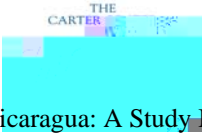


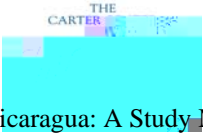


# The November 2011



The November 2011 Elections in Nicaragua: A Study Mission Report of the Carter Center





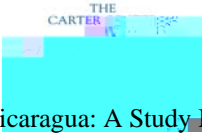
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The main contenders in the 2011 presidential race were incumbent president Daniel Ortega (FSLN), former president Arnoldo Alemán (Constitutionalist Liberal Party, in alliance with the Conservative Party, PLC-PC), and Fabio Gadea (Independent Liberal Party – Nicaraguan Union for Hope, PLI-UNE). Two minor alliances, namely the Nicaraguan Liberal Alliance (ALN, which had placed second in the presidential race in 2006) and the Alliance for the Republic (APRE), were rumored to be financed by and cooperating with the governing party.

The legal framework for the elections was marred by two important issues. First, the presidential candidacy of incumbent Daniel Ortega was inadmissible under the 1987 constitution because he had already served the maximum two terms (1984-1990; 2006-2011), and because a reform passed in 1995 banned immediate re-election of the president. The Supreme Court of Justice (CSJ) had ruled in 2009 that these restrictions violated another constitutional principle of individual equality (and therefore the right of Daniel Ortega to run for office), but the partisan make-up of the court and procedural irregularities in that decision called its validity into question. Second, the Supreme Electoral Council (CSE) was composed of members who had overstayed their terms of office, having been authorized to do so by a questionable presidential decree in 2010.<sup>1</sup> The CSE's partisan composition and the dominance of the FSLN within the technical and administrative structure of the electoral branch were additional cause for concern, especially given that the same CSE magistrates had presided over municipal elections in 2008 in which opposition parties and domestic organizations presented significant evidence of fraud to the benefit of the governing party.

Despite these concerns, opposition parties believed they had no option but to contest the election, bearing in mind the lesson of the Venezuelan legislative elections in 2005 when the opposition boycotted the race and was consequently shut out of politics and cast into deeper disarray. In Nicaragua, opposition prospects for victory in the 2011 elections were never good. Prior to the election, public opinion polls showed President Ortega with a strong lead over both Gadea and Alemán, who split the Liberal vote. The FSLN had won a plurality victory in the 2006 election, and had traditionally garnered up to 40% of the vote. In 2011 it was expected to remain the largest single party in the legislature, and polls suggested it could for the first time capture a simple majority of the seats (47). At least one polling firm found that the FSLN would win over 60% of the seats, as election authorities later reported it had.

Meanwhile, the leading opposition PLI alliance was newly-formed of conservative and progressive remnants of other parties.

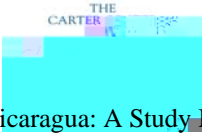


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radio personality from the traditional Liberal party, and its vice presidential nominee a former Sandinista, Edmundo Jarquin, from the MRS (Sandinista Renewal Movement). One of its top leaders and a candidate for the National Assembly, former presidential candidate Eduardo Montealegre, had a small loyal base and some experienced party workers from 2006. Leadership quarrels divided the PLI. The ideological positions of former Sandinistas incorporated into the alliance through the MRS also may have reduced its credibility among traditional Liberal voters.

The popularity of President Ortega and the FSLN party appeared to stem in large part from the government's economic performance and social programs designed to alleviate poverty, along with handouts to the populace. Despite economic contraction in 2009 in response to the collapse of global financial markets, Nicaragua had enjoyed rising commodity prices for its main exports and in 2010 the growth rate reached 4.5 percent. The Ortega administration had kept inflation in check at 8% in 2011. According to household surveys conducted by a European funded and politically independent research institute, the International Foundation for the Global Economic Challenge (FIDEG), poverty had fallen from 48.3% in 2005 to 44.7% in 2010. The percentage of Nicaraguans living in extreme poverty fell from 17.2% to 9% over that same period. Oil donations from Venezuela netted roughly \$500 million per year over 2009-2011, handled off budget as loans on generous terms. Half of that money was earmarked for social





domestic observation groups. A more complete description of these irregularities may be found in Appendix A.

