

REAL PROPERTY RESTITUTION: RISKS FOR CLAIMANTS AND INVESTORS

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In the 1990s, several transitional governments addressed the issue of Communist-era property confiscations by allowing former owners and their heirs to lodge claims. One of the remedies offered to resolve claims was restitution. Restitution involved the return of the original property when possible. This remedy was essential for a variety of reasons including: demonstrating a break with the previous regime, providing vindication for former owners, clearing property titles, establishing respect for private property rights, and ultimately attracting investors.

The former owners of Cuban real property and future investors in Cuba are likely to face many economic, institutional, and social risks when, and if, a post-Castro government seeks to address Communist-era confiscations.¹ The experiences of former Communist countries give credence to these concerns. Any property that was in dispute was unavailable for investors. Restitution legislation that was improperly implemented, if applied at all, gave rise to doubts about the seriousness of the new regimes to

deal with past injustices. Residual Communists who continued to wage influence made many anxious that private property rights would not be respected. Real property restitution in Bulgaria and Nicaragua presented challenges that may serve as potential lessons (or warnings) for claimants and investors alike.

BULGARIA

When Bulgaria fell to Communism, the State took over ownership of all lands, including farms and forests, in order to eradicate “elements with capitalist tendencies.”² Many lands were forcibly relinquished to farming cooperatives, leaving the former owners with no rights over their property³ and their titles physically destroyed.⁴ Typically, the armed, Communist militia seized industries by force before actual nationalization legislation had passed. The militia looted the enterprises, evicted the owners, and announced to workers “that they had been liberated from the yoke of capitalistic exploitation.”⁵ Although most of the housing sector was nominally private,⁶

1. The Castro regime reached bilateral compensation agreements with several countries, including Canada, France, Spain, Switzerland, and the United Kingdom, for the confiscations of their citizens’ properties. This paper covers the remaining properties such as those of domestic Cubans and exiles.

2. Bulgarian Premier Vulko Chervenkov, as quoted in “Bulgaria to Purge Agriculture,” *New York Times*, 30 April 1950, p. 46.

3. “Soviet Bloc Pushes Drive on Peasants,” *New York Times*, 6 February 1950, p. 7.

4. Jean M. Due and Stephen C. Schmidt, “Progress on Privatization in Bulgaria,” *Comparative Economic Studies* 37, no. 1 (Spring 1995), 67.

5. Joseph E. Evans, “Iron Curtain Industry: Soviet Sphere Turns Ex-Factory Owners Into Jobless Fugitives,” *New York Times*, 25 February 1948, p. 1. Over 6,000 industries were seized.

6. Nominally private here indicates that occupants were greatly restricted in their rights to ownership and sales.

about 10,000 residences were also confiscated by the Communist government.⁷

In 1989 Communism collapsed in Bulgaria. The succeeding regime, led by former Communists, set out to reform the government under the demands of popular pressure. In the early 1990s, new legislation was enacted to deal with the injustices of property confiscations. The country's leadership, through democratic elections, shifted back and forth between the Bulgarian Socialist Party (BSP) and the Union of Democratic Forces (UDF). The former was made up of renamed Communists and the latter was a coalition of anti-Communists. Unsurprisingly, the BSP often attempted to restrict former owners and their heirs from regaining their properties. The UDF strongly advocated restitution, or at a minimum acknowledged the need to address the confiscation of properties.

As was common in many post-Communist nations, former Communists reinvented themselves as advocates of capitalism and its many trappings.⁸ They were known to have greatly influenced under-the-radar privatization dealings. Some observers accused them of “cherry-picking.”⁹ Bulgarians lacked trust in the members of their former government. They believed that the Communists who had previously skimmed Bulgarian funds and placed them in foreign accounts used those resources to monopolize shares in privatized companies.¹⁰

When the private property rights of others needed to be addressed, former Communists postponed transparent privatizations and real property restitution. “The [former Communists were] totally against restitution because that would return property to people that they had taken the property from. They tried to bypass restitution by insisting on a law that would compensate with participation in privatization by some kind of vouchers instead of returning the property in its real boundaries.”¹¹ Under Bulgarian restitution laws, property legally purchased by a private owner—that is, property not acquired due to the purchaser's influence with the State (previous regime)—could not be returned to claimants.¹² Former Communists purchased properties sold to them by their cronies and therefore made them unavailable to former owners. The old *nomenklatura* was on the inside track on major reform issues while average Bulgarians were left out.

The “privatization” of many smaller enterprises by Communists took place after the fall of Communism but before restitution laws had been enacted. Since there were no early measures to counteract these sales of state properties to private individuals, many claimants lost their opportunity to have their former enterprises restored to them. Even if a claimant could establish that their confiscated property had been acquired due to the purchaser's influence with the previous regime, the purchaser was allotted a protective deadline of three years before legal eviction.¹³

If enterprises had been purchased from the State “under the Order of the Council of Ministers of 1975”

7. Sasha Tsenkova, George Georgiev, Stoicho Motev, and Dimitar Dimitrov, “Bulgaria,” in *Housing Privatization in Eastern Europe*, ed. David Clapham, József Hegedüs, Keith Kintrea, and Iván Tosics, with Helen Kay (Westport: Greenwood Press, 1996), 112.

8. Even in small villages this type of “political opportunism” was evident. Cooperative members who only a few years before the end of Communism were Communist Party members denied after the transition of ever having supported the ideology and government. See, Deema Kaneff, “Responses to ‘Democratic’ Land Reforms in a Bulgarian Village,” in *After Socialism: Land Reform and Rural Social Change in Eastern Europe*, ed. Ray Abrahams (Providence: Berghahan Books, 1996), 108.

9. Ann Louise Strong, Thomas A. Reiner, and Janusz Szyrmer, ed. *Transitions in Land and Housing: Bulgaria, The Czech Republic, and Poland* (New York: St. Martin's Press, 1996), 23.

