintada farm with 600 manzanas. Their life was peaceful until 2002, when the rental contract expired and in October 2002, the State handed over an agrarian reform certificate to 30 demobilised persons. At the same time the original group found out that the property was located on the territory of the Matagalpa indigenous community, and consequently asked for their support. They received a document for the enjoyment and use of the property by the indigenous community. (The second civil district court of Matagalpa stated that the property is part of the territory of the Indigenous Community of Matagalpa and therefore the State does not have the right to hand out agrarian reform certificates for this area.) In 2004, 145 families arrived on the property assisted by the Intendancy for Property (under the Las Tunas Agreements). At present, the 30 families who had received letter of assignation do no live any more on the property as it was sold out to a single family. The original group of 36 families split up into two groups (21 and 15 families); the first one wants to keep the whole property for itself and took away the agricultural area from the

remaining group. The demand is now that the sale of demobilised group is annulled and that the government solves the problem of the original families by means of a property title.

4.3 LA SUANA FARM, DEPARTMENT OF MATAGALPA

In 1990, a group of 55 workers was given an option for purchasing the property called "La Suana" of 345 manzanas, situated in the Department of Matagalpa. In April 2005, a group of 40 people invaded it, saying they have a letter of assignation for 80 manzanas which the government of that time had handed over based on the "Las Tunas Agreements". This group sold the land and left in October 2006. During the 17 years of settlement on the property, the original group had to suffer evictions by the police, with persons being beaten, injured and detained. In spite of this situation they built their houses, a school, installed drinking water system and produced their own food and other agricultural products for the market even though there is not enough land. This is why they expect that the Superintendence for Property will give them the corresponding property titles.

4.4 THE ENSAYO FARM, DEPARTMENT OF CHINANDEGA

In 1992, the cooperative "Rafaela Herrera" with 71 member families (400 persons, 217 under the age of 12) was founded, and it received a letter of assignation for the property El Ensayo of 365,28 manzanas, situated in the department of Chinandega. The conflict started when a group of people emerged with an agrarian reform title, issued by the former government. Due to this situation, the members of cooperative have been evicted several times, they were beaten, injured and imprisoned, their crops were destroyed and drinking water wells poisoned; they undertook marches to the capital, went on hunger strikes and organized other actions in order to call the attention of the authorities to their plight, so that they might solve their problem. They installed a protest camp in front of the National Assembly in Managua in 2003, and they even undertook an action in which they took off their clothes and tried to march towards the Assembly. But an antistrike police unit was already waiting to cover their nudity and to take them to the police station. Because the media was present, the case received a high level of attention and the following day the protesters were received by government representatives.

In 2005, the National Property Court ruled in favour of the cooperative and did not return the property to the claimants. A year later, the property in question was registered in the name of the State of Nicaragua. Therefore the General Attorney of the Republic has been asked to annul the inscription of the agrarian reform title, which Ms. Carmen Deshón had reached, which is the precondition so that the Property Intendancy might be able to hand over the final title to the 71 families of the "Rafaela Herrera" cooperative.

⁷⁶ The Las Tunas Agreements: Due to the coffee crisis in 2002, after months of protests and occupations on the roads of Matagalpa of hundreds of agricultural coffee workers who suffered unemployment and hunger, the government of Nicaragua signed these Agreements. As part of these the Government promised to hand over, partition off and legalise various properties. However, in some cases it came to confrontations between settled peasants and with demobilised persons of the Resistance of Nicaragua who also according to the Peace Agreements had the right to receive land from the State.

4.5 THE EL TIMAL FARM, DEPARTMENT OF MANAGUA

El Timal lies in the Tipitapa municipality, Department of Managua. This property of about 36.000 manzanas has an extension of fertile land of more than 10.000 manzanas which can be used for agriculture, but only about 5.000 manzanas are property of the State of Nicaragua. The property originally belonged to the Somoza family or its allies and that is why it was confiscated by the State of Nicaragua in 1979. Between 1979 and 1990, the State cultivated sugar cane on the land which was for this purpose divided into squares with roads and access to irrigation. After 1990, the sugar plantation was handed over to the workers, who did not succeed in maintaining the sugar production or to introduce new crops, and therefore the farm was left abandoned.

