

UNIVERSAL JURISDICTION: 2009-2010 NICARAGUA REPORT

Universal Jurisdiction Trip, Winter 2009-2010

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Introduction

This report summarizes the experiences and observations of the 2009-2010 Universal Jurisdiction trip to Nicaragua. The goals of our trip were to study issues hindering economic development on a micro-level; to understand how small community-based organizations are working to build wealth and increase their standard of living; and to learn about the workings of a foreign judicial system and how it addresses various issues faced by Nicaraguans. We met with a number of organizations throughout the country, each of which provided us with a unique insight into the day-to-day challenges of Nicaraguan life. We discovered that each organization was in some way affected by one common issue—land rights. From a professor in Managua to coffee-bean farmers in Miraflor and from sugar-cane workers in Nueva Goyena to members of a solar-power cooperative in Sabana Grande, the various groups we met all told us that they struggled as a result of not having formal title for the land on which they worked and lived.

Thus, we were not surprised when we learned the actual statistic—73% of Nicaraguans work, eat, and live off of land that they do not own. During the first Sandinista regime, the government implemented an agrarian reform program during which land was transferred from the hands of the wealthy landowning class to peasants and allies of the Sandinistas. Unfortunately, the government did not legalize the process, and transferred land without transferring the paperwork. As a result, today's farmers are living on land that is deeded to the elite landowners from the 1970s. This disconnect has a direct impact on the day-to-day lives of rural Nicaraguans. Without a deed, farmers cannot get bank loans unless they have someone or something else as collateral. In addition, it is difficult to get electricity in houses that lack title. Most importantly, there is the lingering fear that the true owner (or his heirs) could come back and reclaim the land.

Demographics & Geography

Nicaragua is the largest country in Central America, and also the poorest. Indeed, it is the second-poorest country in the Western Hemisphere after Haiti. In 2005, 48% of the population of about 3.8 million lived below the poverty line. The GDP fell by almost 3% in 2009, due to decreased export demand in the U.S. and Central American markets, lower commodity prices for key agricultural exports, and low remittance growth – remittances are equivalent to almost 15% of Nicaragua's GDP. Nicaragua relies on international economic assistance to meet internal- and external-debt financing obligations; however, foreign donors have curtailed this funding in response to November 2008 electoral fraud. In

early 2004, Nicaragua secured some \$4.5 billion in foreign debt reduction under the Heavily Indebted Poor Countries (HIPC) initiative, and in October 2007, the IMF approved a new poverty reduction program.

About a third of the GDP revolves around agriculture, timber, and fishing. Currently, most agriculture is small-scale and labor intensive. Livestock and dairy production have seen steady growth over the past decade and have taken the greatest advantage of free trade agreements. Many export products, especially coffee, benefited from the rise in international commodity prices, but are now suffering because of the global economic downturn. Manufacturing accounts for about 10% of GDP and the construction sector another 4%. Services (banking, transportation, trade, retailing, and tourism) account for about half of GDP.

Nicaragua has three distinct geographical regions: the Pacific Lowlands, Central Highlands, and Atlantic Lowlands. The Pacific Lowlands are the most populated region; it is where more than half of the country's population lives. Also, it is the country's agriculture center. The Atlantic Lowlands is the largest area, and by far the most sparsely populated. Infrastructure is poor in this region, and most transport is centered around the river system. It is a semi-autonomous region and the base of the indigenous population. Notably, most of Nicaragua's natural resources are concentrated in this region. The government recently finished a land demarcation project there to help indigenous groups protect their land from encroachment by large farmers and the extractive industries. The Central Highlands are also rural, although much of the area can be reached by road – albeit very poor roads. This is the region best suited to coffee.