10. Mark Milner, “Privatisation is Dodgy Business,” *Guardian* (London), 5 September 1992, p. 33.

11. Alexander Bozhkov, former Director of Sofia's Privatization Agency, as quoted in Strong, *Transitions*, 41.

12. Since these buyers were no longer “Communists,” it would not be judged that they had used their influence to purchase properties.

13. Leland Rhett Miller, “Land Restitution in Post-Communist Bulgaria,” *Post-Communist Economies* 15, no. 1 (2003): 87.

then claimants were eligible for restitution.¹⁴ Those claimants who were relatively lucky to receive their enterprises had to pay the occupants for “improvements.” In post-Communist legislation throughout Central-Eastern Europe, the term improvement was used very loosely. Claimants were also responsible for compensating the occupants, or “owners,” for the amount paid by them to the Communist State for the properties.¹⁵ Notwithstanding the obstacles, by 1993 claimants had restored to them 7,452 shops, 1,010 industrial sites, 882 warehouses, 713 water mills, and 402 office buildings.¹⁶

It is interesting to note certain stipulations of restitution legislation in Bulgaria. If a property was taken legally (some form of compensation paid) as opposed to illegally (no compensation, no advance notice), the former owner was eligible for restitution. Those properties acquired by the State illegally were not eligible for restitution because the new government recognized adverse possession. It is said that even those who lost their properties “legally” often had no recourse because some “recalcitrant state authorities arrange[d] for [documentation] to illegally ‘disappear’ when it suit[ed] their purposes.”¹⁷ Claimants continually lost out to the maneuverings of residual Communists.

Bulgaria is largely a rural country and therefore most claims were made on farms.¹⁸ As many decades had passed by the time Communism ended, several heirs lodged claims for the same properties of the original

owner (if he/she had passed away). Some of the claims were for lands that were no longer used for agricultural purposes making them ineligible for restitution. Under Communism, land boundaries were often altered to create state farms and enterprises. The country needed to be surveyed and boundaries redefined. Cadastres were outdated and disorganized. Many titles had been destroyed during Communist rule. Thus establishing proof of ownership relied on personal testimonies, generally from village elders. Some Bulgarians claimed thousands of acres they never owned. The result of all this was that there were more claims made for land than there was land available in the country.¹⁹

The restitution of land created a variety of problems for Bulgaria. Land reform employees who were untrained did not know how to coordinate the restitution process. Sometimes animal feed was sold before animals had been returned to cooperative members. Other times, animals were returned to people who had not yet purchased feed or still did not have their land. Consequently, much livestock was needlessly slaughtered.²⁰ Restitution also affected the rose industry. Under Communism the State controlled rose cultivation. The country was world renowned for its high-quality rose attar used in perfumes. However, when the State returned lands to former owners and rose oil distilleries were privatized, former field workers “pull[ed] out rose bushes in the hope of getting subsidies for growing food crops.”²¹ The drastic

14. Valya Peeva, “Property Laws and Land Tenure in Bulgaria,” in *Land Tenure and Property Development in Eastern Europe*, ed. Vincent Renard and Rodrigo Acosta (Paris: ADEF/Pirville-CNRS, 1993), 236.

15. *Ibid.*, 236.

16. Strong et al, 45.

17. Anonymous Bulgarian property law expert, as quoted in: Miller, “Land Restitution,” 79.

18. Strong et al, 44. Strong et al note that the Ministry of Agriculture calculated 1.7 million claims, for 54 percent of Bulgarians based on each former landowner having at least three heirs per claim.

19. Rob Home, Tatiana Ouzounova, and Marian Rizov, “Turning the Fish Soup into Fish’: Towards New Land and Property Markets in Bulgaria,” *Royal Institution of Chartered Surveyors RICS Research Paper Series* 1, no. 9 (February 1996): 18.

20. Theodor Troev, “Survey of Bulgaria,” *Financial Times* (London), 13 October 1994, p. 14. Georgy Tanev, Bulgaria’s former Minister of Agriculture, said that in 1992 there were 1.9 million sheep, 460,000 pigs, and 235,000 heads of cattle slaughtered due to liquidation committee members lack of agricultural training. See, Virginia Marsh and Anthony Robinson, “Survey of Bulgaria,” *Financial Times* (London), 5 May 1993, p. 32.

21. Dimiter Stefanov, proprietor of a rose oil-distiller, as quoted in Kerin Hope and Theodor Troev, “Bulgaria’s ‘Valley of Roses’ blooms again,” *Financial Times* (London), 23 April 2002, p. 30.

changes in property ownership led to decreased production²² and market share losses.

Many plots restored to former owners were quite small, between 1.5 and 2 hectares. Those who had large pre-Communist holdings were limited to the restoration of 20–30 hectares.²³ Although there was an increase in family farming, these new small plots were not considered “viable” by agricultural standards.²⁴ Soviet machinery did not fit to make farming efficient.²⁵ Furthermore, due to the Communist industrialization of the country, there had been a large rural-to-urban migration. The new urban owners often did not know much about agriculture and only worked on their lands on weekends, if at all. Some elderly persons who had their property restored to them did not want it. They could not work the land themselves and had little desire to join the market economy.²⁶

The real estate nationalizations of the 1940s included the confiscation of a variety of residences. Anyone who fled Bulgaria’s Communist regime lost all his or her property to the State including residences. Under Communism’s laws, Bulgarians were restricted to one urban home and one weekend home. Therefore, anyone who owned more residences than the two permitted lost them to the State. Before Communist rule, apartment building architects reserved for themselves a unit for personal use. These also fell under nationalization laws. Those who owned lots suitable for housing construction lost their land but were “compensated” with an apartment in the new cheap, Soviet style building erected on their former property. Unfortunately, most of Bulgaria’s housing stock, including that which was constructed during Com-

munist, was in terrible shape with many lacking water and sewerage systems and in need of “urgent improvements and major repairs.”²⁷

The rights to confiscated residences were restored to former owners and their heirs. The return of properties, however, was restricted to those residences which “exist[ed] in the same physical dimensions as when [they were] expropriated.”²⁸ This limitation made it a difficult and sometimes contentious issue for former owners. If residences were occupied, then a protective deadline of three years was enforced. That is, the former owner became the new landlord and the occupant the new rent-paying tenant. At the end of the three-year period, the reinstated owner was supposed to receive the home. Tenants were supposed to vacate residences and the Bulgarian Local Councils were charged with providing housing for them.²⁹