In the context of the Peace Agreements it was decided to hand over the land to former fighters of the different groups. However, many of the former fighters did not receive any land and therefore in 2002 some peasant organisations and cooperatives whose members were former fighters without land, occupied the place called El Timal. At present there are 2 settlements and 17 agricultural cooperatives on the land, which comprise about 500 peasant families without land and 2.000 families from different parts of the country which were demobilised from the army, the police, the ministry of state, the resistance of Nicaragua.

In December 2006, Fian Honduras and Via Campesina made a first visit to the place to verify the situation on the spot.⁷⁷ They registered the following cooperatives which were noticeably present in occupying and demanding land in El Timal: "Reconciliación Campesina" with 168 members who occupy 1,680 manzanas; "Asociación Luchadores por la Paz" with 136 members who occupy 1,200 manzanas; "la Cooperativa Servicios Múltiples 3 de Marzo" with 132 members and 840 manzanas; the "Cooperativa Villa Jerusalén" with 70 members and 790 manzanas; the "Fundación Excombatientes por la Paz y el Desarrollo (FEPADE)" with 95 members and 840 manzanas; the "Movimiento Independiente de Militares Retirados sin Beneficio", with 240 members who occupy 1,200 manzanas. Two further cooperatives on the land are "Emmanuel" and "El Paraíso". All these organisations are members of the Agricultural and Forest Desk (MAF) and of the National Council of Social Organisations (CNOS). Some are part of the ATC, as well as of CNOR and ARNIG.

As the land in El Timal is State land, it is the task of the Intendancy of Property to attribute and hand over the titles. But this institution has handed out titles to third persons as told by witnesses, which is causing constant legal conflicts regarding the ownership of the land, as alleged owners demand the eviction of the peasants. Furthermore, the Intendancy for Property has maintained several times that the peasants are not former fighters and therefore have no right to the land. There have

been several evictions and also invasions of the property by other groups, all of which caused confrontations with several persons injured and imprisoned. There is also loss of crops caused by cattle of private owners. The peasant families live in a very precarious way, in many places they do not have any water, as the water wells (before there was one well in each land square) were partly destroyed, and they do not receive any kind of attention or formation, education for the children and health care. Therefore, Fian International sent a letter to the new Government on January 19, 2007, to call its attention to this case.⁷⁸ The municipal administration cannot give any assistance to the peasants of Timal as they do not have property titles and are therefore not considered in the municipal budget.

At present, the National Government has appointed an inter-institutional commission to attend the problems of this territory and of these groups. Therefore a revision of the claims shall be undertaken so that titles may be given to those really entitled under the agrarian reform. The demand of the group is to receive definitive land titles.

4.6 THE CASE AWAS TINGNI, CARIBBEAN COAST

The Mayagna people of Awás Tingni have been fighting since 1990 for the recognition of their ancestral rights over their territory. In view of the omissions of former governments, the Interamerican Court for Human Rights on August 31, 2002 decided, that the State of Nicaragua must mark the territory of the Awás Tingni community within 15 months. The Court recognised that Art. 21⁷⁹ of the American Human Rights Convention protects the right of the indigenous people to the communal property of the land on which they have been living since ancient times, even though they do not have a property title. The Court also pronounced that in accordance with Art. 29 b) of the Convention⁸⁰ "...prohibits a restrictive interpretation of the rights ..." and the Court further on says: "For the indigenous communities the relation to land is not a mere question of possession and production but a material and spiritual element which they might enjoy fully, also for preserving their cultural heritage and to transmit it to future generations. The effects the inherited right of the indigenous people might have, must be especially considered. As product of the customs, the possession of the land is sufficient so that the indigenous communities, who do not have a concrete title for the property of the land, might receive the official recognition of said property and its corresponding registration."⁸¹

