

# Patchwork Democracy

Nicaraguan Politics Ten Years  
After the Fall

*by*

*David R. Dye*

*with Jack Spence and George Vickers*

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**David R. Dye**, a Managua based research journalist has resided in and provided political and economic analysis on Central America for eighteen years. He took principal responsibility for research and writing this report.

**Jack Spence** is President of Hemisphere Initiatives and is Associate Professor of Political Science at the University of Massachusetts Boston. Spence coordinated the research, made two field trips to Nicaragua, and edited all sections of the report.

**George Vickers** is Executive Director of the Washington Office on Latin America (WOLA) and Treasurer of Hemisphere Initiatives. He edited all sections of the report, made two field trips to Nicaragua including during the November 5th elections, and, along with Spence, wrote the analysis of the results of the election and the performance of the Supreme Electoral Council during the weeks leading up to the election.

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Hemisphere Initiatives  
[jack.spence@umb.edu](mailto:jack.spence@umb.edu)  
[jackspence@terra.com.br](mailto:jackspence@terra.com.br)

Or at the Hemisphere Initiatives web site at  
[http://www.geocities.com/hem\\_init/](http://www.geocities.com/hem_init/)

Or from

Washington Office on Latin America  
1630 Connecticut Avenue NW  
Washington, DC 20009  
202 797-2171  
[wola@wola.org](mailto:wola@wola.org)

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## Nicaraguan Politics Ten Years After the Fall

### PROLOGUE

Over the past fifteen years, most countries of Latin America have passed from authoritarian dictatorship to having democratically elected governments. In these *procedural democracies*, as some political scientists call them, officials are elected in a free and fair manner, and there is inclusive suffrage, freedom of expression and organization, and associational autonomy.<sup>1</sup>

It is proving more difficult, however, for many of these countries to move beyond the electoral trappings of democracy to construct effective democratic institutions capable of providing justice, protecting rights, and delivering both security and economic betterment. According to one cogent appraisal, “electoral procedures are being institutionalized in a number of countries, to be sure, but all too often these co-exist with pervasive clientelism, imbedded injustice, massive corruption, flagrant impunity and reserved domains beyond the authority of government and the rule of law.”<sup>2</sup> While such practices are found to varying degrees in established democracies as well, in the context of recent transition in Latin America they are eroding faith in the democratic option.

Now neglected by foreign academics and news media, Nicaragua has not been one of the countries prompting special concern. In spite of political vicissitudes and the recent disaster of Hurricane Mitch, it has appeared to make fitful progress toward the general goals of democratic development. Since Violeta Chamorro’s defeat

of the revolutionary Sandinista government in February 1990, the country passed through a second peaceful election for national and local authorities in October 1996. The army has kept itself aloof from the political fray since a reform of civil-military relations in 1994. And in recent years, the vigorous efforts of a crusading comptroller-general offered promise of a cleanup of the nation’s endemic corruption.

Ten years after local and international upheavals thrust Nicaragua on the path toward liberal democracy, however, a closer look suggests that democratic rule and governability in Nicaragua remain fragile. During the Chamorro administration, Nicaragua’s National Assembly passed important constitutional reforms and timid institutional reforms began. The advances achieved during the Chamorro administration were a kind of crazy quilt stitched together by ad hoc, unstable compromises following political battles over fundamental issues of governance and economic function. Foreign aid has helped hold the patches together. But key problems of governance are likely to continue until the country begins to grapple more seriously with its central political problem—the consolidation of the rule of law, or as a noted scholar of politics has called it, the *democratic state of law*.<sup>3</sup>

Although there were variations of degree, for most of the last century Nicaraguan political leaders looked upon government as a fount of enrichment and a cornucopia of resources with which to pay off friends and build political

empires. To protect this corruption they have needed impunity: pliant legislators, venal courts, auditors who could be easily bribed. Though constitutional facelifts have been frequent, the political will necessary to seriously reform “intermediate” institutions of the democratic state such as courts and systems of control has been notoriously weak.

The most recent political *reform* in Nicaragua was a pact signed in January 2000 by the country’s two principal political forces. The signers — the ruling Liberal Constitutionalist Party (PLC) of president Arnaldo Aleman and the Sandinista National Liberation Front (FSLN) headed by Daniel Ortega — argue that their accord will strengthen democratic institutions and bolster governability. Critics of the agreement insist that it will do just the opposite.

This report raises strong doubts about whether the new rules for political competition and institutional functioning legislated this year are laying the groundwork for further progress toward fortifying the rule of law or for Nicaragua’s democratic progress more generally. These rules may be fomenting a stable system of deal making among a few players in an atmosphere marked by public cynicism and apathy. But they also may be creating conditions for a new political crisis that will thrust Nicaragua once again into the arena of hemispheric concern.

Nicaragua cannot be content with a “patchwork democracy.” The country’s history suggests that a political system based on exclusion and that allows injustice and corruption to fester, is likely to generate growing discontent to the point where a breakdown of democratic order becomes thinkable. We recognize that consolidation of democracy is a long-term problem — only a short interval has elapsed since 1990. But vigilance in the Nicaraguan case is warranted. The country does not possess many of the normal requisites for democratic stability. Poverty is rife and inequality glaring. And the political culture remains permeated by the legacy of authoritarianism and violence that has marked the country’s history.

Eleven years after Hemisphere Initiatives’ first report on political transition in Nicaragua, this report examines the nature, the roots and the likely consequences of the Liberal-Sandinista pact. The document that follows sketches a portrait of recent Nicaraguan politics, details the content and origins of the new political accord, and assesses the impacts of the agreement after six months in the areas of institution-building and functioning, and political party competition

The body of this report was written before the November 5th elections. The Conclusion contains a brief analysis of the elections.

## BASIC POLITICAL TRENDS: 1990–2000

Over the last two decades, Nicaragua has undergone extraordinary and wrenching changes of a magnitude and intensity matched by few other countries. In 1979, it passed abruptly from 46 years of unbroken despotic rule by the Somoza family into a convulsive period of economic and political change as the revolutionary Sandinista National Liberation Front (FSLN) took power and attempted to remake Nicaraguan society under novel quasi-socialist rules.<sup>4</sup> Hostile relations

with the U.S. and copious US assistance to Nicaragua’s contra rebels led to a highly destructive war. That and failure of the revolution’s economic project set the stage for the election of Violeta Chamorro as president.<sup>5</sup>

In the early 1990s, presidency minister Antonio Lacayo, the chief decision-maker in the Chamorro government, took to referring to the upheavals then under way as a “triple transition.” After 1990, Nicaragua passed militarily from war to peace, politically from revolu-

tionary authoritarianism to liberal democracy, and economically from quasi-socialism to a market-driven system. Each passage was attended by trauma.

In the political sphere, president Chamorro had to grapple with constraints on her freedom for maneuver deriving from the 1987 Sandinista constitution and from the de facto situation of dual power which prevailed in the aftermath of the National Opposition Union (UNO)'s election victory on February 25, 1990. The Sandinistas retained control of the armed forces under Gen. Humberto Ortega as well as of the police, and had nominated a majority of loyal Supreme Court justices shortly before leaving power. The FSLN also held 42% (36 of 92) National Assembly seats, making constitutional amendments, which require 60% majorities in two successive legislative years, a distant prospect.

However, the strongly presidentialist cast of the 1987 charter gave the executive wide powers to act without the need to seek legislative approval for economic and tax measures. This power proved crucial to the government's ability both to ram through harsh stabilization and adjustment measures and to negotiate compromises with its Sandinista adversaries. But it also ended up generating strong objections, both from Sandinistas and from much of the coalition that had brought Chamorro to office.<sup>6</sup>

Until late 1993, politics during Chamorro's term were dominated by raw political combat under rules that were themselves one of the chief objects of struggle. Violent clashes over property rights and stabilization policies combined with the rearmament of former contra and Sandinista combatants to keep Nicaragua in episodic turmoil. When the conflicts reached the point of crisis, some originally in Mrs. Chamorro's camp were seeking her ouster from power.<sup>7</sup>

Between late 1993 and early 1996, splits in the principal political camps (UNO and FSLN) ushered in a period of compromise that averted a deepening of the crisis. Striving to forge a *modus vivendi*, reform-minded elements in the

two camps negotiated major changes to the 1987 Sandinista constitution, reordering the balance of powers in the state and promoting the autonomy and development of key democratic institutions. The reforms prevented incumbent presidents from running for a second term, and gave the legislature much more power. This phase, which enjoyed the support of powerful external players but sidelined both Antonio Lacayo and Daniel Ortega, reached fruition in constitutional reforms passed in June 1995.

The 1995 reforms to the constitution offered some hope for change in institutions. In an overly presidential system, they augmented the powers of the National Assembly in matters of economic and tax legislation. They also changed the rules for electing magistrates to the Supreme Court (CSJ) and Comptroller (CGR), forcing the president to share the control of these nominations with the Assembly and with civil society. In theory, this afforded the institutions a measure of independence from executive control. The Supreme Electoral Council (CSE) had already established a reputation for honesty and professionalism during elections in 1984 and 1990.

Once the new magistrates took office, moreover, Nicaragua seemed to be taking tentative steps toward consolidating the rule of law. As is analyzed below, timid reforms began the arduous process of cleansing the court system. For the first time, the country also witnessed the novelty of a Comptroller General actively engaged in attempts to root out corruption. The aggressive performance of Agustin Jarquin Anaya in office was not only unprecedented in Nicaragua, but had few parallels elsewhere in Latin America.

However, when it came time in 1995 to select new authorities to the CSJ and CGR, the political interests of the small parties that had crafted the reforms prevailed. In successive elections in 1995 and 1996, a hodgepodge of minor parties placed loyal followers on the Supreme Court, while a Christian Democrat secured the Comptroller's job. This outcome

left today's dominant parties with little direct representation at the upper reaches of these institutions. For both the FSLN and the PLC, this trend was problematic.

The election of Arnaldo Aleman as President on October 20, 1996 initiated a period of institutional tensions and strains. The new president quickly displayed strong caudillo-like tendencies that ran counter to the efforts at institutional consolidation emanating from the 1995 amendments.<sup>8</sup> Unlike Mrs. Chamorro, who could not count on solid backing from the incoherent UNO coalition, Aleman initially enjoyed the support of a tightly controlled Liberal Alliance bench of 42 deputies. Even with this majority, however, the Aleman government was unable to overcome fundamental weaknesses in the Nicaraguan political system. Among the most important were the following:

- **Weak governmental effectiveness and legitimacy.** Nicaragua's macroeconomy has grown at an annual rate of 4.5% per year since 1994, not high enough or long enough to mend much of the previous 16 years of deterioration. Adjustment, privatization and other policies generated a strongly regressive trend in income distribution as owners from the Somoza era recovered properties, exiles returned from the United States, and a new middle class sprouted.<sup>9</sup> Though they have declined in recent years, unemployment and underemployment also remain severe.<sup>10</sup> Real income per capita is less than \$500 per year. Nor has growth since 1994 clearly demonstrated an impact on entrenched poverty, estimated by some measures to afflict 75% of the population.<sup>11</sup> Though declining, confusion about property rights has impeded a more vigorous recovery.