As the protective deadline for soon-to-be restituted housing approached, few Local Councils had bothered to locate new homes for tenants. Tenants feared eviction and the government feared public unrest. The former Communists in the Bulgarian legislature attempted to create new rules, including one according to which residences would only be physically restored when alternate housing became available for the tenants. In the end, the Constitutional Court intervened in the matter stating, “From the point of view of the constitutional provision for the inviolability of private property, it is inadmissible to extend temporary restrictions or introduce new ones when ownership on property has already been restored. Once ownership is restored, lawmakers have no right to infringe the inviolability of private property.”³⁰

22. Due, “Progress”, 63.

23. Kerin Hope, “Bulgaria,” *Financial Times* (London), 8 March 1999, p. 3.

24. Plots between 1.5 and 2 hectares were not considered viable.

25. Marsh, “Survey,” p. 32.

26. Kaneff, “Responses,” 96.

27. Tsenkova, “Bulgaria,” 99.

28. Restitution of Nationalized Real Property Act, Article 1.

29. Restitution of Nationalized Real Property Act, §1 and §2.

30. As quoted in Miller, “Land Restitution,” 82.

The Bulgarian Constitutional Court was established by the country's first post-Communist constitution. This court is independent of all governmental branches including the judiciary.³¹ When the BSP regained power in the mid-1990s they endeavored to change restitution laws. It was the Constitutional Court who kept them in check and declared their amendments to be unconstitutional, including the above-mentioned tenant protection measure. The BSP initiated an unsuccessful campaign to tarnish the Court and threaten its members.³²

Bulgaria's property transformation has often been touted as one of Europe's most successful breaks with the Communist past. For many claimants the reality was otherwise. Communist holdovers often managed to take over confiscated properties for themselves. The old bureaucracy intervened in valid claims and threw out necessary documents when they felt like it. Some former owners waited for the possibility of substitute properties which rarely, if ever, became available. The remainder has been left with no choice but to wait for compensation payments. And wait. And wait.

NICARAGUA

The Sandinista National Liberation Front (FSLN) toppled the regime of Anastasio Somoza on July 19, 1979. The Sandinistas, much like Castro's followers in Cuba, repeatedly insisted that they were not Marxists and also stated that they were interested in following Cuba's model of Communism.³³ They were led by a five-member junta for the transition from the Somoza regime before they had officially taken over Nicaragua. Alfonso Robelo, a Junta member, said on July 25, 1979, "At no time will we touch private property."³⁴ Nevertheless, throughout the decade-long rule of the Sandinistas, many Nicaraguans

lost their homes, farms, ranches, factories, and small businesses.

The Sandinistas lost the 1990 elections to the National Opposition Union (UNO), which was headed by Violeta Chamorro. In the interim between the elections and Chamorro's inauguration, the Sandinista-controlled legislative branch passed the infamous Piñata Laws to horde, mainly for themselves, vast amounts of properties. In addition to the properties appropriated during the Piñata, the new administration had to contend with all the confiscations that had taken place throughout the Sandinista era.

Various laws were passed in Nicaragua to attempt, in vain, to resolve the country's property issue. Each law seemed to anger either one group or another. Often times property claims were resolved only on paper, with former owners receiving title to their properties but not physical possession. Compensation payments were meager and unsatisfactory. Occupants—both peasants and Sandinista cronies—were unwilling to vacate the properties that legislation had established should be returned to former owners. Multiple claims, United States foreign aid, an inept judiciary, violence and strikes, and exiles all played a role in the contentious claims dilemma.

The core problem with resolving property claims and all other challenges in the post-Sandinista era was that the Sandinistas never exited from power. Chamorro's UNO coalition did not win sufficient seats in the legislature to be able to legally change the Sandinista constitution. The members of the Supreme Court of Justice, who were appointed by the Sandinista-dominated National Assembly, remained legally in place until 1993.³⁵ Chamorro agreed, under questionable circumstances, to retain the Sandinistas in control of the military and police. Humberto Ortega, a four-star general and brother of the former

31. Hristo D. Dimitrov, "The Bulgarian Constitutional Court and Its Interpretive Jurisdiction," *Columbia Journal of Transnational Law* 37 (1999): 466.

32. *Ibid.*, 473.

33. Karen DeYoung, "Sandinistas Disclaim Marxism," *Washington Post*, 16 October 1978, 2 (A).

34. As quoted in Karen DeYoung, "Junta Nationalizes Nicaragua's Private Local Banks," *Washington Post*, 26 July 1979, 25(A).

35. Robert Collier, "Nicaraguan Expatriates Fight for Land," *San Francisco Chronicle*, 27 March 1990, 17 (A).

Sandinista “president,” was the chief of the army. His post gave him control of the secret police, the military budget, and the manufacture and purchase of arms. Former state security agents, some trained by Communist Cubans and the Palestinian Liberation Organization, went unpunished and were awarded important posts in the National Police.³⁶ The Sandinista Defense Committees (CDS),³⁷ while no longer technically recognized, remained in place. All of these factors obligated the Chamorro administration to work within the previous regime’s rules.