### Limits on Election Observation

The European Union and OAS each negotiated a memorandum of understanding, as has been their custom, through which the Nicaraguan government assured them of conditions adequate to monitor elections. Nonetheless, due to the lateness of the government's publication of regulations for observation on August 16, 2011, these groups were unable to deploy their teams and to verify the quality of the election process as a whole since critical stages (registration of parties and candidates, verification of the voters list, voter registration, the first month of campaigning) occurred before their missions were established.

The OAS mission leader reported that the polling station authorities had obstructed his observers' ability to carry out their function. On election day, 10 of the 50 OAS observers fielded were blocked from entering and observing their selected polling places for the morning hours. This meant they were unable to verify whether the ballot boxes were empty at the moment they were sealed. No previous Nicaraguan election had seen anything close to such widespread and frequent hindrance of international observation.

The second statement of the EU observer mission on November 17 asserted that its personnel, along with poll-watchers of the political parties, had been prevented from effectively observing the summation of the JRV-level vote tallies done in the municipal counting centers subsequent to election day.

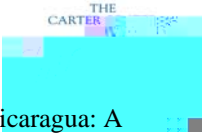
One reputable and experienced domestic observer group, the Institute for Democracy and Development (IPADE), and a newer group Let's Make Democracy (Hagamos Democracia), applied for but were not granted credentials to observe inside the polling stations despite their compliance with legal requirements and intense social and international pressure on the electoral authorities. Another deeply experienced group, Ethics and Transparency (ET), did not apply for credentials.

### Irregularities in the Preparations

In the run-up to election day, the most important problems in election preparation related to the voters list (*padrón*) and voter identity document (*cédula*) Voters lists must be periodically updated to reflect address changes filed by voters who move within the country. In Nicaragua this is followed by a voter verification process wherein voters visit their polling places to check that they are registered to vote in the proper location, a process conducted in July 2011 without international observation. In addition, voting lists need to be regularly purged to remove the name of anyone for whom a death certificate has been issued, but citizens complained this had not always been done. CSE policy is that citizens are not removed from the list even if they have not voted in many years.

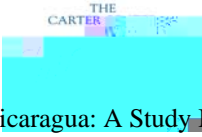




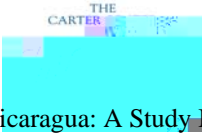


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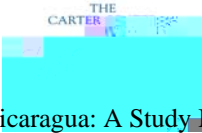


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that if they did not acknowledge the published results, those funds would be withheld and the party would be bankrupt.

In addition, there was a pending decision concerning a longstanding dispute within the PLI over who was the party's legal representative. Three other party factions disputed the claim of PLI deputy Indalecio Rodríguez to this position, even though it had been ratified by the CSE earlier in 2011. If the PLI deputies did not take their seats, legal control of the PLI might be transferred to a rival leader. Finally, in that same dispute, some PLI candidates, including some who were elected, had been accused of not being party militants and thus not qualifying for election. Despite pressure from international observers, this matter had not been decided prior to the vote and some elected deputies could yet be stripped of their seats.

Convinced that legal remedy could not be obtai



Costa Rica, whose representatives expressed concern about the mission report and the process.

### EU Reaction

The EU mission's initial statement on November 8 took the CSE sternly to task for numerous failings, stressing in particular its lack of independence and transparency, and lamenting the deterioration in its functioning since the last election in 2006. A subsequent statement on November 17 said that the lack of transparency had worsened at all levels of election administration during the tabulation of results and their publication. However, like the OAS it limited itself to the description of "irregularities," refraining from using the term "fraud".

### US Reaction

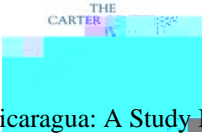
The elections drew sharp criticism from the United States. Citing the reports by the European Union and OAS missions, the US State Department said on November 10, 2011 that the election suffered significant irregularities and was not transparent nor administered in an impartial manner. It noted the absence of a full accounting of the ballots, failure to accredit credible domestic observer groups, and problems in distributing voter identity documents, as well as the fact that some international observers were denied access to the polling places. Rather than refer to Daniel Ortega as elected, the State Department simply noted that the government had announced he would serve another term. The United States promised to continue to support civil society, but was silent on whether it would support the government.