History

Post-independence Nicaragua was defined by a struggle for power between the elite of the two colonial cities of Leon (the pro-industrialization “Liberals”) and Granada (the pro-agriculture and Roman Catholic Church “Conservatives”), combined with regular U.S. intervention. Between 1912 and 1933 U.S. Marines occupied the country on behalf of the Conservatives, until Augusto Cesar Sandino brokered an agreement to end the fighting. In January 1933, the Marines left the country, following the election of Juan Bautista Sacasa as President. At the urging of the U.S., Anastasio Somoza García was appointed as director of the National Guard. Somoza ordered the assassination of Sandino in 1934, the murder of former Sandino supporters by the National Guard, and the resignation of Sacasa in 1936. By maintaining an iron grip on the country and close ties to the U.S., the Somoza family dictatorship ruled Nicaragua until 1979. After a 1972 earthquake destroyed Managua and exposed the corruption of the Somoza family, their power began to wane as they lost the support of the economic elite.

The disillusionment caused many young people to join the Sandinista Liberation Front (FSLN). The FSLN, drawing on the legend of Sandino who is credited with driving out the Marines, was founded in the late 1960s. In the 1970s it fought a deadly guerrilla war – a bloody, protracted conflict - before overthrowing Somoza in 1979. The Sandinistas inherited a debt of U.S. \$1.6 billion, an estimated 50,000 war dead, 600,000 homeless, and a devastated economic infrastructure.

Although President Carter was willing to work with the new government, President Reagan took office in 1981 condemning the FSLN. On his orders the CIA began financing, arming and training rebels, some of whom were the remnants of Somoza's National Guard – and the Contras were born. The U.S. also sought to place economic pressure on the Sandinistas, and so the Reagan administration imposed a full trade embargo. The Contras waged a guerrilla war, similar to the previous one waged by the Sandinistas. After the U.S. Congress prohibited federal funding of the Contras in 1983, the Reagan administration continued to back the Contras by covertly selling arms to Iran and channeling the proceeds to the Contras (the Iran-Contra Affair). The Sandinistas eventually won the war, but by the late 1980s another 50,000 Nicaraguans had died, and the Sandinista economic policies were proving unsuccessful.

The Anti-Sandinista coalition won a surprise victory in the 1990 elections and Violeta Chamorro became president. As a result of the Contra war, the per capita income of Nicaragua had been reduced by over 80% during the 1980s and the debt had increased to U.S. \$12 billion. She engaged a policy of privatization, but Chamorro's main contribution to Nicaragua was the disarmament of groups in the northern and central areas of the country. This provided stability that the country had lacked for over ten years. Arnoldo Alemán won the 1996 election, but unfortunately his major contribution was siphoning off hundreds of millions of dollars in international relief aid after Hurricane Mitch devastated much of the country. Daniel Ortega, who led the country during the 1980s as leader of the FSLN, regained power in 2006 after a split on the right. Ortega has maintained close ties to other left-leaning governments such as Cuba, Venezuela and Bolivia, but has allowed the results of Chamorro's privatization to remain mostly intact.

Legal and Political System

Early on in our trip we had the honor of meeting with distinguished jurist Dr. Ivan Escobar Fornos, a member of Nicaragua's Supreme Court, in his private office in Managua. During this meeting Dr. Escobar Fornos gave us a brief overview of both the Supreme Court and the general government structure of the country. There are several significant differences between their system and our own. The Nicaraguan Supreme Court does not function as one single entity. Instead, the sixteen justices are spread out amongst several *salas* (chambers), each presiding over specific areas of law. Each *sala* consists of six

justices. Each justice is permitted to sit on two *salas*. Dr. Escobar Fornos sits on the constitutional and civil law *salas*. In the event of a tie, a justice from another *sala* may be invited to help decide the case.