One of the most tangled webs of the property issue in Nicaragua was that of multiple claims on the same properties. Sandinistas confiscated several large, efficient agricultural enterprises and converted them into State farms.³⁸ Some properties were distributed to landless peasants and others were assigned to cooperatives. By 1986, after the second agrarian reform, many State farms were broken up and allocated to individual farmers.³⁹ The State promised to issue titles to beneficiaries but often did not deliver. Even when they did issue titles, they frequently did so slopily, recording new titles in registries and cadastres next to the original owners’ entries.⁴⁰ The agrari-

an property titles granted via the Piñata⁴¹ to beneficiaries of confiscated lands added to the nightmare. Moreover, many property registries had been previously damaged⁴² and the remaining were in a deplorable state containing incomplete information and outdated cadastral records.⁴³

The complications of the numerous claims resulted in an over-worked Nicaraguan judiciary. As more claims came in, the workers at the understaffed Ministry of Finance attempted to scrutinize claims and organize the valid ones so as to present them to the judiciary. The judiciary then determined which measures would be taken in the specific cases. Former owners who refused bonds as compensation took their cases to courts that were already overwhelmed by their property caseload.⁴⁴ The entire process of resolving claims was muddled because of all the options offered to challenge different property reform laws. To boot, most judges were Sandinista holdovers from the previous regime. Even when the judiciary issued decisions there was no one to implement them.⁴⁵ Today there exist continued problems of corruption and an insufficient pool of judges with proper education and skills.⁴⁶

36. William Branigan, “Sandinista Hold on Army, Police Hobbles Chamorro: Reintegration of Contras Seen as Main Achievement of Nicaraguan Leader’s First 100 Days,” *Washington Post*, 7 August 1990, 6 (A).

37. These were neighborhood watch committees similar to Cuba’s *Comités de Defensa de la Revolución*.

38. Jaime Wheelock Román, who served as Minister of Agriculture during the Sandinista regime, claimed that these were not confiscations because they involved compensation to the owners through “legally enforced sale[s] to the state.” See: Jaime Wheelock Román, “Changes in Agrarian Property in Nicaragua,” *Capital University Law Review* 22 (Fall 1993): 855.

39. Julia Preston, “Shortages, Rotting Meat Signs of Nicaraguan Strife,” *Washington Post*, 25 July 1986, 1 (A).

40. Nicaragua’s territory was never properly surveyed, and many de facto owners were not given deeds before or after Sandinista rule. Records of land transfers throughout Nicaragua’s history have been deficient and the “double titling or repeated titling” created an administrative nightmare. See *Nicaragua Land Policy and Administration: Toward a More Secure Property Rights Regime* (Washington, D.C.: World Bank, Rural Development Unit, 2003), 34.

41. Law No. 88 of March 30, 1990: Law for the Protection of Agrarian Property.

42. Martha A. Field and William W. Fisher III, *Legal Reform in Central America: Dispute Resolution and Property Systems*, Harvard Studies in International Development (Cambridge: Harvard University Press, 2001), 220.

43. J. David Stanfield and Steven E. Hendrix, “Ownership Insecurity in Nicaragua,” *Capital University Law Review* 22 (Fall 1993): 941.

44. Field, 229.

45. Howard LaFranchi, “Nicaraguans in a Turf Fight over Just Who Owns Land,” *Christian Science Monitor* 88, no. 234 (29 October 1996): 6.

46. Michael Gold-Biss, “Nicaragua,” in *Countries at the Crossroads 2004: A Survey of Democratic Governance* (Washington, D.C.: Freedom House, 2004), 7.

Violence and labor strikes created an environment of fear and instability in the post-Sandinista years. Whenever the possibility existed of reversing Piñata laws, the Sandinistas mobilized to threaten the administration in power.⁴⁷ Not only did they continuously strike and physically seize properties, but their use of violence and vandalism escalated. They burned the office of then-mayor Arnoldo Alemán and two pro-democracy radio stations. They fired at the two-story office building of former Contras. The police saw everything and did nothing.⁴⁸ Arges Sequeira, the first president of the National Association of Former Property Owners, was shot in the head six times by Sandinista operatives⁴⁹ as a warning to others who pressed for the return of their property.

Resistance by occupants forced former owners to resort to more aggressive methods to regain properties returned on paper. Occupants were armed and ready to shoot at any legal owner attempting to regain entry into their properties. The former U.S. Ambassador to Nicaragua, Oliver Garza, said that occupants had killed some of those who attempted to evict them. Garza also said that, “property law [is] a do-it-yourself proposition...[you] must be prepared to occupy it physically and pay for armed security details.”⁵⁰

Sandinista officials and their supporters often either outright confiscated homes (including moderate

ones) or purchased them for preposterously low prices that appeared in public records. They refused to vacate the premises claiming that they legally occupied the residences. Humberto Ortega bestowed to his daughter as a wedding gift the confiscated home of owner Sandra Leets de Montenegro. A Sandinista ambassador lived in the confiscated home of owner Edith Cohen. Frustrated at the lack of government action Cohen said, “Those hooligans stole our properties...and now the burden is on me to prove it, not the other way around.”⁵¹ Liberation theology priest and former Foreign Minister under the Sandinistas, Miguel D’Escoto, paid a pittance for his mansion in Villa Panama.⁵² Former Interior Minister Tomás Borge only paid US\$1,800 for an entire group of residences. The former Chief of Sandinista State Security purchased his lavish estate for US\$4,800. The unseated Daniel Ortega said that the return of the mansion he occupied (confiscated from banker Jaime Morales) would “demoraliz[e]” the masses.⁵³

Nicaraguan exiles lobbied hard for the return of their confiscated properties, but some eventually gave up because of frustration and sometimes fear. Although only a little over a decade had passed since the Sandinista takeover, former owners returned to destroyed properties. Structures on their land had been ransacked by unknown offenders.⁵⁴ Pools and gardens were overrun with weeds. Windows were broken.⁵⁵ In addition to the shameless looting of properties,⁵⁶

47. See Ariel Solórzano, “Sandinista nouveaux riches cripple Nicaragua’s growth,” *Wall Street Journal*, 9 May 1997, 19 (A) and Frank Kendrick, “Nicaragua: The Failed Conquest for Consensus Aftermath of the Mexican Elections,” *Washington Report on the Hemisphere* 17 (October 28, 1997): 18.

48. Shirley Christian, “In Managua, Angry Reminder of Sandinista Power,” *New York Times*, 11 November 1991, 6 (A).

49. José de Córdoba, “Seeking Control: Battle for Properties Keeps Nicaraguans on Verge of Anarchy,” *Wall Street Journal*, 12 November 1993, 1 (A).

