

European Union Election Observation Mission



Final Report

**Presidential and Parliamentary Elections
Nicaragua 2006**

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This report was produced by the EU Election Observation Mission and presents the EU EOM's findings on the parliamentary and presidential elections in Nicaragua. These views have not been adopted or in any way approved by the Commission and should not be relied upon as a statement of the European Commission. The European Commission does not guarantee the accuracy of the data included in this report, nor does it accept responsibility for any use made thereof.

Section I

Chapter 1

Executive Summary

Following an invitation from the Supreme Electoral Council (CSE) and the Ministry of External Relations to observe the National Elections (presidential election, parliamentary elections and Central American Parliament elections) on 5 November 2006, a European Union Election Observation Mission (EU EOM) was deployed to Nicaragua on 23 September 2006. The EU EOM, led by Mr. Claudio Fava, MEP, undertook observation in all 15 departments and in the two autonomous regions of Nicaragua with more than 150 observers, focusing its observation activities on the presidential and parliamentary elections.

The 5 November 2006 presidential and parliamentary elections were peaceful, competitive and adequately administered. The emergence of political forces which provided the electorate with a wider choice made them the most important elections held in Nicaragua since 1990. This represented a significant and welcome development in the democratic evolution of the country that needs to be safeguarded and accompanied by significant reforms.

The final results gave the candidate of the *Frente Sandinista de Liberación Nacional* (FSLN), in representation of the alliance “*Unida Nicaragua Triunfa*” Daniel Ortega victory in the presidential race with 38% of the valid vote, and the candidate of the *Alianza Liberal Nicaragüense* (ALN), Eduardo Montealegre, second place with 28.3%. The candidate of the *Partido Liberal Constitucionalista* (PLC) José Rizo came third with 27.1% and Edmundo Jarquín of the *Alianza Movimiento de Renovación Sandinista* (MRS) fourth with 6.3%. The fifth competitor, Edén Pastora of the *Alternativa por el Cambio* (AC) received 0.29% of the vote. The final results for the National Assembly (NA) gave 38 deputies to the FSLN, 25 to the PLC, 22 to the ALN and 5 to the MRS.

The legal framework provides a basis for the conduct of democratic elections. However, the Electoral Law is designed to function in a bipartisan political system, which, although it still permeates all the most important state institutions, no longer corresponds to the political situation in the country. It contains a number of gaps, ambiguities and inconsistencies with the Constitution that were not clarified with adequate regulations by the CSE and that in their totality make it very difficult for emerging political forces to participate in an equal and effective way in the elections. Significantly, the legal framework does not provide an independent judicial avenue for the final resolution of complaints and appeals. The electoral management body, the *Consejo Supremo Electoral* (CSE) is the last instance of judgement for almost all election-related complaints, and exercised its decision-making powers in this field without providing detailed public reasoning for its decisions in line with standard and customary practice.

The CSE is also responsible for an unusually wide range of other activities, from the maintenance of the civil and the voter registers to the supervision of political party activities. Overall, the high degree of politicisation of the CSE in favour of the FSLN and the PLC, both at the central level and in its territorial structure, diminished considerably its ability to act as an independent institution, free from party control. While electoral preparations by the CSE were, in general, logistically adequate, there were shortcomings dictated by the control that the local party structures of the FSLN and the PLC imposed on the process, and by an overall lack of transparency in decision-making and in the related information-sharing process.

There is a strict correlation in Nicaragua between the civil register and the voter register. The voter register is based upon the information contained in the civil registry database, although each citizen has to make a direct and active application, in person, in order to receive an ID card, which is essential to be able to vote. The obsolete, time-consuming and non standardised process of civil registration at the municipal level has a significant influence on the inaccuracies and on the inflated figures of the voter register. The distribution of the ID cards and supplementary voting documents, as had been the case already several times in the past, was poorly handled by the CSE and permitted a selective distribution in some areas of the country in favour of the FSLN and PLC.

The campaign was largely incident-free and was conducted in an atmosphere of respect for freedoms of expression, association and assembly. However, there was an absence of substantive policy discussion, with a focus instead on personal attacks among candidates, emotive slogans and unrealistic promises. The PLC and ALN presidential candidates used inflammatory language against each other and against the FSLN presidential candidate, who focused his campaign on reconciliation and avoided political confrontation. Regrettably, however, the FSLN presidential candidate did not give interviews or participate in public debates. Overall, the exploitation of old war-related issues was less evident than in previous elections. In a continuing sign of growing normality, the police and army acted within their institutional framework and made a positive contribution to the establishment of an atmosphere conducive to the conduct of democratic elections.

Regrettably, the campaign period was marked by external interference and pressure that is not consistent with respect for national sovereignty in relation to the democratic process. This came mainly from US Government officials and US deputies against the FSLN presidential candidate and, to a lesser extent, against the PLC presidential candidate and in favour of the ALN candidate. On a lower level, the Government of Venezuela supported the campaign of Ortega by providing some fertilizer and petrol to FSLN-run municipalities and institutions on preferential terms, and by expressions of its support for Ortega and the FSLN.

Although all political parties contesting the elections gained access to most media outlets, the majority of radio stations, TV channels and print media openly showed clear political preferences in their electoral coverage. Imbalance in the amount of time and in the tone devoted to political parties was observed in the majority of the media monitored by the

EU EOM. The provisions on the limitation of daily airtime and space devoted to electoral campaigning were neither respected by the media, nor enforced by the CSE, resulting in a saturation of parties' advertisements and paid programmes on TV channels and radio stations, especially in the week prior to the elections. In a welcome initiative, many media outlets produced special programmes to inform the population about the different political options. Nevertheless, several media outlets violated the campaign silence period and did not apply any internal form of control to avoid the diffusion of electoral advertisements with defamatory language.

Election day was conducted in a generally calm environment. Voters turned out in large numbers, demonstrating their commitment to a peaceful and democratic process, despite the often slow conduct of polling. On the whole, in polling stations observed, procedures were adequately followed and largely transparent. The presence of attentive party agents in all, and domestic observers in most, polling stations observed, provided effective oversight of the process. Counting was slow but took place in a transparent manner, with the procedures largely followed in polling stations observed.

The process of results tabulation was characterised at the municipal and departmental level by slowness, confusion and some fraudulent attempts to change the results. However, the triple security mechanism put in place by the CSE of publicising the results forms at the polling station level, providing a copy to all party agents present at the polling stations and transmitting the same results forms to the central level enabled political parties and the CSE to effectively halt most attempts at fraud. Regrettably, the full effectiveness of this mechanism was partially hampered by the CSE decision to suspend delivery of the copies of the results forms to the parties' representatives at the central level after reaching 70% of the total of polling stations.

The long gap between the last release of partial preliminary results on 7 November and the release of complete preliminary results on 15 November raised unnecessary suspicions and tensions. Even though a narrow interpretation of the law does not oblige the CSE to complete the release of the preliminary results, good practice and transparency obligations should have required it to inform the political parties and public opinion at large of the reasons for its decision in an adequate manner.

Significantly, there were only a very limited number of challenges to polling station results and only 17 appeals were made to the CSE by ALN and PLC prior to the release of the preliminary results. Regrettably, however, the CSE never published the final numbers of polling stations challenged and annulled, as well as the Departmental Electoral Councils (CED) and Regional Electoral Council (CER) decisions on the appeals submitted to them. The CSE upheld the CED and CER decisions in all cases, in a universal one-line ruling that demonstrates a lack of transparency and inadequate judicial practice in terms of electoral justice. Despite the significant noise made in the media by ALN, PLC and MRS about alleged attempts of fraud at the municipal and departmental levels, only two challenges to the preliminary results (at the departmental deputies constituency level) were presented to the CSE. One appeared to be rejected for formal

procedural reasons, and one was accepted leading to arithmetical corrections, which did not change the assignment of the seats concerned.

On 22 November, the CSE announced the final results of the presidential and parliamentary elections by simply publishing the names of all the elected representatives and without releasing any figures for vote totals per party, voter turnout, invalid votes or number of polling stations annulled. Regrettably, even the preliminary results, broken down by polling station, which had been previously made available on the CSE website, were withdrawn after that announcement. The final results, broken down by polling station, had still not been published at the time this report was completed. Despite the lack of any specific obligation in the Electoral Law for the CSE on the format to be used to announce the results, the methods chosen were far from being adequate in terms of transparency.

A vibrant civil society, committed to the democratic development of the country, played a significant role in the elections, in particular by closely monitoring all stages of the process, deploying large numbers of well-trained observers over the Election day period, remaining vigilant and active during the results publication and challenges period and by continuing with the debate on electoral reforms.

Women continued to play a limited role in some aspects of the election process, although they were well represented in the lower levels of the election administration. Overall, there were fewer women candidates in these elections, and fewer women elected in the NA due to their lower ranking as candidates in the various party lists.

To continue the process of democratic development of the country and provide improved conditions for competitive and pluralistic elections, significant reforms are needed in the legal framework and in strengthening the institutional capacity and independence of the election administration. A thorough reform of the Electoral Law, of the Citizen Identification Law and the adoption of a new Law on Political Parties would contribute significantly to furthering the democratic development of the country. The final chapter of this report offers, in a spirit of partnership and cooperation, detailed recommendations to encourage and stimulate such reforms.

One of the most important aspects that the reform process of the Electoral Law should deal with is the system for appointing CSE commissioners once the current mandate expires. The appointment process should ensure the commissioners' impartiality and independence from all political parties and at the same time, command the respect of all stakeholders. Adequate mechanisms to effectively consult with and take into account civil society recommendations during the appointment process should be established. Eligibility criteria for commissioners should privilege the civic and institutional background of the candidates to the CSE commissioner positions over their political affiliations. A reduction in the number of commissioners should also be seriously considered.

The CSE should also be strengthened as an institution. This process should include an overhaul of its central office configuration, with the establishment of an official organisational structure that responds to criteria of efficiency and transparency. The Civil Service Law should apply for the appointment and the performance of senior levels of the election administration both at the central and at the territorial level, in order to guarantee their professionalisation and protect them from arbitrary dismissals and political party pressure. The composition of the permanent territorial structure of the election administration should be thoroughly reformed and depoliticized.

The reform of the Electoral Law should be accompanied by the adoption of a modern Law on Political Parties that could respond to the new and more complex demands of Nicaraguan society. This law should recognize political parties as subjects of rights and obligations that go well beyond the mere electoral period, and address aspects such as the legal personality of political parties, the regulation of their rights and duties in society outside electoral periods and the regulation of their finance in its global dimension.

The civil and voter registration processes should be revised, modernised and harmonised. In order to achieve this, both civil and voter registration should be placed effectively under the control either of a specialised division of the CSE, or of a different governmental agency. A thorough reform of the Citizen Identification Law could regulate the reorganisation of the system. The application, production and distribution of ID cards should be simplified and removed from the control of the political parties' territorial structures. The distribution of ID cards should take place permanently at the municipal level, ideally in the same office that deals with civil registration.

The publication of election results, both preliminary and final, should be regulated by detailed and transparent rules. The CSE should be obliged by law to publish preliminary and final results at every level, including results broken down by polling station, removing the possibility of the CSE deciding arbitrarily how many and which part of the results to be made public.

The resolution of electoral challenges and appeals should be governed by a mechanism independent from the one that administers the elections. This could mean that such competences are attributed to a specific section of the judiciary or at least to a separate branch of the CSE that deals exclusively with the supervision of the process and the resolution of challenges and appeals. The decisions on challenges and appeals should be informed by basic principles of juridical culture and should respect the procedures already used in the Nicaraguan judicial system. Decisions on complaints, challenges or appeals should always contain detailed and clear reasoning for every single decision.

Chapter 2

Introduction, Background, and Acknowledgements

Following an invitation from the Supreme Electoral Council (CSE) and the Ministry of External Relations to observe the National Elections (presidential election, parliamentary elections and Central American Parliament elections) on 5 November 2006, a European Union Election Observation Mission (EU EOM) was deployed to Nicaragua on 23 September 2006. The EU EOM undertook observation in all 15 departments and in the two autonomous regions of Nicaragua. The EU EOM focused its observation activities on the presidential and parliamentary elections.

The Mission was led by **Chief Observer Mr. Claudio Fava, Member of the European Parliament (MEP)** and consisted of 10 core team experts, 26 Long-Term Observers (LTOs) and over 100 Short-Term Observers (STOs), coming from 20 EU Member States as well as from Switzerland. Around election day, the EU EOM was joined by a 14-member delegation from the European Parliament, led by Mr. Emilio Menéndez del Valle MEP and including six other MEPs. The EU EOM issued a statement of preliminary findings and conclusions on 6 November 2006, which was endorsed by the European Parliament delegation. In total, the EU EOM deployed 150 observers in all departments and regions of the country over the election day period. Upon the release of the final results and the conclusion of the election process, the EU EOM closed its operations on 9 December 2006.

The mandate of the EU EOM was to conduct a comprehensive assessment of the electoral process in accordance with international principles for genuine democratic elections in line with the standard EU methodology and the “Declaration of Principles for International Election Observation” commemorated at the United Nations in October 2005.

The EU EOM wishes to express its appreciation for the cooperation, coordination and assistance received throughout the course of its work from the following: the CSE; the Nicaraguan Government; representatives of the Nicaraguan civil society and domestic monitoring organisations; representatives of all political parties; representatives of the media; the Delegation of the European Commission in Nicaragua; the United Nations Development Programme; the International Foundation for Electoral Systems; local representatives of EU Member States; and international observer colleagues, especially from the Carter Center and the Organisation of American States.

This Final Report follows and integrates the preliminary findings and conclusions contained in the Preliminary Statement and contains an extensive set of recommendations elaborated in a spirit of cooperation and friendship as a contribution to the strengthening of the Nicaraguan electoral process.

Section II

Chapter 3

Political Context

3.1 Political Background

Since the fall of the dictatorship of Anastasio Somoza in 1979, political life in Nicaragua has been dominated by the confrontation between pro and anti-Sandinista groups. This confrontation gave rise to a long civil war in the 1980s, ending with the 1990 elections which were won by the liberal coalition led by Violeta Barrios de Chamorro. After that, the confrontation between pro and anti-Sandinista blocks moved to the political arena and evolved into a conflict played according to basic democratic rules, although it continued to leave the country very polarised and divided between the two main political forces, the *Frente Sandinista de Liberación Nacional* (FSLN) grouped around Daniel Ortega, the former leader of the 9 FSLN revolutionary commanders, and the *Partido Liberal Constitucionalista* (PLC) led and co-founded by Arnaldo Alemán, former mayor of Managua, who was elected President in 1996.

This long-term confrontation was also characterized by continuous deal-making between the two groups. The liberal coalitions that repeatedly won the elections since 1990, whilst having sufficient strength to unite the liberal parties to win the elections, never maintained a united front in the National Assembly (NA) blocking every serious attempt to make effective progresses in the democratisation of the country. Despite having significant powers, the presidents therefore often needed to seek the support of the FSLN in order to pass laws in the NA.¹ Therefore, since 1990, the FSLN, even though formally always in the opposition and not able to push for its own type of reforms or to pass laws, was always in a key position to approve and negotiate with the government significant power-sharing agreements.

After 1990, several differences began to surface within the FSLN, with the emergence of a group challenging Ortega's leadership and demanding a renewal of the party. The party's reputation had suffered badly from the so-called "*Piñata*" (the gifts), by which many prominent FSLN leaders obtained various state properties (homes, factories, land, machinery, etc.) at exceptionally advantageous prices in the interim period between the 1990 elections and the transfer of functions to the new Chamorro administration. The emerging differences resulted in the creation in 1994 of the breakaway party *Movimiento Renovador Sandinista* (MRS) under the leadership of former FSLN Vice-President Sergio Ramírez. However, the results obtained by the MRS in the subsequent elections remained very modest and did not pose a real threat to the hegemony of the FSLN within

¹ To pass regular laws, 46 votes are needed (Article 141 Constitution), whilst for partial constitutional reforms 56 votes are needed, and 62 for a completely new constitution. On the other hand, to block any constitutional reform only 37 votes are needed (Article 194 Constitution).

the leftist spectrum. The PLC, on the other hand, remained for a good decade under the strict control of Alemán's group.

The form of deal making described above reached its apex during the Alemán Presidency, when the political negotiations with Ortega became very intense and resulted in 2000 in a number of constitutional reforms that were perceived by many analysts and civil society organisations to be tailor-made to ensure continued control over the political life of Nicaragua by the two leaders. In particular, the positions within key state powers (the Supreme Court, the CSE and the State Accounting Office) were divided between the two parties. In addition, the electoral system was changed to make it more difficult for smaller parties to challenge the dominance of the two traditional parties, and to reduce the percentage of votes needed to be elected President in the first round (See chapter 4). This agreement was to be known later on as "*El Pacto*" (The Pact).

The presidency of Enrique Bolaños, former Vice-President under Alemán who was elected in 2001 representing the Liberal Alliance, attempted to make a clear change of direction in the administration of the country. Bolaños attempted to focus on the fight against corruption as the number one priority for the country and departed drastically from Alemán's policies.² This drastic and sudden turn did not find any support within the PLC, which literally abandoned Bolaños, leaving him to govern with no allies in the NA.³ President Bolaños had to rely therefore on ad-hoc agreements with the FSLN to pass legislation and initiate some reforms. In February 2005, the NA even passed a Constitutional Law (N.520) that reduced the powers of the President.⁴ Overall, however, the Bolaños administration was characterised by a general inability to negotiate with the political parties represented in the NA and by a heavy reliance on the support of the international community, specially the US Government. This inability turned into an open conflict among the various state powers (Executive, Parliament, Supreme Court, and CSE) that prevented the consolidation of democratic institutions and badly affected the economy, culminating in violent street protests that plagued Managua for some time (students, health workers, transportation, etc.) during 2005.

3.2 The political scenario before the elections

In March 2006, before the presidential and parliamentary elections, elections took place

² The most prominent and significant result in this respect was the sentencing of former president Arnoldo Alemán for corruption offences to 20 years in prison.

³ One parliamentary group of 9 deputies was created from within the liberal group called "*Azul y Blanco*" and supported President Bolaños with modest results, resulting in a new alliance, *Alianza por la República* (APRE) for the 2004 municipal elections, but winning only two out of 153 municipalities.

⁴ Law 520 would provide the NA with the powers to reject nominations of ministers and ambassadors made by the President, and would allow the NA to request reports from ministers and governmental officials, with the possibility even of dismissing these officials in case of dissatisfaction with their performance. The passage of the Law 520 was termed by President Bolaños a "technical coup-d'etat", and led him to request the support of the Organisation of American States (OAS) in order to avoid its entry into force. After a long stalemate and several mediation attempts, a new law was passed by the NA (Law N. 558), which delayed the entry into force of Law 520 until 20 January 2007. While this compromise allowed the Government to continue its administration and avoided a complete paralysis of the State, the discussion continued as to whether the changes foreseen in Law 520 are to enter into force or not in 2007. It appears that a large majority in the new National Assembly (FSLN, PLC and ALN) is currently in favour of a further extension of the grace period granted by Law 558 or even the complete cancellation of Law 520.

for the Regional Councils of the two Autonomous Regions of the Atlantic Coast. These elections were seen by many analysts as an important test for the electoral administration, whose reputation had emerged rather tarnished after the so called “*Caso Granada*” (Granada Case) that marred the 2004 municipal elections and made precarious the level of trust enjoyed by the CSE among the various stakeholders.⁵ The Regional Council elections therefore came under heavy scrutiny to see whether the extreme politicisation of the election administration and the control exerted over it by the FSLN and the PLC (which sometimes completely paralysed CSE activities due to their internal power struggles) could still allow the delivery of a genuine electoral process, especially in light of the growing inadequacies of the bi-partisan focused Electoral Law in the more diverse political situation, and of the inaccuracies in the voter register. Once the obstructionist power struggle was overcome, the CSE proved its ability to deliver a technically sound process.⁶ This was confirmed by the evaluations of the domestic and international observers present for those elections. The results gave a significant victory in terms of number of votes to the PLC, in spite of all the speculations about the PLC’s alleged decline following the imprisonment of its long-time leader and former President Arnoldo Alemán, and the emergence of the *Alianza Liberal Nicaragüense* (ALN) as a significant liberal force, especially in the South Atlantic Region. In any case, the positive outcome of these regional elections represented an important boost for the CSE in advance of the presidential and legislative elections, at a time when public confidence in the institution was low.