There is also a distinction in the way justices come to sit on the Court. Appointments to the Supreme Court in Nicaragua are not for life. Justices are elected to serve for terms of five years, and may not serve for longer than twenty-five years. This system requires the Court's members to remain closely tied to their political parties. Just this week, two Sandinista judges on the Supreme Court have refused to step down after their terms expired. This is tied to Ortega's move last year of using his allies on the Supreme Court to allow him to seek re-election in 2011 by contravening constitutional term limits on the presidency. Ortega followed that by decreeing that judges whose terms expire this year can remain in office indefinitely until they are reelected or replaced by the National Assembly, which has been paralyzed by political gridlock and largely inoperative for months. On a related note, unlike our system of government, Nicaragua's state consists of 4 branches. This includes the executive, legislative, and judicial, as well as a fourth branch that is responsible for overseeing elections. Nevertheless, the recent elections were plagued by accusations of fraud and corruption.

We also met with a Professor Setright, an American who moved to Nicaragua after the Sandinistas came to power, where she met her husband, Guillermo. Their home, the location of our short lesson in political history, provided an excellent example of the legal problems and political strife she described. During the Sandinista revolution, Guillermo successfully organized a peaceful protest at his high school in response to the politicized firing of his principal. Although their objective was achieved, Guillermo was warned not to return to his home; instead he joined the Sandinista guerillas. At the price of his many years of service to the revolution, and his left ear, Guillermo was given a home in Managua in what had once been a housing compound for Somoza soldiers. As discussed above, the beneficiaries of the land redistribution plan were not given proper title. Although he has been able to acquire title to his home, even now, over 30 years later, Guillermo's electric bill still comes in the name of the soldier who owned his house before the war. For poorer families, especially in the more rural areas, who can't prove how long their family has been on the land, title is much more difficult to attain. The return of wealthy title-holders, who maintain a legal claim to the land, is a constant concern.

Nitlapan

Universal Jurisdiction spent the majority of its time with Nitlapan, an NGO that facilitates land access for the peasants and workers without land in Nicaragua. Through its Rural Legal Services Program, Nitlapan lawyers and legal agents work to identify, negotiate, purchase, and legalize land. During our time with Nitlapan, we went through land deeds and looked at the paperwork that is necessary for the legal

transfer of land. We learned about Nicaragua's adverse possession process, which has been removed from the judiciary and placed in the hands of the executive. This switch makes the process much easier for a lucky few, but very arbitrary, leaving a majority of rural farmers who have been living and working on land for thirty or more years without a method to claim the land as their own. Nitlapan also works on natural resource management throughout the country, such as reforestation and access to potable water. Two Universal Jurisdiction members, along with a third Fordham Law student who spent last summer in Nicaragua with Universal Jurisdiction, will be spending this summer working with Nitlapan on a new conflict-resolution project.

Local Development Fund

One of Nitlapan's main strategic partners is the Local Development Fund ("Fondo de Desarrollo Local" or FDL), a non-profit institution that provides financial services to small and medium rural and urban businesspeople to allow them to increase their living standard and capital. We spent the first afternoon in FDL's offices in Matagalpa learning about the organization's different programs. Then, over the next two days, we traveled into the countryside to meet with individual recipients of FDL services.

FDL provides financial credit in two ways. First, FDL offers credit to responsible individuals engaged in economic activity. Second, FDL offers credit at lower interest rates to female cooperative groups on the basis of joint liability. In addition to financial credit, FDL lends cows and other livestock to small farmers. FDL predominately services the agricultural sector; however, the organization does provide essential capital to commerce and small industry as well. While the tone of the meeting was positive, FDL noted that the recent economic crisis had hindered the organization's ability to offer assistance.

At the time of our meeting, FDL was not lending to new clients as a result of the "No Pago" movement. No Pago began in mid-2008 to advocate against the repayment of loans after Ortega encouraged disgruntled loan recipients to protest in front of the offices of alleged "usurers." The protesters biggest complaint is the high level of interest on the loans - on average, between 10% and 12% annually, but occasionally as high as 21%. Omar Vilchez, a former Sandinista mayor and leader of No Pago, has demanded that the maximum interest rate be capped at 8%. The group says it will not make payments on their loans until such a cap is passed. The FDL explained to us the high interest rate is necessary because of expensive transaction and operational costs in managing loan repayment; anything smaller would drive it out of business. But perhaps that is the entire point of the movement - opponents of No Pago allege that Ortega wants to force farmers to seek credit through Alba-Caruna, a credit union created by Ortega's government that is partly responsible for handling aid money from Venezuela.