50. As quoted in James Varney, “Nicaraguan Expatriates Demand Land Back: United States is Growing Tired of Long Delays,” *Times-Picayune*, 28 May 2000, 1 (A).

51. As quoted in Pamela Constable, “Americans Fight to Get Back Property Seized by Sandinistas,” *Boston Globe*, 25 October 1992, p. 8.

52. William Ratliff, “Flying their True Colors,” *Washington Times*, 8 July 1991, 1 (D).

53. Nancy Nusser, “Ortega vows he’ll hold on to estate,” *Atlanta Journal and Constitution*, 12 May 1991, 12 (A).

54. Pamela Constable, “A Nicaraguan capitalist returns: His properties in ruins, exile voices hope—but plans to watch from US,” *Boston Globe*, 30 April 1990, p. 2.

55. *Ibid.*

56. Shirley Christian, “Victors’ Lament: To the Losers Belong the Spoils,” *New York Times*, 8 June 1991, 2 (A).

restituted enterprises sometimes were seized by their workers. They claimed that their work over the years had contributed to the properties' increased value. They demanded shares in the returned companies. The State demanded that former owners pay for "improvements" made to their enterprises since nationalization.⁵⁷ Other exiles received title to their former properties but never physically regained them. With each effort to recover Sandinista-occupied property, former owners' lives would be repeatedly threatened. The demoralization due to ruined properties and the seemingly ad hoc property claims process led some exiles to question whether the move back to Nicaragua was worthwhile.

The United States Foreign Claims Settlement Commission (FCSC) never reached an agreement with the government of Nicaragua resolving the confiscation of U.S. citizens' properties. However, the U.S. government actively pressured the Nicaraguan government for restitution and compensation for its citizens, including those who were not U.S. citizens at the time of confiscation but were later naturalized. The American government retains the right to help its citizens resolve their claims regardless of their nationality at the time of the takings.⁵⁸ As more and more Nicaraguans became American citizens, the more the caseload of claims has grown.

The Nicaraguan government was always under the threat of losing aid from the United States due to its growing caseload of unresolved property claims. The U.S. government reserves the right to vote against offering aid through international lending agencies to countries that have confiscated American-owned property without just compensation. Additionally,

the Hickenlooper Amendment of 1962 requires the United States government to deny aid to these offending foreign nations.⁵⁹ The government maintains the right to waive this denial so long as the country in question is making adequate progress in property claims resolutions. The U.S. has repeatedly issued waivers. Some believed that with each waiver more claims went ignored because the U.S. no longer had any leverage against the government of Nicaragua.⁶⁰ Others believed that withholding aid because of a lack of progress in claims settlements was a "bogus issue."⁶¹ Nicaragua badly needed aid from the United States so that it could fulfill International Monetary Fund (IMF) criteria for foreign exchange reserves.

In order to speed up the claims process so as to clear property titles, receive increased aid, and attract investors, President Chamorro determined that claimants judged as ineligible for restitution would be paid compensation. Initially, the Ministry of Finance issued 20-year, 3 percent bonds that could be used to purchase shares in the future privatization of State assets.⁶² Former owners were rarely satisfied with the bonds as they were not worth much.⁶³ Furthermore, the government continually put off the privatizations that were supposed to create funds for compensation bond interest payments.⁶⁴ Since bonds were unpopular and deemed inadequate, former owners attempted to utilize their right to contest the resolution of their claims. They were able to go to the existing disorganized and corrupt regular court system or to post-Sandinista created property tribunals. The property tribunals settled very little because the resolutions they reached were returned to the regular courts for the formal order on the claim settlement.

57. Tim Coone, "Nicaraguan state sell-off reduced to snail's pace," *Financial Times*, 19 February 1991, 3 (I).

58. Larry Rohter, "U.S. prods Nicaragua on seized land," *New York Times*, 25 July 1995, 7 (A).

59. 22 US Code, Sec. 2370 and Section 527 of the Foreign Relations Authorization Act (1994).

60. "Review and Outlook: Tale of Two Nations," *Wall Street Journal*, 26 April 1993, 1 (A).

61. "Penny-pinching on Nicaragua," *New York Times*, 28 July 1995, 26 (A).

62. Decree No. 56 of October 15, 1992: Compensation System.

63. David Dye, "In a Land That Suffered a War over Land, Fightin' Words Are Heard Once Again," *Christian Science Monitor* 87, no. 168 (26 July 1995): 11.

64. LaFranchi, "Turf Fight," 6.

The Sandinistas often garnered support in their early days of the revolution by promising to rectify the disproportionate ownership of land in Somoza's Nicaragua. Interestingly, the Sandinistas often were at fault for not protecting the property beneficiaries of their regime. Especially remarkable is that many of those beneficiaries who managed to maintain lands gifted to them by the Sandinistas eventually sold them to a few financially advantaged buyers. Some beneficiaries who were broke and desperate sold their lands at under-market values.⁶⁵ Arnoldo Alemán bought land from Sandinista beneficiaries who had formed a cooperative.⁶⁶ Ultimately, individuals with relatively deep pockets bought up many previously distributed plots and restituted properties.⁶⁷ These buyers included Sandinistas and anti-Sandinistas.

It used to be politically risky in Nicaragua to be affiliated with the Somoza regime and the former leader's family. Post-Sandinista administrations resisted acknowledging the Somoza claims as legitimate. Because of this, there seemed to be no risk in investing in properties that would never be restored to these former owners. However, in December 2004, the Nicaraguan Supreme Court of Justice ruled that a Somoza-owned property be returned to its original owners. CEMEX, a Mexican cement company, had been using the property since 2001 under a 25-year lease from the Nicaraguan government.⁶⁸ Lindolfo Monjarrez, the Nicaraguan Presidential press secretary, said that this decision was "a grave legal dilemma and [presented] problems of judicial insecurity for national and foreign investors."