For the ordinary Nicaraguan, then, democracy has not yet paid off. In addition, the credibility of government has been undermined by intense public suspicion about corruption in the ordinary exercise of power and in the privatization of state assets. During the Chamorro period, doubts swirled around the sale of 350 state enterprises in operations

conducted without the benefit of legislative authorization. Under Aleman, the privatization of a bank and the attempted sale of the public telephone system excited speculation about further irregularities, while the press has uncovered extensive purchases of rural properties by the president and evidence of misdeeds by his cronies.

- **Persistent property clashes.** For a decade, the leitmotives of Nicaraguan politics have been clash and combat between Sandinista and anti-Sandinista forces around issues of property and economic adjustment. Somoza era elites have tried to regain control of holdings they lost during the Sandinista revolution. Sandinistas have defended their property gains. Violent clashes were common, particularly in the early 1990s as former contras and some military veterans rearmed. Due to the balance of political forces, both post-1990 governments have been forced to compromise with the Sandinista opposition in order to be able to govern, making outright "counterrevolution" impossible. However, the result of the compromises has been to leave the property problem, after ten years, still partly unresolved.
- **Inadequate Representation.** One of the overriding problems in Nicaragua's political setup is the use of the party list system of proportional representation (PR) in choosing the people's representatives. Voting for a party list rather than individual candidates is not in itself undemocratic and occurs in many countries. But in Nicaragua, where the principal parties are now dominated by one leader, such a system produces cohorts of Assembly deputies who are politically beholden to, and subservient to, the caudillos leading the parties rather than being responsive to the needs of their electors. The domination by the major party leaders of their respective party blocs also undermines the Assembly's independence. A feature in PR systems that provides a corrective to this situation is the relative ease with which new parties can gain a presence in the legislature.

But when this avenue is closed off by restrictive rules, a crisis in representation may result.

- **Fragile Institutions.** Over the years, progress in devising and building democratic institutions has been sporadic, and reformers have not enjoyed sufficient political backing to push their efforts to fruition. Nor have reformers convinced the public of their handiwork — polls regularly show the faith of Nicaraguans in the basic institutions of constitutional democracy to be abysmally low.<sup>12</sup> In reality, the consolidation of democratic government is at best in its early stages. Separation among the powers of state is particularly inadequate. Dominance of the legislature by authoritarian party leaders favors the politicized selection of the magistrates who preside over the other powers of state and organs of control — the Supreme Court, the Supreme Electoral Council and the Comptroller General. This makes their political independence from the executive questionable.

The Nicaraguan Army and National Police, bodies created during the Sandinista revolution which continue to be staffed by holdovers from that era, have too much independence, creating problems for the execution of governmental and judicial orders. Both bodies are more professional now, and FSLN party control has disappeared. Statutes passed during the Chamorro administration have also regularized procedures for turnover in the army and police leadership. But neither of the recently elected governments has been willing to risk exerting real civilian supremacy over the armed institutions by strengthening the civilian ministries to which they are formally subordinated. The scarcity of civilians trained to deal with questions of national defense and citizen security contributes to this inertia.<sup>13</sup>

Finally, power is excessively centralized. The ethnically diverse and historically separate regions of the Atlantic Coast are in theory governed by an autonomy statute, pro-

mulgated in 1987. The 151 municipalities are also guaranteed autonomy by a 1988 law. However, in neither case is the principle of autonomous exercise of power matched by effective rights to raise the revenue necessary to give subnational units of government genuine financial clout and hence political independence from the central government.<sup>14</sup> This in turn inhibits meaningful participation at the local level.

- **Caudillism and Clientelism.** Politics in Nicaragua operates within a matrix of political culture that foments caudillism, clientelism and corruption.<sup>15</sup> Postwar polarization has aggravated the tendency for the principal political parties to be dominated by leaders who demand blind loyalty and brook little dissent. At all levels of the system, one of the principal motives of those seeking political office is to use it for their private economic gain. Many of those seeking higher office try to recruit clienteles to whom they promise the spoils of lower office. Daily political combat is marked by tendencies toward violence and political chicanery not excluding crude blackmail.

Among the elite, an authoritarian political ethos prevails marked by disregard for institutional rules, a tendency toward violent resolution of conflicts, and a zero-sum notion of politics. Many ordinary Nicaraguans also manifest a belief in the need for strong political leaders and parties to achieve stability, and lack the interpersonal trust necessary to social and political cooperation. Despite these cultural features, the citizenry displays relatively strong support for the democratic system as such as well as tolerance for the political rights of others.<sup>16</sup> This somewhat puzzling pattern may be partly explained by the “postwar syndrome” — the tiredness of Nicaraguans with the violent confrontation of the revolution and immediate post-revolutionary years.<sup>17</sup>

- **Sandinista-Anti-Sandinista Polarization.** Ten years after the Sandinista revolution, the basic cleavage in Nicaraguan politics is still

between Sandinistas and anti-Sandinistas. Polls of the electorate normally show that each major party, the Liberal Constitutionalist Party (PLC) and the Sandinista National Liberation Front (FSLN), enjoys a solid core of 20–25% of potential voters. In addition, as a result of the revolution and contra war, strong political hatreds persist in segments of the population that, while small, nonetheless form the backbone of the two major parties' electoral support.<sup>18</sup> Potential for political polarization is thus constant.

- **Tenuous Governability.** As a consequence of all the above, Nicaragua is plagued by chronic low-level instability. This instability is not strong enough to reach the point of crisis but is not clearly receding. Symptoms of ungovernability may be seen in the frequent and opportunistic rearmament of former military personnel seeking to extract resources from government, in strikes and violent demonstrations by social groups, and in disruptions in the work of the National Assembly by the political parties.<sup>19</sup> Foreign governments and donors, in particular the USA, have had to exercise occasional political tutelage to prevent crisis. This behavior reinforces the country's deep economic dependence; ten years after the fall, Nicaragua is one of the world's highest per capita recipients of foreign aid.

Despite this litany of problems, some progress has been made in basic democratic practices. Voter turnout in elections has been surprisingly high — far higher than in two other post-war Central American countries after many events that could and did contribute to cynicism. In one expert opinion, decently run elections and foundations for non-electoral participation laid down in earlier years underpin this behavior.<sup>20</sup> In addition, after its jarring 11-year revolutionary experience, Nicaragua is no longer a country in which a traditional, clientelistic reading of political culture *wholly*

applies.<sup>21</sup> The salience of corruption as the key issue of public debate over the last three years casts doubt on the contention that most Nicaraguans passively accept self-seeking behavior from public officials.

Nevertheless, in the face of the weaknesses just reviewed, even the most sincerely democratic government would face difficulty in getting itself re-elected. In fact, as a result of their political compromises and of short-term economic policy outcomes, both governments since 1990 have suffered more or less rapid erosion in popular support. This failure has not helped other political parties. However a diverse array of political groups opposed to both the PLC and the FSLN have not been able to unite or to mobilize popular dissatisfaction. No other political force yet receives more than 10% of the vote. Despite electoral rules favoring small parties, the two big parties captured all but 15 of 93 seats in the Assembly in 1996. And those 15 seats were divided among nine parties, most of which had nothing to do with the constitutional reforms.

Neither Aleman nor the Sandinistas have taken much comfort from their dominance. In the final weeks of the 1996 campaign, Daniel Ortega watched as supposedly neutral political forces such as the Church and the United States weighed in against his candidacy.<sup>22</sup> In subsequent elections, he concluded, the new two-round system for presidential voting would lead to second rounds in which all the other parties ganged up on the FSLN. Moreover, following his 1996 defeat, he continuously blamed the Supreme Electoral Council for the irregularities he claimed had prevented his victory.<sup>23</sup>

Given these antecedents, it is perhaps not surprising that leaders of the PLC and FSLN decided to turn the tables on their minor party adversaries by ejecting them from positions of institutional power. Those who had shaped the reforms were not well positioned to defend them. In the next section we examine the extraordinary pact signed last January by Ortega and Aleman.



## THE PACT

**A**rnoldo Aleman and Daniel Ortega are political enemies of long standing. At the beginning of their revolution, the Sandinistas briefly threw Aleman in jail and later stripped him of certain properties. From his post as mayor of Managua (1990–95), the Liberal leader rode to the presidency largely by bashing the Sandinistas and castigating Violeta Chamorro for compromising with them. The two men's parties were bitter rivals in the 1996 campaign. In April 1997, shortly after Aleman took office, pro-Sandinista forces confronted the new government with a violent protest movement seeking to force it into an early compromise over Aleman's economic policies. The historical irony in the January 2000 pact is thus strong.

The pact negotiations, only semi-secret, occupied the front pages of Nicaraguan newspapers intermittently for a year and a half before the deal was finally struck in December 1999. From the beginning, news filtering out from the bargaining table made clear that the Liberal and Sandinista negotiators were striving to do at least two main things: establish joint party control of three key institutions of state—the Comptroller-General's Office (CGR), the Supreme Court of Justice (CSJ) and the Supreme Electoral Council (CSE)—dividing that control between them according to their respective political weights; and truncate political competition through changes in the electoral law. The press dubbed this a drive for bipartisan dominance.

The public portions of the Liberal-Sandinista pact consist of changes to the constitution, to the electoral law, and to ordinary legislation.<sup>24</sup> Each of the changes benefit the interests of the signers to the exclusion of other actors.

### CONSTITUTIONAL CHANGES

The constitutional reforms completed in January 2000 restructure the three key institutions mentioned above. They create a collegial, five-person Comptroller-General's Office whose members

are elected by the National Assembly for six-year terms and who then choose a comptroller and vice-comptroller from their own ranks. They expand the Supreme Court from 12 to 16 justices, and augment the Supreme Electoral Council from five to seven magistrates while shortening their terms from six to five years.

In each body, the number of top leadership posts was increased in order to facilitate a political balance between the PLC and the FSLN. Subsequent elections have packed the three institutions with Liberal and Sandinista representatives, displacing most other forces. In the case of the CGR and CSE, the elections left the dominant PLC with a majority and the FSLN a substantial minority of the top spots. In the Supreme Court, neither party as yet prevails, though elections to replace retiring magistrates in coming years may well produce the same balance of positions.