3.3 The presidential and parliamentary elections

The presidential and parliamentary elections of 5 November 2006 were considered to be the most important elections held in Nicaragua since 1990. The most significant development that gave these elections such special importance was the presence of four alliances or parties with considerable chances of winning several seats in the NA and whose performance could have a serious impact on the outcome of the presidential race. The emergence of the *Alianza Liberal Nicaragüense* (ALN-PC), and the revival of the *Movimiento Renovador Sandinista* (MRS) under a new alliance (A-MRS), which grew in support and became an important challenger, created a completely new scenario for the elections, and challenged the bipartisan nature of the political system, traditionally dominated by the FSLN and the PLC, and was a significant development in Nicaraguan politics. A small fifth party, the *Alternativa por el Cambio* (AC), has been active under different names for some time but only played a marginal role in the process.

The growing popular support that marked the pre-electoral campaign of ALN and MRS was accompanied by various fears that the two emerging presidential candidates, Herty

⁵ The mayoral election results in Granada initially gave victory to *Alianza por la República* (APRE, the liberal-reformist alliance), but the final results gave victory to the *Convergencia Nacional* (the FSLN-led alliance) after the results of one polling station were annulled for formal mistakes in the filling in of the results sheet. This event was deemed a clear case of fraud by domestic observers, who accused the election administration of having illegally engineered the results in favour of the FSLN, and cast a dark shadow on the overall performance of the CSE.

⁶ The CSE President requested the Supreme Court to issue an opinion on the possibility of calling the substitute commissioners to make up the quorum when the PLC principal commissioners refused to be present at CSE sessions, which paralysed the CSE’s work. The CSJ ruled favourably on the request and so CSE sessions began to operate again.

Lewites (A-MRS) and Eduardo Montealegre (ALN-PC) would not be allowed to run for the Presidency due to staged accusations by the FSLN and PLC. In the end, thanks also to a strong international pressure, both candidates were able to submit their candidacies without problems and could begin campaigning. However, Lewites died unexpectedly in July, and his running mate Edmundo Jarquín took over as presidential candidate, while Carlos Mejía Godoy was chosen as vice-presidential candidate. The sudden death of Lewites once again changed the political context and altered the balance among the contesting forces, with the FSLN strongly increasing its chances as a possible first-round winner in the presidential election. In this context, the split within the liberal forces was a concern to some national, regional and international actors (specially the US Government) which saw a first round victory by Daniel Ortega to be much more likely. This encouraged the US Government to continue with its policy of blunt intervention in Nicaragua, through various visits of governmental officials and elected representatives. The main objectives of these visits were to raise the pressure on the PLC to accept a coalition with the ALN, while at the same time discrediting the FSLN candidate in any possible manner.

The election results gave victory in the presidential election to the FSLN candidate Daniel Ortega in the first round, with 38% of the valid vote, followed by Eduardo Montealegre with 28.30 %. The PLC candidate José Rizo came third with 27.11%, Edmundo Jarquín of the MRS received 6.30% and Edén Pastora of the AC ended up fifth with 0.29%. In the National Assembly elections, the final allocation of seats gave the FSLN 38 deputies, the PLC 25, the ALN 22 and the MRS 5. AC did not obtain any seats because it did not meet the 4% threshold, and it will therefore lose its legal personality according to the current provisions of the Electoral Law. The results, while confirming the Ortega's victory under the current system of representation, represent the lowest percentage for winning a presidential race in Nicaragua in many years. Such a victory was made possible by the constitutional amendments of 2000 that lowered the threshold for first-round victory from 45% to 35% of the valid votes if the candidate gaining most votes is at least 5 percentage points ahead of the second-place candidate. In all previous elections since 1990, the winning presidential candidate had always won with more than 50% of the vote. In this sense, the more limited popular vote obtained by Daniel Ortega compared to previous presidents should compel the FSLN leadership to take into account in governing the country the wishes of the more than 60% of Nicaraguans who expressed a different choice.

The results, despite the confused and lengthy publication process put in place by the CSE and the strong media fuss about possible complaints and challenges (See Chapters 11 and 12), were recognised by all parties. Significantly, the runner-up in the presidential elections, the ALN candidate Eduardo Montealegre, in a welcome and important move for the stability of the country, was the first presidential candidate to concede Ortega's victory, as early as the night of 7 November with a visit to FSLN headquarters. On that occasion, Montealegre announced his wish to be a constructive and effective opposition force in the NA. At the time of writing, the plans and strategies of the main political forces in the next NA are still uncertain, especially in light of the long-publicised floor-crossing announcements of elected candidates to join the FSLN, and the possibility of

further such announcements.⁷ In this respect, the internal disputes between some PLC elected members and the party leadership could give rise to new floor-crossing practices. Likewise, the ALN and even the FSLN may not be exempt from this phenomenon given the inclusion in their alliances of various personalities with differing ideologies.

⁷ Floor-crossing announcements characterised the entire pre-election period (See Chapter 9). In addition, the NA deputies elect Salvador Talavera (ALN) and Mario Valle (MRS) announced their passage to the FSLN in the days after the elections. A third deputy, Juan Ramón Jimenez was expelled more recently by the MRS after being elected as third vice president of the NA with the agreement of the FSLN and PLC deputies.

Section III

Chapter 4

The Legal Framework

4.1 Political and Legislative Structure of Nicaragua

The legal framework governing the elections in Nicaragua is made up of the 1987 Constitution, the 2000 Election Law and a set of regulations dictated specifically for each election. Another important piece of legislation is the 1993 Citizens' Identification Law that regulates the process of civil and voter registration (see Chapter 6), while other laws like the Municipalities Law, the Law of Administrative Divisions and the Civil Code have only limited application in the electoral process.

The Constitution defines Nicaragua as a presidential republic, with the President as the Head of the Executive Power and the Supreme Commander of the Army. The legislative power resides with the National Assembly (NA), made up of 90 elected members plus two seats assigned to the runner-up in the presidential electoral race and to the outgoing President. The judiciary is composed of a three-tiered structure and is headed by the Supreme Court of Justice (CSJ). Administratively the country is divided in 15 departments and two Autonomous Regions on the Atlantic Coast, created in 1987 by the Law on Special Autonomy for the Atlantic Coast Regions to ensure greater protection for the economy and the rights of the ethnic minorities living in those regions. Below the departmental or regional level, 153 municipalities complete the territorial organisation of the country.

4.2 Electoral Legislation

4.2.1 The Constitution

The Constitution provides the basic principles regulating genuine and democratic elections. The right to elect is granted to Nicaraguan citizens at the age of 16, an unusually young age, and oddly five years before the full acquisition of social and civil rights. The right to be elected is granted at 21 years for the NA and at 25 for the presidency. The Constitution also guarantees the freedoms of expression, assembly and association, the right to organise and belong to a political party, the right to make petitions and to criticise the powers of the State through any public official as well as the right to receive a reply from the same official.

The Constitution was approved in 1987 and since then the parts that affect the electoral process have been amended several times via laws of partial constitutional reform. Partial reforms of the Constitution require a qualified majority of 60% of deputies to be approved, while total reforms require the approval of two thirds of the deputies, as well as the calling of a Constituent Assembly. The first important reform was introduced with the Law 192/1995 that strengthened the powers of the NA vis-à-vis the executive. This

was followed by Law 330/2000 that increased the number of members of the electoral management body, the *Consejo Supremo Electoral* (CSE), from five to seven and changed the requirement for a first round victory in the presidential race. More recently, Law 520/2005 further strengthened the NA's powers over the government's powers by granting it the prerogative to approve governmental nominations of ministers, ambassadors and other high offices with a qualified majority of 60%. As a result of a political agreement in the NA, the entry into force of this specific amendment was postponed until ten days after the new President and the new NA take office (see paragraph 3.1).

The most controversial constitutional reform was that which took place in 2000, lowering from 45% to 40% the percentage of valid votes needed to win the presidential election in the first round, with an additional possibility of achieving a first round victory with only 35% of valid votes, provided that there was a 5 percentage point advantage over the second place candidate. The same reform also gave a NA seat to the outgoing President and to the second place presidential candidate. Both amendments have been heavily criticised by parties like MRS and ALN and by a large sector of the civil society, as tailor-made to favour the victory of Daniel Ortega in the first round, and to give Arnaldo Alemán special immunity as a member of the NA.

The electoral authority, the CSE, is recognised in the Constitution as the fourth power of the State and is granted very extensive powers in the administration of the electoral process (See Chapter 5).

4.2.2. The Electoral Law

The Electoral Law has the status of constitutional law (*Ley Constitucional*) and requires a qualified majority (60%) to be approved or amended in the NA. The Electoral Law was introduced in 2000 and has now governed the presidential and parliamentary elections of 2001, the municipal elections of 2004 and the Atlantic Coast regional elections of 2006. While providing a framework for the conduct of democratic elections, this law has been the subject of growing concerns from various sectors of the civil society in recent years due to certain inconsistencies with the Constitution and other questionable provisions.⁸ Moreover, the changed political situation has increasingly highlighted a number of ambiguities and gaps in the Electoral Law, which was clearly designed for a bipartisan political system that does not correspond to the current political reality of the country. The CSE despite its ample regulatory powers did little to clarify through regulations the mentioned gaps and ambiguous provisions.

On the whole, the Electoral Law is an unusual combination of very broad and not well defined principles (that leave room for different interpretations and require quite extensive regulations), and a number of very detailed provisions that are much more like regulations. This situation is compounded by the fact there is no permanent regulatory framework, instead "ad hoc" regulations are approved by the CSE for each specific electoral event. This system makes the institutionalisation and standardisation of good

⁸ The Electoral Law was also the subject of heavy criticism by the EU EOM of 2001.

electoral practices more difficult, opening instead the door to potential inconsistencies and uncertainty in the rules applicable for each single electoral process, especially because the regulations are often passed at a very late stage and are the result of political negotiations.

Some of the main problems in the practical implementation of the Electoral Law in an electoral process will be analysed in various chapters of this report. However, it is crucial to highlight here that the provisions concerning political parties are one of the main weaknesses in the Law. The legislation is designed to function in a bipartisan political system and to preserve the dominance of the two traditional political parties in it. This intention permeates a number of provisions, starting from the very restrictive ones that regulate the constitution and creation of political parties, including the provision regulating their registration for an election, and ending with the prohibition on independent candidates or citizens associations standing in the elections.

Political parties, in order to get their legal personality, are obliged to have a national headquarters and executive boards in all departments and regions and all municipalities. In order to participate in elections, they are also obliged to present lists of candidates for all electoral races and for all constituencies. Regional parties are only able to participate in national elections if they form an alliance with a national party, and may not participate, even in the departmental constituencies, alone. Furthermore, the CSE is granted the mandate to verify whether the parties' internal executive board elections are carried out in accordance with democratic procedures, and to cancel the parties' legal personality if they do not reach the threshold of 4% of the total valid votes in national elections.⁹ The requirements for the parties are very burdensome as well in terms of the human and financial resources needed to participate in the territorial structure of the election administration and in particular in the distribution of the third polling station committee member (see Chapter 5). If this is added to the need to field political party agents in all polling stations the burden for new, small or emerging political forces becomes extremely heavy.

Furthermore, both the Constitution and the Electoral Law considerably narrow down the prerogatives of those political parties that do not obtain 4% of the valid vote in parliamentary elections. If a party does not reach 4% of the vote, not only does it win no seats, but it also loses its legal personality. This clashes with international standards of freedom of association and the principles guaranteed by the Constitution in Article 55, which guarantees the citizens' right to create parties or participate in party activities beyond mere electoral purposes. Whilst it is common in proportional systems to have a threshold to prevent fragmentation amongst very small parties, 4% is a relatively high and redundant figure given the low electoral magnitude of many departmental constituencies (see chapter 4.4.). This provision is very disadvantageous particularly for

⁹ The Supreme Court of Justice (CSJ) following the 2001 elections, in a case brought by members of the *Partido Conservador*, declared inapplicable (sentence 103/2002) the provision of Article 10 item 17b of the Electoral Law, which required that the 4% of valid votes be obtained specifically in *presidential* elections. The CSJ found that this contravened the Constitution, Art 173 item 12, which establishes that it is 4% in national elections. In the same sentence, the CSJ eliminated the requirement of collecting 3% of authenticated signatures of the national voter register in order to be registered as a political party.

regional parties considering the other restrictions mentioned above, and is somewhat contradictory, considering the fact that Nicaragua has a legislature composed of a single chamber and has two autonomous regions. The large parties have, to date, used these provisions to their advantage by attracting, and including in their ranks, the smaller political parties.

4.2.3 The CSE Regulations

The CSE made only limited use of the ample regulatory prerogatives afforded to it by the Law, during these elections. The most important regulations passed by the CSE concerned the challenges procedures, the role and functions of political party agents, political party financing during the electoral campaign, and the functioning of the municipal, departmental and national tabulation centres. Other regulations were passed by the CSE on campaign ethics and on observation.

The challenges regulation (*Normativa de Impugnaciones*) at the polling station level generated the most heated discussion in the pre-electoral period, causing concern and speculation. After being the focus of a long negotiation between the CSE and the political parties, the regulation failed in its final version to clarify the procedure to be followed in the case of altered or damaged results forms adequately. This left the door open for the annulment of entire polling station results, instead of clearly referring to the possibility of a recount as provided by Article 131 of the Electoral Law, raising concerns about the possible large-scale repetition of the so called “*Caso Granada*” (see Chapter 3.2). While in these elections, the parties did not use challenges as a tool to influence the results, the very fact that polling station results could be annulled without a proper definition of the circumstances in which this could happen created unnecessary confusion and added suspicions about fraud schemes that could be used.

The regulation on political party financing, though very important in principle, did not regulate any further the very general and permissive provisions of Article 99 of the Electoral Law on campaign financing that allow private and limitless donations from individuals, including foreigners (see chapter 9.6). The regulation focused mainly on detailing the procedure for the parties to record their campaign expenditure in order to receive public reimbursement. In addition, the regulation specified the overall amount allocated by the State for campaign expenditure (C\$ 165,700,270.00, set in the Electoral Law as 1% of the national budget) to be divided among the parties based on the valid votes obtained by each of them.

The regulation on the roles of political party agents and of their legal representatives, is very much part of the Latin-American tradition of empowering political parties to oversee the electoral process. In particular, party agents (*fiscales*), are in a crucial position, vested with the power to oversee the work of the electoral bodies at each level and to file corresponding challenges. The regulation on electoral ethics, negotiated with the political parties, was directed at all stakeholders in general and political parties in particular, calling for respect for the different candidates’ opinions and the civic values to be upheld in the electoral campaign, forbidding the use of inflammatory and offensive

language toward candidates and their families. The regulation also contained a prohibition on campaigning for a boycott of the elections. The regulation on observation referred to the standard principle of impartiality and neutrality, but did not include a right of access to the CSE central offices, only to polling stations and tabulation centres. The regulation also contained restrictions on the rights of domestic observers, who could not be accredited unless they submitted a large number of certified documents and the names of all intended observers at least 60 days before the elections.

The regulation on the appointment of polling station committees, mentioned in generic terms in Article 16 of the Electoral Law, was a very sensitive issue that should have been further regulated by the CSE. In particular, the appointment of the third polling station committee member that was left to the “other parties participating in the elections” should have been further regulated by the CSE. Respect for the principle of “political pluralism”, with nothing further specified, and the generic requirement to present shortlists of three names for each polling station, was in fact interpreted in various manners by various election officials. In failing to issue a regulation on this matter, the CSE permitted a wide range of different interpretations and practices at municipal level that penalised parties like the MRS and unduly favoured a small party like AC.

The regulation on tabulation centres was passed by the CSE very late and addressed only limited aspects of the process. The regulation mainly detailed the work to be carried out at municipal and departmental levels, drawing a procedural distinction between mathematical corrections and the resolution of challenges. The regulation included a very important fraud prevention measure, which is the immediate transmission of the polling station results to the National Tabulation Centre; even though in practice there were some shortcomings with its implementation (see Chapter 11). In addition, the regulation did not detail how to crosscheck the information coming from the polling station results sheets against the municipal and departmental consolidations as a way to adjudicate eventual challenges or appeals

A very relevant regulatory vacuum concerned the media. Even though there are provisions in the Electoral Law on the allocation of airtime to political parties and candidates during the election campaign, there is a total lack of enforcement mechanisms necessary to induce respect for the daily airtime to be devoted to electoral campaigning, and to stop advertisements and paid programmes containing inflammatory messages or attacking the personal integrity of candidates.

4.3 Electoral justice

There are various kinds of electoral disputes described in the Electoral Law and in CSE regulations. Challenges and appeals against CSE decisions at the polling station level or at the CEM or CED/CER level, and appeals against preliminary results, can only be adjudicated by the various levels of the CSE, which is the final judicial instance – there is no independent avenue of appeal. Electoral conflicts are again solved by the CSE through a special reconciliation mechanism. Electoral crimes fall within the jurisdiction

of the State Prosecutor's Office and the criminal courts. The provisions related to electoral disputes are rather scarce, despite the fact that the CSE is the last instance of judgment (see chapter 12).

4.4 The System of representation

The presidential ticket (president and deputy) of Nicaragua is elected in a plurality-majority system with the possibility for a second round run-off. No second round is required if a candidate wins the first round with at least 40% of valid votes, or failing that, if a candidate wins the first round with at least 35% of valid votes and is 5% points ahead of their closest opponent. The reasons for establishing such a relatively low percentage of valid votes to win in the first round were part of the Ortega-Alemán deal that is known as the *Pacto* and that produced the 2000 constitutional amendments (see Chapter 4.1). Previous to that, at least 45% of the valid vote was required to win the presidency in the first round. The new percentages to win the presidential election in a first round are relatively low, as compared to Latin American averages, even though there are cases where a simple majority system is in place (Mexico, Honduras and Panama).

As far as the single chamber NA is concerned, the 90 deputies to be elected are all chosen by closed list proportional systems, 20 from one nation-wide constituency and 70 from 17 departmental/regional constituencies.¹⁰ The closed list system - whereby parties decide their own list of candidates, and the only choice for the voters is which party to vote for - has the advantage of simplicity for voters and simplicity for polling and counting staff.¹¹ However, this system presupposes well developed mechanisms of internal party democracy to function adequately; otherwise, the selection of candidates can turn into a private issue for the parties' respective oligarchies and become an additional instrument for the fostering of clientelist politics. Although the Electoral Law requires political parties to use the most democratic means that they have at their disposal to select their candidates, this provision is not generally complied with by the parties nor enforced by the CSE.

The number of seats allocated to each of the 15 departments and the two autonomous regions varies from one to 19, according to population size. A fixed number of deputies are allocated to each departmental/regional constituency, in addition to the 20 allocated to the nationwide constituency. There is no mechanism in the Electoral Law to update the electoral magnitude of the constituencies regularly in response to changes in population growth in the various departments. The population figures used are in fact still those from the 1995 census, which has since been superseded by a census in 2005.¹²

¹⁰ Two seats are assigned by the Constitution to the outgoing President and to the runner-up in the presidential election.