Today Nicaragua is the poorest country in Central America and the second poorest in the hemisphere (after Haiti). Attempting to address all the problems this country faces on a daily basis is overwhelming. The lack of closure of the property issue early on in the transition has aggravated the situation. One source states that 60 percent of Nicaraguan properties continued to "lack proper documentation" as recently as 2002.⁶⁹ Many former owners remain unsatisfied with their settlements if they reached any at all. Investors are not prone to developing businesses or placing funds in this country where property titles remain in question and where property legislation and the judiciary are unreliable. The longer properties are in dispute the longer it takes for them to be made economically viable.

CUBA

On January 1, 1959, Fidel Castro toppled the government of Fulgencio Batista. Castro denied that he and his revolutionaries were Communists.⁷⁰ In fact, Herbert L. Matthews, a *New York Times* journalist had stated that Castro "[was] not only not Communist but definitely anti-Communist."⁷¹ Nevertheless, the Castro regime systematically commenced vast private property confiscations as the Communist regimes in Central and Eastern Europe had carried out. Everyone and anyone accused of being affiliated with the previous Batista regime lost their properties. The "Yankee oligarchy"⁷² as well as other foreigners, and Cubans from all walks of life, eventually lost their homes, ranches, farms, and businesses.

65. See Jon Jonakin, "The Impact of Structural Adjustment and Property Rights Conflicts on Nicaraguan Agrarian Reform Beneficiaries," *World Development* 24, no. 7 (1996): 1179–1191; idem, "Agrarian Policy," in *Nicaragua Without Illusions: Regime Transition and Structural Adjustment in the 1990s*, ed. Thomas W. Walker (Wilmington: Scholarly Resources, Inc.), 107–108.

66. Gonzalez, "Unpaid Wages," 14 (A).

67. Deena I. Abu-Lughod, "Failed Buyout: Land Rights for Contra Veterans in Postwar Nicaragua," *Latin American Perspectives* 27, no. 112 (May 2000): 53–54.

68. "Corte Suprema ordena devolución empresa cementos a familia Somoza," *EFE*, 24 December 2004.

69. *Project Appraisal Document on a Proposed Credit in the Amount of SDR 26.2 Million (US \$32 Million Equivalent) to the Republic of Nicaragua for a Land Administration Project (PRODEP)*. (Washington, D.C.: World Bank, Environmentally and Socially Sustainable Development Sector Management Unit, 2002), 3.

70. R. Hart Phillips, "Reds' Alleged Role In Castro's Regime Alarming Havana," *New York Times*, 24 April 1959, 1.

71. "Actions by Castro Stirred Criticism," *New York Times*, 18 June 1959, 3.

72. Fidel Castro as quoted in R. Hart Phillips, "Castro Attacks Sugar Quota as 'Imperialism,'" *New York Times*, 8 July 1960, 1.

The government of Cuba has resolved the property claims of many foreigners through bilateral compensation treaties over the years. The government has not yet reached any such agreement with the government of the United States. The Cuban government has also not addressed the property confiscations of its own citizens. It remains to be seen whether or not a post-Castro regime will undertake any property claims mechanism. However, a regime that is serious about demonstrating its dedication to a free market economy and a democracy that respects all human rights, including private property rights, will need to resolve the property issue.

Cuba has the sad advantage of being one of the few remaining Communist countries. This allows for the possibility of learning from the mistakes and successes of those nations where Communism already ended. There has always been the assumption that Communism in Cuba is finite. This too is an advantage because there has been extensive preparation for the day there is finally a change in the island. Part of this preparation ought to include decisions about making claims on property. The possibility of claiming confiscated properties will be exciting and heady. However, given the setbacks experienced by claimants in other post-Communist nations, it is wise for former owners, their heirs, and future investors, to be aware of what may come.

Many factors similar to those in Bulgaria and Nicaragua will likely influence decisions to pursue restitution of and investment in Cuban real property. Important to bear in mind are Cuba's environmental issues, structural deterioration and collapse, Commu-

nist-controlled judiciary, and the military's power, which all pose risks. Additionally, multiple claims on property, social conflicts, corruption, and returning exiles will also come into play when, and if, claims are recognized. Although these risks represent only the tip of the iceberg for what's to come, they will likely give pause to claimants and investors in tomorrow's Cuba.

Cuba's environment has suffered a great deal largely due to Communist mismanagement and partly due to climate. Air pollution levels are fairly high in industrial areas and cities with heavy traffic.⁷³ The island's waterways and coastline are also polluted.⁷⁴ To make matters worse, the eastern end of the island has endured a severe drought for the past several years. In Holguín, no more than twelve of the province's seventeen water reservoirs are operational. Many of the large dams⁷⁵ and micro-dams are in poor conditions.⁷⁶ Citizens are left with little choice but to "develop ways of conserving water."⁷⁷

Cuba's infrastructure is greatly outdated and broken down. The sewer system in Havana is from the early 1900s. It cannot handle the city's current population. There are currently foreign-funded projects seeking to resolve the waste problem.⁷⁸ The country's electrical grid is in desperate need of modernization. In October of 2004 over 100 factories were closed in order to save energy due to electrical problems.⁷⁹ Scheduled blackouts cost the government millions of dollars.⁸⁰ Marcos Portal, Minister for Basic Industries for twenty years, paid the price for the energy crisis with his job. However, the State declared that Portal "frankly admitted his mistakes."⁸¹

73. "Cuba Moves to Cut Pollution in Havana," *Financial Times Information*, 27 January 2005.

74. Eudel Eduardo Cepero, *Environmental Concerns for a Cuba in Transition* (Coral Gables: University of Miami Cuba Transition Project, 2004), 9.

75. Larry S. Daley, "Restoration of Cuban Gallery Forests, Especially on the Banks of the Bayamo and Other Rivers of the Cauto Basin," in *Cuba in Transition—Volume 12* (Washington: Association for the Study of the Cuban Economy, 200), 226.

76. "Drought Situation in Cuba Worsens," *Financial Times Information*, 25 March 2005.

77. "Cuba Spends Over 20M Dollars on Drought Measures," *Financial Times Information*, 21 February 2005.

78. Patricia Grogg, "A Helping Hand for Havana Bay," *Inter Press Service News Agency*, 22 February 2005. Sewer modernization efforts are only focused on Havana.