The changes also afforded the party leaders revenge against their respective nemeses. For Aleman, the reform was plainly devised to wrest the Comptroller's office from the grip of Agustin Jarquin, the president's most bothersome opponent. For Daniel Ortega, the reform was a prelude to summarily removing CSE president Rosa Marina Zelaya, whom Ortega has long blamed publicly for the FSLN's 1996 election loss.

The reforms also provide the Liberal and Sandinista leaders with impunity. The amendments made it significantly more difficult for the National Assembly to sanction a sitting president by raising the percentage of votes needed to strip him of his immunity, from 50% plus one to two-thirds. The reforms also created a future Assembly post for Arnoldo Aleman, by stipulating that an outgoing president automatically becomes a member of the legislature after his term of office. These changes likewise favor Ortega; the second place finisher in a presidential race also receives an Assembly seat.<sup>25</sup> Deputies are immune from prosecution, a point of concern to Aleman due to charges of

corruption and to Ortega owing to accusations of child abuse by his stepdaughter Zoilamerica Narvaez.

Still another amendment changes the criteria for winning a presidential election. It lowers to 40% the majority needed to win outright on the first round of the two round system, and to 35% in case the gap between the first and second place finishers exceeds 5%. This change is regarded by most observers as a key concession by Aleman to Daniel Ortega, as it facilitates winning an election on the first ballot, thereby obviating a second round in which other contenders would unite against the FSLN. Ortega won 41% of the vote in 1990 and 38% in 1996.

Another change reinstated the right to run for public office to Nicaraguans who at any time in the past have relinquished their citizenship. However, such aspirants must renounce their alternate citizenship at least four years prior to election day and reside continuously in Nicaragua during the same period. This plank applies mainly to people who went into exile during the Sandinista revolution, and was ostensibly designed to benefit two Liberal presidential hopefuls, Jose Antonio Alvarado and Jose Rizo Castellon, who, as we will see later, subsequently failed to receive Aleman's blessing.<sup>26</sup>

Still another amendment changed residence requirements for candidates in mayoral elections. The change made it necessary for an aspirant both to have been born in, and currently reside in, the district he or she intends to represent. This plank deprived a popular non-party politician, Pedro Solorzano, of a chance to run for mayor of Managua.<sup>27</sup> An ordinary law dividing the municipality of Managua into three parts later accompanied this change to the constitution. This division also worked to Solorzano's detriment after an administrative ruling in January 2000 declared that his current residence lay outside the city of Managua's redrawn boundaries.

These constitutional amendments significantly restrict political competition. The subsequent changes in the election law reinforce these restrictions.

#### CHANGES TO THE ELECTORAL LAW

In the view of international election experts, Nicaragua's new law creates Latin America's most restrictive electoral system and one whose likely outcome will be the demise of most of the existing parties.<sup>28</sup>

**Political Parties, Alliances, and Independent Candidates.** The new law places very strong, possibly insurmountable obstacles in the way of forming *new* political parties. It requires the formation of party leadership committees not only at the national (1) and departmental (14) level, but also in every one of Nicaragua's 151 municipalities.<sup>29</sup> No Latin American country save Costa Rica stipulates the latter requirement.

To register, a new party must also present a list containing a number of citizen signatures equivalent to 3% of those voting in the last election, with each signature accompanied by the person's cedula (national ID card) number. Moreover, such signatures must be unique—if they have appeared on the registration petition of any other party, they are discounted. Thus, the parties that submit lists first diminish the pool available to other parties. The new party must then repeat this process in order to register its candidates. The 3% threshold is one of the highest in Latin America, exceeded only by Peru's 4%.

For this year's municipal voting, any existing party that did not attain 3% of the votes in the last national election must, as in the case of new contenders, reconfirm its legal status by submitting the same 3% signature list.<sup>30</sup> And if it does not obtain 4% of the vote when the election is held, its registration is annulled and it must start all over again.

The law also eliminates Nicaraguans' previous right to organize non-party or "popular subscription" candidacies for mayor, i.e., people who do not run on a party ticket. Furthermore, if a group of parties wants to strengthen itself by forming an *alliance*, it must present a number of signatures equal to 3% of voters multiplied by the number of parties forming the alliance. This plank, which has no parallel any-

where, requires astronomic minima for maintaining registration — if the alliance fails to gain 4% of the vote for every party participating, all the participants lose their registration and have to go back to square one. These planks are so leonine that they have dissuaded any parties from forming alliances in this year's mayoral races. Had they been instituted by the Sandinistas prior to the 1990 election, absent any international protest, the Chamorro run for the presidency would have been stillborn.

**Calendar.** If the above barriers to participation were not sufficient, the new law further demands that parties desiring to present candidates must have acquired their legal status twelve months prior to a national election and six months prior to municipal elections. For the municipal balloting scheduled for November 5, 2000, this meant that parties had to have their status clear by May 4 — under the terms of a law that only went into effect on January 24.

Any party that fails to get 4% of the vote in November's municipal balloting will be unable to run candidates in the national contest scheduled for November 2001, unless it re-registers by fulfilling all the above requirements. In addition, parties may not sit-out an election convoked by the CSE—if they do not run, they are also out. Among Latin American countries, this rule applies only in Costa Rica.

**Election Finance.** The new law limits the ability of parties to receive public funds, which since 1996 have been granted for election participation. Such funds will henceforth be given only after the fact, i.e., only after a party wins the coveted 4% of the vote it needs to stay alive. This reform greatly reduces the incentive for opportunistic politicians to form unserious parties simply to acquire money, and is one of the few reforms supported by most Nicaraguans. However, it places new parties in the position of having to borrow money to run a campaign.

**Proportional Representation Formula.** The reform alters the method used in 1996 for cal-

culating vote remainders in Nicaragua's proportional representation scheme. Whereas the 1996 formula allowed a proliferation of minor parties to obtain legislative seats, the new ("D'Hondt") formula does the opposite, serving to entrench the positions of the two largest parties in the legislature.

**Election Apparatus.** The National Assembly, in which the PLC and FSLN are the dominant parties, names the CSE's magistrates. Though it is not stipulated in the law, the logic of the Liberal-Sandinista pact has been to insist that those chosen be loyal party cadres. The Assembly chose Liberal deputy Silvio Calderon and Emmet Lang, FSLN party chief in Managua, to fill the new posts created by the council's expansion. Both are veterans of their parties' 1996 election campaign efforts. On July 3, 2000 the dominant parties went on to select other party stalwarts to replace four of the five council members chosen in 1995.

Equally important, Law 331 mandates that the lower levels of the election system—departmental and municipal councils and the Vote Reception Boards be composed of three members again chosen according to political criteria. The president and the first member of each of these bodies are selected alternately from slates presented by the first and second-place parties in the last election, i.e., the PLC and FSLN. Only in the choice of the "second member" do other parties have a voice. By implication, each of these bodies will be controlled by Liberals and Sandinistas, making big party domination of the election apparatus complete.

At a number of junctures in his presidency, Arnaldo Aleman has floated a proposal for a *constituyente* (constituent assembly) to entirely rewrite Nicaragua's 1987 constitution. Immediately after the pact's signing, Aleman resurrected this idea in a new form. The proposal raised eyebrows both for its timing and its specifics: this time Aleman suggested that election for a constituent assembly could replace the national election scheduled for November 2001.

### REACTIONS TO THE PACT

The PLC and the FSLN argue that the new election rules will increase governability. In their view the previous rules jeopardized governability in the party system and the legislature by favoring the proliferation of what they call "microparties."<sup>31</sup> After the 1996 elections, nine small parties gained representation in the Assembly and occupied 15 of the 93 total seats. This made legislative coalition-building difficult, as the big players were forced into arduous negotiations with a welter of tiny political groupings. Daniel Ortega has insinuated that small parties' votes got sold to the highest bidder.<sup>32</sup> Perhaps more important to the two party leaders, incentives for party formation encouraged splits from the big two. With such incentives removed, potential party dissidents must now toe the line or face political oblivion.

The big parties also assert that institutions in which the major political forces are represented according to their respective weights will work better than when institutions were colonized by other, minor players. A prominent Liberal defender of the pact, Central Bank president Noel Ramirez, has argued that the fight against corruption will be more effectively served by the deliberations of a collegial body than by the capricious decisions of an individual (Agustin Jarquin).<sup>33</sup> Daniel Ortega has argued that reform of the CSE will guarantee cleaner elections. Although international election observers do not agree, Ortega has persistently charged that the Liberals won the 1996 elections through fraud which was covered up by the CSE, then run by a member of the Sandinista Renewal Movement (MRS), an FSLN splinter party.

However, the dominant parties have tended to assert that improved institutional functioning will occur rather than spell out why or how. Denying that comptrollers chosen by the PLC and FSLN would simply obey their parties' dictates, Ortega initially promised that the CGR "is going to be controlled by efficient, honest and capable people." But he did not explain what incentive the parties would have for nominating such worthy delegates.

Ortega has further argued that the pacted reforms have helped Nicaraguans avert another armed confrontation. By giving the FSLN a chance to win again, the political pact has permitted a "popular alternative" to return to power through the ballot box rather than by militant demonstrations or even force of arms. According to diplomatic sources, Aleman has made the same argument.

Critics of the pact fear that it will endanger, if not reverse, the fragile progress the country has made toward democratic development. In a particularly pessimistic version, veteran journalist Guillermo Cortes wrote, "The democratic wave that began with the Esquipulas accords in 1987 has practically come to an end. Twelve years were worth nothing against an authoritarian tradition of four centuries."<sup>34</sup>

Other commentators are unwilling to be so categorical. But pact critics have broadly shared a fear of regression to authoritarianism and increasingly compare the political pretensions of president Aleman to those of the Somozas. Most of them argue that the Court, Comptroller, and CSE are being re-politicized, losing autonomy from the narrow interests of the two big parties. This will, they say, torpedo further progress toward strengthening the rule of law and combating corruption. Former Assembly president Luis Humberto Guzman, a leader of the 1995 reform movement, has asked, "can anyone now have confidence in the independence of these powers?"<sup>35</sup>

Critics are also convinced that the new electoral law will reverse the political pluralism hard won in Nicaragua since the 1980s, creating insuperable barriers to the entry of new aspirants. A former CSE president, Mariano Fiallos, has argued that although "some of these measures are found in the electoral laws of other countries...in none is there a set of requirements and obstacles so obviously designed to produce bipartisanship."<sup>36</sup> By artificially entrenching two-party dominance with the Liberals and Sandinistas as the only serious forces, the pact will moreover close off space for civic opposition generally.