According to ASOMIF, the national microfinance association, \$20 million in loans has been frozen in seven municipalities due to aggressive protests, leaving thousands stranded without access to credit to keep their small businesses running. Another \$100 million in foreign investment from 25 international microfinance partners, including those based in the United States, Switzerland and Costa Rica, have also been stalled.

The highlight of our time with Nitlapan and FDL was meeting with women and men who had directly benefited from FDL loans. One man explained that the small piece of land he received through FDL had profoundly changed his life. No longer having to work for someone else, the man could now grow his own crops and sell them at the market. At the same time, the man noted that sales were slow and he was struggling to pay back his initial loan. Through our interactions with Nitlapan, we learned that the development process in Nicaragua is complicated. While there are small successes that positively impact individual's lives, there are larger systematic problems that impede these successes. Furthermore, we saw the interconnectedness of the current economic crisis. Just as banks in the United States are hesitant to lend money, lending organization in Nicaragua are hesitant to take on additional risk. Nonetheless, these loans are essential because they enable small farmers to generate revenue. More broadly, they allow a once forgotten segment of Nicaragua's population to emerge as an economically independent group.

Asochivida

The most emotional visit Universal Jurisdiction made was in Chichigalpa. There we spoke with former sugar-cane workers who had spent their lives working the fields for Nicaragua's largest rum company, Nicaraguan Sugar Estates Limited (NSEL) (the producer of Flor de Caña rum). NSEL is part of the Grupo Pellas Corporation, one of Nicaragua's largest corporate entities. Among other things, Grupo Pellas is involved in banking, cable television, internet, alcohol, and sugar production. Over the course of their decades of work in the sugar-cane fields, the workers had been required to use and work around harmful pesticide chemicals without adequate protective gear. These chemicals were used to encourage cane growth, and were sprayed both manually by field workers and by airplanes. The exposure to these chemicals caused a significant number of workers to develop lethal health problems, such as Chronic Renal Insufficiency (CRI). When NSEL learned of the health problems they fired the workers.

The group we met, Asochivida, is comprised of former workers and widows of workers who died as a result of their illnesses. Asochivida was formed in 2003 and initially represented only 145 people. Hoping to silence the problem, the rum company paid them a total of 8,000 cordobas, or about \$367. However, the number of sick workers grew steadily; by 2005, 1,000 sick workers and widows had joined the group and there are now currently over 2,000 people who are being represented by Asochivida.

Asochivida is fighting to force the rum company to address these health problems in several ways. First, they seek proper medical services and past medical expenses provided to the former workers. They also are pressuring the rum company to make their sugar cane cutting practices less dangerous for the workers by providing protective equipment that is suited for the climate. Finally, Asochivida hopes to create alternative healthy employment opportunities for the sick workers and widows.

Given that NSEL receives funding from the World Bank, it is astounding that the company's obvious indifference to the health problems of its workers is allowed to continue. Speaking to the former workers was both eye opening and incredibly depressing, especially considering how little government support they were receiving and how financially and politically powerful Grupo Pellas is. The members of Asochivida assured us that even if they themselves fell prey to their diseases, their fellow workers would continue to fight this battle until they achieved some measure of justice. It was inspirational and served as encouragement to learn more about how international legal mechanisms can be used to support those in need.