¹¹ The estimates of illiteracy rates in Nicaragua are of up to one third of the population.

¹² If the 2005 census figures were to be taken into account when looking at the current electoral district magnitudes, these would demonstrate serious imbalances in terms of seat/population ratio. This ratio would be as low as 51,000 in the department of Chontales, but also as high as 153,000 in the RAAS (South Atlantic Autonomous Region), with an average of 73,000 inhabitants per seat. Managua would be one of the departments that has a greater proportion of seats than its current share of the population, while the RAAN, RAAS and the Department of Jinotega would be amongst those that have significantly fewer seats.

This configuration with 70 seats assigned to relatively small constituencies confers a slight advantage to the larger parties, which is reinforced by the formula used to allocate seats -a modification of the traditional d'Hondt method.¹³ This formula utilizes the highest average method to assign seats to the contesting parties or alliances.¹⁴ Only in one of the 17 departmental/regional races (Managua) did all four parties represented in the NA win a seat, in five departments three parties won a seat, in ten departments only two parties won seats.¹⁵ In the departments where only two or three parties won a seat, the votes for the other parties can be considered wasted. This occurrence might originate a debate on the introduction of compensatory seats in the nation-wide constituency, so that the “wasted votes” for the parties that do not win any seat in the departmental/regional constituencies can be recuperated.

One of the advantages normally attributed to small departmental constituencies (like those used in Nicaragua to elect 70 deputies) over larger ones is that they provide a more direct link between the local population and their representatives (which is less strong among deputies elected in nationwide constituencies), which is also an issue of contention in Nicaragua. Such a direct link is important from the point of view of having an active and ongoing democratic culture, not limited to just voting in elections, and whereby citizens can channel their needs and demand accountability from their representatives. In Nicaragua, opinion is divided on whether the departmental deputies really operate in this way or rather as local caudillos in a clientelist manner. What is clear is that in small constituencies vote margins are frequently very small, as was the case with the 20 vote margin for the third deputy elected in the North Atlantic Autonomous Region (RAAN).

¹³ An example of how the system chosen privileges the larger parties is provided by the NA election results, and the difference between the last and the first of the four parties that won seats in it. The MRS has fared relatively poorly in the translation of votes won into seats won (8.2% of votes, 5.6% of seats), whilst FSLN as the largest party has fared the best in the translation of votes won into seats won (37.5% of votes, 42.2% of seats).

¹⁴ The d'Hondt formula traditionally favours larger parties if compared to other similar methods using the highest average method. The principle of the highest average method is based on the division of the total number of votes won by a party by a figure that increases as the party wins seats. As the divisor increases after the first round of seat allocations, this party's total is reduced in the following rounds of seats allocation, allowing parties with lower initial totals to win seats. In the Nicaraguan modification of the d'Hondt method, the first allocation of seats is based on dividing each party's valid votes by the electoral quotient (obtained in turn by the simple division of the total number of valid votes for the constituency by the number of seats to be assigned in that constituency). For the second round of seat allocations, the divisor increases for all parties, and it is given by the division of the valid votes obtained by each party, plus one, by the electoral quotient. For the following rounds of seat allocations, the divisor is increased by one only for the party that wins the previous seat (returning to the original d'Hondt).

¹⁵ In the department of Río San Juan – the only department with a single seat – naturally only one party won a seat. One of the two party departments had as many as six seats, so it is not only because of very small seat numbers that only two parties won.

Chapter 5

The Electoral Administration

5.1 The Electoral Management Body

The *Consejo Supremo Electoral* (CSE) has constitutional status as one of the four independent powers of the State. The CSE's functions are very broad: to organise elections, declare the results, appoint the departmental tier of the electoral administration from the political party shortlists, issue rules and regulations, and manage the voter register. In addition, the Constitution makes the CSE responsible for a number of functions that might more typically be the competence of other bodies, such as the Interior Ministry or Justice Ministry. These include the civil register, the issuing of identity cards, and the grant and cancellation of legal personality to political parties. Significantly, and controversially, the CSE is also responsible for adjudicating all electoral complaints and appeals. There is almost no possible recourse to the judicial system from a CSE resolution or decision.¹⁶

The CSE is headed by seven commissioners (plus three substitute commissioners), each of whom are appointed by the NA with a qualified majority of 60%. According to the Constitution, the President and the NA should both present nominations for the position of commissioners "in consultation with civil society". However, there is no legal requirement that any of the candidates nominated by the civil society should be chosen, and to date they have not been, even though they have appeared on the President's list. The selection of commissioners has in fact always been undertaken in accordance with the directives of the two main parties, which have consistently preferred to appoint commissioners with a very strong political profile rather than individuals with a more independent or technocratic background.¹⁷ They are currently considered to represent the FSLN and PLC interests in a ratio of 4:3. The quorum of commissioners for decision-making is five, although for most decisions a majority of four is sufficient. The term of office for the commissioners is of five years, and all of the current members were either recently renewed in their posts or are newly-appointed. No new appointments will be made, failing death or resignation, until after the municipal elections of 2008.

There is a serious concern that this high degree of politicisation is replicated throughout the election administration. The directors of each operational department in the CSE headquarters are appointed by the CSE commissioners, and take orders directly from them. They reflect the same dominance of the FSLN, with the PLC in the minority. The other competing parties are not represented at the national level, due to the bi-partisan focus of the Electoral Law. There is little overall executive coordination of all the

¹⁶ The only case specified in the Electoral Law where there is a right of appeal to the courts is where a political party has had its registration suspended or cancelled by the CSE. The lack of an independent mechanism for electoral disputes has been remarked negatively by the Inter American Court of Justice.

¹⁷ The current CSE commissioners include the former FSLN campaign manager, the former chief national party agents of both the FSLN and the PLC, and two former PLC Interior Ministers.

departments, each operating independently and often with little communication with each other, in several separate buildings across the city. The position of Secretary General, though existing in the structure, does not really have an overall coordinating executive role of the various operational departments, as is normal practice in other electoral management bodies. As a result of their politicised nature and the mutual distrust that this generates, departments often duplicate and counter-check one another's work. Surprisingly, for a body that issues legal regulations and is the sole entity responsible for electoral justice, there is no legal department within the CSE. This goes some way to explain the substantial weaknesses found in terms of judicial formalities in issuing decisions (see Chapter 12) and in the regulatory framework.

A Civil Service Law was only recently introduced in Nicaragua, in an attempt to professionalise public institutions, and reduce the impact of political appointments. The CSE has suffered from this in the past, with many staff from top to bottom appointed on the basis of political quotas rather than technical ability, and experienced staff replaced when new political imperatives dictate. The new Civil Service Law exempts from its reach the CSE magistrates and temporary staff (which is a standard type of provision), but also, less typically, it exempts the departmental directors, so they are not required to be selected and appointed according to its provisions.

Another concern about the election administration centres on its lack of transparency. The CSE does not open its meetings to party agents or observers and does not publish its minutes. However, some efforts have been made to improve this situation, with the CSE responding promptly to international observers' requests for meetings with commissioners (although PLC commissioners were never present at these meetings) and inviting all observers to a few informational meetings. In the field, EU EOM observers had a more mixed experience, with some of the local election bodies open and helpful, and others not at all. Parties like ALN and MRS reported that it was much harder for them to gain timely access to crucial information than it was for the FSLN and PLC. The examples brought by these two parties concerned details of the latest voter register, or their haphazard receipt of lists of ID cards that were ready for collection. Other significant examples of lack of transparency concerned the difficulty for observer organisations to obtain information on the political composition of the election administration, on the process of ID card distribution and on the results publication process (see Chapter 11).

More worryingly, this lack of transparency extends to the CSE's role in dispensing electoral justice. The CSE, unlike the CSJ, does not publish its resolutions, or make them available upon request. This falls short, both formally and substantively, of what should be expected from an open and public system of electoral justice (see Chapter 12). Moreover, the regulations that are needed to fill the gaps in the law were often issued late by the CSE, whereas in other cases, the gaps in the law were simply not filled (see Chapter 4.2.3).

A serious consequence of the fact that the CSE is an institution subject to political control is that it has very little independent institutional or operational capacity. It is the party

machinery that undertakes much of the CSE's field activities. However, the parties both inside and outside the CSE show little interest in reforming the principle of political control of the CSE, but rather seek to remain or become a part of that control mechanism. Likewise, little interest is shown in developing the CSE's institutional capacity, as the parties fear that this would involve a loss of control on CSE activities and that their interests would therefore not be protected. At root, this attitude seems to demonstrate a lack of faith in the idea that an institution could exist and function fairly and transparently in the interests of all, which may be a result of the overall weakness of institutionalism and rule of law in the country.

5.2 The CSE structure

The politicisation of the CSE is enshrined in the Law throughout its territorial structure, through which the two political forces that obtained the largest share of the vote in the previous elections are entitled, on a rotating basis, to the positions of president and first member in each of the three-member tiers of election administration. As a result, the dominance of the FSLN and the PLC continued during these elections at all levels (departmental, municipal and polling stations).

All tiers of the election administration are appointed in cascade from shortlists of three candidates put forward by the political parties. In sequence, the CSE appoints the Departmental/Regional Electoral Councils (CEDs/CERs) and the CEDs/CERs appoint the Municipal Electoral Councils (CEMs) that in turn appoint the polling station committees. With the president and first member positions of all tiers of the election administration divided between the two largest parties in the last elections, Article 16 of the Electoral Law states that third member positions should be divided between the other competing political parties. The law provides no guidance on how this division should be made, other than by "taking account of political pluralism". The CSE did not issue a regulation to deal with this matter. In this legal vacuum, a wide range of practices flourished at various levels, leading to a perception of arbitrariness at best, or political manipulation at worst (see below 5.2.3).

For the presidential and parliamentary elections, the emerging parties and civil society made repeated calls for the third member posts to be assigned in an equitable manner. However, this was not heeded and the distribution was quite unequal (see Annex I). In part, this was due to difficulties with the manner in which the shortlists had to be presented, and in part to the very extensive territorial structure that is required in order for the political parties to present full shortlists fulfilling all the procedural requirements at the polling station level. Information gathered by the EU EOM revealed that ALN has the largest share at all levels, and the AC, a small party with a very limited infrastructure, gained a surprisingly sizeable share, including the politically important positions of third member of Managua CED and Managua CEM. The concerns raised by parties like ALN and MRS that the AC may have been provided with personnel and infrastructure by the

FSLN, were in some cases directly admitted by AC representatives to EU EOM observers.¹⁸

5.2.1 Departmental and Regional Electoral Councils (CEDs and CERs)

The CEDs/CERs are responsible for various aspects of the electoral process in their area of responsibility, including appointing members of the CEMs, distributing electoral materials to the CEMs, giving ID badges to party agents for the CEMs, publicising the location of polling stations and the voter register, dealing with complaints and appeals, revising the consolidated results produced by the CEMs, producing the departmental/regional consolidated results and ruling on polling station results that have been challenged. To be a member of a CED/CER, a person must be at least 25, have a higher academic qualification, and have lived in the department or region for the past two years. The law requires them to be in office at least five months before election day, and to remain in office until five days after the inauguration of the new NA. However, the President of the CED/CER remains in office permanently to work on Civil Register and ID card issues (Art 16, Electoral Law). An unbalanced distribution of the third member positions among the other political parties was noted even for the 17 CEDs/CERs (see Annex I).

5.2.2 Municipal Electoral Councils (CEMs)

The CEMs are responsible for the operational aspects of the elections in their area, including naming polling station staff, producing consolidated municipal results. Although they can rule on complaints and appeals, as far as polling station results challenges are concerned, their role is limited to remitting them to the CED/CER. To be a member of a CEM, a person must have a high school diploma, or be qualified as a primary school teacher, and have lived in the municipality during the past two years.

A number of CEMs appointed third members not from any of the party shortlists, claiming that these were inadequate, but directly from members of the public (*de oficio*). This raised concerns when it involved large numbers, such as in Granada and Estelí. In some places (Managua El Crucero, León) the third member was appointed from the FSLN or PLC (either directly from party shortlists, or *de oficio* by the CEM), in contravention of the Electoral Law prohibition on there being more than one member from the same party.

5.2.3 Polling stations

Each polling station has a maximum of 400 voters by law, a relatively small number, which has the positive consequence that they are well spaced and accessible. Polling stations are within walking distance for the majority of voters, which means that the issue of political parties providing transport to voters does not arise. However, it also means

¹⁸ The multiplier effect of the politicisation of the election administration observed by the EU EOM was that the same party that obtained the third member of the CED would usually enjoy greater representation as second member of the CEMs and of polling stations of that department.

that there is a relatively large number of polling stations (11,274), presenting a challenge for parties and observer groups in terms of the human resources and infrastructure necessary to cover all polling stations. A total of 90,000 people are required for a party to present a shortlist for every polling station member plus substitute, as well as a party agent plus substitute.

Given the paucity of either substantive or procedural criteria for appointing third members, different procedural rules were applied across the country for how the short-listing process worked. Deadlines were not uniformly applied and this lack of clear procedures led to a wide range of local solutions. In some cases, a failure to agree on the composition of polling station members was left by the CSE to be negotiated and resolved by the local political parties. This was generally accepted by the parties as a normal practice. Overall, the process of appointing the third members of the municipal and polling station committees generated a significant degree of mistrust and ill-will towards the election administration, and also between the parties.

5.3 Resources and modus operandi

At central levels, the CSE commissioners are very well-resourced, and some central departments have adequate resources (items such as computing systems are in part provided by international cooperation). However, a very large part of the CSE's budget goes on salaries, and little on infrastructure. Nevertheless, resources at local levels are scant, with many CEMs having no computers and no photocopiers, working with typewriters or by hand, and having no filing system. This makes it more difficult for them to be transparent, for example, in distributing lists of ID cards that have arrived. Some CEMs made far greater efforts than the remaining CEMs to do a good job, staying open at weekends (for example Siuna and Bilwi in the RAAN), taking initiatives to distribute ID cards (for example Diria and Diriomo in the Grenada Department, El Rama in the RAAS) and providing information to observers. Overall, the original deadlines set in the electoral calendar were often not met, with varying degrees of flexibility from municipality to municipality: however, the general effectiveness of the electoral preparations was sufficiently guaranteed throughout the country (see Chapter 9).

In terms of relations between the CSE and its departmental and regional structures, weekly meetings were held in Managua with all CED/CER presidents, and the flow of information to the CSE was good, with daily and weekly statistics having been provided on, for example, the distribution of ID cards. When problems arose, as in the naming of third members, the CSE always maintained that each CED/CER or CEM was an autonomous body (although the law does not state this: they are in fact subordinate bodies) and that they would not interfere with their work. This so-called respect for the autonomy of the lower tiers of its hierarchy seems likely to be a smokescreen for the CSE's own institutional weakness and lack of institutionalised control over its territorial structures.

The institutionalised politicisation of the CSE territorial administration makes it difficult for the CSE to control and ensure uniformity of actions and provides the two parties

which control the president and first member positions with clear advantages. Each of the three person electoral authority structures operates on the basis of a majority of two for taking decisions.¹⁹ As a result, the structure of the election administration at all levels raises legitimate concerns about the independence and impartiality of its decisions. This system, while providing a clear advantage in terms of mutual control under a functioning bipartisan regime, creates instead imbalance and lack of uniform practices in the new more diverse political context.

By the time the EU EOM left the country, the CSE had been unable to provide any official information on the overall cost of the elections. It is well known that since the 1990 elections, (entirely funded by the international community) the organization of elections has remained an extremely costly activity with very limited improvements in the optimization of expenses and management of available resources. The average cost per voter in the 2001 elections was estimated to be around 12 USD per voter, a figure much higher than in other countries in the region. It is very likely that the cost per voter of the 2006 process would result to be similar.

¹⁹ EU EOM observers noted that in Estelí the third member of the CED/CER or CEM did not seem to have the strength to oppose the other two members, but acted rather as appendices, in part because they tend to have no previous electoral experience. In Matagalpa EU EOM observers noted that the “real leader” of each CEM is the member who belongs to the same party as the local mayor.

Chapter 6

Civil and Voter Registration

6.1 Legal framework

The Constitution makes the CSE responsible for the central civil register, the voter register, and the production and distribution of ID cards. The legal references come principally from the Electoral Law, the Citizen Identification Law, and the Civil Code. There is a very tight connection in Nicaragua between the civil register, the ID card application, and the consequent entry in the voter register, and the entire system is based on the active initiative of each citizen to get registered at all the different levels.

The route from birth registration to civil registration, and then from civil registration to voter registration, is fraught with administrative difficulties and bureaucratic glitches. This process can also be expensive, unnecessarily complicating citizens' exercise of their voting rights. At birth, newborn individuals should be registered in the local Ministry of Health hospital or clinic in order to obtain a medical birth certificate. With their medical birth certificate, newborn individuals can be entered in the Municipal Civil Registry by making an application. They will then receive a civil birth certificate. After that, when individuals reach voting age, they must apply to the local CSE offices, currently open only at the CED/CER level in non electoral periods, in order to get their ID cards. Only when their ID card application is approved will they be entered in the voter register. The successful applicant must also take the trouble to pick up their ID card from the relevant CED or CER.

It is unusual, in comparison to standard good practice around the world to find all of these functions under the responsibility of the election administration, especially when the entire process requires the active initiative of citizens at different stages. Often the civil register and ID cards are the responsibility of the Interior Ministry or Justice Ministry. One negative consequence of having the civil register and ID cards under the control of an electoral authority is that almost inevitably an electoral authority will concentrate its priorities and its resources on elections and electoral periods, whereas these issues concern important civil rights, and as such require a permanent supply of human and material resources. On the other hand, if properly administered by the election authority, such a concentration of functions could turn into an advantage for citizens in terms of the actual enjoyment of their civil and political rights by speeding up the waiting times and ensuring a higher degree of accuracy and efficiency.

6.2 The civil register

The central civil register in Managua is the central archive for all municipal civil registries. Both the central and the municipal systems operate in a very antiquated and complicated fashion, with the bulk of their work carried out by hand without any technological support. Individuals are manually entered into the municipal civil registry

books after making an application that includes the production of a medical birth certificate issued by the local office of the Ministry of Health.²⁰ Registration at the municipal level is not yet fully regulated by countrywide standardised procedures, although some efforts have been made to do so. Some municipal registrars use different formats and often record different information from municipality to municipality. The civil birth certificate issued upon registration does not contain a unique nationwide numbering system that could be used later on for a quick identification of the registration entry. In addition, municipal civil registries are, for administrative purposes, under the control of each Mayor's office (i.e., each Mayor hires and fires the Registrar and provides their office space), whilst in terms of their working procedures they are under the theoretical control of the central civil registry division of the CSE. This divided jurisdiction contributes to the proliferation of non-uniform procedures. In each municipal registry book, births and deaths are registered in separate volumes, usually filled out by hand, and then a handwritten copy of this is produced, which is the birth or death certificate. Only once each 500 page volume is full (which may take some time in a small municipality), is it sent to the central civil registry division of the CSE in Managua. Once in the central civil registry division, the information is revised and the municipal books are microfilmed before being returned to their municipalities of origin. Once microfilmed, the key data is then manually transferred into a hard-copy format by the civil registry division. The quality and legibility of the microfilmed information is often poor, delaying future controls when ID applications are processed.