79. "Cuba schedules blackouts to save energy," *Associated Press*, 30 September 2004.

80. Dalia Acosta, "Return of Scheduled Blackouts Is Actually a Relief," *Inter Press Service News Agency*, 30 September 2004.

Soviet-style agricultural methods ultimately devastated the soil. There is widespread soil degradation, high levels of salinity, and compaction.⁸² Many currently idle lands and those reforested by the State are overrun by *marabú*, a thick, thorny tree. While the soil beneath may be nitrogen-rich, the removal of *marabú* can be labor-intensive and difficult. If it is razed by fire or by some other defoliating agent then damage is caused to the soil. The repair, particularly for vast lands that were once cattle ranches and cane fields, creates a hefty expense for making the properties functional.

Years of low or no maintenance, abandonment, and even demolition have affected real property structures. The once grand Fin de Siglo department store in Havana is largely boarded up except the first floor, which offers cheap, Soviet-era products. Other shops in the capital city have suffered a similar fate.⁸³ Reports indicate that 65 buildings crumbled under Hurricane Charley. Over 1,000 buildings in bad shape are evacuated each year, in addition to the thousands more the State deems badly damaged or altogether irreparable.⁸⁴ The demise of housing conditions was already evident in the early years of the revolution⁸⁵ and has only gotten worse. Some dilapidated residences serve as collective housing, where occupants lack the income for adequate upkeep. The State also bulldozed some previously confiscated

homes.⁸⁶ What's more, in 2003, the State shut down 71 of 156 sugar mills across the island.⁸⁷ They will become virtually worthless as time passes.

After the collapse of the Soviet Union, General Raúl Castro revamped the military structure through the *Sistema de Perfeccionamiento Empresarial*. He also initiated joint ventures with foreign investors to help offset Cuba's crumbling economy. The *Fuerzas Armadas Revolucionarias* (FAR), Cuba's military, controls 230 factories and firms in Cuba.⁸⁸ Several members of Cuba's military, such as European-educated General Ulises Rosales del Toro, General Luis Pérez Róspide, and others, hold top posts in sugar, transportation, and tourist industries.⁸⁹ The Gaviota state corporation, headed by General Pérez Róspide, manages domestic airlines, rental cars, almost a quarter of hotel rooms through foreign partnerships, and other tourist enterprises.⁹⁰ Also largely managed by FAR is corporation *Comercio Interior Mercado Exterior* (CI-MEX) which is said to have earned US\$300 million in the year 2000⁹¹ and reportedly US\$700 million in 2003.⁹² It seems unrealistic to expect the military to give up the power that has enabled top members to become quite wealthy and influential.

The Cuban judicial system lacks any semblance of legitimacy. Courts and judges are supposed to uphold and advance Communist (often called Socialist) ide-

81. As quoted in Ronald Buchanan, "Castro, amid energy crisis, takes direct control," *Platts Oilgram News* 82, no. 203 (October 21, 2004): 4.

82. Cepero, *i*.

83. Gary Marx, "Bottom-of-the-barrel stroll," *Chicago Tribune*, 9 September 2004, 4.

84. Nancy San Martin, "High winds, old age threaten buildings throughout Havana," *Miami Herald*, 18 September 2004, 13A.

85. Juan de Onis, "Cuban Statistics Detail Depth of Housing Crisis," *New York Times*, 16 October 1964, 12.

86. Tania C. Mastrapa, "Post-Communist Property Claims in the Czech Republic and Nicaragua: Lessons Learned for Cuba," (Ph.D. diss., University of Miami, 2005), 300.

87. Anthony Boadle, "Sugar mill closures end era in Cuba," *Reuters*, 11 March 2003.

88. Brian Latell, *The Cuban Military and Transition Dynamics* (Coral Gables: University of Miami Cuba Transition Project, 2003), 16–17.

89. For more information on the Cuban military's involvement in the private sector see: "Ministry of the Armed Revolution (MIN-FAR), Section V: Economic Activities," found in University of Miami's Cuba Transition Project [<http://ctp.iccas.miami.edu/Organizational/Chart6.html>].

90. "The Cuban Military in the Economy," *Focus on Cuba* 46 (August 11, 2003).

91. John A. Loomis and Gordon R. Fulton, "A Blueprint for Havana," *Urban Land* 63 (November/December 2004): 88.

92. "Military Involvement in the Economy," *Cuba Facts* 9 (March 2005).

als. Although judges technically are no longer required to be members of the Communist Party, their loyalty to the regime is of necessity. After all, Fidel Castro said in 1991, "...[lawyers, prosecutors, and judges] have to understand that we need revolutionaries in these positions, revolutionaries who are told 'this is your combat post.'"⁹³ Totally disbanding the judiciary at the beginning of a transition is unwise because there is no immediate replacement available.⁹⁴ Therefore, a property claims mechanism will be likely to involve the participation of current judges (at least in the early stages of the post-Castro era). Given their ideological tendencies, the likelihood that they will uphold private property rights (contrary to all Marxist ideology and training) is questionable.

The potential for corruption and violence are important elements about which to be concerned in a post-Communist scenario. Elites, such as military businessmen, will attempt to manipulate a transition in their favor.⁹⁵ Cubans who have been propelled by a failed government to steal and scam for survival may be unlikely to adapt quickly to a law-abiding system. The need for cash will make Cuba a fertile ground for bribery. This will extend to those who process and adjudicate property claims. If there is opposition to the new system—including resistance to restitution laws—citizens may take matters into their own hands. There is also often mention about possible retribution killings.⁹⁶ The current police force, untrained in democratic policing, will be neither neu-

tral nor useful for maintaining order and upholding the law.

The length of the Castro regime has often resulted in confiscated properties changing hands several times. As was typical with other Communist countries, the State often doled out confiscated residences to revolutionaries and party loyalists.⁹⁷ Loyalists and other beneficiaries of vacated housing received "title" from the Cuban government.⁹⁸ The State developed "human settlements" and government enterprises on confiscated lands. Foreigners have also invested in confiscated real property over the years. All of these events will lead to multiple claims on the same properties leading to lengthy and costly court battles.