The Chair of the House Foreign Affairs Committee, Ileana Ros-Lehtinen, called a hearing on December 1 and said that the United States should not recognize the election, calling it a "sham". Senators Robert Menendez (NJ-Democrat) and Marco Rubio (FL-Republican) submitted a resolution for consideration by the Senate urging the Obama administration to oppose loans by international financial institutions to the Nicaraguan government and suggesting that the OAS consider suspending Nicaragua's membership in accordance with Article 21 of the Inter-American Democratic Charter.

The key policy question is whether the United States will issue Nicaragua a waiver concerning fiscal transparency, which comes up for renewal in March 2012, and another concerning the resolution of property cases, which is due in June. The effect of not issuing the first waiver is to block US bilateral aid to government agencies. If the second waiver is not issued, US representatives will be enjoined to vote against loans to Nicaragua in international financial institutions, and humanitarian and civil society aid would also be curtailed. As a Highly Indebted Poor Country, Nicaragua only has access to concessionary funds. In the Inter-American Development Bank (IDB), Nicaragua only qualifies for special operations funds which the United States may be able to veto, but which have not been treated with political conditionality in the past and for which there may be reluctance to introduce political criteria. Nicaragua also qualifies for International



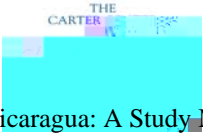
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2012 despite Nicaragua's overt backsliding. The OAS has offered technical assistance to





principle, however, as long as they retain their formal status as coequal branches of state the current centralizing tendencies could be reversed to restore checks and balances.

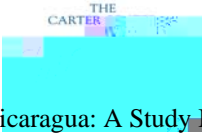
Although the business sector is particularly keen on judicial reform because the uncertain legal environment and cost of obtaining favorable decisions act as drags on investment, COSEP also is calling for reform of the electoral law and a new CSE. If done well, such measures could rebuild confidence in electoral institutions. Private suggestions from the Sandinista legislative bench and public proposals from the Consejo Nacional de Universidades, a domestic observer group sympathetic to the FSLN, include purging the voters list of dead people, streamlining issuance of voter identity documents (and possibly creating a voter i.d. separate from the national i.d. card), earlier opening of the Municipal Electoral Councils (which currently open six months prior to elections), longer lead times for the CSE to prepare credentials for opposition polling agents, improvements in the civil registry so that birth records are adequate for provision of voter i.d.s, and clarification of the pool of parties eligible to submit slates of names for the third position on the voting boards. The FSLN may consider these, but rejects some of the additional proposals that have been voiced by civil society groups such as IPADE, including re-acceptance of popular subscription candidates not registered with any political party in municipal elections, which the FSLN claims would become an avenue for illicit drug money to enter the campaigns.

#### End of the 2000 Pact

The FSLN also can now use its legislative majority to make new appointments to the CSE, CSJ and other bodies. The election of new CSE and CSJ magistrates requires a qualified majority of 56 votes. It may well reappoint the current magistrates because the party views their experience as an asset. However, the manner in which appointments to the CSE and CSJ have been informally handled since the 2000 pact, in which the PLC and the FSLN have divided up the spoils, is subject to change. Now that the PLC has been displaced by the PLI, the pact between the two caudillos Ortega and Alemán, which was the principle organizing mechanism for political power over the past decade, is void.

The Sandinistas are expected to make room on the legislative leadership and in the CSJ and CSE for some representation by the PLI, but at best in proportion to the number of votes won, meaning the opposition's quota will fall to roughly one third of the posts or less, insufficient to exert much influence. Some sources indicated that the role of the second force in making appointments at lower levels of the electoral administration (departmental and municipal electoral councils, and voting tables) may change if the electoral law is reformed.

Any such changes would signal the FSLN party's intention to use its new dominance in the legislature to extend the party's power within other state institutions. Most critics with whom The Carter Center met said that the Sandinistas' primary goal is to retain that power permanently. Caution is therefore warranted when prescribing institutional reform



as a remedy for democracy's ills, since depending on their process and resulting content, reforms might serve only to entrench a single hegemonic party.