Though it is less widely held, a corollary argument is that partisan control of the election machinery will be taken to the point where election fraud—the normal practice during the Somoza epoch—once again becomes thinkable.<sup>37</sup> Initial implementation of Law 331 has sparked outraged accusations by numerous small parties that the reformed CSE is operating to produce just such an outcome. (see below.)

Other arguments against the new election law have been advanced. Critics argue that requiring cedula numbers from party petition signers is discriminatory, in that significant numbers of people still do not have this document. Similarly, allowing a person to affix his or her signature to only one party petition is incompatible with a citizen’s right to engage in cross-party voting or simply to support a party’s chance to run without intending to vote for it.

Finally, international electoral expert Horacio Boneo has argued persuasively that the problems of party fragmentation and parliamentary management generated by the previous electoral rules could easily have been solved without Law 331, and required only small changes in provisions regarding public campaign money and the method for calculating remainder votes in the PR system.<sup>38</sup> The rest of the law, Boneo argued, is only comprehensible if one assumes that the main motive of the pacting parties was to restrict competition from other forces.

Public opinion has been strongly against the terms of the pact. In a December 1999 survey in Managua, 67% of respondents said that the two parties had made their pact simply to “divide up spoils” (*repartirse cargos*). Even 54% of Sandinista supporters and 58% of Liberal supporters espoused this cynical view. By contrast, a mere 28% of the

sample thought the accord would bolster governability. Although the minority of respondents who were PLC or FSLN sympathizers thought that the pact would guarantee clean elections in 2001, those without party identification disagreed by 48–40%. Most strikingly, a month before the pact was voted into law, absolute majorities of Sandinistas (57%) Liberals (62%), and others (68%) called on the party leaders to desist from further dickerings.<sup>39</sup>

In a national survey conducted in late February 2000 by the Institute of Nicaraguan Studies (IEN), 61% of respondents asserted that the pact only benefitted the interests of the two pacting parties, while only 8% believed that it “benefitted the nation.”<sup>40</sup> A detailed breakdown of the IEN survey reveals that Nicaraguans disapprove of virtually every facet of the bipartisan agreement, often by very large margins.

However, opposition to the agreement in principle has not been accompanied by public protests. As the pact was enacted into law in January, opponents were able to mount only feeble demonstrations against it. A drive to gain 50,000 signatures on a petition to have the reforms submitted to a popular referendum kicked off with much fanfare—the first signer was former president Violeta Chamorro—but subsequently ran aground.

|  | FOR% | AGAINST% |
|--|------|----------|
| Elimination of “popular subscription”                      | 21   | 67       |
| Division of Managua  | 9    | 55       |
| Deputyship for Aleman as former president                  | 9    | 87       |
| Chance to run for renouncers of Nica nationality           | 37   | 58       |
| CSE, CSJ composed of Liberals and Sandinistas by quota     | 13   | 42       |
| Collegial Comptroller                                      | 21   | 61       |
| CSE should nominate election officials rather than parties | 55   | 32       |
| Compose CSE of notables with merit, not party delegates    | 71   | 14       |
| Submit Reforms to Referendum                               | 81   |          |

## WHO BENEFITS?

On the face of it, the pact between the Liberal Constitutionalist Party (PLC) and the Sandinista National Liberation Front (FSLN) is aimed at creating a two-party political system that effectively excludes the myriad of *microparties* that have complicated governance in Nicaragua over the past decade, and that promises greater stability by establishing a degree of power-sharing between the PLC and the FSLN. That, at least, is the justification put forth by Arnoldo Aleman and Daniel Ortega.

A closer look at the evolution of the two big parties over the last ten years, however, raises profound questions about whether the kind of arrangements promoted by the pact will deepen democracy and encourage political stability. The more disturbing and likely possibility is that the pact will facilitate a trend toward renewed caudillo-style dominance within the two major parties. The main features of the evolution of the PLC and the FSLN over the past decade have been a reduction in internal democracy and increasing personal control by Aleman and Ortega. It is hard to find any evidence that this has fostered transparency, efficiency or greater participation in the instruments of governance in Nicaragua.

### THE GROWTH OF THE PLC AND THE ROLE OF ALEMAN

The Liberal Constitutionalist Party was an insignificant force in 1990. It originated as an offshoot from Somoza's Nationalist Liberals in the nineteen-sixties, and the party was one of 14 mini-parties that coalesced in 1989 into Chamorro's National Opposition Union (UNO). Today, however, the PLC is organized throughout the country. Arnoldo Aleman is personally responsible for this transformation. When he began his political career as mayor of Managua in 1990, Aleman used the resources afforded by the mayoralty along with donations from friends in Miami to build up the PLC as a national political organization loyal to himself. His principal ideo-

logical appeal was to anti-Sandinismo, and many people joined or sympathized with the party out of hatred of the FSLN and from a desire to recoup confiscated properties. Part of the PLC's expansion in the 1990s is believed to rest on reincorporation of elements from the Somozas' PLN.

Another key pillar of support was the Catholic Church. Implacably hostile to the Sandinistas, the Church hierarchy played a key support role in Aleman's 1996 election. Since his election, in order to pre-empt criticism from the bishops over his performance in government, Aleman has given patronage jobs to Catholic priests and supported the Church's plans to build a regional seminary in Nicaragua. Though not without its problems, this strategy has been successful enough that Nicaraguans increasingly identify Cardinal Miguel Obando Bravo as a political ally of the president.<sup>41</sup>

Though a member of the Liberal International, the PLC does not evince a distinctive ideological profile nor are internal policy debates evident.<sup>42</sup> The chief Liberal ideologue, Dr. Sergio Garcia Quintero, soon abandoned the party in frustration and has become one of the most vehement critics of Aleman's autocracy.<sup>43</sup> Instead, Liberal party life appears to turn mostly around intrigues among a series of second-level figures to position themselves to become Aleman's successor.

There are few leaders in the PLC capable of challenging Aleman. Jaime Cuadra, a coffee-grower from Matagalpa and former agriculture minister, enjoys widespread allegiance from an informal "northern bloc" of local party leaders. And Aleman has permitted vice-president Enrique Bolanos, until recently not a PLC party member, to control government nominations in his home department of Masaya.<sup>44</sup> To preserve their positions, however, such figures must make public obeisance to the dictates of *el hombre*, as Aleman is known (mimicking Somoza-era jargon).

Failure to do this can bring swift punishment. When deputy Arnulfo Barrantes failed to

observe party discipline in a 1997 vote in the Assembly, Aleman responded by ejecting all of Barrantes' supporters from governmental posts in the latter's home town of Esteli. Others who had the nerve to challenge him have been similarly punished, including by seeing their relatives who had been appointed to consular and diplomatic posts displaced.<sup>45</sup>

He has also prevented alternative aspirants for the 2001 Liberal nomination from consolidating fiefdoms from which to challenge his control of party affairs. When Jose Antonio Alvarado attempted to use the education ministry as a national political platform in 1999, Aleman summarily shunted him off to the minor post of defense minister. Similarly, Jose Rizo Castellon's desire to utilize the municipal affairs institute INIFOM as his power base was thwarted by Aleman's insistence on naming all of the body's key personnel himself.<sup>46</sup>

Choice of candidates in municipal elections is another arena where the Aleman style has generated friction within the party. Both in 1996 and again in 2000, Aleman promised to use local opinion polls to help select potable candidates. But when it suited his purposes, he did not hesitate to overrule these to secure mayoral nominees loyal to himself.

On the whole, Aleman has displayed unexpected skill at managing these complicated political relationships. But his harsh control has not prevented a tendency toward splits. The miniscule Nationalist Liberal Party (PLN), a component of the 1996 Liberal Alliance, went into opposition even before Aleman was inaugurated, alleging that he had reneged on a pledge to make its leader, Enrique Sanchez Herdocia, head of the National Assembly. The major schism to date came in mid-1998, when Masaya party leader Eliseo Nunez exited, making harsh criticisms of Aleman for favoring exiles from Miami and concentrating control of patronage in his own hands.<sup>47</sup>

**Aleman's Style of Governance.** By all reports, Aleman exercises iron personal control over the public administration. From the outset he insisted on personally naming people to gov-

ernmental posts at virtually all levels. In this fashion, he has been able to monitor and control the actions of his ministers and foment the flow of information and loyalty to the top. He has further engaged in frequent and capricious rotations of his cabinet; to all appearances, these are designed to keep intra-party rivals who are his subordinates in government off balance, thus preserving space to orchestrate his continuance in power after the scheduled end of his term.<sup>48</sup>

But constant rotation of key personnel has also impeded the development of key policies. An example is a master plan for education reform drawn up, with much civil society input, by one of Aleman's rivals for control of the PLC. In September 1999, when education minister Jose Antonio Alvarado was rotated out in a patent move to lower his profile, work on the plan all but stopped. In May 2000, it was announced that the plan would not be ready until the end of the year, and its implementation would then depend on the availability of foreign aid funds that apparently had not yet been pledged.<sup>49</sup>

In addition, Aleman has continued the marked centralism in relations between the national executive and sub-national units of government inherited from his predecessors. Though his discourse supports decentralization, he has prevented the National Institute for Municipal Development (INIFOM) from functioning autonomously, partly in order to corral intra-party rival Jose Rizo. Through the 1997 tax justice law, he also effectively re-centralized governmental finances, depriving the *municipios* of traditional sources of tax revenue.<sup>50</sup>

The politics of clientelism have further allowed Aleman strong influence over other powers of state. Through his personal domination of the PLC apparatus, Aleman has first kept his party's deputies in the National Assembly tightly under his thumb.<sup>51</sup> His loyal ally in this effort has been Assembly president Ivan Escobar Fornos, whose adherence to Aleman's legislative dictates has been so slavish as to subject him to public ridicule.

Initially lacking a favorable balance of loyalties in the Supreme Court, and unable to exert much influence in the army, Aleman has adroitly dispensed favors and allowed discretionary use of resources in order to buy off potential opposition. By naming relatives of Supreme Court justices to diplomatic posts, among other favors, Aleman has helped to secure the neutrality of the court on constitutional challenges affecting the government's interests. On another front, through a de facto grant of autonomy, he has permitted the Nicaraguan army to benefit from diverse businesses acquired from the public weal and to fend off demands for return of confiscated properties ceded to its care during the 1980s.<sup>52</sup>

Managing relations with another power center, the foreign "donor community", has forced Aleman to take a tack partially at odds with his overall style. In order to show aid givers a positive face, the president has named technocrats of recognized capacity as well as representatives of the domestic banking and business sectors to the principal economic cabinet posts. This cohort of trained officials drew up a major 1997 tax reform and in March 1998 concluded a second ESAF (Extended Structural Adjustment Facility) agreement with the IMF. Despite later rows over other issues, these policies have cemented a basic working relationship between the Aleman government and the international financial institutions.

