

ELECTORAL OVERVIEW

Implications for Legal Framework

Panorama Electoral (Electoral Overview) is a growing consortium of organizations¹ that exercises the formal right to national electoral observation of current processes. The consortium is civic, non-partisan, independent and engaged with the constitutional rights and duties of Nicaraguan citizenship.

This list is based exclusively on facts, highlighting the events that most affect the electoral process and its fundamentally democratic principles, such as the right to vote and be elected, political pluralism, due process, civic participation, representative democracy and legal rights, among others. The evaluative summary and general recommendations are the thoughts and ideas of the Consortium, based on relevant events and the history leading up to said events. The report includes the events that form the framework of these elections to the date of its publication, and the report is submitted with the hope of improving our electoral system and our democracy by fully and publically publishing the findings of a technically rigorous observation.

Evaluative Summary and General Recommendation of the Consortium

The final evaluations of the Nicaraguan elections by recognized experts and qualified electoral observation groups,² which have closely observed this electoral system since the year 2000, have shown a constant and worsening deterioration of the quality of electoral processes administered since that year. Conditions became critical starting in 2008, the year in which the official results reflected fraud against voting citizens, according to those organizations' official publications.³ From 2010 until now, the lack of minimum information and transparency prevented the processes from being auditable by political parties or outside analysts. Based on the events that have affected the 2016 electoral process from its beginnings, expounded upon below, this Consortium anticipates little substantive variation from the current trend, leaving little room for hope that this election occurs peacefully and respects the votes of those who choose to participate. We recommend that the authorities that have arisen from this electoral process prioritize the swift and faithful creation of a political environment with just and transparent elections, respecting the right to democratic participation of all Nicaraguans.

I. Political and Legal Context

- A coalition presented as candidates for president and vice president are the current president and his spouse, respectively. Some hold that this is a violation of Article 147 of the constitution, which prohibits people within one to two levels of "affinity" (*afinidad*) of the current president from being nominated for public election. On the other hand, in what appears to be an appraisal of the current electoral authority, some precedents in other countries seem to indicate that "affinity" does not include marriage. Given the negative history of dynasties and nepotism in Nicaragua, some groups are alarmed by this development.
- In June of this year, more than 1700 days after the submission to the Supreme Court (*Corte Suprema de Justicia*, CSJ) of writs of protection (*amparo*) by favorable factions of an internal

¹ The consortium consists of Ethics and Transparency Civic Group (*Grupo Cívico Ética y Transparencia*), Leadership Institute of the Segovias (*Instituto de Liderazgo de las Segovias*), the Chinandega Women's Movement (*Movimiento de Mujeres de Chinandega*), and the Association of Volunteers for Community Development (*Asociación de Voluntarios para el Desarrollo Comunitario*).

² Ethics and Transparency Civics Group (*Grupo Cívico Ética y Transparencia*), European Union (*Unión Europea*), The Carter Center, IPADE and OSA.

³ See reports from Ethics and Transparency and IPADE, which prove that the CSE named as victors 40 mayors who had not, in fact, won the popular vote as recorded in the vote-counting minutes, with networks of corruption affecting hundreds of JRVs and entire municipalities with more total votes than what was expressed in the official register, among other irregularities.

lawsuit within the Independent Liberal Party (*Partido Liberal Independiente*, PLI), the CSJ ruled in sentence 299 in favor of the appellant Pedro Reyes V., thus granting him control of the party. Beyond the merits of the appellant's case, Article 51 of the Protection Law (*Ley de Amparo*) establishes a maximum of 45 days after the submission of the writ to give this type of sentence.