Only after this long process, is the information contained in the hard-copy format transferred to the IT division of the CSE and the data entered in a database, which represents the source against which every ID card application is later checked. Each of the several transcriptions described above before the information is entered into an electronic database is extremely vulnerable to human error and exposed to local manipulations. Ideally, all these steps should be reduced substantially and the information entered electronically already at the municipal level. The several passages of information and the delay in its updating (particularly concerning deaths, many of which are simply not registered) from the municipal registers to the central register have an adverse effect on the accuracy of the voter register. The errors and inconsistencies between the municipal civil registry books and the central civil registry database (for example, inconsistencies between an entry in the central electronic database and a civil birth certificate, or between a civil birth certificate and the hard-copy form produced after that) make it more difficult for citizens to obtain their ID cards. Such errors are usually only discovered when an ID card application is filed in by an individual who has reached voting age. The corrections are done through an equally cumbersome process (involving paperwork travelling to the municipality and back to the central registry division of the CSE, and sometimes requiring a notary or judge), before the ID card application can be finally approved.

²⁰ At birth, newborn individuals should be registered in the local Ministry of Health hospital or clinic in order to obtain the medical birth certificate. With the medical birth certificate, newborn individuals can then be entered into the Municipal Civil Registry by making an application, then receiving a civil birth certificate.

In addition to the problems within the civil register itself, there is an issue concerning those citizens whose births and deaths are simply never registered. For remote or very poor populations, there may be neither the incentive nor the resources to obtain a birth or death certificate. If a person is not registered within one year of their birth or death, then a special late registration process must be followed, in the municipality of birth, which is costly and cumbersome, requiring evidence to be presented before a judge and usually requiring the services of a lawyer. Recent estimates suggest that around 20% of the child population do not have birth certificates, and as many as 50% of deaths are not registered. Another related phenomenon concerns the relative ease with which individuals can register themselves twice in two different municipal civil registries, provided that they have a certain amount of money to pay for a lawyer and the legal process. To this purpose, the special late registration process mentioned above can be abused, circumventing the need for any documentary proof of birth, as it requires only the testimony of witnesses – who can be corrupted. If a double applicant changes some personal details (name, date and place of birth, parents' names), then it is unlikely that the CSE database will detect that there is a double entry.²¹

6.3 The ID card application process

ID card applications can be made at the departmental offices of the CSE by all citizens aged 16 and over. Although both the Citizen Identification Law and the Electoral Law state that these offices should operate in each municipality, since 2002 the CSE has closed the municipal election offices except during electoral periods. This means that citizens can only apply at the departmental offices, which makes access more difficult and requires time-consuming and expensive journeys to the departmental capital, which is beyond the reach of a significant part of the population.²² The relevant departmental CSE office forwards the applications to the ID card division of the CSE in Managua, where checks are made between the civil birth certificate and the central civil register's database and microfilms. If there are inconsistencies or errors, the central civil registry division has to become involved, and in many cases the application has to be returned to the municipality for corrections to be made, usually a time-consuming process that would be better performed centrally, with investigations in the relevant municipality where necessary. The application is also checked against the database of existing ID cards to ensure that it is not a duplicate request. Once all checks are completed, the ID card is produced, the person is entered into the voter register, and the ID card is sent back to the local CSE office for the citizen to collect it. There are no time limits specified for the process of producing an ID card, and for many cards it might take several months. The CSE does not notify citizens as to the progress of their application or that their ID card has arrived at the local office, so citizens must make repeated journeys to their local office to find out whether it has arrived.

²¹ Individuals may choose to register twice in order to have two different ID cards for a number of reasons: for some it is because of involvement with crime, for some employees it is because they wish to retire earlier and collect their pension. Others may simply register for the first time with false information about their place of birth because they do not wish to go to the trouble and expense of returning to their original place of birth.

²² The application must include the civil birth certificate, and either another ID document, or the testimony of two witnesses.

The Electoral Law (Art 32) provides that a supplementary voting document (DSV) may be provided to citizens who have applied for an ID card, but have problems of inconsistency with their entry in the civil register. In practice, many thousands of DSVs have been issued in recent electoral processes, including this one, not necessarily because of a problem in the civil register, but mainly due to a lack of time to carry out all of the necessary checks described above. DSVs enable citizens to vote, but they expire immediately after the election, and have no validity as an identity document. There is concern that the electoral administration may not devote the necessary resources to processing these files swiftly in between elections. Given that the CSE is mainly an electoral administration, it merely considers the ID card as a voting document, to the detriment of all its other important civil and administrative functions normally absolved by citizens through their ID cards outside elections. An ID card is necessary for the issuing of passports and driving licenses, to perform fiscal controls, to take a job and obtain health insurance and so forth. To some extent, the Citizen Identification Law also reflects this excessive focus on the ID card as a mere voting document.

6.4 The Production and distribution of ID cards for the presidential and parliamentary elections

The EU EOM observed the last stages of the production of ID cards for these elections and was able to observe their distribution in the field. The process, as in previous elections, raised concerns primarily about the distribution of ID cards, centring on both the inefficiency of the process, as well as political manipulation in some parts of the country. The deadline for requesting an ID card was extended by the NA for 15 days to 21 August, which together with a backlog of applications slowed down the production and delivery process, so that two weeks before the elections ID cards were still being delivered to municipal offices, leaving little time for citizens to pick them up. A total of 190,000 new ID cards and 214,000 DSVs were produced this year.

A significant number of the ID cards, numbering in the thousands, were not picked up by citizens, in part because many citizens did not know whether their ID card had arrived, and did not have the time and resources to make speculative trips to the municipal election office to find out.²³ A study by the domestic monitoring organization *Ética y Transparencia* over a 90 day period between May and August 2006 tracked ID card applications and found that only 30% of applicants who were persistent and visited the CSE office more than twice received their card. This success rate went up to 43% for those who sought the assistance of a political party.²⁴ The study found that the average

²³ By the time the EU EOM left Nicaragua, the CSE had not published any detailed figures on the number of ID cards and DSV remaining uncollected. According to information gathered by the EU EOM at municipal level following the special delivery drive the weekend before the elections, over 52,000 ID cards remained uncollected (although a significant number of these dated from previous years), and over 29,000 DSVs. This information relates to only 67 of the total 153 municipalities, since information was not available for the others. The CSE verbally gave differing figures on different occasions. Just before the elections the CSE announced to the media that there were 130,000 undelivered ID cards (including some from previous years), and 73,000 undistributed DSVs. One week after the elections, the CSE informed international observers that the numbers were much smaller: 113,000 ID cards and 17,000 DSVs, although domestic observers had other figures: 16,000 ID cards (from 2006 only), and 89,000 DSVs. The issue remains that no figures were published by the CSE, leading to uncertainty.

²⁴ *Ética y Transparencia*, National Identification Card Assessment, October 2006.

amount spent by the citizen to obtain their ID card was six USD (the cost of the photographs, photocopies, and transport), which is out of the reach of those living in extreme poverty.

The CSE did not issue guidelines to the municipal offices on how to manage and expedite the distribution process, so a variety of practices were seen across the country. Simple and helpful measures, such as publicly displaying the list of ID cards that had arrived, reading out the list of names on local radio and TV stations (as was done in Nueva Segovia, at the initiative of the local radio station *Ke Buena* and *Canal 2 TV*), or delivering that list to all the political parties, were not commonly adopted. Elsewhere, there was a general lack of transparency, with the list of ID cards delivered only to FSLN and PLC supporters, or just one of these two parties. In some cases, including León, Boaco, Matagalpa and Masaya, there were allegations from ALN and MRS that the ID cards were delivered directly to FSLN or PLC party officials, who then distributed them to their sympathizers, but not to any one else.²⁵ Distribution was often disorganised, with municipal offices not keeping proper records of which cards had been delivered, or which of the remaining cards dated from previous years. Unexpectedly, two days before Election day the CSE ordered all uncollected ID cards to be returned to Managua, an exercise of controversial effectiveness.²⁶ The overall impression was that of a distribution process in the hands of the FSLN and PLC party machines, but not always efficiently benefiting these parties.

The CSE was very slow to respond to the public concern about the delayed delivery of ID cards, and failed to launch a public information campaign or to carry out a special delivery drive until the last weekend before the elections, despite having special funds provided by the International Foundation for Election Systems (IFES) for this purpose. The delivery drive did facilitate distribution, in particular in urban areas, but fell short of what was needed. The disorganised and non-transparent distribution of ID cards gave rise to a diffused perception of arbitrariness, and in places to a politically biased distribution. With very small vote margins for some departmental deputy seats, shortcomings in the distribution of ID cards could have affected the results.

6.5 The voter register

Any citizen aged 16 or over who has an ID card or Supplementary Voting Document (DSV) has the right to vote. Only those who have had their political rights suspended by a court sentence are prevented by law from voting. However, in practice, there are no procedures to enable voting by remand prisoners or those who are hospitalised. There is also no provision made by the CSE for out of country voting. Citizens cannot have their names entered on the voter register until they obtain their ID card or DSV, but once on

²⁵ In previous elections, CSE staff and party representatives had gone out to rural areas to distribute cards from village to village, a measure that was generally considered as helpful but not imposed by the CSE as a common good practice

²⁶ The CSE's intention was to alleviate fears that these cards could be misused. However, the lack of public information about this meant that numbers of citizens went to the CEMs to collect their ID cards, only to be told that this was no longer possible. The times at which CEMs stopped delivering ID cards varied across the country, from lunchtime on Friday in the RAAS to Saturday evening in Managua.

the register they will not usually be removed until their death certificate (if their death is registered) is provided to the central civil registry.

For these elections, the number of people on the final voter register was 3,665,141. The total population in the 2005 census was 5,142,098, of which the census body gave a preliminary figure of 3,088,335 for those aged 16 or over.²⁷ Relying as it does on citizen initiative, and on the slow and often inaccurate information from local civil registries to keep it up to date, it is not surprising that the voter register contains a number of inaccuracies. It is generally considered to be over-inclusive, containing a number of dead people, and also emigrants, who retain the right to vote, even if in practice few exercise it. The voter register is also under-inclusive in respect of new potentially eligible voters who do not have an ID card, either because they have not applied for one, or because their card has not yet been processed. Recent audits of the voter register carried out by domestic observer groups suggest that it includes close to 90% of the population of voting age, a proportion in line with international standards.²⁸ Some of the criticisms often made of the voter register are in reality misplaced and should be directed at the civil register that supports the voter register.

Another area of inaccuracy in the voter register concerns those whose address is out of date, a figure estimated at 10% of the voting population.²⁹ It is up to each citizen to update their address details at the CSE offices, although beyond electoral periods only departmental offices are open. Before the elections, a period of verification is open to update the voter register, allowing citizens to update their address and thereby vote at a polling station closer to their home, or to have their name included in the voter register if it has been omitted by mistake. A change of address is allowed even though the person's ID card has not been changed to reflect their new address, which represents a convenience to voters. Having said this, it may give rise to some confusion regarding Article 41 of the Electoral Law. This article allows voting by citizens whose name does not appear on the voter list at the polling station, provided that they can produce an ID card or DSV that shows an address within that polling station district. In comparative terms, it is very unusual to allow voting by those who are not on the voter register, and one would normally only expect to find this in post-conflict countries where it has not yet been possible to create a reliable voter register. Although Article 41 removes one of the guarantees against double voting, this provision was generally welcomed by civil society groups as a positive enfranchising measure, given the inaccuracies in the voter register.

Following the display and challenge periods, the voter register was finalised at the end of September, later than the date specified in the electoral calendar. The delay was due in part to the extension of the ID card application period, at the request of various civil

²⁷ INEC: Instituto Nacional de Estadísticas y Censo, www.inec.gob.ni

²⁸ *Ética y Transparencia*, Two-way Study of the Voter Register, June 2006, with an update published in September 2006. *IPADE*, March 2006, Two-way Study of the Atlantic Coast Voter Register found a higher figure - 20% of the population - not included in the register.

²⁹ *Ética y Transparencia*, National Identification Card Assessment, October 2006. A further 10% of the sample was found to be domiciled at addresses that do not exist, or where that person had never lived. The *IPADE* study of the Atlantic Coast Regions found a worse situation, with 45% of inaccuracies in the register, as a result of people who had changed address, died, left the country, and so on.

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society organizations due to concerns that some 700,000 potential voters were in danger of being disenfranchised. However, it meant in practice that the political parties did not have sufficient time to challenge the additions or changes to the register, before the final version was issued on 5 October.

Chapter 7

Media

7.1 Media landscape

The media landscape in Nicaragua is composed of a large number of media outlets, mainly due to the fact that radio is still the main source of mass communication in the country. There are more than 150 radio stations registered in the country, 5 national TV channels, some 12 local TV stations and 3 daily newspapers with limited circulation. Radio is the main media in rural areas, while TV audiences and press readership are mainly located in urban areas.

There is only one state media in the country: *Radio Nicaragua*. This radio station reaches almost the entire country, but its audience is quite limited, occupying only the 23rd position in the national ranking of 150 radio stations. After three years of inactivity, the state TV channel *Canal 6* came back to air on 21 September, but broadcasting only four hours per day, from Monday to Friday. These broadcasts were Mexican educational programmes. Therefore, most of the media in Nicaragua are private entities under control of business groups or families. This results in a media landscape with almost non-existent independence, in which the majority of the media have evident political and economic interests that determine their activity. The polarisation of the political environment in the country is also reflected in the media, with radio stations, TV channels and publications clearly aligned with the sandinista or the liberal ideologies. While *La Nueva Radio Ya*, *La Primerisima* and *Canal 4 TV* are some of the media linked or controlled by the FSLN, liberal parties have the support or control of media such as *La Prensa*, *Canal 2 TV* (both pro-ALN), *Trinchera de la Noticia* or *Canal 12 TV* (both pro-PLC).

Freedom of expression is respected in the country and the media can operate without limitation or censorship from any governmental institution. Nevertheless, issues such as the reduction of the tax exemptions for importing paper and printing equipment (implemented after the last Constitutional reform in 2005) and the lack of a law that guarantees access to public information are causes of concern among the local media. Journalists in Nicaragua generally do not experience limitations in carrying out their job; however, some isolated cases of intimidation and even murder have taken place in the last years, not only among journalists investigating organised crime or drug-trafficking but also among journalists covering politics.

7.2 Media legal framework

The legal provisions on media activities in Nicaragua are very limited. There is no specific media law in the country and the only provisions that briefly touch on media issues are found in the Constitution and the Criminal Code. Article 68 of the Constitution establishes that mass media must contribute to the development of the country, and confers on the State the responsibility for ensuring that the media are not controlled by

foreign interests or economic monopolies. The article also prohibits censorship and the decommissioning of printing presses or any other equipment used for the circulation of opinions. Article 183 of the Criminal Code regulates libel and crimes against public decency in the media, and establishes the obligation to publish, within 24 hours, the related sentence and the media's retraction, when requested by the offended party. Article 10 of the Emergency Law gives the President of the Republic power to suspend radio and TV transmissions, print and any other communication outlet whenever necessary for the maintenance of public order.

The provisions on media coverage of the electoral campaign are found in Chapter VII of the Electoral Law. Article 87 states that during the campaign period political parties may make use of printed media, radio stations and TV channels for campaign information purposes. The provision further establishes that all electoral propaganda should identify the party or alliance which airs or commissions it and prohibits electoral spots discrediting or damaging other candidates or calling for an electoral boycott or violence.

The distribution and limitations on the use of airtime and space by political parties are regulated in Article 90. This provision gives the CSE the responsibility to guarantee the parties' and alliances' right to buy daily airtime and space in the media, and establishes a maximum of 45 daily minutes of electoral propaganda for each radio station; 30 daily minutes for each TV channel, and 2 daily pages for each newspaper. The provision establishes that no party or alliance is allowed to buy more than 10% of the mentioned global airtime or space. This stipulation was neither respected nor enforced by the CSE; however, in case of proper application, it would have left half of the available time without a beneficiary due to the fact that only five political parties contested the elections.

Lastly, the Electoral Law, even though it distinguishes between public and private media, does not contemplate any provision for the allocation of free airtime to parties in the electronic media. In the case of the state radio station *Radio Nicaragua*, Article 90 leaves it up to the CSE's responsibility to study any party's proposals for the use of its airtime and for drawing a calendar for the equal distribution of that airtime. Such a provision becomes useless in a context in which political parties have to pay for the airtime.³⁰

7.3 Media monitoring methodology

From 5 October to 5 November, the EU EOM monitored a total of 15 Nicaraguan media outlets in order to evaluate their level of impartiality and their degree of compliance with the rules and regulations established for the coverage of the electoral campaign. The monitoring also allowed the EU EOM to evaluate the level of access by the different parties and candidates to the media and the validity of any complaints by parties on the quality and quantity of the coverage gained in the media.

³⁰ During the campaign period, only PLC and ALN bought airtime on *Radio Nicaragua*.

The sample selected by the EU EOM for its monitoring effort took into consideration the public and private media, electronic and printed, with the highest audience and with coverage of the different political tendencies. The media monitored were:

Radio: *Radio Nicaragua, La Nueva Radio Ya, Radio La Primerísima, Radio La Corporación* and *Radio 580*

Television: *Canal 2, Canal 4, Canal 8, Canal 10* and *Canal 12*

Written press: *La Prensa, El Nuevo Diario* (newspapers), *Bolsa de Noticias, Trinchera de la Noticia* (daily magazines) and *Confidencial* (weekly magazine).

A total of 6 media monitors were trained to register the amount of airtime and space gained by political parties and candidates in the different media correctly, and also to evaluate the tone (negative, neutral or positive) of that coverage.

7.4 Media analysis

In line with Article 87 of the Electoral Law, political parties and alliances made use of radios, TV channels and the print media to spread their messages during the electoral campaign period. Nevertheless, party campaigns in the media focused more on personalities and slogans and in general lacked concrete information about their platforms.

In a welcome initiative, several TV channels, radio stations and newspapers produced special programmes and editions to inform the public about the different political contestants, including political debates, interviews with candidates and policy proposals by parties on different topics. Regrettably, most of these initiatives lacked information on the FSLN due to its presidential candidate's decision to not give interviews or participate in public debates. This measure deprived the electorate of information on the FSLN's political proposals.

The legal provisions on the limitations of daily airtime and space to be devoted to electoral propaganda were not respected by any of the 15 media outlets monitored by the EU EOM. This resulted in a saturation of parties' advertisements and paid programmes on TV channels and radio stations, especially during the week prior to election day. The CSE did not take any enforcement action in this regard, justifying its inaction with the need to protect freedom of expression, and arguing that any attempt to implement those provisions would have been met with a very strong and negative reaction from the media.

In a similar fashion, the provisions on the identification of the origins of propaganda material were not respected by the media. Political advertisements were broadcast and published on some occasions without identifying the party or alliance that commissioned them. Furthermore, much of the electoral propaganda from PLC and ALN contained offensive content intended to damage the integrity of some of the candidates. The clearest example of this practice was "*En fuego cruzado*", a PLC paid space set up in the guise of a talk show, broadcast daily by *Canal 8 TV* and transmitted simultaneously by 9 radio stations. The programme, co-presented by PLC chief of campaign Enrique Quiñónez,

several times portrayed the FSLN's presidential candidate as the devil and constantly showed images from the war period spreading the message that Ortega's electoral victory would bring the country back to war. On 12 October, Quiñónez alluded in this programme to alleged sexual relations that some ALN parliamentarians had had with ex president Arnoldo Alemán.

The negative and offensive tone of this campaign increased some days prior to Election day, not only with advertisements by political parties such as PLC or ALN, but also with advertisements by civil society and religious groups like *Instituto Nicaragüense de Desarrollo (INDE)*, *Mujeres al Rescate de la Historia* or *Coalición Evangélica*.³¹ In this context, the criminalisation of therapeutic abortion on 26 October, with the support of all parliamentary groups except the MRS, triggered the publication in various newspapers of advertisements paid by women's associations that portrayed the FSLN, PLC and ALN's presidential candidates as "women killers". Again, the CSE did not take any action to stop these practices nor remove any of those materials. In a similar way, the media did not take any responsibility in this regard to stop the broadcasting or publication of the defamatory messages being aired.