### Breakup of the PLI

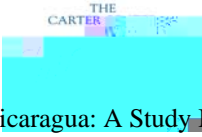
Although the PLI would not have sufficient votes in the legislature to prevent consolidation of a one-party dominant regime, it could impose political costs on the government in international and domestic circles by voicing opposition in the National Assembly. However, the PLI is an incoherent party engaged in an unstable alliance that may well come apart. Such a breakup will not likely be encouraged by the FSLN, which would find a cacophony of voices in the legislature time consuming to manage and therefore may prefer a single interlocutor whose cooperation could confer legitimacy on reforms. Nonetheless, the PLI may fracture along pre-existing fissures as leaders within it jockey for position.

### Increased Patrimonialism

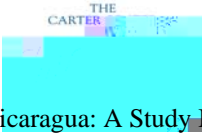
The business community and opposition media have provided a counterweight to the centralization of power under past governments, but in the medium term this too could change.

The current Ortega administration has met regularly with business representatives to discuss an agenda that the private sector and government jointly set, and only one law affecting business was approved without its consent. Now, however, businessmen fear that the government's consensus-building will be a matter of grace rather than necessity, and may be abandoned. This, together with US and European qualms about governmental legitimacy and juridical security, could discourage foreign direct investment. If the United States does not give Nicaragua a property waiver, multilateral funds could be substantially reduced as well, rendering Nicaragua more dependent on Venezuelan aid and further rattling investor confidence.

The business community also expressed concern about a reduction in competition within the economy as FSLN-connected businesses begin to displace rivals within some industries, crowding out competitors through unfair business practices. Critics contend that patrimonialism already permeates the government, which reportedly offers lucrative opportunities and priority in customs processing and other transac



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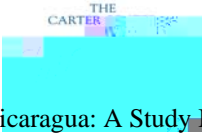


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should pledge not to reform the constitution unilaterally. Instead, it should engage Nicaraguan society broadly and seek to deepen accountability, the rule of law and limited government as a matter of principled constitutionalism.

Nicaragua needs to rise above its patrimonial political past, moving politics beyond the reach of *caudillo* strongmen and tactical political pacts into a stable democratic framework where political bargains are struck through the give and take of the democratic process rather than as a means of circumventing it. Such a model also requires coherent opposition political parties and a more stable party system, which have not been attainable to date. This goal of institutional strengthening is compatible with and indeed crucial for sustained economic growth with redistribution of a kind that could permanently reduce social inequality and foster economic development for all Nicaraguans.



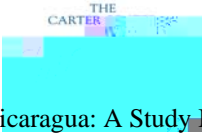


others citizens had no such help. Citizens could pay an expediting fee of about \$15 if they wanted to get their new documents sooner, but it was reported that those with contacts in the FSLN or CPCs had the fee waived. CEM members also advised their parties when documents had been manufactured and those parties arranged for home delivery of the i.d. whereas citizens affiliated to other parties had to guess when their documents might be ready and travel to the municipal capital to pick them up.

**JRV Members** Nationwide 12,960 Juntas Receptoras de Votos (JRVs, or voting tables) were formed to administer the vote at the polling stations, each with a corresponding ballot box. The top two positions on the three-person boards were named by the governing party and the party that had placed second in the previous election; the latter was the ALN, which was rumored to have been suborned by the FSLN and which ultimately obtained insufficient votes to win a seat in the legislature. The list was published after the deadline, just weeks before the election, preventing any investigation into whether the personnel listed as members of the ALN were in reality FSLN party militants, as had been feared. No study of this question has been published in the month since the election.

The third position at the voting table was a matter of contention. In the past, and by law, that person had been drawn from lists submitted by the remaining parties in order to assure as much pluralism as possible, but on this occasion the name was drawn from lists submitted by all parties so that in some instances the FSLN or its allies obtained an additional spot. In some JRVs the governing party effectively controlled all three posts.

It is worth noting that the CSE provided almost no information to the public concerning election procedures, and did not position itself

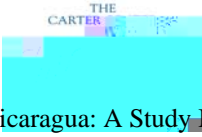


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In addition, indelible ink applied to







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been publicly posted as they were entered into computers for tabulation, allowing the parties to practice oversight in real time and request correction of any discrepancies, but this practice was abandoned without explanation. Moreover, the results and winners were published prior to the dates indicated in the electoral calendar, shortening substantially the time parties had available to prepare formal objections.

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The Carter Center  
One Copenhill  
453 Freedom Parkway  
Atlanta, GA 30307  
(404) 420-5100x Fax (404) 420-5145  
[www.cartercenter.org](http://www.cartercenter.org)