- Thus, the Supreme Court stripped control of the primary parliamentary opposition party from the group that had run it since 2011, through three electoral processes and in concordance with prior, presumably final, rulings, and did this via electoral authority. In a few days, another CSJ decision made impossible the use of the only other electoral body available for the elections for this coalition, thus excluding the second most influential political force in the country from parliamentary participation. The years-long delay, spanning three electoral processes, is not the only questionable element. By putting forth a sentence in the midst of the electoral process, in the the same week when the parties take office in the territorial administration of the electoral authority, the faction that won the lawsuit was unable to exercise its right to nominate senior and administrative staff to all of the intermediary bodies and eventually in the country's Vote Administration Boards (*Juntas Receptoras del Voto*, JRV), causing an imbalance in bipartisan control of these bodies mandated by the Electoral Law (*Ley Electoral*).
- The following 29 of July, the CSE dismissed 28 primary and alternate representatives, as asked by the new leadership of the PLI. The popular mandate of these legislators was to expire January 9, 2017. On August 16, these representatives submitted a writ of protection to the CSJ, alleging denial of due process, lack of jurisdiction of the CSE (dismissal of representatives is the exclusive power of the National Assembly) as well as violations of the right to defense and to constitutional principles related to the right to be elected (Article 51) and political pluralism.

II. Administrative and Legal Context

- In April of 2014, all of the magistrates of the Supreme Electoral Council (*Consejo Supremo Electoral*, CSE) were elected with 60 votes from the governing party and two allied representatives. Members of the opposition in parliament did not participate, maintaining that the *sui generis* form of voting for or against all of the candidates simultaneously obligated them to support candidates that had been accused by the opposition and other groups of being the authors of fraud in past elections. As a consequence, the group holding electoral authority became a body entirely composed of candidates nominated by the governing party.
- The reforms to the Electoral Law of May 2012 and the reform of Article 131 of the Constitution in January 2014 incorporated important elements of model legislation with the goal of assuring proportional and equal-to-50% participation by women on political parties' candidate lists and therefore in delegations to the National Assembly. These are the first parliamentary elections under this new rule. The democratic achievements of this positive measure, beyond gender equality, depend on the development of the internal democracy of each party, institutionalism and the separation of powers, which have all suffered setbacks in recent years according to numerous experts.
- Constitutional reform Article 131, of January 2014, which makes the manipulation of party affiliation (*transfuguisimo*)⁴ illegal under penalty of dismissal, the implementation of which has led to the removal of three representatives, have resulted in the legislative period finishing abnormally, with 12 of 92 popular election seats occupied by persons designated by a party to substitute those that were duly elected, as well as 19 primary representatives replaced by an alternate representative, damaging the democratic function of the legislative body.

⁴*Transfuguisimo*: when a legislator abandons or is expelled from the party through which they were nominated for a popularly elected seat, either because of irreconcilable disagreement with party leadership or policy, or for personal or financial reasons.

III. Electoral Observation

- In concordance with Article 10, Section 8 of the Electoral Law, this consortium, through the Ethics and Transparency Civic Group (*Grupo Cívico Ética y Transparencia*), solicited from the CSE on June 18 its due accreditation as an Observer, with no received response to date. In the Electoral Calendar, the accreditation of observers is absent for the first time since its initial implementation in 1990. Nevertheless the consortium continues to carry out its mission supported by Article 52 of the Constitution (*Citizens have the right...to denounce irregularities and make constructive criticism to the Powers of the State or to any authority...*).
- President Ortega declared in a public speech that international observers (described as *sinvergüenzas*⁵) would not be invited to the process. The CSE is enforcing the order.

IV. Electoral Administration

- The electoral calendar published on May 11, 2016, some six months later than is customary,⁶ mentions and plans for fewer activities than its predecessors, without knowing if these activities will be carried out. The absence of the following activities of importance to the current calendar is of note: a date for the accreditation of observers, publication of manuals (such as the Step by Step, which regulates the JRVs), rulings for the function of voting stations, due dates for the submission of electoral registers to parties and the preliminary publication of results by the JRVs, as mandated by Article 129 of the Electoral Law.⁷
- In a meeting of the consortium with five of the six active parties, their lack of access to financing (including bank credit) to conduct campaigns was especially noted.

Given in the city of Managua, Nicaragua, on September 6th of 2016.

⁵ People without shame

⁶ For example, in the last two presidential elections, the 2006 electoral calendar was published in January and; the 2001 calendar was published in February.

⁷ Since 2011, Voting Center (*Centro de Votación*) has published an in-auditable summary, as such the parties receive their results in the form of a copy of the vote-counting minutes, conducted by each individual JRV.