In accordance with the provisions on the campaign silence period, TV channels, radio stations and newspapers removed all electoral spots 72 hours before election day. However, *Canal 4 TV* and *La Nueva Radio Ya* flagrantly violated the campaign silence airing the FSLN campaign song on several occasions. As for the rest of the media outlets monitored by the EU EOM, campaign silence was also violated by broadcasting studio programmes in which political analysts campaigned in favour of one or other political option (*Canal 2*, *Canal 8* and *Canal 10*), or the publication of opinion articles clearly in favour of a specific vote (*La Prensa* and *El Nuevo Diario*).

During the monitored period, several civic and voter education campaigns by private organisations such as *IPADE*, *Ética y Transparencia* or *Movimiento por Nicaragua* were aired on TV and radio stations. However, the CSE only broadcast one campaign on the collection of ID cards.

7.5 Media monitoring results

The results of the media monitoring show that overall the media provided a variety of opinions that covered the spectrum of the five political forces competing in the elections. However, the clear political leanings that characterise most of the media in Nicaragua determined a generally biased coverage of the process. The media monitoring results show imbalances in the amount of time/space and/or the tone devoted to political parties in the majority of the media analyzed. In different manners, the majority of media analyzed attempted with their broadcasts to favour or harm the reputation of specific parties or candidates according to their own political leaning.

All the political forces contesting the elections gained some informative coverage in all the media monitored by the EU EOM except for AC, which was never mentioned in *La*

³¹ Nicaraguan Institute for Development, Women Salvaging History, Evangelical Coalition.

Nueva Radio Ya and *Canal 4 TV*. A total of 11 out of the 15 media analyzed carried out a biased electoral coverage both in time/space and/or tone, and generally without distinguishing between information and opinion. The media outlets that performed in a reasonably impartial manner during the monitored period were *Canal 8*, *Canal 10*, *Bolsa de Noticias* and *Confidencial*.

While the main sandinista media (*La Nueva Radio Ya* and *Canal 4*) focused their coverage only on the activities of the FSLN and its presidential candidate, ignoring the other parties and candidates, the media with liberal leanings (*La Corporación*, *Canal 2*, *La Prensa*, *Trinchera de la Noticia*) devoted more time/space to discrediting and questioning political rivals rather than praising their own candidates. No complaints by any political party, media or the CSE were officially made during the analyzed period regarding the electoral coverage in the media.

7.5.1 Media monitoring charts

Analyzing the results of all 15 media outlets monitored by the EU EOM, the monitoring shows that the FSLN was the party that globally received the highest electoral coverage (electoral propaganda excluded) on radio, TV and newspapers. The large imbalance reflected in the figures of radio and TV is generated mainly by the huge amount of airtime that *La Nueva Radio Ya* and *Canal 4* devoted to the FSLN.³²

Political Parties	Radio	Television	Newspapers
FSLN	66.7%	34.9%	29.6%
PLC	8%	23.8%	24.5%
ALN	14.8%	21.9%	23.8%
MRS	7.9%	13%	15.4%
AC	2.5%	6.4%	6.7%

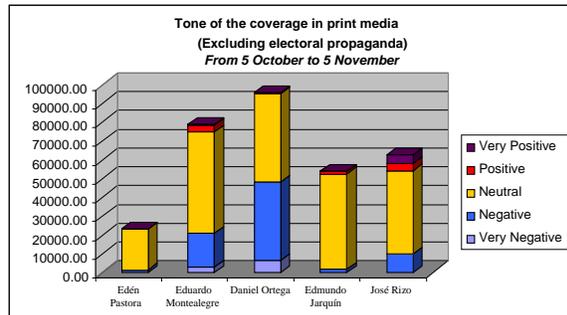
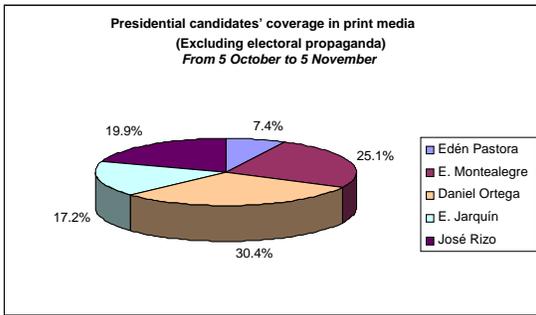
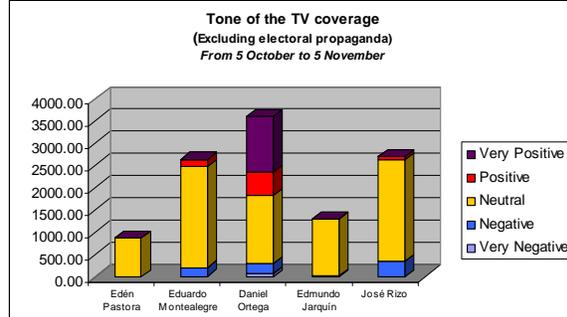
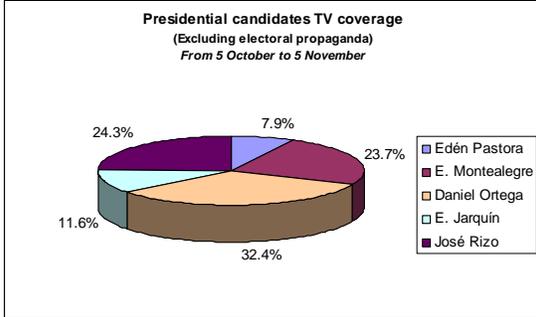
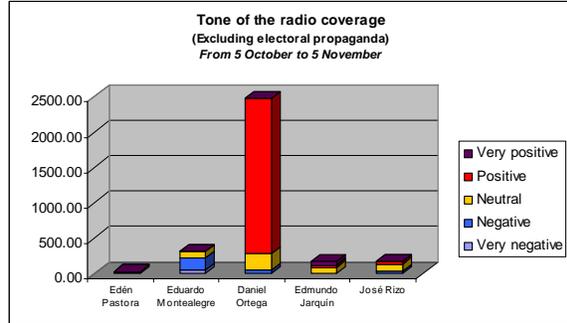
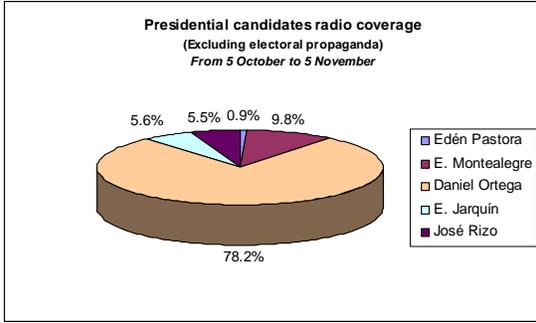
Distribution of total coverage received by the different political parties

Apart from the quantity, the imbalance was also reflected in the tone of the coverage, as the FSLN received the highest coverage with negative tone in the media of liberal leaning and also the highest coverage with positive tone in the media of pro-sandinista inclinations. Overall, the FSLN received the highest amount of negative reports in all radio (13%), TV (18%) and print media (47%), and also the highest amount of positive reports in radio (73%) and TV (36%).

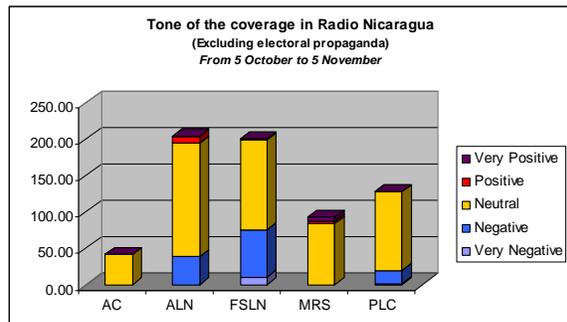
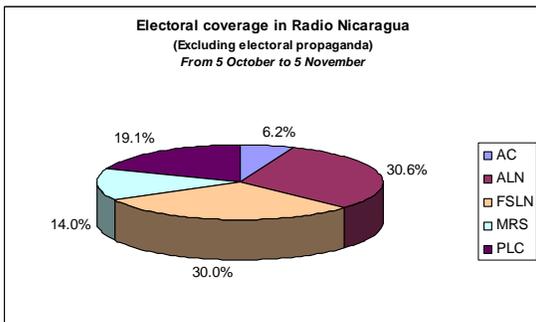
Monitoring the presence of presidential candidates in the media shows that Daniel Ortega received most coverage in all radio (78.2%), TV (32.4%) and print media (30.4%). The analysis of the tone of all this coverage shows that the FSLN's presidential candidate received the highest amount of positive reports in radio and TV, but the highest amount of negative reports in newspapers.

³² To see final charts of each of the 15 media monitored, see Annex II.

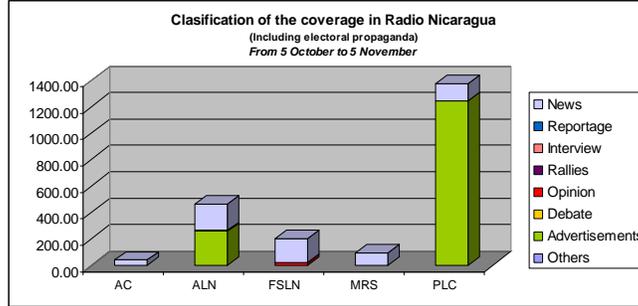
EU EOM Nicaragua 2006 - Final Report



Radio Nicaragua, the only state media in the country, allocated airtime to all five parties contesting the elections, the ALN (30.4%) and the FSLN (30.1%) were those that received most coverage. Analysis of the tone, however, shows that while 19.5% of ALN coverage was negative, the amount of reports in a negative tone for the FSLN was almost double (38.3%). PLC and ALN were the only parties buying airtime on the state radio station for electoral propaganda.



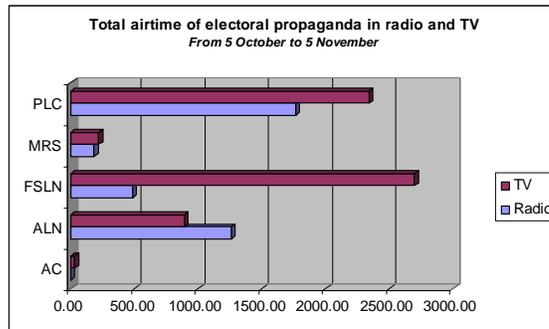
EU EOM Nicaragua 2006 - Final Report



As for electoral advertising in the media, PLC was the party that bought most airtime in the electronic media. During the analyzed period, the airtime of PLC advertisements and paid programmes surpassed 2,000 minutes on TV (more than 33 hours) and 1,500 minutes in radio (25 hours).

For its part FSLN, the party buying the second most airtime, focused its strategy mainly on TV (more than 41 hours of advertisements and paid for programmes), conscious of the radio support that it was already receiving from *La Nueva Radio Ya*.

ALN bought the third most airtime on radio and TV and was the party with the largest investment in electoral advertising in newspapers and magazines. In total ALN bought 40000 square centimetres of space (25 pages) to publish its advertisements. The presence of electoral advertising from MRS and AC was much smaller both in print and electronic media.



Chapter 8

Gender and Minority Issues

8.1 Participation of women

Although there are no legal barriers to women's political participation on equal terms with men, and indeed the Constitution (Article 48) puts an affirmative duty on the State to eliminate obstacles to equality and to effective political participation, the representation of women as candidates, elected members, and registered voters does not reflect their percentage of the overall population in Nicaragua.

8.1.1 Women candidates and deputies

The percentage of women candidates in these elections (23%) was far lower than their percentage in the population (52%).³³ Many of the women candidates were placed in very low-ranking positions in the candidate lists, making it very difficult for them to win a seat. Only one woman ran in the presidential and vice-presidential election as vice-presidential candidate, for the AC. There were only 17 women (19%) elected to the NA, a decrease from 22 women (24%) in the previous legislature. While theoretically there are voluntary quotas in most parties for women candidates (introduced in the 1990s following pressure from the women's movement) in practice these quotas are not complied with or are not applied in effective ways at the moment of finalising the candidate lists.³⁴ This is because they are merged with other quotas, such as that for young people; or because there is no requirement to put women in winnable positions on the lists; or because the women's quotas are negatively affected when parties have to provide high ranking positions on the list for other parties they have made an alliance with, and these parties do not have the same quotas. The PLC in fact only presented 20% women candidates for the National Assembly (primary positions, not including substitutes), the FSLN 33%, the ALN 16% and MRS 21%. The party that has the greatest proportion of women among its elected deputies is the FSLN, which for many years has had a significant number of women deputies. Women ministers have tended to be in traditional posts, such as family, health, and education. (See Annex III on gender statistics.)

Concerns have been raised on the real effectiveness of the current limited presence of women in the National Assembly for the promotion of women's issues. A recent study found that the outgoing National Assembly did not pass any laws in favour of women's equality, and the proposed Equal Rights and Opportunities Law has remained shelved since 2003, due to a lack of party support.³⁵ Even more worryingly, ten days before the

³³ INEC 2005.

³⁴ 40% for PLC and MRS, 30% for FSLN.

³⁵ *Diagnóstico: La Mujer en las Elecciones Nacionales. Asociación de Mujeres Profesionales por el Desarrollo Integral, AMPDI.* (Study: Women in the National Elections, by the Association of Professional Women for Integral Development) September 2005.

elections, a controversial law was hastily passed to criminalise abortion in cases of medical necessity and rape (therapeutic abortion), which had been legal for 100 years. The majority of the women deputies (from FSLN, PLC, and what is now ALN) voted in favour of this law, causing consternation in the women's movement. According to women movement leaders from civil society, this vote responded to the parties' agreements with the Church, showing how far the parties will deviate from their stated principles in order to gain favour with powerful groups. This vote also demonstrated the strong degree of control exercised by the party leaderships, so that deputies had little real choice in their vote. The strong caudillo structure of the two main parties allows little space for differences of opinion, so that women who wish to advance in the parties need to show loyalty to the leaders and to party lines. Some of the most powerful women in politics are relatives of very powerful male politicians, such as Rosario Murillo, the wife of Daniel Ortega, and director of the FSLN campaign, and María Dolores Alemán, daughter of Arnoldo Alemán, and head of the women's section of the PLC. Experience from around the world shows that greater internal party democracy tends to favour larger numbers of women candidates. As in many countries, it is difficult for women parliamentarians to pursue women's issues unless they enjoy a critical mass in the parliament, and unless there is a strong women's movement in civil society to both support them and hold them accountable.

8.1.2 Women voters

Women make up 50.4% of the voter register, and 52% of the population, therefore showing a slightly lower rate of registration than that of men. The difficulties involved in obtaining an ID card and thereby registering, are likely to have a greater impact on women for whom it is generally harder to make a number of visits to CSE offices, as they often have responsibility for children, many as single mothers. By the time the EU EOM left the country, the CSE did not release any information on women voter turnout.

The majority of the parties' written political platforms referred to equal opportunities and women's equality, but at a general and rhetorical level. Few concrete targets or proposals were mentioned (one example was the PLC's promise to include women in 50% of decision-making positions in the government). The MRS, which participated in the elections in alliance with the Autonomous Women's Movement, did not present proposals specifically for women, but rather focused on a platform that they stated would benefit all individuals, including women, by establishing a secular democratic state with social justice. However, in terms of the parties' campaigns in the mass media and at meetings and rallies, EU observers noted very little mention of gender equality or women's rights, except by the MRS, and very few campaign events were specifically targeted at women voters. EU observers noted a fairly equitable presence of women at campaign events, usually between 40 and 50%. There were some civic education campaigns targeting women voters, produced by civil society, but none were produced by the CSE.

8.1.3 Women in the electoral administration

In the election administration, women's representation is lowest at the senior levels, and increases progressively going down the hierarchy. There is only one woman on the main CSE board of 10 commissioners, and she is a substitute commissioner. There are 20% women election officials at the departmental level, 40% at the municipal level, and over 67% at the polling station level. It is the political parties that nominate candidates for all these posts, and also party-nominated appointees who select them, so it is with the parties that efforts to increase women's participation are needed.

8.2 Participation of minorities and indigenous issues

Historically, there has been a strong cultural divide between the Pacific and the Atlantic regions of Nicaragua. While in the Pacific most of the population is made up of descendants of the previous indigenous population and immigrants (*mestizos*), this intercultural mix did not develop in the same way in the Atlantic Region. Ethnic minorities exist today in varying numbers as follows in descending order: Miskito, Creoles, Mayagna (aka Sumo), Garifunas and Ramas. From these, some are indigenous (Miskito, Mayagna, Rama) while the others established themselves at a later stage in this region (Creole, Garifuna). However, the cultural differences, besides the different ethnic composition of the peoples that populate the two coasts, are mainly due to the different systems of colonisation that the populations of the two coasts were subjected. The Pacific region was subject to Spanish colonisation, whilst the Atlantic region, generally referred to by its inhabitants as the Caribbean region, was under British control.

There are in total roughly 150,000 Miskitos on the Atlantic coast, the majority of which live in the Autonomous Region of the North Atlantic (RAAN). The number of Mayagna in the RAAN is around 15,000, with about 5,000 more in the Autonomous Region of the South Atlantic (RAAS). There are neither Rama nor Garifuna in the RAAN, and few Creoles, mainly in Bilwi. The Miskitos dominate the three municipalities of Bilwi, Waspam and Prinzapolka in the RAAN, while there are relatively few Miskitos in Siuna, Rosita and Bonanza. On the other hand, Mayagna communities are found mainly in Bonanza and Siuna, to a lesser extent in Rosita and Waspam (Comunidad Umbral close to San Carlos). In total, the Mayagna form 66 communities in 9 Regions.³⁶

Even after the integration of the Atlantic regions into Nicaragua that formally took place in 1894 with the end of the British Governorate, the Atlantic Coast always remained a separate entity from the rest of Nicaragua, leaning both in cultural and economic senses more towards the Caribbean and North America than to the other half of Nicaragua. This separation is still perceptible today, despite some limited attempts at integration that began with the FSLN government in 1979. Given the special situation and after some violent confrontation between the central government and the indigenous population in

³⁶ According to the 2005 census, 8.6% of the population identified themselves as belonging to ethnic minorities or indigenous communities. This was the first time the question was asked in a Census. However, other estimates put the ethnic minority percentage of the population at 14%.

the early 1980s, an Autonomy Law was passed in 1987 (Law 28). The Law provided for the establishment of Regional Councils to govern the two regions, the RAAN and the RAAS, and the power to negotiate with the central government on all matters of special interest for the two regions.

Following the adoption of Law 28, the 45 council members of each Regional Council are elected from within 15 electoral districts and for some specific districts (ten out of thirty) the first candidate on each list must be from within a specific ethnic group. Both the Councils complained that their functions were restricted by a narrow application of the Autonomy Law promoted by the Central Government, especially concerning the concessions granted to international companies for the use of natural resources. The Constitution provides protection against discrimination, although many feel that there is still much to be done. There were no civic or voter education materials produced by the CSE in indigenous languages, although some NGOs did produce some. Polling station staff was recruited from the local population and spoke the local language, so language problems were not reported on election day. Many of the indigenous communities of the Atlantic Coast live in remote and inaccessible communities, such as along the Rio Coco, and are therefore, particularly affected by the difficulties in obtaining an ID card (see Chapter VI).