For example, in early 2008, the Center for International Environmental Law (CIEL), on behalf of Asochivida and other similarly situated cane workers, filed a complaint with the World Bank's Compliance Advisor/Ombudsman (CAO). CAO's goals, according to their website (<http://www.cao-ombudsman.org/about>), are to address the concerns of individuals or communities affected by World Bank projects; enhance the social and environmental outcomes of World Bank projects; and foster greater public accountability. CAO is an independent of the loan-making process and instead reports directly to the President of the World Bank. As a result of the negotiations that followed, NSEL committed to provide some, though insufficient, amounts of food, medical, and school supplies to former employers and their families. The most important result is that a team from Boston University is currently conducting an epidemiological study on CRI, which will hopefully conclusively establish the link between the chemicals and the CRI epidemic among the cane workers. This is an important example of the benefits of connecting a small community-based organization to international actors, although at the moment it is hard to see any improvement in the lives of the workers as a result.

Cooperatives: Grupo Fenix and the Miraflor Coffee Cooperative

In the 1980s the Sandinista government created cooperatives from confiscated farmland. The land was not owned individually but by the state and the cooperatives were created through national law. Even though today the Sandinistas have gained control again of the Nicaragua's government, cooperatives have changed dramatically in nature and scope since the 1980s. Cooperatives centered on farming feature private familial ownership of the productive land with shared facilities for the members of the cooperative

to use. Moreover, the cooperative structure has moved beyond agriculture and is used for other community projects. During Sandinista rule in the 1980s, participation in the state-organized cooperatives was crafted through law. In contrast today the cooperative movement has morphed into voluntary associations. These changes reflect both the democratic, entrepreneurial nature of cooperatives today and their stronger connection to the communities the cooperatives serve.

A cooperative is an association of people united to promote economic and social needs through a jointly owned enterprise. Their aims can vary wildly; we visited one cooperative that focused on renewable energy and solar power and another that consisted of coffee growers. All cooperatives, however, share several common features. Members govern the activities of the cooperative collectively, usually through democratic means, such as a voting system. Membership is usually limited, sometimes by gender as in the case of women's cooperatives, or by economic activity, such as coffee cooperatives. They typically use any revenue to reinvest in the community or dedicate to further the purposes of the cooperative.

One cooperative we visited was the "Solar Woman of Totogalpa," a woman's cooperative initiative assisting the women in the town to form a cooperative and create a sustainable solar community. The cooperative is major project of the non-profit organization Grupo Fenix, which seeks to promote economic and community development in Nicaragua, through the use of renewable energy. Grupo Fenix started at, and remains connected to, the National Engineering University, and began working with community members in 1999. Its stated mission is "to contribute to the wellbeing of rural communities, creating an awareness of sustainable lifestyles through technical and cultural exchange, promotion, and research in the field of renewable energy."

We spent two days with the cooperative. When we initially arrived, we were divided into groups for our home stays. For example, John and Eliot stayed in the house of a woman named Rumelda who lived with her husband and two daughters in Sabana Grande. The energy used, which essentially comprised a few lights bulbs and a small radio, was all supplied through solar panels. After some prying on our part, and some questions regarding the development of the cooperative and the community, it became clear to us that this entrepreneurial woman was fully invested and excited about the solar project she was a part of.

Cooking with wood burning stoves poses a significant risk to a women's health in Nicaragua. The need for fuel also leads to deforestation, which in turn causes flooding and environmental degradation. The Totogalpa women's cooperative has crafted a solution to both of these problems through an invention called the "solar cooker." A solar cooker is a big wooden box lined with reflective material that can trap large amounts of heat and acts as an oven. This cooker poses none of the smoke-related risks and

does not require any fuel, saving time and money. The cooperative builds, markets, and sells these solar cookers and also refurbish solar panels.

Between our conversations with Rumelda and our educational tour, it was clear that this ambitious group had a clear vision for the future. In one year alone, the women contributed over 8,000 hours in volunteer work just on their first building, making every one of the almost 6,000 adobe bricks with their own hands. The first Solar Center building is now open and houses a small office, a shop for building photovoltaic panels and solar cookers, and a small warehouse. It also functions as a center for the community for special occasions, such as the arrival or departure of Solar Culture Course participants and international volunteers. The women, together with Grupo Fenix, offer solar culture courses several times a year that not only teach the skills and technology of building solar panels and cookers, but the realities of life as a campesino in Nicaragua.