All major regime changes are met with at least some resistance. In addition to the reluctance of Communist-era elites to give up their status and privileges in a new Cuba, many real property occupants will be unwilling to vacate the premises. The system of *permutas*, or housing swaps, has led to different occupants over time. Confiscated properties now serve as homes for military officials, offices,⁹⁹ foreigners, hotels and motels,¹⁰⁰ embassies and consulates, and other functions. Claimants will find their former lands distributed among cooperative members and small farmers. Even if protective deadlines are enforced before the return of actual properties, occupants may be unwilling to accept claimants as their new landlords in the meantime.

93. As quoted in Laura Patallo Sánchez, *The Role of the Judiciary in a Post-Castro Cuba: Recommendations for Change* (Coral Gables: University of Miami Cuba Transition Project, 2003): 47 at note 60.

94. See Mario Díaz-Cruz, III, "Challenges for a Transitional Judiciary in a Post-Castro Cuba," in *Cuba in Transition—Volume 12* (Washington: Association for the Study of the Cuban Economy, 2002).

95. Sergio Díaz-Briquets and Jorge Perez-López, *A Transparency/Accountability Framework for Combating Corruption in Post-Castro Cuba* (Coral Gables: University of Miami Cuba Transition Project, 2002), 9–10.

96. "Recent Cuban Refugees: Their Hopes and Fears," *Focus on Cuba* 56 (July 19, 2004).

97. See "Prague Expels Enemies: Moves Them to Give Housing to 'Loyal Workers,'" *New York Times*, 2 July 1949, 3. Loyalist beneficiaries in Communist countries included those in top government and military posts, heads of block committees, members of action committees, informants, and others deemed reliable elements.

98. Steven E. Hendrix, "Tensions in Cuban Property Law," *Hastings International and Comparative Law Review* 20 (Fall 1996): 67.

99. See N. Levinson, "Exiled from his home, Cuban architect Mario Romañach lost his place in history. A fellow Havanian writes him—and the city's Modern architecture—back into the canon," *Metropolis* 23, no. 6 (2004): 92–97.

100. For instance, Villa Eulalia in Miramar was the home of a Miami exile. See <http://www.nashtravel.com/hotels/villaeulalia.html>.

Many Cubans living in the island are aware of their rights to their former properties. Technically, former owners were supposed to turn in their titles to the State when properties were nationalized. Many never did and others kept copies for themselves, just in case. If the time comes for claims there will be a mad scramble to dig up old documents as there was in Central-Eastern Europe. In a scenario where *all* claims are recognized, these Cubans will be the new winners. Those on the island who have nothing to claim but may have been beneficiaries of confiscated properties for their loyalty to the revolution may become the new losers. It will be a socio-economic power shift that is certain to create envy and tensions.

Ever-present on the transitional scene are those who actively oppose the return of properties to their former owners. Opponents may include left-leaning scholars, Communist elites, deep-pocketed exiles and potential investors, and at times those who simply find restitution to be an unwise policy. Some of these “activists” will attempt to maneuver policy towards (1) privatization of confiscated properties through auctions and sales; (2) compensation for former owners with bonds, cash, and vouchers; or (3) wholesale disregard for property claims. These three approaches make confiscated properties available for the “activists” and others to buy up at what may be very low prices. Cubans in the island who have been denied ownership rights to their former properties (and any other ownership for that matter) and other claimants may not be receptive what is likely to be a pittance in compensation payments that the government will barely be able to afford.¹⁰¹

Unfortunately, the average Cubans in the island are cash-strapped. They will lack the resources to aggressively pursue claims. Even if they are able to recover their former properties they may find themselves unable to invest in them. This may result in the quick

sale of claims and properties in return for desperately needed money. Investors (including well-financed former owners and Communist elites) will jump at the chance to purchase at low prices. The ownership distribution in the country may become imbalanced and create myriad problems in the long-run.

The issue of restitution in post-Castro Cuba is often focused on the exile community. No doubt, in addition to all other claimants such as Americans and Cuban citizens in the island, they will play a significant role in the claims process. However, it is uncertain exactly how many will accept nothing short of the return of their actual property. One informal study conducted in 2004 indicates that although 90 percent of survey participants¹⁰² feel they have a right to claim properties, only 23 percent would insist on the return of their confiscated properties as the only plausible resolution. The remainder would consent to a combination of options such as comparable property and monetary compensation. Less than half replied that they would claim occupied residences. Of those, several indicated that their former homes were currently used by foreigners who had purchased them from the Cuban government, military officials, hotels, offices, embassies and consulates.¹⁰³ Of course, current intentions may radically change if the opportunity in fact presents itself.

One of the most fundamental questions former owners and their heirs will have to ask themselves, once the emotions are at least partly overcome, is whether or not they want to take on their actual former properties or lobby for another alternative. Investors will also need to realize the hurdles they will face if attractive properties are in dispute. Furthermore, many negative aspects discussed need to be considered by both groups. The cost of restoring real property to a functional and aesthetic state may be great. Contending with occupants-cum-tenants and lessees may be exhausting and irritating. Residual Communists in

101. Cuba's foreign debt alone is estimated to be about US\$33 billion. See “Cuba's Foreign Debt,” U.S. Department of State, Bureau of Western Hemisphere Affairs (July 24, 2003), at <http://www.state.gov/p/wha/rls/fs/22743.htm>; *Cuba Facts* 8 (February 2005).

102. Participants in the study included exiles not of Cuban origin.

103. The survey conducted was part of the author's dissertation. See Tania C. Mastrapa, *Post-Communist Property Claims in the Czech Republic and Nicaragua: Lessons Learned for Cuba*. Ph.D. diss., University of Miami, 2005.

the country's bureaucracy and judiciary may create roadblocks to the claims process making it a lengthy and arduous task. No one knows for certain if a post-

Castro Cuba will even be safe. This is all a great deal to ponder but it is nevertheless necessary to do so in order to avoid future headaches and heartbreaks.