There is no specific provision in the Electoral Law to guarantee seats in the National Assembly for ethnic minorities. The regional parties of the Atlantic Coast that represent ethnic minorities are only able to compete in national elections if they form alliances with national parties. The alliances for these elections were between the FSLN and YATAMA (*Yapti Tasba Masraka Nanih Aslatakanka-Organisation of the Sons of the Mother Earth*), ALN with another part of YATAMA, the PLC with the *Partido Indigenista Multiétnico* (PIM), and ALN with the *Partido Movimiento Unidad Costeña* (PAMUC). Two representatives of ethnic minorities were elected to the National Assembly, both for the FSLN alliance, which represents an increase from one in the previous NA.³⁷

The number of National Assembly seats allocated to the two autonomous regions (three for RAAN and two for RAAS) is provided by the Electoral Law, but this distribution dates from 1995 and no revision has been undertaken to take account of the population increase in these regions, which is mainly due to the addition of some municipalities to these regions. If the population data from 2005 were taken into account, the number of seats allocated would be four for each region.

³⁷ Brooklyn Rivera Bryan and Loria Raquel Dixon Brautigam.

Chapter 9

The Pre-electoral Context

9.1 Political party and candidate registration

As described in Chapter 4, political party and candidate registration is one of the areas of the process where the provisions are particularly restrictive for small and new parties. In order to participate in the elections, apart from the burdensome requirement of having an office in all the 153 municipalities, each party must present candidates for every seat as well as a substitute in every constituency (a total of 220 seats, including Parlacen). This makes access to the electoral process more difficult for smaller parties. Alliances of parties may be formed, and joining an alliance with a larger party may be the only chance of participating for a small party that is likely not to reach the 4% threshold alone. In these elections four alliances were formed, involving all the larger parties. Only one small party participated alone, AC, which gained less than 1% of the vote, thereby losing its legal personality.

Regional parties may only be formed in the two Atlantic coast autonomous regions, but solely for regional or municipal level elections. In order to participate in the national elections, even on the regional deputies list, the regional parties must be in alliance with national parties. The existence of this requirement for national level elections, apart from its inconsistency with lower level elections poses serious concerns also from the regional autonomy perspective. For these elections, regional parties formed alliances with the big national parties to compete in the parliamentary elections (see Chapter 8).

The Constitution specifies the requirements for being a candidate for President or National Assembly Deputy as: (i) to be a Nicaraguan citizen and have renounced any other nationality at least four years before the elections; (ii) to have lived in the country for the four years prior to the elections;³⁸ (iii) to be at least 21 years old to be a NA deputy, or 25 to be President; and (iv) to have one's full civil and political rights. In the case of deputies for the departmental or regional lists, they must have been born or lived in that department or region for the two years prior to the elections. It is not possible to be President for more than two terms, and these terms may not be consecutive.³⁹ There are no restrictions on deputies' re-election.

The candidate lists for all electoral races had to be presented by 31 May, and was followed by a challenge period. The final list of candidates was published by the CSE on 19 June. Fears that some candidates might not be registered for the elections (as had happened in previous elections) were not realised, as candidates from across the political

³⁸ Unless working overseas in a diplomatic mission or international organisation or studying overseas.

³⁹ The theme of presidential re-election is a contentious one, with a number of reformers advocating no re-election at all, and voicing concerns that the Constitution could be changed to allow consecutive re-election, although it is not unusual internationally to allow consecutive re-election.

spectrum were registered. After 19 June, no changes could be made to the National Assembly candidate lists, even in the case of death or resignation (in such cases the substitute candidate would take the place). In the case of death, incapacity or withdrawal of a presidential candidate, a replacement could be named by the party, as happened following the death in July of the MRS presidential candidate Herty Lewites.

The closure of the candidate registration period so long before the opening of the campaign (19 August) is not required by the Electoral Law (it was only established in the electoral calendar) and does not appear to serve any useful purpose. During the long period between registration and the elections, a number of candidates announced their intention to change their party affiliation, without actually resigning (i.e., that they would join another party's bloc if elected). This had the potential to have created confusion for some voters, and was a source of frustration for the parties involved, who voiced their intention to ask for an Electoral Law reform that provides for open lists, or for the substitution by the party of candidates who expressed such an intention.

9.2 Electoral preparations

The logistical preparations of the CSE were already well under way when the EU EOM was deployed. The production and delivery of election day materials, including the printing of ballot papers, were carried out in a technically proficient manner. Electoral materials were generally delivered without problems to the local level during the week before the elections, and were stored adequately, with the police and army assisting the election officials diligently and professionally in these tasks and playing a reassuring role for the population. Not without problems were the distribution of ID cards (see Chapter 6.5 above), and the appointment of polling station members (see Chapter 5.2 above).

9.3 Civic and voter education

The EU EOM observed very limited civic and voter education activities organised by the CSE, all related to the distribution of ID cards. The CSE's efforts to inform citizens about the need to collect their ID cards were not adequate, despite its legal obligation to carry out a public education campaign on this (Art 57, Law of Citizen Identity). Repeated calls were made by civil society for the CSE to do this, and international technical assistance to fund these activities was available, much time in advance. However, the CSE only carried out one short media campaign on this issue, which was only launched just before the elections. The CSE did not carry out any other civic or voter education campaigns in the mass media in the period observed by the EU EOM, although some leaflets and posters were produced on the subject of ID cards. Several civic education campaigns by private organisations such as *IPADE*, *Ética y Transparencia*, or *Movimiento por Nicaragua* (MpN) were aired on TV and radio stations. MpN also carried out a campaign encouraging people to pick up their ID cards as well as some specific voter education, on where and how to vote.

9.4 Training of polling station staff

The training of all the polling station staff (over 34,000 people) was carried out in each municipality and in general sufficiently ahead of election day. Unlike in previous elections, a direct training system, as opposed to a cascade system, was used in almost all of the country, the only exception being the two Atlantic Regions and Rio San Juan. A core group of trainers was selected and trained with the technical assistance of IFES, which then toured the country train polling station members directly, according to a pre-defined calendar. The training methodology was good, with several active learning techniques applied, and a high level of involvement from the trainees. The training support material was also of good quality. In some places, the training was marred by confusion and controversy over the appointment process of the polling station members, with uncertainties as to who the selected individuals were (see Chapter 5.2.3). This was often due to the actions of local political party officials. The training programme also provided a training certificate as a prerequisite to working in a polling station. The introduction of the certificate was intended as a measure of quality control, and also to prevent the last minute irregular naming of polling station staff. According to the electoral calendar, all staff should have been named by 22 September, before training began. However, not all parties were able to present their shortlists in time, and political negotiations and adjustments of the named staff were ongoing throughout the training period. As a result, in a number of places actual participation in the training determined whether an individual would be the nominated polling station member. Political parties such as MRS and ALN claimed that CEMs made last minute changes to the lists of participants, and that as a result in some places their members were prevented from taking part in the training, and in others those who had received training were not given their certificate (for example in Masaya and Managua).

Despite the occurrence of the mentioned problems, originated mainly by lack of clarity in the polling station appointment procedures and by the attempts to politicise the training activities at local level, the CSE training program delivered positive results and represented one of the few efforts made by the CSE to create a sense of the institution among election officials and disenfranchise them from tight party control.

9.5 Electoral campaign

The electoral campaign officially started on 19 August, two and a half months before election day, and two months after the publication of the official candidate lists. However, in practice, the publication of the final candidate lists triggered the start of the campaign a lot earlier. The campaign was, on the whole, free from serious incidents, and fundamental freedoms of expression, assembly and association were respected. The preferred forms of campaigning were door-to-door activities and small meetings, with a limited number of large-scale rallies, organised primarily for the closing of the presidential candidates' campaigns. Overall, the campaign was characterised by an absence of substantive policy content, remaining largely silent on crucial issues such as economic reform and poverty alleviation. It centred instead on personal media attacks among some candidates, emotive slogans and unrealistic promises. In this context,

towards the end of their campaigns, the presidential candidates of PLC and ALN increased their use of inflammatory language against each other and the FSLN candidate. The ALN and MRS focused mainly on the negative effects of the *Pacto* and the related division of key posts within the state institutions. The FSLN candidate, on the other hand, focused his campaign on reconciliation themes but avoided interviews with the media and any political and personal debate with the other candidates.

Overall, the exploitation of old war-related issues was less evident than in previous elections, perhaps due to the high number of new voters who had no direct knowledge of that period. In a continuing sign of growing normality, the police and the army acted within their institutional framework and positively contributed to an atmosphere conducive to the conduct of democratic elections.

The politicisation of the election administration was a cause of concern for the ALN and MRS, as well as for civil society in general. The concern was present throughout the campaign, even though towards the end of it the reference to this argument clearly diminished in intensity. However, the preoccupation of ALN and MRS regarding the politicisation of the CSE was mainly related to their exclusion from its board of commissioners rather than to the broader issue of the CSE politicisation as such. Some senior electoral officials and other institutional figures allowed themselves to become involved in personal and political disagreements with presidential candidates in a way that appeared instrumental to campaign purposes.

A case that attracted significant media coverage during the campaign, even though it took place before its start, was the audit performed by the State Accounting Office on the financial disclosure declarations made by the presidential candidates, carried out as part of its standard auditing functions of electoral candidates. According to the ALN, the timing of the State Accounting Office's audit was clearly directed at discrediting the ALN presidential candidate Montealegre for the possession and selling of shares of a private bank involved in the CENI case.⁴⁰ This case had been put under investigation for fraud before the Probity Commission of the National Assembly just before the election campaign, even though the issuing of CENIs dates back to 2000 and 2001. Despite the large attention dedicated to it by the media, the nature of the State Accounting Office's audit was of a merely technical nature - into the properties of the various presidential candidates - and fell within its mandate. On the one hand, the nature and impact of this audit was overstated by the Chief State Accounting Officer and was used to attempt to discredit the ALN presidential candidate. On the other hand, the consequences of the audit were also exaggerated by the ALN in terms of the negative impact that this could have on its presidential campaign. Despite these episodes of confrontation between representatives of the executive, the electoral administration and other state institutions and the candidates, the electorate remained calm and demonstrated a high level of commitment to determining their future through democratic means.

⁴⁰ The CENI (*Certificados Negociables de Inversion – Negotiable Investment Certificates*) were issued by the Central Bank to acquire the debts of a number of private banks during a banking crisis between 2000 and 2001.

Regrettably, the campaign period was marked by external interference and pressure that is not consistent with respect for national sovereignty in relation to the democratic process. This came mainly from the US Government against the FSLN presidential candidate and, to a lesser extent, the PLC presidential candidate and in favour of the ALN candidate. U.S. governmental officials and members of the U.S. Congress made various comments on the potential negative impact of an Ortega victory on relations between Nicaragua and the USA and on the Nicaraguan economy in general. The US Ambassador in Managua was particularly outspoken on this issue. On a lower level, but equally regrettable, the Government of Venezuela was present throughout the Ortega's campaign by providing some fertilizer and petrol to FSLN-run municipalities and institutions on preferential terms, and by expressions of its support for Ortega and the FSLN.

Sensitive topics became politicized in the campaign period. In particular, the issue of abortion in cases of medical need suddenly became an electoral topic and regrettably ended with its hasty criminalisation in the National Assembly ten days before the elections, with the support of all parties except the MRS. This was supported by the various Churches and was approved after being presented by the President as an urgent matter.

Another sensitive issue that was politically exploited during the campaign was the accusation made by an NGO against Daniel Ortega before the Inter-American Commission for Human Rights just three weeks before the elections. The charges related to alleged crimes against humanity committed by Ortega and other Sandinistas in the period 1981/82 against the Miskito population of the North Atlantic Region. The case had been dormant for some years, but had regularly resurfaced before elections as a campaign topic to discredit Ortega.

The energy crisis that has been affecting the country for some time was also a recurrent campaign issue. The media often manipulated it to spread confusion and alarm about the CSE's ability to complete all the logistical preparations for the elections adequately, and as to whether there would be electric light available during the counting and results tabulation process. The blame was generally placed on the provider (Unión Fenosa – a Spanish company) and there were rumours that the annulment of the contract was forthcoming, together with a critical evaluation of the privatisation law that had allowed for energy production and distribution to be given to private companies during the Alemán administration. In this sense, the possibility that Venezuela could help to overcome the crisis was often used as campaign argument by the FSLN. In the end, the immediate issue was solved by an agreement between the Presidency, the producers and distributors of electricity. This agreement guaranteed an uninterrupted electricity supply between 4 and 11 November.

Opinion polls, traditionally unreliable in Nicaragua, were released by a variety of companies, some old and a few completely new, and in most cases confused the electorate.⁴¹ Their results and significance grew more prominent in the campaign once

⁴¹ Apart from a traditional methodological deficiency, the so-called "El Güegüense" phenomenon is an additional reason that makes opinion polls unreliable in Nicaragua. The surveyed individuals would not normally say for whom

they became part of the dispute between ALN and PLC as to their polled strength. ALN found in these polls a confirmation of its role as the main FSLN challenger, while the PLC considered them biased towards the ALN and aimed at forcing them to come to terms with the PLC. The established companies were *Cid-Gallup, Borges y Asociados* and *M&R*, generally under exclusive contracts with some media outlets (*Canal 2* and *La Prensa*) but some university teams also stood out for their soundness. Overall, the majority of the surveys still proved to be methodologically deficient, with inappropriate statistical samples, and did not take enough account of the rural vote. However, the survey results of the established companies were confirmed in their general trend by the actual election results.

9.6 Political party financing

Political party financing is almost entirely unregulated, with no limits on the amount of donations or spending, and few restrictions on the source of funds. The few provisions that there are on political party finance are included in the chapter of the Electoral Law that deals with the electoral campaign. The placement of these provisions in this chapter illustrates the limited scope given to this topic by the legislator, and furthermore there are no Electoral Law provisions dealing with political party finances outside electoral campaign periods. Unlimited tax-free donations may be received from Nicaraguan or foreign individuals, or Nicaraguan companies and institutions, provided they are not state or semi-state institutions. Donations from foreign institutions are also allowed, but for technical assistance and training only.

The regulation on campaign finance (see Chapter 4.2.3) does not provide further details or limits on financing, but rather deals with the generous reimbursement procedure. U.S. \$9 million of public money is distributed to the parties against spending receipts.⁴² This amount is divided between the parties in proportion to the number of votes that each obtained, provided that they reached the 4% threshold. This is not a measure that seeks to level the playing field and provide equitable access to funds for all parties or assist the entry of poorer or newer parties, but rather reimburses parties in proportion to their success. Likewise, the lack of limits on private financing, likely a more significant source of funding than the public funds, also does nothing to help level the playing field.

In terms of auditing and transparency requirements, both the law and its practical application are weak. The Law states that private donations should be held in special bank accounts, and that the documentation relating to these donations is public and held by the State Accounting Office. However, the State Accounting Office does not interpret this as a requirement to demand such documentation from the parties or as an obligation

they would vote for but would rather respond to what the surveyors want to hear. In every election since 1990, Ortega was always considered ahead by the opinion polls, but he lost every time with an average margin of some 13% to his liberal opponent.

⁴² The amount to be reimbursed is specified in the law as 1% of the regular income in the state budget (which means money raised from domestic sources, primarily taxes and duties, and does not include international aid or loans). The Regulation specifies that this amount is 165.7 million córdobas for these elections, which at the 15 November 2006 exchange rate is equivalent to US\$9.2 million.

to audit it.⁴³ As far as spending is concerned, the parties are required to present accounts and receipts to the State Accounting Office in order to receive public reimbursement, but such an obligation does not extend to all their expenditure, only to the reimbursable amount. The State Accounting Office review only determines whether the formal requirements are complied with, and does not go behind this to look, for example, at whether the money was spent in purchasing goods and services at market rates or at inflated prices. Although the Electoral Law says that the reimbursement is exclusively for campaign expenses, the parties are allowed by the CSE Regulation on Campaign Finance to seek reimbursement for their expenses during the period between 20 February and 15 November 2006.⁴⁴ For the presidential and parliamentary elections the reimbursable amount amounted to C\$ 165.7 million (US\$9.2 million),⁴⁵ divided by the number of valid votes in the presidential elections,⁴⁶ giving an amount per vote of C\$ 67.61 (U.S.\$3.77) to be multiplied by the number of votes obtained by each party. This calculation damages those parties that do better in the parliamentary elections.⁴⁷

The parties presented their third and last reports with the request for reimbursement to the State Accounting Office in the third week of November, and the State Accounting Office issued its final report on 4 December indicating the amount of reimbursable expenditure for each of the four parties that reached the 4% threshold of the valid vote. The FSLN declared C\$ 100,194,838.94; the ALN C\$ 102,492,951; the PLC C\$ 54,884,773; and the MRS C\$ 31,683,027.93.⁴⁸ The expenditure that was considered as questionable by the State Accounting Office will not be reimbursed to the parties by the CSE. The parties were given enough notice to present additional documentation in support of their claims. According to this report, the ALN and PLC have the highest amount of non reimbursable expenses (24.38 % and 9.13 % respectively), followed by the MRS with 7.19%. The FSLN has the lowest percentage of questioned expenses with 2.98%. It appears that in their last submission of receipts the parties were more lax in producing accurate expenses reports, especially once they realised that they had already topped their reimbursable amounts. Once the State Accounting Office completed its audit, it is up to the CSE to approve payment for each party.

⁴³ On 3 November, the State Accounting Office in reply to a request made by the EU EOM stated that its interpretation of the Electoral Law is that parties are not obliged to inform the State Accounting Office of the financial contributions received, and that therefore the institution is not empowered to perform any audit on this. It also stated that the institution can only perform a review of the parties' expenditure, and that the documentation related to this becomes public after approval of the Steering Board of the State Accounting Office. This is not in line with previous practice of the same office.

⁴⁴ Art. 18 of the Regulation on Campaign Finance establishes the reimbursable period from the calling of elections (20 February) to 15 November 2006. However, the CSE electoral calendar set the campaign from 19 August to 1 November.

⁴⁵ This represents 1% of the regular income of the National Budget. The regular income in the National Budget means from domestic sources, primarily taxes and duties, and does not include international aid or loans.

⁴⁶ The Regulation refers to "National Elections", without specifying whether this means parliamentary or presidential elections. The CSE has always used the presidential election results to make this calculation, exemplifying the secondary importance attributed to the parliamentary elections.

⁴⁷ If all the parties' expenses were approved, this would lead to a reimbursement of US\$3.5 million for the FSLN, \$2.6 million for the ALN, \$2.5 million for the PLC, and \$0.5 million for the MRS.

⁴⁸ A group of civil society organisations coordinated by *Ética y Transparencia*, have focused attention on party financing, and made a study of estimated expenditures from 1 July to 8 November. Their figures are approximate, as they worked on the basis of estimates, not actual accounts, so they have to estimate the rates that each party pays for advertising and media space, and how much they pay for campaign expenses and poll watchers. Their estimated totals are approximately double the amount that each party declared to the State Accounting Office.

9.7 Abuse of state resources

The Electoral Law and the Regulation on Electoral Ethics prohibit the use of state resources for campaigning or propaganda. However, a number of small-scale violations were observed by the EU EOM, principally by mayors and their staff. The use of state resources for campaigning or propaganda is treated as an electoral crime in the Election Law, but there were only two accusations made for this type of abuse out of the 62 cases investigated by the Electoral Prosecutor (see Chapter 12.5).

The EU EOM observed such abuses in the municipality of Chinandega (where FSLN propaganda could be seen displayed in municipal buildings) and the mayor campaigned on the local radio for the FSLN. In León, it was reported to the EU EOM that FSLN municipality staff was leading political party propaganda painting activities in sites belonging to the municipality, in violation of the Electoral Law. No sanction was taken against them. In Managua and Estelí FSLN municipal staff was observed removing other parties' campaign materials from public spaces, but left FSLN propaganda intact. In Boaco, the PLC mayor was observed using public vehicles and property for the campaign and in El Ayote (RAAS) the municipality used its vehicles and buildings for the PLC campaign.