78 FIAN International and La Vía Campesina, Special Intervention in the framework of the Global Campaign for Agrarian Reform, addressed to President Ortega, January 19, 2007

79 American Human Rights Convention, Art. 21: "Right to Private Property"

80 American Human Rights Convention, Art. 29: "Rules for Interpretation"

81 Interamerican Human Rights Court, Case of the Mayagna (Sumo) community Awás Tingni vs. Nicaragua, sentence of August 31, 2001.

77 FIAN Honduras; Jesus Garza, Informe Caso Timal, December 2006

In contrast to former governments, the present Government has given priority attention to the case of the Awas Tingni, which could be deduced from various steps taken in this year. On February 14, 2007, the Regional Autonomous Council for the Atlantic ratified the previous resolution by the Commission for Territorial Marking and Structuring, which will solve the problem of overlapping territory between the Awas Tingni community and three Miskita communities. Recently, the Secretary to the Presidency for the Caribbean Coast, Lumberto Campbell explained to the Awas Tingni community, that the process of marking borders would be initiated in these days and the handing over of the title would be done on August 9th of this year. When meeting the Mission, the Vice-Intendancy for Property confirmed this announcement by the Secretary to the Presidency. When visiting the place, the Mission said that this progress is of greatest importance and that this level of attention must be kept up in view of the problems which will arise in the context of the demarcation. The Mission also asked to consider the situation of threats and harassments which are rampant in the territory, and that therefore necessary measures must be adopted to give an efficient protection to the Awas Tingni community against any kind of aggression and hostility by third persons.

5. Conclusions

During the field visits, the majority of peasant families said that the new government has shown political will to approach the agricultural problems but that it remains to be seen how these promises will be put into practice in order to solve the agrarian conflicts efficiently and to give to the communities the necessary resources to produce their own food.

In the meetings held with relevant authorities about the cases verified by the Mission, the General Attorney of the Republic, the Intendancy for Property and the Council for Reconciliation, Peace and Justice expressed their engagement to give special attention to the solution of the cases presented by the Mission.

The International Mission appreciates the political decision of the Government to acknowledge as national priority that the problem of alimentary insecurity of its population must be attended to, which shows itself in the launching of the Program Zero Hunger, in particular by handing over the Productive Alimentary Voucher to rural women.

We consider it of utmost importance to be able to count with a legal framework to address the causes of hunger and malnutrition with a focus on the human right to food, and therefore we do appreciate the Government's support of the bill for a law of alimentary security and sovereignty. The bill is intended to be introduced again to Congress in August, and therefore the Mission hopes that after so many years of discussion this law will finally be passed by the General Assembly.

Likewise we consider it positive that Territorial Operative Commissions are being created for the solution of agrarian conflicts with the help of mediation and negotiation. This is especially true for the attention to the indigenous communities by a special vice-intendancy, which will be responsible for the definitive titling and demarcation of the territories of the indigenous communities in favour of their legitimate owners.

Based on the observations and verifications made by the International Verification Mission of the Global Agrarian Reform Campaign, concise recommendations were given which can be found in the Summary at the beginning of this report. The Mission also intends to do a follow-up to the report to see whether the concrete promises given in the meetings as well as those promoted publicly with regard to the "Zero Hunger" Program have been fulfilled in the announced period of time. It remains to be seen whether they will be supported by concrete results.

6. Annex

1. MEMBERS OF THE MISSION

FIAN International

Martin Wolpold-Bosien
Bernd Kappes
Brigitte McBain-Haas

Via Campesina

Iván Romero Jiménez, COCOCH de Honduras
Florencio Munguía Zarate, ANTA de El Salvador,
Domingo López, CUC de Guatemala.
Ramiro Téllez M. CGRA - Vía Campesina.