The Solar Women have also built a Clivus composting toilet and installed a solar water pump on the center grounds, and in partnership with ADRA (Adventist Development and Relief Agency), replanted more than 14,000 native trees in the community. The women also maintain a Green Store (Tienda Verde), a micro-loan fund, and a Scholarship Fund/Committee. While we were visiting, the women were finalizing and formalizing their cooperative status, which would enable them to collect government funding and manage their own accounts independently. In addition, they have created a plan for a Solar Center that would house an office, research center, production shops, market, restaurant, and hotel. This solar “campus” would provide the infrastructure they envision to promote and sell solar products and house and feed visitors coming to their model solar community for courses in solar technology.

There were concerns about the time and labor-intensive methods of some of the projects and whether they could be replicated on a larger scale. Also, while we did see the solar-cookers being used, it seemed that the majority of cooking still went on wood-burning stoves within the household. Nevertheless, the opportunities provided by Grupo Fenix’s projects have clearly improved the standard of living for the women involved, and its goals show potential for further improvement in the future.

In Miraflores we visited more traditional coffee cooperatives. The coffee farms in Miraflores produce a high-grade, organic, coffee bean – a certification the cooperative must acquire each season by passing an inspection and paying a certification fee. There are three cooperatives in total; one is a women’s cooperative while the other two simply limit membership to families who grow coffee. The cooperatives collectively own coffee processing facilities while the families privately own the productive land that grows coffee. The cooperatives require dues from its members to pay for these shared facilities. The cooperatives also invested in improving the health services offered and the primary schools.

Cooperatives have multiple benefits for the communities in which they operate. First, cooperatives typically reinvest proceeds in the community or spend profits to further the aims of the cooperative. This contrasts with private ownership. For example, the coffee cooperative owns a coffee processing and drying operation. Community ownership avoids any possible rents a private owner could charge. The community-focused structure also allows communities to disperse costs among a large group of individuals, allowing for community entrepreneurship. Individually the women in “The Solar Women of Totogalpa” cooperative would not have the time nor the resources to try developing and marketing an innovative item such as the solar cooker. The cooperative structure spreads these costs across the community and makes it a viable venture.

Second, in the communities we visited the cooperatives created a strong sense of pride among the members. The community in Totogalpa strongly supported the work of the solar group. Even young children wanted to help out with the project when they grew up. This shared purpose and dedication creates a strong social network. The structure of the cooperative itself encourages these community bonds through democratic decision-making. Cooperative organizations also serve to help bring social services to their communities, another aspect of community building. For example, the coffee cooperative in Miraflor was involved in bringing medical services to the community as well as improving and expanding the local schools.

Lastly, cooperatives embody values of local democratic decision-making and entrepreneurship that are otherwise lacking in Nicaraguan culture. As the government of Daniel Ortega continues its descent into autocracy, cooperatives create local economic units based on democratic principles. They also localize decision-making. Coffee cooperatives that can prepare coffee for export avoid the risks of exploitation inherent in working with a large corporate exporter. They also allow for community entrepreneurship through spreading the risks and costs inherent in innovative business ventures.

Cooperatives provide a structure for sustainable development. They are non-profit and keep any revenues in the community where the cooperatives operate. They also strengthen social networks and communities which can help all development efforts. They vary in aims but all contribute to the fabric of the communities in which they operate.

For further information:

Nitlapan <http://www.nitlapan.org.ni/index.en.php>

Asochivida (Asociacion de Chichigalpa Por La Vida) <http://asochivida.org/>

FDL <http://www.fdl.org.ni/index.en>

Grupo Fenix <http://www.grupofenix.org/>