In Estelí, the exterior of the CED office is painted all over in the red and black colours of the FSLN, a violation of the Regulation on Electoral Ethics, which requires impartiality by the CSE and forbids party symbols or markings to be displayed in CSE offices. The Electoral Law also prohibits the use of national symbols, including the flag, by any party in its public rallies. Daniel Ortega was frequently seen draped in the national flag at campaign rallies, with no sanction taken.

9.8 National Observation and Civil Society

Nicaragua has a very vibrant civil society.⁴⁹ There are several organisations that have been active in the field of democratisation and electoral observation for the past 15 years, gaining a considerable amount of experience and also technical assistance provided by international organisations. In the context of election observation, the two organisations that stand out for their activities and nationwide coverage are *Ética y Transparencia* (EyT) and the *Instituto para la Promoción de la Democracia* (IPADE).

The activities run by civil society organisations were more varied and complex than in the past, achieving an in-depth coverage of the entire electoral process. Apart from the standard observation of Election day proceedings, which achieved an impressive degree of coverage of at least 90% of polling stations, and of the pre-electoral period, there were media monitoring projects, studies on political party finances (including campaign activities), pressure groups for electoral reforms, quick count and parallel vote tabulation activities. As a consequence of the widespread concern about the challenges regulation,

⁴⁹ According to the Register of Non-Governmental Organisations kept at the Ministry of Interior there are over 3,000 organisations.

EyT and IPADE had a specific focus on challenges and complaints. A new organisation, *Movimiento por Nicaragua* (MpN) focused on ID card applications and distribution, and carried a strong message against the FSLN/PLC Pact. They also carried out a number of civic and voter education campaigns. One specific aspect of the electoral process that was extensively analyzed by the main organisations was the voter register, of which they made several audits (see Chapter 6).

The role of the CSOs has been extremely open and crucial for the transparency of the whole process, to the point that the CSE itself mentioned the large national observer presence as one of the main strengths of the 2006 elections. The CSOs put pressure on the election administration at various levels to work more effectively and transparently on a number of different occasions. In addition to that, the specific attention devoted by a number of groups to the issue of electoral reform is very important for the strengthening of Nicaraguan democracy. Nevertheless, the relations between the domestic observer groups and the CSE were rather tense, as the CSE has always perceived them rather as challengers than as legitimate stakeholders. This misperception was at times strengthened by some CSO representatives who saw themselves more as supervisors than as observers. One episode that generated much media attention was the EyT quick count exercise.⁵⁰ In reality, the discussion between EyT and the CSE on how and when the quick count results would be released to the media was kept within the normal working relationship. However, its content was often distorted and exaggerated by the media due to the legal obligation for EyT to present the results first to the CSE and to publicise them only with its authorisation. The quick count carried out by EyT was published this time only the morning after election day and provided a largely accurate estimate of the preliminary results.

The different treatment and restricted access that on some occasions was given to domestic observer organisations in comparison to international observers groups is not in line with international standards and should be corrected for future elections.⁵¹ The EU EOM requested the CSE to ensure that the rights of domestic observers were fully respected with regard to access to the National Tabulation Centre. The CSE consequently admitted the major domestic observer groups to the facility.

⁵⁰ This exercise, based on a standard methodology applied worldwide of selecting a random statistical sample, gives an estimate of the results within a margin of error not higher than 3%, normally a few hours after the elections and can be considered an important instrument of transparency and, on occasion, pressure on the election administration.

⁵¹ IPADE reported difficulties in carrying out their observation of voting and counting in 5% of cases, either being denied access, or not being given information.

Chapter 10

Election day

10.1 Introduction

The EU EOM deployed 150 observers in all departments and regions of the country, visiting 923 polling stations through opening, voting, closing and counting. This represents 8% of the total 11,274 polling stations. Each team filled in a statistical form on each visit, resulting in the completion of 72 opening forms, 792 voting forms, and 60 closing and counting forms.

10.2 Opening

In general, opening procedures were followed adequately, although they were slow, and in many cases openings were delayed: almost half of polling stations observed opened more than half an hour late. In a few isolated cases, EU EOM observers reported difficulties in obtaining access to the pre-opening constitution, an obstacle that domestic observers also reported.

10.3 Voting

Voting procedures were generally adequate, although slow, leading to queues of several hours in places. Voters displayed great patience throughout, and an impressive commitment to the democratic process.

EU observers evaluated voting as being without problems or with only small technical problems in 95% of the observed polling stations. In the remaining few cases, there were serious problems that affected the conduct of the vote only in 1% of the polling stations observed. The other small technical problems that were observed did not affect the process overall, and appeared to be due to staff's lack of understanding of the correct procedures, rather than to a manipulative intent. For example, in 46% of cases the voter was not checked for ink. In only 1% of cases observed, EU observers found that voters could not vote in secrecy, because of problems with the physical layout of the polling station (either it was too small, or there was an uncovered window). In 2% of cases, DSVs were retained by the polling station officials, when they should have been returned in case of a possible second round. The process was generally peaceful, and in 94% of cases the Electoral Police were evaluated as carrying out their job properly.

A range of different practices was observed regarding voters who could not find their names on the register. Article 41 of the Electoral Law allows a person to vote with an ID card even when they are not on the register.⁵² In other cases, citizens were denied the

⁵² In order to vote in accordance with Article 41 without being on the voter register, the person's address must be within the area of that polling station, and the so-called "yellow pages" of voters, a special list of voters who are no

chance of voting under Article 41, because of polling station staff's concern that this could cause the ballot papers to run out.⁵³ The newly-introduced voter register assistants (*edecán*), who helped people find their names on the register outside each polling centre, was helpful, although they did not in all cases provide information to those voters whose names could not be found in polling centres voter lists about the possibility of voting with Art. 41. There was a lack of clarity as to whether the ID cards were to be punched after voting, and differing practices were observed. In three polling stations observers were present when ballot papers ran out (due to large numbers of people voting who were not on the register, either with Art. 41, or locally-stationed police or military), leading to some voters being turned away, although it is possible that they may have been able to vote elsewhere using Art. 41⁵⁴. The assistant for the special needs voters was a positive innovation, helping with their physical access and preferential treatment in accordance with the Electoral Law provisions.

The CSE estimated voter turnout at 69% of those voters listed on the voter register, since 2.5 million people voted (including an estimated 2% of invalid votes) of a total of 3.6 million on the register. Taking into account the over-inclusiveness of the register in terms of emigrants and deceased people and the fact that some several thousand citizens did not collect their ID cards, the real turnout rate could be estimated as higher than 80%.

The elections were well-observed both by attentive political party agents – FSLN was present in 99%, PLC in 98%, ALN in 88%, MRS in 76%, and AC in 27% of polling stations visited (more were present during closing) - and by domestic observers, who were present in 90% of stations visited. Given the relatively large number of polling stations in the country, the high degree of party and observer coverage was an important achievement. Occasionally observers found that party agents, especially from the FSLN, were taking too active a role in the polling station, and interfering with procedures. Some of these cases concern party agents that helped out because of the slowness of the procedures. The fact that polling station committees were composed only of three staff may have led to certain slowness in the voting procedures and to the formation of the queues observed.

10.4 Counting

Closing and counting were also slow, but largely transparent and in accordance with procedures. EU observers rated 90% of cases as without problems or with only small technical problems, with the remainder having serious technical problems (7%), or small problems of manipulation (3%) that did not have any impact on the results of the count. In 3% of polling stations observed, those waiting in the queue at closing time were not allowed to vote. The colours of the different ballots were too similar, which caused some delay in counting. Polling station committees were surprisingly not provided with

longer in the specific polling station because they moved to another polling station should be consulted. Sometimes the “yellow pages” were not consulted, but people would be allowed to vote anyway using Article 41.

⁵³ According to IPADE observers, in the majority of cases they observed, Article 41 was correctly applied, although in approximately 12% of cases, they reported that the persons were wrongly allowed to vote.

⁵⁴ Tipitapa, Managua and San Sebastián de Yali, Jinotega.

calculators. As a result, many had difficulty filling in the results form, and a large number of mathematical mistakes appeared overall.

The respect for the will of the voter when deciding whether a vote is valid was very high, as provided for in the Electoral Law. Only approximately 2% of votes were declared invalid, and in these cases it was not generally because of a dispute about the voters' intention, but because of some other reason, e.g., polling station members did not always write the security number on and sign the back of the ballot (which invalidates a vote) or because the ballots had become mixed up with those from the neighbouring polling station.⁵⁵

Before the elections, there had been concern that a significant number of polling stations could be challenged for being illegally constituted (see Chapter 4.2.3) – in particular, in León, where close to 100 polling stations did not have a PLC member on them.⁵⁶ In the end, relatively few challenges were made, and fewer upheld, although the CSE has not released any figures on this.

In 98% of cases copies of the results form were distributed to all party agents, and most importantly, in all cases observed the results form was posted outside the polling station. The combination of these two elements was crucial in ensuring the legitimacy of the process.

10.5 Transmission of results

The immediate transmission of the results forms from each polling station to the CSE National Tabulation Centre in Managua, after their posting outside the polling station, was intended to be a key mechanism to deter fraud and enable political party agents to follow all stages of the tabulation process. There was a transmission centre in every municipality, where the forms were faxed or scanned to Managua, before being submitted to the CEMs. Although there had been earlier concerns about technical problems, the transmission process largely worked well, with only a small percentage needing to be re-transmitted or delivered physically. The preliminary results published by the CSE were based on the transmitted results.

⁵⁵ 8% and 11%, respectively, of cases observed by IPADE

⁵⁶ The consequence of such a challenge if upheld would have been that all the votes from that polling station would be annulled.

Chapter 11

Results Tabulation and Announcement

11.1 Municipal and departmental tabulation

Following the Electoral Law, there are two results consolidations that take place in parallel. Firstly, all polling station results forms, once completed and posted at the polling station level, are immediately transmitted to the national tabulation centre where their data are entered electronically and tabulated to produce the preliminary results. Secondly, polling station results forms are consolidated at the municipal level. In turn, municipal consolidations are checked and consolidated at the departmental/regional tabulation centres to produce the final results. There is no provision for preliminary results to be cross-checked against final results, so the two processes are essentially independent from one another. However, it was odd that the modern technology used for the preliminary results process (image transmission from the municipality to the national tabulation centre, double entry into a central database with automated error-checking), could not then be also used to countercheck the aggregation of final results process in doubtful cases. The final results process consists instead of manual aggregation of polling station results sheets and correction of errors at the municipal level, with the use of spreadsheet applications only at the departmental level.

The preliminary results process was also more transparent to the general public than the final results announcement, in that the partial preliminary results were published on the CSE website, whereas the final results were not. The intended transparency and confidence-building operation that was meant to be put in place with the website publication of the preliminary results was not entirely successful. On the other hand, the final results process was predicated on the capacity and autonomy of the municipal and departmental/regional tabulation centres, with the central CSE offices having no real role, except for the resolution of challenges. This placed a great responsibility on the local tabulation centres, with the only cross-check being the vigilance of the political parties' agents. For those political parties that did not have an effective field structure that could feed them with access to all polling station results forms, the task turned out to be very difficult.

11.2 Tabulation and announcement of preliminary results

The polling station results forms were double entered and audited at the national tabulation centre (CCN). The audit results showed that the number of arithmetical mistakes was high, between approximately 20% and 25% of the total polling station results, but that they were mainly related to discrepancies between the total number of ballots, void ballots and unused ballots, without having an impact on the valid vote results. The immediate transmission of the results forms from each polling station to the CCN, together with the posting of the polling station result forms and their distribution to all political party agents are key mechanisms provided by the law to deter fraud and

enable the parties to follow all the stages of the tabulation process. However, the functioning of this triple mechanism was partially hampered by the sudden decision of the CSE to stop providing the last 30% of copies of the polling station results to the political party agents at the CCN. This meant that the political parties had to rely solely on their field infrastructure to check a significant percentage of the results forms from each polling station. This was not logistically feasible for all parties, especially the smaller parties, as they did not have the resources to provide agents at every polling station. In some cases, *EyT* provided copies of the forms to the parties, as it had a high level of coverage of polling stations.

The first partial preliminary results, covering 5% of results forms, were released at 01,00. on 6 November; the second release, covering 15% of the results, at 03.30. of the same day; the third release, covering 60% of the results, at 01,00 of Tuesday 7, and the last release of partial results covering 91.6%, was released on at 18,00 of Tuesday 7. The results were also published by the CSE on its website (www.cse.gob.ni). This publication was very useful, as it was broken down to each polling station, thus allowing cross-checking. However, the publication did not go beyond 91.6% of polling station results, remaining at that phase even after the announcement of final results.

The complete preliminary results were published on 15 November, and detailed the total valid votes for each party in each election. For the election of National Assembly deputies in the departmental constituencies, the total valid votes were provided on a departmental basis. No other figures were provided, for example no figure for total voters, or for invalid votes, and no other breakdown by department or municipality. The long gap between the last release of partial preliminary results for 91.6% of polling stations on 7 November and the release of complete preliminary results on 15 November was later explained by the CSE as being due to the slow processing at field level and the poor quality of the results forms being transmitted from the remaining polling stations. The CSE was not obliged by law to complete the release of partial preliminary results, but the sudden halt unnecessarily raised suspicions and tensions that could have been avoided. The CSE decided instead to concentrate its efforts on the consolidation of the results tabulated at the departmental level that were being physically transported to the CCN, but it failed to adequately inform the political party agents and the general public.

11.3 Tabulation and announcement of final results

This official tabulation process for the final results ran independently from the preliminary results process. After the transmission of the polling station results forms to the CCN, the results forms and the sensitive materials (including counted votes and unused ballots) were delivered to, and consolidated at, the municipal tabulation centres. The consolidation performed at this level was a simple arithmetical review that included filling in the consolidated municipal results form. The municipal tabulation centres were also a preliminary filter for the processing of challenges lodged at polling station level. At the departmental or regional level, the consolidated municipal results forms were reviewed and corrected if necessary, and the challenges lodged at polling station level

were adjudicated. The resolution of challenges included the possibility afforded by the Electoral Law to open and recount the ballots, but this only happened in a few cases.⁵⁷

Difficulties were observed by the EU EOM at a few municipal or departmental tabulation centres where some domestic observers were not permitted full access or EU EOM observers were given little or contradictory information.⁵⁸ EU EOM observers reported that a few technical staff in the municipal and departmental count centres showed a party preference, commonly for the FSLN and the PLC, but this had no bearing on the accuracy of the process. Some political party agents were observed taking too active a role, for example in León, where they persuaded staff to expel the ALN and MRS party agents from the CED.

There were few manipulation attempts at the municipal level to alter the National Assembly results, mainly by municipal electoral officials from the FSLN and PLC, to the detriment of ALN and MRS. The clearest case, which was first reported and then directly observed in this context took place in the department of Carazo, where an FSLN municipal election official tried to move some 800 votes from the MRS to the FSLN during the tabulation of results in the municipality of Diriamba. This change would have given the FSLN an additional seat, to the detriment of the MRS. The MRS party agents, in possession of all the results forms for their area, were able to spot the attempted fraud and challenged the municipal consolidation at the CED in Carazo, which corrected the attempted fraud. By the time the EU EOM left the country, the CSE had not released any information as to whether the staff involved would be sanctioned; clearly, it would be a positive step if they were. There were similar suspicions of frauds in other municipalities, but no concrete attempt to change the results forms came to light. Mathematical mistakes were admitted by the CSE in relation to the Masaya departmental tabulation (following the ALN appeal to the Masaya CED) but they have not been corrected in any official publication.

On 22 November, the CSE announced the final results for all electoral races by reading out the names of the elected deputies. The final results confirmed the same number of seats per political party in the National Assembly as calculated on the basis of the preliminary results. The names of the president and vice president elect were also read out. The parties were also notified of these results and of the resolution of their appeals (see Chapter 12), but no additional information was released – no valid vote totals, no invalid votes, no total voter numbers, no details of polling stations annulled, no results breakdown per polling station. This is highly unusual compared to international practice, and although the Electoral Law does not require this additional information, it should be given to meet standard transparency practice. In addition, at the same time as the release of the names of those elected, the CSE website withdrew the posting of the preliminary results of each polling station, and left available only the preliminary results per polling centre.

⁵⁷ Overall, there were around 150 challenges to polling stations results initially reported by the EU EOM observers, whilst the unofficial number given by the CSE was 120. This discrepancy was due mainly to the fact that some challenges announced by political party agents had in fact been resolved before the challenge was filed, but also to a general confusion in the process at the municipal and departmental level.

⁵⁸ These centres were in Managua at municipal level, Granada, Río San Juan and Boaco at departmental level.

The final results approved by the CSE, but not published, give the candidate of the *Frente Sandinista de Liberación Nacional* (FSLN), Daniel Ortega, victory in the presidential race with 38% of the valid vote, and the candidate of the *Alianza Liberal Nicaragüense* (ALN) Eduardo Montealegre second place with 28.3%. The candidate of the *Partido Liberal Constitucionalista* (PLC) José Rizo came third with 27.1% and Edmundo Jarquín of the *Alianza Movimiento de Renovación Sandinista* (MRS) fourth with 6.3%. The fifth competitor, Edén Pastora of the *Alternativa por el Cambio* (AC) received only 0.29% of the vote. The final results for the National Assembly gave 38 deputies to the FSLN, 25 to the PLC, 22 to the ALN and 5 to the MRS.

Overall, the tabulation and publication of the preliminary results and the publication of the final results was handled rather poorly by the CSE, with a lack of transparency and public information throughout the process. However, no serious demands or complaints were made by the political parties to the CSE that it delivers the complete information about the results, leaving only civil society organisations to request this. The CSE informed the EU EOM that, although not obliged to do so by the Electoral Law, it would release the complete results by polling station at a later stage.⁵⁹ By the time this report was completed, the CSE had not released any additional information about the results. In any case, such a belated publication would still be significant for transparency and statistical research.

⁵⁹ This was apparently done in the 1990s, but has not been done since 2000, according to domestic observers.

Chapter 12

Electoral Complaints and Challenges

12.1 Polling station challenges

The challenges to polling station results, despite the serious debates and discussions that preceded the enactment of the relevant regulation and the gaps that remained in it (see Chapter 4.2.3), have been very limited. Regrettably however, by the time the EU EOM left the country, the CSE had still not released any official figures either for the total number of polling stations challenged, nor for the total number of polling stations annulled, even though this number was always referred to by the CSE as very low and it was not disputed by the political parties that such number was low.⁶⁰

In any case, the practice of annulling polling station results rather than recounting the ballots wherever possible contradicts the relevant provisions of Article 131 of the Electoral Law. Furthermore, the possibility of a recount was not adequately mentioned in the challenges regulation. Despite this provision in the Law, the option of recounting does not in fact appear to be part of the electoral culture, as it is considered to be too problematic and, quite surprisingly, not acceptable for the general public. The possibility to call repeated elections in case of annulment of a polling station is also not provided for in the Law.

Apart from challenges to polling station results, there were two other types of challenges that could be made to the results - arithmetical corrections at the municipal and departmental levels, and a counting revision at CSE central level over the publication of the preliminary results. While there were a significant number of arithmetical errors, and a number of corrections were made, only two requests for revisions were made (see below, 12.3).