2. INVITING ORGANISATIONS

CENIDH

Bayardo Izabá
Gonzalo Carrión
Carlos Guadamuz
Georgina Ruiz
Adelaide Sánchez
Jairo León (Matagalpa)

Mesa Agropecuaria Forestal

Pedro Huertas
José Angel Cruz, ATC
Carlos Wayman

3. MAP LOCATIONS OF CASES



7. Acronyms

AGROINSA

Agro Industrias de Nicaragua Sociedad Anónima

APP

Area de Propiedad del Pueblo

APT

Area de Propiedad de los Trabajadores

ARNIG

Asociación de Retirados de la Resistencia Nicaragüense

ATC

Asociación de Trabajadores del Campo

CAFTA

Central American Free Trade Agreement

CAS

Cooperativa Agrícola Sandinista

CESCR

Committee on Economic, Social and Cultural Rights

CEDAW

Convention for the Elimination of All Forms of Discrimination Against Women

CNOS

Consejo Nacional de Organizaciones Sociales

CENIDH

Centro Nicaragüense de Derechos Humanos

CIPRES

Centro para la Promoción, la Investigación y el Desarrollo Rural y Social

CNOR

Comité de Oficiales Retirados

CSS

Cooperativa de Crédito y Servicio

ECERP

Estrategia Reforzada de Crecimiento Económico y Reducción de la Pobreza

ENABAS

Empresa Nacional de Abastecimiento

EPS

Ejército Popular Sandinista

FACS

Fundación Augusto César Sandino

FAO

Food and Agricultural Organisation

FENACOO

Federación Nacional de Cooperativas

FEWS

Food Security Early Warning System

FIAN

FoodFirst Information & Action Network

FIDA

Fondo Internacional de Desarrollo Agrícola

FIDEG

Fundación para el Desafío Económico Global

FSLN

Frente Sandinista de Liberación Nacional

GISN

Grupo de Incidencia Sur-Norte

GISSAN

Grupo de Interés de Soberanía y Seguridad Alimentaria Nutricional

HIPC

Heavily Indebted Poor Countries Initiative

ICESCR

International Covenant on Economic, Social and Cultural Rights

IMF

International Monetary Fund

INB

Ingreso Nacional Bruto

INGES

Instituto de Investigación y Gestión Social

IP

Intendencia de la Propiedad

LP

Línea de Pobreza

MAF

Mesa Agropecuaria y Forestal

MAGFOR

Ministerio de Agricultura y Forestal

MAS

Ministerio de Acción Social

MECD

Ministerio de Educación Cultura y Deporte

MiFiC

Ministerio de Fomento, Industria y Comercio

MINSAL

Ministerio de Salud

MYPES

Micro y Pequeña Empresa

NBI

Necesidades Básicas Insatisfechas

OPS

Organización Panamericana de Salud

PEA

Población Económicamente Activa

PMA

Programa Mundial de Alimentación

PNUD

Programa de Naciones Unidas para el Desarrollo

PRGF

Poverty Reduction and Growth Facility

PYME

Pequena y mediana empresa

RAAN

Región Autónoma Atlántica Norte

RAAS

Región Autónoma Atlántica Sur

SIMAS

Servicio de Información Mesoamericano
sobre Agricultura Sostenible

SINAPRED

Sistema Nacional para la Prevención,
Mitigación y Atención de Desastres

TLC

Tratado de Libre Comercio

UDHR

Universal Declaration of Human Rights

UNAG

Unión Nacional de Agricultores Ganaderos

UNAP

Unión Nacional de Acción Popular

UNICEF

United Nations International
Childrens' Emergency Fund

UNDP

United Nations Development Programme

WFP

World Food Programme

WHO

World Health Organisation



FIAN INTERNATIONAL

Willy-Brandt-Platz 5
69115 Heidelberg, Germany
Tel.: +49-6221-6530030
Fax: +49-6221-830545
E-mail: fian@fian.org
<http://www.fian.org>