But suspicions of corruption and the politicized administration of aid projects have made the government's relations with bilateral donors periodically tense. For example, in a highly publicized dispute with the European Union in 1999, Aleman tried to allocate housing units built under a EU-funded construction project to members of his personal staff.<sup>53</sup> After an extended diplomatic quarrel, he was forced to back off. But among certain European donors, the episode reinforced an image of Aleman as a primitive and anachronistic throwback to the 1970s.

Aleman has also attempted to exert control over important parts of civil society. Reviving

an odious practice of the Somozas, he has forced public employees to contribute 5% of their monthly wages, inscribed as "voluntary quotas," to the PLC." He has tried to stifle opposition in business circles by liberally ordering tax audits of business people who oppose him. In response, some in the private sector have decried "fiscal terrorism."<sup>54</sup> And most complain of a lack of clear rules for investment.<sup>55</sup>

Furthermore, he has exercised pressures to bring the media and non-governmental organizations (NGOs) to heel, albeit with only limited effect. Soon after Aleman's advent, Nicaragua's media organs began complaining that the government was dispensing official advertising only to its media friends. The principle daily paper, *La Prensa*, later charged that the government was subjecting it to tax harassment as a reprisal for its exposes of corruption.<sup>56</sup> Finally, Aleman and his subordinates have engaged in periodic rows with many of the country's NGOs, which the government is convinced are pro-Sandinista and out to undermine its control of local-level development. In one instance, the government threatened to review the naturalized Nicaraguan citizenship of Mexican born Ana Quiros, then head of the post-Mitch *Coordinadora Civil para la Emergencia y la Reconstruccion*.

**Allegations of Corruption.** The most publicized allegations against Aleman have to do with what many in Nicaragua regard as his failure to explain the rapid increase in his personal wealth. (Aleman has admitted the increase.)<sup>57</sup> According to insistent press reports, that increase has allowed the president, under the guise of dummy business interests, to acquire a sizable network of rural properties in various departments of the country. Once in Aleman's hands, it is further alleged, governmental agencies have improved these farms with infrastructure at the public's expense. In a notorious example, a government ministry paved a 20-km long road through a virtually unpopulated part of southern Managua department to provide the president easy access to his holdings.<sup>58</sup>

Many other allegations revolve around rigged-bidding or favoritism in public works.



In one prominent case, a firm called *Modultecsa*, run by a Cuban-American friend of the president, received government contracts to do post-hurricane reconstruction work and promptly made a mess of it.<sup>59</sup> The company also initially employed Aleman's number one son-in-law. In another case, suspect bidding procedures allowed foreign business interests linked to Aleman to garner a lucrative contract to provide electric energy.<sup>60</sup>

Doubts about the government's probity have extended to the privatization of state assets. The *Banco Nicaraguense (BANIC)* was sold for \$11 million in January 1999. A number of the Central American buyers were revealed to be business partners of an Aleman intimate named Donald Spencer, who was one of the directors of the state-owned bank before its sale. Moreover, it has been alleged that suspect loans made by the same state administration were illegally used to purchase the bank to begin with.<sup>61</sup>

The major prize in the Nicaraguan privatization scramble is the state telephone company *ENITEL*. Here suspicions swirled around Aleman's political connections to Jorge Mas Canosa, then powerful head of the anti-Castro Cuban-American Foundation in Miami and a funder of Aleman's political ambitions as early as 1989. In 1998, *ENITEL* signed a contract to provide 100,000 new phone lines with *MasTec*, one of Mas Canosa's companies. It was later revealed that the price negotiated for the lines was 40% above going rates. The government then wanted the eventual purchaser of *ENITEL* to honor the overpriced deal, a requirement that helped scuttle the government's first attempt to sell *ENITEL* in May 1999. Under pressure from multilateral donors, Aleman was forced to rescind the contract.<sup>62</sup>

**Aleman's Interest in a Pact with the FSLN.** Given this description, it may seem odd that Aleman would have any interest in a power-sharing pact with the FSLN. Aleman undoubtedly believes he has stabilized the PLC's dominant position in the system by eliminating potential competitors. He has fortified his

dominance over party affairs to the point of daring to float a proposal for a constituent assembly in 2001 that he calculates will lead to another presidential term. He has moreover conquered space and quotas of power in state institutions where the PLC has heretofore been weak or absent, and guaranteed himself, for at least five years, immunity from investigation into what are alleged to be illicit dealings.

Moreover, and despite the devastation wrought by Hurricane Mitch, his government can also claim a number of achievements to date. Economic growth over 1997–99 averaged 5% annually, open unemployment has dropped, and a significant number of foreign investors have arrived willing to play by the government's peculiar discretionary rules. What then is the problem? Why does Aleman need a pact with Daniel Ortega?

Aleman's first problem is that his management of government is not credible to Nicaraguans. Except for brief interludes, the president has received negative ratings for his performance in office ranging from -5% to -10% over the course of his term.<sup>63</sup> His party, which won 51% of the national vote in 1996, has lost popularity to the point where it holds the loyalty of only 20% of the citizenry. Its position in national politics is less firm than it appears. In particular, the local level political base Aleman built up between 1990–1995 has been undermined by his financially weak government's inability to provide significant resources to municipalities. The PLC moreover lacks a strong, electable figure to serve as its next candidate, as Aleman has steadfastly resisted grooming a successor.

In addition, Comptroller-General Agustin Jarquin came perilously close to uncovering and documenting allegations about the growth of the president's patrimony and the machinations surrounding *BANIC*. Control over the CGR, therefore, became imperative in order to thwart such investigations. If an iron ring of impunity could be forged involving the National Assembly and the Supreme Court, so much the better.

Aleman's strength has come from the use of four classic techniques of authoritarian leaders in Nicaragua: ruthless domination of the official party, centralized and personalistic control of governmental affairs, clientelistic manipulation of other power centers, and attempts at intimidation of civil society. Coupled with these methods has gone, in the view of most Nicaraguans, Aleman's avid pursuit of personal enrichment. But the very familiarity of these techniques has generated a backlash in public sentiment.

#### THE FSLN IN OPPOSITION.

During the early years of the Chamorro era the army, police and much of the court system were in Sandinista hands. The Sandinista front furthermore enjoyed a prominent position in the media and controlled a powerful public-sector union apparatus. Less visible resources allowed pressure to be exerted through intimidation. This pattern nurtured Daniel Ortega's belief that the FSLN could "govern from below," exercising a political weight out of proportion to its 1990 vote result. The FSLN's key objective became the transfer and legalization of numerous properties to Sandinista leaders and their followers. In the shadow of these operations, a clique of Sandinista entrepreneurs was born with an interest in the system.

Throughout the early 1990s, this strategy enjoyed some success. Despite cries about an illicit "pinata," the Chamorro administration ratified the bulk of the property transfers made by the Sandinistas to their followers in the 1980s, including agrarian reform lands, building lots and housing. Chamorro also agreed to divide up state-owned farmland and industries then being privatized, ceding up to 25% of various sectors to Sandinista workers. There was and remains a key stumbling block: most beneficiaries of these transfers have still not received clear title to these possessions.

However, the FSLN's leverage proved to be unstable, and gradually weakened. Foreign pressures forced Sandinista-era police chief Rene Vivas from office in September 1992, and later led to the ouster of Ortega's brother,

Humberto, from the leadership of the Nicaraguan army. The balance of forces in the Supreme Court also changed, and both the Court and the Chamorro government had an interest in gradually purging at least the lower courts of openly Sandinista (and incompetent) judges. The ability of confiscated property holders to bring suit in local courts to recover their holdings then put the interests of FSLN leaders and their clients at risk. The risk increased when Aleman entered office threatening to take back properties from Sandinistas. Recovering lost ground in terms of institutional space thus became one of the FSLN's main concerns.

The FSLN's social base has also badly deteriorated. Powerful in the early 1990s, Sandinista public-sector unions have largely lost the capacity to mobilize their respective sectors. Internal wrangling has also taken its toll. Union leaders who gained access to "workers properties" through the 1990s "concertation" agreements were unable to reconcile their newfound role as entrepreneurs with the traditional function of representing workers. Many fell into disfavor with their bases due to accusations of corruption and abuse of their positions. By 1996, the Sandinista Workers' Central (CST) had suffered a serious split.<sup>64</sup>

**The Consolidation of FSLN Control by Daniel Ortega.** This erosion, coupled with losses in two consecutive elections, threatened Daniel Ortega's power within the party. During the revolution, Ortega had enjoyed the status of *primus inter pares* among FSLN comandantes. But after 1990 his predominance became an issue. In part, this was due to his unmatched personal activism. While other historic leaders floundered in indecision, and mid-level leaders were forced to find jobs outside the party and government, Ortega personally spearheaded the struggles of Sandinista workers and peasants to keep control of farms and factories. With this leadership, Ortega consolidated loyalties in the party to his person.

The result of this concentration of party power has been a frustrating and ultimately

incomplete process of internal democratization in the FSLN. After losing government power, the FSLN leadership could no longer resist pent-up pressures from lower echelons to account in some fashion to the base. A 1994 Congress even declared the formerly consultative “Sandinista Assembly” as the party’s top policy-making organ. However, Ortega’s personal dominance and drive have continually thwarted schemes to use the National Directorate and the party assembly to keep the maximum leader under some semblance of control. As in the PLC, they have also impeded the emergence of any alternative leader to assume the reigns in a transition that in another context would be inevitable, given that Ortega has suffered consecutive defeats as the party’s standard-bearer.

After the FSLN’s second election loss in 1996, a process of internal reflection groped for a horizontal reformulation. But the process was resisted and ran aground after some months. Thereafter, the Directorate virtually ceased to function, leaving real coordination of the FSLN in the hands of Ortega and the party secretaries in the departments. At the same time, in the view of today’s party dissidents, the top leadership took a strong lurch to the right, deciding to put protection of its property interests foremost. The party officials and entrepreneurs charged with running a shadowy network of Sandinista businesses became increasingly influential.<sup>65</sup>

In the last FSLN Congress, held in May 1998, pressures for internal party transformation bubbling up from the base spent themselves. On the Congress floor, party founder and former Sandinista interior minister, Tomas Borge, helped Ortega turn back an effort by deputy Victor Hugo Tinoco to groom himself as the leader’s successor, initially by running for the party’s second post of vice-secretary general.<sup>66</sup> At the same time, business elements associated with Ortega also rose to posts in the party directorate.