12.2 Appeals against decisions on polling station challenges

Only 17 appeals were presented against the decisions made by the CEDs/CERs. They were all dealt with together by the CSE by means of a one-line resolution that applied to all the cases, upholding the decisions made at departmental or regional level by the respective CED or CER. This resolution was delivered to the parties on the day the final results were announced, but not made public at all. This practice is not in line with any acceptable international standards and illustrates a lack of transparency, a lack of acceptable judicial formalities, and also a thoroughly inadequate degree of reasoning in terms of electoral justice. This is particularly serious given that this resolution was the last instance and no further appeal was possible. Even though the Electoral Law does not contain any provisions on the procedures to be used by the CSE for hearing and

⁶⁰ Unofficial estimates put the number of annulled polling stations at 30, some because there were more than 400 voters (no polling station can have more than 400 voters), others as results of challenges.

adjudicating cases, the general principles and practice in Nicaraguan jurisprudence set standards on how sentences should be given.⁶¹

In some of the appeals submitted at the departmental and regional level, the relevant CED/CER did not decide the appeals made to it, but rather referred them on to the CSE. This is again not in line with any international standard, and in violation of the constitutional principle (Article 34.8 and 34.9), which states that a sentence should be given in each instance of the judicial process, and affirms the right of appeal against sentence to a higher court. To fail to do so, effectively cuts out one instance and thus infringes the right to justice.

12.3 Appeals against the preliminary results

Following the CSE's publication of the full preliminary results of the presidential and parliamentary elections on 15 November, the political parties had three days to present any challenges. Notwithstanding the large number of arithmetical errors discovered and despite the large media fuss, only two challenges were submitted against the preliminary results, the first by the PLC with respect to the election of the third National Assembly deputy to be elected in the RAAN constituency and the second by the ALN relating to arithmetical mistakes in Masaya and Estelí. After the expiration of this term, there was no further possibility of any appeals or challenges concerning the results.

The PLC challenge was rejected by the CSE in a brief resolution that upheld the results produced at the regional level. In substance, this challenge claimed that three polling station results were not included in the preliminary results, and that other results forms (including the municipal and regional consolidations) were altered.⁶² Since there was a very narrow margin of only 20 votes between the FSLN and the PLC for winning the third seat, the PLC stood to gain an additional seat if the challenge was resolved in its favour. However, copies of all the original polling station results were not included in the challenge as required by the relevant regulation. The PLC member of the RAAN's CER presented a criminal complaint against the CER president (FSLN), alleging that the president forged her signature on a document presented to the CSE dealing with the regional results. On another occasion however, the same PLC member of the CER confirmed to the CSE commissioners that all signatures on the submitted CER result consolidation sheet were original. The PLC's grievances relating to the RAAN included the fact that challenges that they had presented at lower levels remained unresolved. However, the PLC did not energetically pursue the case once their appeal was rejected, partly due to the realities of political deal-making, and partly probably due to frustration caused by previous fruitless attempts at a lower level to seek redress through the

⁶¹ For example, the Civil Procedure Code (Arts 424, 436) states that judgments should be clear and precise, decide all the points in debate, give the details of each party and of their petition, analyse the arguments, as well as present the legal and factual considerations relevant to the judgment, as well as giving the decision itself.

⁶² The PLC appeal in relation to the RAAN makes reference, *inter alia*, to their previous appeals against FSLN challenges to polling stations in Siuna resolved in favour of the FSLN. According to the PLC appeal on the revision of the results, their previous appeals were not dealt with. They object to the exclusion of those three polling stations in Siuna, which if included would have changed the RAAN results in their favour.

electoral justice. Serious concerns remain concerning the tabulation of some of the municipal results in the RAAN and the CSE's lack of reasoning and explanation for its decision on this appeal did little to assuage any doubts and uncertainty over them.

The ALN challenge relates to arithmetical errors in two departments, Masaya and Estelí. This was a far less contentious challenge, because the rectification of these errors would not change the seat allocation, and CSE officials had already acknowledged the mistakes in Masaya. More specifically, the results of five municipalities were not included in full in the departmental consolidation of Masaya, which affected all parties equally. In the case of Estelí mathematical errors occurred in the departmental consolidation, but again the correct figures would not have changed the seat allocations. The CSE accepted the challenge related to Masaya and made corrections, although there had been no publication of the corrected results by the time the EU EOM departed.

12.4 Other election-related complaints

The Electoral Law defines other types of election-related complaints that fall under the jurisdiction of the CSE. They are related mainly to decisions taken by electoral authorities such as polling station appointments or CSE instructions, alleged misconduct of election officials, alleged campaign violations and complaints against political parties.

These complaints are handled by the CSE and were mainly resolved at the various levels of the electoral administration through a conciliatory mechanism called *avenimiento*. Under this mechanism, the political parties and other interested stakeholders meet to seek to resolve their differences under the arbitration of the electoral authority. In case there is no resolution then the electoral authority decides on the issue, with a possible appeal to the higher level of the electoral authority, or forwards the case to the Electoral Prosecutor if it is deemed to be an electoral crime (see Chapter 12.5). The number of complaints lodged before the electoral authorities was not recorded at the municipal nor the departmental level but the EU EOM evaluated it as very low, the great majority of cases having been resolved by the conciliatory mechanism. Most of the complaints observed related to disputes about campaign material, such as undue removals or placing of posters and banners. On the issue of the selection process for the third member of polling station committees, a few formal complaints were lodged (particularly in León). No details have been published of these types of complaints, even though the EU EOM was able to obtain a summary of them.

After the announcement of the final results by the CSE, a special appeal was submitted by the PLC presidential candidate José Rizo before the Court of Appeal of Managua. The appeal was against the CSE decision of not assigning to him the substitute seat for the special National Assembly seat that is granted by Law to the former President (see Chapter 4.4). The CSE, with an extensive and peculiar interpretation of the Constitution, had based its decision on the fact that Rizo resigned from that position in order to run as a presidential candidate. The Court of Appeal upheld Rizo's appeal in mid January and requested him to submit the case to the Constitutional Section of the Supreme Court for

the final decision. By the time this report was completed, there had been no final decision on the case by the Supreme Court.

12.5 Electoral crimes

Electoral crimes are listed in the Electoral law (Articles 173-175) in three categories of seriousness.⁶³ A number of offences that may be committed by CSE staff are included. Electoral crimes represent the only, limited, segment of the electoral process that falls within the competence of the judiciary.

Within the Public Prosecutor's Office there is an Electoral Prosecutor dealing with electoral crimes, with a presence in all departments. The Electoral Prosecutor can act on accusations brought by citizens, by the CSE and other State institutions or act *de officio*. Accusations may be made to the police or directly to the Electoral Prosecutor. The police are in charge of investigation and report to the Electoral Prosecutor, who can decide to dismiss the case or to submit it to the criminal courts for judgment. There are no expedited procedures for these cases, so the time lapse from the beginning of an investigation until the decision on a case is equivalent to the average times for ordinary justice, which can be extremely long. By the end of November, the Electoral Prosecutor had received 62 accusations. Of this number, a third concerned the destruction of electoral campaign material, half concerned alleged minor misconduct of election officials (delays in providing accreditations was the most frequent case heard) and two concerned minor cases of alleged abuse of state resources.⁶⁴

The case of alleged electoral crime that attracted the most media attention involved the International Republican Institute (IRI), which was denounced to the Electoral Prosecutor by the CSE for publishing training documents for political party agents based on outdated elections regulations, and for unauthorised usage of the CSE logo. The accusation was given an exaggerated importance in the media, as IRI's actions did not have any real negative impact on the process. When the EU EOM left the country, the case was still officially under investigation.

Of the 62 cases that were received, 30 were dismissed as irrelevant by the Prosecutor, 15 were still under investigation when the EU EOM left the country and the other 17 had been forwarded to the Criminal Courts.

⁶³ The first one includes crimes related to improper behaviour of voters in the polling station, destruction of campaign materials, and voter impersonation attempts. The second group includes vote buying, physical threats to voters and violent and obstructive behaviour in the polling station. The third group, the most serious, includes threats or physical aggression against election officials, duress on employees or subordinates to vote a particular way and abuse of state resources.

⁶⁴ The first case concerned the alleged abuse perpetrated by the Nicaraguan Ambassador to Washington, which was denounced by the PLC. The allegation was that the Ambassador sent e-mails in support of the ALN presidential candidate during working hours and utilising state equipment. The second case took place in Madriz, with a complaint submitted by the PLC against a municipal official affiliated to the FSLN. Both cases were still under investigation when the EU EOM left the country.

Section V

Chapter 13

Recommendations

The EU EOM, at the conclusion of its mandate in Nicaragua, wishes to offer the following recommendations as its contribution to the strengthening of the country's democratic process. Many of these recommendations take into account the work of civil society groups in recent years in order to promote and support the political dialogue that should accompany the reform process.

Firstly, a thorough reform of the Electoral Law would contribute significantly to furthering the democratic development of the country. The current Electoral Law contains a number of gaps, inconsistencies with the Constitution and ambiguous wording which leave many crucial aspects of the electoral process unregulated, or subject to excessively restrictive or arbitrary interpretations. On the whole, the Electoral Law is designed for a bipartisan political system, which makes it difficult for the creation and emergence of other political parties, and no longer responds to the current political situation in the country. In addition, a consolidated code of all regulations and procedures governing the entire election process could help establish a more level playing field and more certainty as to the rules of the game among the contestants.

Political Parties and Candidates

1. The specific nature of political parties as building blocks of the democratic development of a country, should be reinforced with a modern Law on Political Parties. This Law should respond to the new and more complex demands of Nicaraguan society and recognise political parties as subjects of rights and obligations that go well beyond the mere electoral period. The main aspects that such law could address are the legal personality of political parties; the regulation of their rights and duties in society outside election periods; and the regulation of their finance in its global dimension, from disclosing their sources of funding to accounting for all their expenditure.
2. The obligations established in the Electoral Law for the creation of new parties, such as the requirement to have an assembly and a steering board established in every municipality of the country under the supervision of the CSE, should be reconsidered. The establishment of a municipal office in 50% of the municipalities of the country could be sufficient.
3. The rule that prevents regional parties, (which tend to represent the ethnic minorities of the Atlantic Coast regions) from competing for any seats in the national elections, except in alliance, should be reconsidered, specifically for regional deputy seats in the national elections.

4. The constitutional requirement for political parties to win at least 4% of the valid vote in the national elections in order to maintain their legal personality and participate in future elections should be reduced.
5. The requirement to present lists of candidates for all electoral races and for all constituencies should be abolished.
6. The right to stand for independent candidates and citizens' associations should be allowed at least for regional and municipal elections.
7. Transparent and enforceable mechanisms of internal party democracy to select and rank candidates within their respective party lists should be established, with specific attention to the promotion of women candidates. The link between the electorate and the elected representatives should be encouraged and the selection of candidates removed from the strict control of political party leaderships. Additionally, and subordinate to the establishment of the above mechanisms, consideration could be given to the possibility of introducing open lists.
8. Transparent and accountable mechanisms to record, disclose and audit the donations to political parties and their expenditure during the electoral campaign should be established. Consideration should be given to the introduction of limits on donations to political parties, as well as limits to their campaign expenditure. Enforcement mechanisms to guarantee adequate public disclosure of parties' income and expenditures should also be introduced and not limited to campaign periods. Consideration could also be given to reducing the current reimbursement to parties from public funds.
9. Serious consideration should be given to introducing gender quotas in the political party candidate lists for the National Assembly (for example, a minimum of 30% women), as well as ensuring a balanced gender ranking within such lists so that women candidates have reasonable chances of being elected. In this context, examples from Latin American countries and especially from Central America could be considered. If quotas are adopted, necessary enforcement mechanisms would need to be included in the Electoral Law.
10. The closing date for registration of political parties and candidates for a specific election should be closer to the election period than is currently the case, in order to avoid announcements of affiliation changes and long pre-electoral campaign periods. Consideration could be given to allowing the substitution of candidates for the National Assembly who resign, as is foreseen for presidential candidates.
11. Enforcement measures should be put in place to guarantee that electoral campaign activities are conducted only within the specific period devoted to the election campaign.

Electoral System

12. The mechanism to determine the number of deputies elected for each departmental/regional constituency (Art 141 Electoral Law) should be updated. The number should be revised each time there is a national census, or by using updated civil registration figures, to achieve a better proportionality between the population and elected representatives.

13. The establishment of a quota for indigenous seats should also be considered, as has been the case in other Latin American countries, at least to guarantee representation proportional to their population size.

14. The introduction of compensatory seats in the nation-wide constituency could be considered as a mechanism to recuperate the “wasted” votes of those parties that do not win any seats in departmental/regional constituencies.

Election Administration

15. The Electoral Law should be reformed to ensure that at the end of the current mandate the system for appointing CSE Commissioners ensures their impartiality and independence from all political parties and at the same time commands the respect of all stakeholders. Adequate mechanisms to effectively consult with and take into account civil society recommendations during the appointment process should be established. Eligibility criteria for commissioners should guarantee and privilege the civic and institutional background of the candidates over their political affiliations. A reduction in the number of commissioners should also be seriously considered.

16. The CSE should be strengthened as an institution. This should include an overhaul of its central office structure. The CSE should approve its own rules of procedures and establish an official organisational structure that responds to criteria of efficiency and transparency. This would include a secretary general with powers of overall coordination among the various directorates.

17. The CSE should establish a legal department that could support the institution in its roles as regulation-maker, and as the body that dispenses electoral justice.

18. The Civil Service Law should apply to senior levels of the election administration, in order to guarantee their professionalisation and protect them from arbitrary dismissals and political party pressure.

19. The composition of the permanent territorial structure of the election administration should be thoroughly reformed and depoliticized. Appointments should be made in accordance with the Civil Service Law. Consideration should be given to the permanent appointment of a departmental/regional electoral officer not linked to any political party.

20. An equal representation of women at the various levels of the election administration should be encouraged. This process should be initiated with a larger representation at the highest level, and then be promoted by means of a specific policy within the CSE at the various appointment levels.

21. The appointment of polling station committee members should be made in a manner that guarantees their independence and neutrality from political parties. Alternatively, a more equitable representation of the various forces in the political spectrum should be guaranteed with transparent rules that are not subject to differing interpretations.

22. The CSE should make full use of its regulatory powers in all those specific aspects of a given electoral process that might not be sufficiently explained in the law, in order to increase consistency and eliminate ambiguity in its interpretations.

23. The CSE should provide electoral stakeholders with more open access to information about its activities, for example, by holding informational meetings with them and by publishing more up-to-date information on its website. In this context, the promised passage of the Law on Access to Public Information could also require the CSE to be more transparent about its own decision-making processes and proceedings. CSE sessions when it is acting in its judicial capacity to resolve complaints or appeals should be open to the public.

Civil and voter registration

24. The procedures for civil registration should be updated, simplified and standardised in all municipalities. The system of civil registration should be computerised from the outset in all municipalities and placed effectively under the control either of a specialised division of the CSE, or of a different governmental agency. Specific geo-indexing parameters such as settlement divisions or new address codes could be introduced to simplify identification and future updates. A thorough reform of the Citizen Identification Law could regulate the reorganisation of the system.

25. A reformed Citizen Identification Law should also place more emphasis on the importance of ID cards as a general identification document that citizens can use for a multiplicity of purposes and not only as a voting document. The requirement to obtain an ID card should be a duty/obligation shared by the citizens together with the institutions, rather than just being the responsibility of citizens.

26. Each civil registration application should be entered electronically at the municipal level, with a unique number assigned to each entry that can be used later on for every change of residence or status and for other fiscal or administrative purposes. The procedures at municipal level should be defined and supervised by the CSE, and the civil registrars should answer exclusively to the CSE officers rather than to the municipality.

27. More efficient mechanisms to verify and eliminate double registrations and communicate changes of status and deaths should be put in place, with the CSE needing to take the lead on this, rather than relying on citizens' initiative.

28. If the civil registration functions are to remain under the responsibility of a specialised division of the CSE, a separate budget should be allocated to it, regardless of the occurrence of elections in a given year. Ideally, the civil registration process should be given equal if not higher attention in non-election years. Specific mechanisms to inform ID card applicants of the progress of their applications should be designed and implemented.

29. More efficient and routine civic education strategies should be devised to inform the rural and disadvantaged populations of the need to be civilly registered. Application for civil registration should be free of charge for all citizens. The normal registration procedure should be extended to all individuals until they are five years of age.

Voter Registration

30. The application, production and distribution of ID cards should be simplified and removed from the control of the political parties' territorial structures. The distribution of ID cards should take place permanently at the municipal level, ideally in the same office that deals with civil registration.

31. Each ID card application should continue to be made at the municipal level but the review process should be handled only at the central level, with the establishment of a clear set of procedures to verify its veracity and any inconsistencies. Consideration should be given to the automatic entry in the voter register of all citizens who reach voting age without the need to fill a specific application.

32. Voter list verification (giving citizens the opportunity to update or modify their information) should be subject to more rigorous quality assurance checks and should be given better publicity. It would be more appropriate for emigrants or non-residents to be marked as such in the voter register.

33. If adequate efforts are made to implement the recommendations above, the possibility afforded to voters by Article 41 of the Electoral Law to vote even if their name does not appear on the voter register, would then become redundant and should be abolished.

Election day procedures

34. In order to rationalise costs and procedures, consideration should be given to reducing the overall number of polling stations and to increasing the number of staff and voters per polling station.

35. When more than one electoral race takes place on the same day, the colours of the different ballot papers and ballot boxes should be more clearly distinguishable.

36. The filling in of polling station and results forms and the completion of accuracy checks in the filling in of the results forms should be more specifically addressed in the training. Polling station staff should always be provided with calculators.

37. Domestic observers should always be given unrestricted access to all the stages and activities of the electoral process, including the tabulation procedures.

38. In case of challenges to polling station results that are substantiated, the results of the polling station should not be annulled, but rather recounted at the CED/CER level. The possibility of a polling station recount should also be introduced at the municipal level.

39. Specific training should be designed for CEM and CED/CER staff assigned to the tabulation process. This should include basic computer skills and data-entry exercises.

Publication of results

40. The publication of the preliminary results should be regulated by detailed and transparent rules. The CSE should be obliged by law to publish the preliminary results in their entirety, including the complete polling station breakdown, thus removing the possibility of the CSE deciding arbitrarily how many and which part of the results to be made public. Crucial statistics on voter turnout, number of valid and invalid votes, and the number of polling stations challenged and annulled should also be made public in the publication of preliminary results.

41. The announcement of the final results should include all the figures mentioned above for the preliminary results, including the publication of the overall results broken down by polling station.

Adjudication of electoral complaints and appeals

42. An independent mechanism should be established for the resolution of electoral challenges and appeals. This could mean that such competences are attributed to a specific section of the judiciary or at least to a separate branch of the election administration that deals only with the supervision of the process and the resolution of challenges and appeals.

43. The electoral administration's decisions on challenges and appeals should be informed by basic principles of juridical culture and should respect the procedures already used in the Nicaraguan judicial system. Decisions on complaints, challenges or appeals should always contain detailed and clear reasoning for every single decision.

Media

44. The CSE should begin to use its authority to require the media to abide by the provisions set out in Articles 87 and 90 of the Electoral Law regarding the use of the

media by political parties and the diffusion of electoral propaganda during the electoral campaign. The reasons presented for not enforcing these sections to date should no longer be an excuse for further inaction or omission.

45. The limits on airtime that may be purchased by each electoral contestant in different media outlets should be determined in accordance with commonly agreed media parameters.

46. Free airtime should be provided by the state-owned electronic media, as well as by other electronic media to provide all contesting political parties with a basic platform to communicate their political proposals to the population.

47. Adoption of a voluntary code of conduct by media outlets should be considered. Through the adoption of such code, the media could demonstrate their willingness to abide by the principles of equal opportunity and fairness in electoral campaigns and to refuse to circulate offensive and aggressive electoral propaganda by political parties. The adoption of such a code of conduct could also be done under the auspices of the CSE.

48. A Media Law should be adopted to properly regulate and guarantee the multiple functions of the mass media, and to give them a clearer and more solid role in Nicaraguan society. An independent institution should be established to enforce media regulations.