**Ortega’s Interest in a Pact with the PLC.** While Daniel Ortega has managed to consolidate supreme power in the FSLN, the party

itself has become weaker over time. Splits and defections have occurred in the party base, the power of popular organizations linked to the FSLN was waned, and corruption in some has set in. A historic congress in May 1994 saw former vice president Sergio Ramirez and a sizable chunk of the party’s original leadership (and most of its intelligentsia) part company with Ortega. After the party’s debilitating 1996 loss led to further erosion, explosive allegations of child abuse over many years against Ortega by his stepdaughter, Zoilamerica Narvaez, caused the party to close ranks around Ortega in 1998.<sup>67</sup> But the attrition has been unstoppable; in the estimate of one party leader, more than 90% of some three hundred original second-echelon cadre from the revolutionary era have left the FSLN or became completely inactive. Some loyalists who remained steadfast through this series of crises were then shaken by the pact with archenemy Aleman.<sup>68</sup>

Unlike the PLC, the FSLN is an ideological party. The internal debates of the early 1990s may have given way to mere intrigue, but the party retains a vision of itself as “socialist” and “revolutionary”. Many in and out of the party spent their adult lives in political activism against both the Somoza dictatorship and U.S. domination of Nicaragua. For purposes of democratic consolidation, clinging to this identity is problematic. At least on Ortega’s part, it has gone hand in hand with a traditional leftist rejection of liberal democracy (“which is not really democracy”) as a valued political form.<sup>69</sup>

However, an ideologically-based division exists within the FSLN structure that provides a certain counterpoint to this position. In recent years, a current calling itself the “Democratic Left” in the FSLN has opposed what it sees as right-wing tendencies in the Ortega-dominated leadership. Unexpectedly, this current has also espoused some support for institutional consolidation, and notably defended Comptroller-General Jarquin against Arnoldo Aleman’s attacks. In part for this reason, four Sandinista deputies in the Assembly took the risky step of

voting against the Sandinista-Liberal pact in January.

From Ortega's perspective, a pact with the PLC offers hope of preventing further decline of FSLN influence. The agreement promises to stabilize the party's role as at least the second force in Nicaraguan politics. It gives the party a chance to overtake the PLC in 2001. Reoccupation of key institutional spaces also allows property and other interests to be defended. Finally, the pact affords Ortega impunity and longevity in power.

As this analysis suggests, however, Ortega's willingness to bargain is born of weakness rather than of strength. Poll findings have regularly shown the public's perception of Ortega, both as a person and as opposition leader, to be highly negative. As presidential candidate he appears to have little chance of increasing the party's 1996 vote total, and may gain much less. An opportunity to win a presidential election with 35% of the vote is thus attractive. In the negotiation, his lieutenants achieved the coveted 35% vote criterion that Ortega hopes will return him to power. But this victory came only at the price of accepting exclusionary rules for party confirmation. Ortega has apparently gambled that the rules will not be so exclusionary as to rule out parties that would be strong enough to take votes away from the Liberals and make possible a 35% victory for the FSLN.

Like Aleman, Ortega has also had to deal with the limits of his resource base. His capacity to shape events has declined, and his party had been pushed out of key institutional spaces.

For the FSLN and its leader, colonization of the CGR, CSJ and CSE thus became of prime importance.

**Who Benefits?** As can be seen, Arnaldo Aleman and Daniel Ortega have several interests in common. Though Aleman enjoys a somewhat freer hand in his party than does Ortega in the FSLN, both leaders aspire to go on being king-makers in their respective parties indefinitely. Both also have an interest in excluding political competitors, although the interest is not exactly equivalent. They are especially interested in preventing competition from parties that have split off from their own flanks. To guarantee such exclusion, joint control of the election apparatus is ideal.

The two leaders also benefit by protecting themselves from prying eyes. Aleman wants to ward off investigations into the myriad accusations of corruption that have marred his presidency. Ortega is interested in squelching serious inquiry into allegations of child abuse brought by his stepdaughter, and covering up the origin of forms of wealth in the hands of certain party leaders and followers. The two men thus have a shared interest in controlling government organs such as the court system and CGR, where investigations might originate.

For more than nine months, Nicaragua's political institutions have been operating under the pact's new rules. Whether they will function well or badly is the next question to which we turn.

## THE PACT'S IMPACTS

**N**ine months is only a short time in which to assess the effects the Liberal-Sandinista pact will ultimately have on Nicaraguan politics. But some things can already be said.

In terms of institutional functioning, the operation of the pact thus far has tended to confirm the critics' fears. Far from ferreting out cor-

ruption, the collegial Comptroller General of the Republic (CGR), in its first test, issued a ruling that protects the interests of the executive. Apparently biased and negligent decisions at various levels have further damaged the reputation of the judiciary. The new Supreme Electoral Council (CSE) has meanwhile become mired in a controversy over verifying the signatures sub-

mitted by the political parties for registration. As election approached, fraud charges flew and threats to disrupt the electoral process loomed.

The following review suggests that not all space for continued institutional development has been closed off. Implementation of the pact has, from the beginning, been intertwined with "HIPC politics" (i.e., with the Aleman government's drive to convince international donors to grant it large-scale debt relief under the IMF-World Bank scheme to pardon the debts of Highly Indebted Poor Countries). To do so it needs to convince donors that it is making progress toward transparency and good governance. This gives national and international actors some leverage to work for continued institutional strengthening.

Evidence for the entrenchment of bipartisan Liberal-Sandinista dominance is so far not conclusive. The party re-registration process has left in its wake a semi-exclusionary outcome in terms of opportunities to compete in November's municipal elections. But it did leave one other, possibly major, contender in the race. Meanwhile, the big parties have suffered from dissension and attrition in the initial stages of pact implementation, suggesting that if other contenders develop strength and elections remain fair, the dominant players could be vulnerable.

#### THE COMPTROLLER-GENERAL

The status of the Comptroller General of the Republic (CGR) was greatly enhanced by the 1995 constitutional reforms, which declared it the supreme body for oversight of public administration and control of state assets and resources, as well as of any private organizations funded by the government. Formally, then, the Comptroller's purview is vast. In practice, prior to the May 1996 election of Comptroller Agustin Jarquin Anaya, the CGR was ineffective and vulnerable. It usually did no more than sporadic financial audits of government agencies. In 1992, the Chamorro government engineered the summary removal of the existing comptroller for opposing its wishes.

Shortly after taking office, Jarquin embarked upon an ambitious program to upgrade the institution's capacity, securing \$5.2 million from the four Nordic countries plus other assistance. The new comptroller sought to endow the CGR with the capacity to audit not only individual agencies but the state's entire consolidated accounts, which include autonomous agencies and the state banking sector. The strengthening program further aimed to give the CGR the ability to audit the performance of government bodies (i.e., to evaluate the effectiveness of government spending, not simply to verify that money was being spent according to budget).<sup>70</sup>

This radical expansion of the Comptroller's role was threatening to Arnaldo Aleman. Jarquin thus had to devise a political strategy for dealing with governmental obstruction. He did this in large part by attempting to reach out to the citizenry and keep himself and his institution before the media. Jarquin's tactics brought criticism from some corners, including certain donors who found his style of high-profile auditing unnecessarily confrontational.

Though Jarquin succeeded in greatly expanding staff and budget, and overhauled the CGR's internal organization, the CGR developed only a portion of its planned capabilities, and remained limited primarily to financial auditing. Despite strenuous efforts, the CGR also made little progress in bolstering the internal auditors in government agencies or in reducing discretionality in the management of the public budget.<sup>71</sup> Probably the most important achievement of the Jarquin period was to greatly raise the profile of the institution. Even minor officials became aware of the CGR. Equally important, Jarquin's efforts increased the public credibility of the institution and its auditors, unleashing a pack of denunciations that were often more effective in ferreting out misconduct than the audits themselves.<sup>72</sup>

By the same token, the Comptroller-General came under ever more intense pressure to respond to the public's demand for action against official thievery. Such pressure out-

stripped the institution's capacity to respond. The Comptroller peppered the government with a steady barrage of investigations. But at certain moments staff weaknesses undermined his efforts, as in 1998 when the CGR's chief economist was unable to sustain an accusation that the central bank could not account for some \$500 million in foreign exchange receipts.

The Aleman government increasingly responded by refusing GGR auditors access. In the Banco Nicaraguense (BANIC) case, this tactic thwarted an investigation into the bank's flawed privatization. A Supreme Court decision in 1998 also lowered the evidentiary weight of CGR audit findings.<sup>73</sup> By late 1999, according to insiders, the institution's capacity to act had been largely frozen by these tactics and by the looming presence of the pact.

Comptroller Jarquin's downfall began in March 1999, with revelations that he had surreptitiously engaged a prominent journalist in an unethical contract to provide the CGR with politically sensitive information. This misstep, which Jarquin later admitted, handed the government a pretext to pursue him in court on fraud charges. He was jailed in November 1999, in what was widely seen as a reprisal orchestrated in the politicized court system.<sup>74</sup> Due to ensuing public criticism, an appeals court ruling freed the Comptroller after 45 days in prison.

**The Collegial Comptrollers.** The election this year of five members to form the new collegium of Comptrollers was followed by their selection of Guillermo Arguello Poessy, a former vice-minister of finance for property affairs and vice-foreign minister, as the president of the CGR. Two other places are occupied by auditors loyal to Aleman, while the FSLN positioned its foreign relations secretary, Jose Pasos Marciaq, as a fourth member. The FSLN supported Jarquin to stay on as the fifth member until his resignation at the end of June.

Arguello's initial statements betrayed a conception of his role that some donors to the institution found troubling.<sup>75</sup> He declared that

he would give priority to investigating cases relating to the previous Chamorro government; rather than to auditing the current budget. Arguello also indicated that his overriding goal was to change the public's "perception" of the probity of government officials—as if that were more important than making sure they behaved themselves.<sup>76</sup>

The CGR's initial decisions aggravated donors' concerns. The new Comptrollers promptly sacked Jarquin's staff and began making changes in ongoing investigations.<sup>77</sup> In the most publicized of these, the full collegium resolved to shelve an investigation into the abuse of state resources to improve the properties of president Aleman.<sup>78</sup> Although Jarquin protested vigorously, CGR vice-president Francisco Ramirez argued that the proceeding against Aleman should not have been opened because, as president, Aleman enjoys immunity from prosecution. The other Comptrollers decided to throw the investigation of Aleman's patrimony into the lap of the Assembly, where the president's supporters could presumably bury it.

This began what Jarquin has argued is a pattern of institutional "self-limitation." In March, the four Nordic countries suspended their assistance, arguing that the changes made to the structure might threaten the goals of their assistance. Other donors, including the United States, nevertheless continued to provide aid. To these, the comptrollers committed themselves to draft a reform to the institution's Organic Law as well as a probity law, and to resolve more than 20 outstanding cases of alleged misuse of government resources.

**The Byron Jerez Case.** More than these initial developments, a high-profile corruption investigation has called the impartiality of the reformed CGR into question. In March, the daily newspaper *La Prensa* embarked on a series of exposes of alleged wrongdoing on the part of a key Aleman ally. As head of the finance ministry's General Tax Division (DGI), Byron Jerez was one of the most powerful offi-

cials of the Aleman government and treasurer of the ruling PLC.

Over a period of weeks, *La Prensa* unearthed supposedly shady procurement practices involving purchases by the DGI from companies run by Jerez's brother in Miami. The paper then focused on a missing check for \$200,000 issued by Jerez's office, that had never reached its destination in the state insurance company INISER. Almost immediately, it became known that Comptroller Jarquin had been pursuing the trail of 13 other tax credit checks issued under suspect procedures, many of which had passed through the offices of the state-owned oil distributor PETRONIC before the money allegedly reached the coffers of Jerez's US relative.

*La Prensa's* denunciations goaded the new CGR into announcing a special investigation into the DGI. The Comptrollers also began audits of PETRONIC and INISER, and called on Jerez to clarify his relationship with companies in Miami.<sup>79</sup> However, Jerez was unable or unwilling to give a satisfactory explanation of where the \$200,000 had gone, produce the person he claimed had cashed the missing check, or supply documentation demanded of him. On the Monday after Easter, the Comptrollers issued the official an ultimatum to respond. When Jerez cavalierly ignored them, the CGR summoned him to appear forthwith.<sup>80</sup>

It was not until two weeks after a crucial Washington donors meeting in May, however, and under continuing foreign strong pressure, that the Comptrollers finally announced their verdict. By a 3–2 decision dominated by the Liberals, the Comptrollers recommended Byron Jerez's destitution and the imposition of a fine, but refrained from establishing a presumption either of civil or of criminal responsibility. The majority view was that irrefutable evidence that Jerez had committed a crime had not been presented.<sup>81</sup>

The decision was met with a hail of indignation. A consultant to the CGR made a pointed and reasoned criticism of the decision, noting that the GGR's investigation had been unduly

short and incomplete. Particularly damaging was the Comptrollers' inexplicable, and apparently deliberate, inaction in seeking the aid of the courts to compel parties under investigation to testify and hand over documents.<sup>82</sup> This laxity was crucial, as "lack of evidence of a crime" was the CGR's official rationale for not finding in favor of civil or penal responsibility for Jerez.

Terming himself vindicated and above reproach, Jerez resigned his post just hours after the verdict on June 7. Although he had loudly proclaimed for weeks that he would abide by the Comptrollers' recommendations, president Aleman did not immediately move to fire his subordinate. And in a vote of confidence in Jerez, Aleman kept him on as treasurer of the PLC. Those opposed to the Liberal-Sandinista pact took the CGR's ruling and Aleman's inaction in the Jerez case as proof that the pact was confirming their fears.<sup>83</sup>

**Legal And Administrative Reforms.** The Jerez ruling suggests that the CGR can no longer be counted on to impartially investigate corruption charges against high-ranking government officials. Will damage to the CGR go further? Official plans to revamp its powers suggest that possibility.

In May, in the midst of the Jerez case, Aleman sent a proposal to reform the CGR to the Assembly. Terming the bill "an abuse", Agustin Jarquin asserted that the government had not consulted the Comptrollers and had pre-empted the efforts of foreign consultants working on the issue.<sup>84</sup> Sandinista members of the CGR had prepared reform legislation that conflicted with Aleman's desire to centralize CGR power in president Arguello. The president's version also appeared subtly to reinforce the trend toward institutional "self-limitation." In particular, the government draft embodied the principle of "prior control", giving the CGR the right to supervise governmental operations such as contracting at all steps, not just after the fact. Ostensibly a device to make the institution stronger, experts argued that prior control would actually work to weaken the

CGR's position, as it diluted the moral responsibility of public officials for the results of their decisions, making subsequent sanctions of their behavior by the courts problematic. At the CGR's behest, foreign consultants worked to reconcile the several drafts. The president later sent an improved version of the bill to the Assembly.

Other donors, meanwhile, took a different tack. In March, the Inter-American Development Bank announced that it was working with the government to establish a system for overseeing public contracting and purchasing.<sup>85</sup> The ambitious, \$21 million "efficiency and transparency" program again appeared to embody a system of preventive control of government operations.<sup>86</sup> A "project inspectorate" run by an international firm would be empowered to enter into any institution without advance notice, oversee all stages of a contract process, and train governmental officials in contracting and purchase management.

Neither the reform of the CCR's Organic Law or the IDB transparency proposal has yet been approved or put into effect. However, both are part of the international community's requirements for relief of Nicaragua's burdensome foreign debt. For that reason, "HIPC politics" has created pressure for administrative cleanup, which in addition to these initiatives includes passage of a revised probity law. In appearance, the Aleman government has acceded, at least in part, to the donors' pressure. The ultimate outcome of these initiatives nevertheless remains to be seen.

**The Judicial System.** Nicaragua's judicial system is regarded by seasoned observers of politics as the weakest and most corrupt institution in the country.<sup>87</sup> They regard its weaknesses as so grave and tangled that it is usually impossible to distinguish whether the system is failing to act in a credible manner due to its intrinsic incapacity, to political interference, or to corruption. The system's credibility with the general public is also extremely low.

Appointments to the Supreme Court of Justice (CSJ) have always been political. The

Court has traditionally failed to rule expeditiously on many of the constitutional challenges brought before it, giving rise to a belief that the substance and timing of the judgments it eventually renders are negotiated, usually with the executive. In some cases, challenges languish for years. Nor has it acted with rapidity on the several legal challenges to the pact.<sup>88</sup>

The internal independence of judges is virtually non-existent. The CSJ has divided up the system into territorial fiefdoms where groups of justices control lower court nominations, cementing a combination of party and personal loyalties. A *judicial career* law, increasingly adopted in other countries in Central America, is still on the drawing board. Procedures for hiring, promoting, disciplining and firing justices (appointed without fixed terms) are thus arbitrary, giving Supreme Court magistrates enormous leverage over the lower ranks.

The lack of adequate separation between the functions of state attorney (*procurador*) and public prosecutor (*fiscal*) creates a conflict of interest which further undermines judicial independence from the executive.<sup>89</sup> Finally, the justice system currently rests on an outmoded statutory foundation dating from the 19th century. That foundation mandates a judicial process that fails to mesh the functions of judge, prosecutor, police and defense attorney in a manner necessary to administer justice in a way that is both efficacious and protects the rights of defendants to due process.<sup>90</sup>

**Reform Efforts.** Since 1990, efforts to reform aspects of the legal system have been legion.<sup>91</sup> With help from the United Nations Development Programme (UNDP) and Sweden, the post-revolutionary CSJ developed a master plan that emphasized judicial training and creation of minimal material conditions for a court system to function. When the official Escuela Judicial was founded in 1993, many judges were not even lawyers and had no judicial training. Also with Swedish cooperation, 123 local judicial centers (*casas de justicia*) have been established in municipalities in an effort to expand access to the system. All judges are now required at least to have law



degrees. And although deficient, legal training has slowly changed the concept of what it means to be a judge at the local level, emphasizing dispute mediation where possible over litigation.<sup>92</sup>

In 1995 constitutional reforms aimed for greater judicial independence. They lengthened CSJ terms of office and reduced the president's power over their selection. Whereas before only the president could propose slates of candidates, Assembly deputies now also have this prerogative after consultations with civil society. The reforms also mandated allocation of a minimum 4% of the ordinary national budget to the judicial system.<sup>93</sup>

Complementing the 1995 reforms, a new Organic Law of the Judicial Power passed the National Assembly in mid-1998. In principle, this law mandated a series of reforms only some of which have been put into effect. The most important of these was creation of a Commission for the Judicial Career, which is charged with drafting legislation on the subject. While this reform has stagnated, the CSJ has set up an internal disciplinary commission, aided by a judicial inspectorate, which has gone some way toward weeding out corrupt and incompetent personnel.

Most of the recent advances took place between 1996 and 1999, under the leadership of Supreme Court president Guillermo Vargas Sandino, a Liberal, and vice-president Alba Luz Ramos, a Sandinista. Under their aegis, the Court divided itself into four chambers and began resolving cases much more rapidly. The Vargas-Ramos team removed more than 200 judges and court secretaries who flagrantly abused their office. This created the impression of a less politicized, somewhat cleaner system; a survey of local-level opinion indicated that in smaller cities and towns, few people perceive their local court as corrupt.<sup>94</sup> Despite improvements in recent years, however, the quality of judicial training remains very low, and knowledge of what laws are applicable is weak — at times even in the CSJ.

In spite of these advances, the experts consulted by HI believe that judicial politicization

and corruption remain intense, particularly in Managua. There few local or district level judges have been removed or sanctioned. Sentences, it is alleged, are bought and sold. Suspicion extends especially to the Managua Appeals Court, and even to the high court itself. A former Appeals Court magistrate revealed that judges in Managua have accumulated up to 20 complaints without decisive disciplinary action being taken.<sup>95</sup> Young local judges put in positions of heavy responsibility have resigned in frustration.

**The Impact of the Pact.** The first signs that the pact, once finished, would pack the court system with new judges from the PLC and FSLN came in August 1999, when the Supreme Court underwent its annual election of authorities.<sup>96</sup> This unleashed a bout of political intrigue and jockeying for position that paralyzed the CSJ for six weeks. The pact in gestation appeared to foment a re-alignment of the court's twelve members into Liberal, Sandinista and independent groups, with the latter holding the balance of power. In the end, the Vargas-Ramos reform team was replaced by a Liberal CSJ president, Francisco Plata, and an FSLN vice-president, Yadira Centeno. This result foreshadowed the pact-to-come, which reinforced the dominance of these two parties.

The four magistrates to the expanded 16-member CSJ were finally elected in March 2000. Against the wishes of some of its deputies, the PLC acceded to the FSLN's choice of Managua appellate court justice Armengol Cuadra, who had headed the feared Anti-Somocista Popular Tribunals during the revolutionary years. The FSLN also added former deputy Rafael Solis, while the Liberals selected deputies Carlos Guerra and Guillermo Selva. Analyses of the precise political composition of the expanded court varied according to who was counted in what camp. For the moment, fluidity appears to prevail, with no court faction enjoying a majority, and a quorum of two thirds is required for decisions.<sup>97</sup>

**Political Manipulation.** Meanwhile, there is ample evidence that blatant political manipula-

tion of the court system continues. Two cases involve apparent reprisals by the pact leaders against their political enemies. In one, mentioned above, Comptroller Jarquin was sent to jail. After international donors balked and visited him, and Jarquin's wife threatened a hunger strike, the government appeared to relent. The Managua appellate court then overturned the district court's ruling. Insiders regarded both the original and the appellate decision as politically dictated.

In a second notorious case, a local judge of Sandinista background sentenced then FSLN member Carlos Guadamuz to two years in prison for causing a violent row in Managua's municipal council in May 1999. Long a thorn in the side of Daniel Ortega, Guadamuz had excoriated his party brethren for the pact, especially for agreeing to divide the capital city into three parts. Separate legal maneuvers by a Liberal judge then deprived Guadamuz of control of a radio station (Radio Ya) whose ownership he disputed with the FSLN. Analysts interpreted the two actions as reprisals orchestrated in tandem by the pact participants to prepare Guadamuz's exclusion as a candidate in the Managua mayoral race.<sup>98</sup>

Other cases suggest the judiciary's permeability to the interests of the executive. One suspect ruling, this time by the Supreme Court, occurred in May. The Court had earlier admitted a writ of *amparo*,<sup>99</sup> from an investment group called "Inversiones Iberoamericanas", against a ruling by Comptroller Jarquin that had declared the January 1999 privatization of the Banco Nicaraguense (BANIC) in the group's favor as null and void. The Court ruled that Jarquin had exceeded his powers, as only the courts could rule the privatization action invalid.<sup>100</sup>

The Court soon found that it had embarrassed itself, as it had based its decision on a clause of the CGR's 1981 Organic Law that had been repealed in 1984. When Comptroller Guillermo Arguello asked the court to clarify its ruling, magistrate Josefina Ramos, president of the CSJ's constitutional chamber, was

forced to admit that the justices had made a mistake.<sup>101</sup>

This admission implied that the Comptrollers indeed had the power to nullify administrative actions without such a ruling infringing on the jurisdiction of the legal system. Jarquin then insisted that the justices pass the case to the chief Procurator for legal action to determine whether or not the privatization had been legally conducted.<sup>102</sup> The Court, however, refused to retract the *amparo* it had awarded to the investors, leaving intact a sale which has been strongly questioned as rigged in favor of cronies of Arnoldo Aleman.

The court case that followed the CGR's ruling on Byron Jerez has reinforced the impression of political bias. On June 8, a former auditor, Rafael Cordova, decided to go to criminal court to denounce Byron Jerez in the case of the missing checks, which Cordova had investigated during his tenure in the CGR.<sup>103</sup> In the absence of a mechanism for distributing judicial proceedings, Cordova lodged his suit in Managua's first criminal court, headed by judge Marta Quezada. Of Sandinista background politically, Quezada is one of the few judges in Nicaragua who enjoy a reputation for impartiality.

In response, Jerez' lawyers lodged an "objection of partiality" (*recusacion*). They argued that judge Quezada had "displayed interest" in handling the case. Though this accusation of bias was not backed by evidence, the maneuver was sufficient to throw the case to alternate judge Walter Solis, who ruled in favor of the objection and assumed responsibility for hearing the case himself. Solis then proceeded to conduct what has been characterized as a superficial examination of the evidence.<sup>104</sup>

The denunciation against Jerez also put pressure on Prosecutor General Julio Centeno to assume a role in the case. But Centeno vacillated—he avoided clarifying the state's stance toward the denunciation, and hid behind the CGR's finding that no criminal responsibility applied.<sup>105</sup> In turn, judge Solis hid behind Centeno's disinclination to pursue a case in which

the state was theoretically the offended party. He not only refrained from calling Rafael Cordova—the plaintiff—to testify, but failed to pursue the investigative avenues left untrodden earlier by the CGR. On July 1, Solis issued a verdict absolving Jerez of criminal responsibility.

The judge promptly met a storm of criticism for having shirked his duty.<sup>106</sup> Solis then blamed the Procurator for not exercising his role properly and ironically argued that if he, Solis, had been more diligent in pursuing evidence, the defense lawyers would have accused him of “displaying interest.”<sup>107</sup>

**Thwarting Reform.** In recent years, Nicaragua has witnessed myriad initiatives funded by foreign donors to improve the very low quality of its judicial system. Of the initiatives that impinge on the twin problems of judicial politicization and corruption, two of the most important are the law of the judicial career and the law of the public ministry. Along with a new law on administrative suits, these initiatives have had mixed success.

Though the *judicial career* was foreseen in the 1995 amendments to the constitution, the CSJ formally set up a commission to draft a bill on the subject only in 1999. Believing it has a commitment from the Court to move forward on the issue, the IDB has drawn up a \$24 million “Program for Judicial Independence and Transparency,” one of whose major components is institutionalizing the judicial career and improving the quality and credibility of judges.<sup>108</sup> The project will design rules and mechanisms for selecting, promoting, disciplining and firing judges and court secretaries, and formulate standards for training judges in the universities.

Despite this incentive, little action on the issue has been visible to date. In the short term, according to Court insiders consulted by HI, the lineup of forces does not favor the needed legislation. To begin with, the commission to draft the law is headed by a Liberal justice who is considered Aleman’s closest ally on the bench. In addition, only a minority of Supreme Court justices are known to currently support

the idea, though they include the court president and vice president. According to a justice interviewed by HI, the majority of court members are unwilling to relinquish control over their fiefdoms by getting behind a genuine reform in this area.

In contrast to the judicial career, there briefly appeared to be progress toward the creation of an *independent public prosecutor*. On May 2, without opposition, the National Assembly approved the Law of the Public Ministry, which creates an independent prosecuting attorney (*fiscal general*) separate from the state attorney (*procurador general*). Whereas the latter official is named by the president, the Assembly will choose the chief prosecutor and deputy from slates of candidates to be presented by the executive and by the Assembly itself.<sup>109</sup>

In appearance, the law not only separated functions but granted the Fiscal broad powers to investigate and pursue crime ex-officio or acting from a denunciation. But in comparison with drafts prepared by foreign consultants, the law that emerged from the Assembly was weak. For example, the Fiscal would have to await judgments from the CGR before prosecuting government officials for corruption. On the organizational side, he lacked the services of a secretary-general, an executive assistant, or an auditor.

Unexpectedly, Procurator General Julio Centeno, who had backed the bill initially, later announced that Aleman would veto parts of the new law. Centeno argued that the legislators had taken away some of the Fiscal’s essential powers, conditioning these on a later reform of penal procedure.<sup>110</sup> His proposed amendments stipulated that the *fiscales*, not the police, would direct investigations into alleged crimes. Given the chronic weakness of police criminal investigations, this is a necessary feature of any reform of the system of criminal justice. But subordinating the work of police investigators to the Fiscalía would infringe the autonomy the National Police presently enjoys in the state, and was sensitive politically.

In the Assembly, Aleman’s veto gave rise to quarreling between the pact-makers. The

Sandinistas' star deputy, Walmaro Gutierrez, argued that the idea of subordinating police investigations to the new prosecutor could violate the constitution.<sup>111</sup> Other critics argued that the veto process was a ruse by president Aleman to prevent a strong bill from seeing the light of day.

In contrast to the public ministry bill, the *law for administrative litigation*<sup>112</sup> has met a better fate. This law has a complex-sounding title but is based on a simple premise: citizens should have the right to sue if they feel their rights are infringed by administrative rulings made by government agencies. Such a law could be extremely valuable in protecting Nicaraguans from abusive government practices. Fearing any initiative that could expose officials to financial responsibility, the government dragged its feet, and the bill remained shelved for three years.<sup>113</sup> Pressures from the United States government and the IMF led to new movement on the bill in late 1999. On the government's side, a desire to have something positive to show a May 2000 donors' meeting operated as a stimulus.

During Assembly debate on the bill, obstructionist maneuvers made themselves felt. In particular, Liberal deputies attempted to revise the bill to allow the government to evade payment of damages when it lost suits in the new courts to be created. Unexpectedly, magistrates from the Supreme Court then arrived to scold the lawmakers for their obstruction, and were backed by Sandinista legislators. The Liberal deputies then caved in. The bill finally passed in mid-May, albeit only after the major parties negotiated a 16-month lapse before the legislation would go into effect, making the Aleman government immune from its impact. With this outcome, a basically positive piece of legislation appeared to emerge.

#### THE SUPREME ELECTORAL COUNCIL

The CSE was founded in 1984, and until this year has been headed by only two people, both originally Sandinista militants. The CSE's president until 1996 was a respected intellectual

figure, Mariano Fiallos Oyanguren. Despite the partisan loyalties of its staff, Fiallos and Rosa Marina Zelaya built the CSE into one of the most professional bodies of the Nicaraguan state and conducted two national elections, in 1984 and 1990, which were generally regarded as free and fair and in which voter turnout exceeded 75%. In the second of these, the FSLN fell from power. Indicating the level of national and international approval of his performance, the National Assembly re-elected Fiallos with little opposition in 1995.

Key to this high level performance was that the CSE leadership selected lower and mid-echelon personnel according to their professional qualifications and not according to party dictates or criteria. However, this situation changed abruptly as a result of election law reforms in 1995 that stipulated that the political parties would name candidates to staff the lower-level electoral councils and vote boards during the 1996 campaign. The parties then dominant in the Assembly argued that this pluralism would help guard against fraud. Fearing the advent of a politicized process that would undo his handiwork, Fiallos promptly resigned.

Rosa Marina Zelaya occupied the CSE's helm from early 1996 to March 2000. To Zelaya fell the excruciating task of managing a polarized and highly complex national and local election, the rules for which were changed several times in the year before the voting.<sup>114</sup> She also had to grapple with a massive job of training inexperienced party delegates down to the level of local vote boards about their responsibilities. Underfunded and overburdened by mammoth tasks, the Council barely limped through to election day on October 20, 1996.

During the vote count, the system broke down in places, and a substantial minority of the ballots were lost. In the view of most observers, this outcome was due to insufficient time, inexperienced officials, and lack of resources leading to administrative disorganization rather than to political manipulation.<sup>115</sup> Immediately after the vote count began, however, FSLN leader Daniel Ortega began to

charge that serious fraud had been committed. Although his party has not provided convincing evidence, he has maintained that claim ever since, alleging that Liberals carried out fraud and that Rosa Marina Zelaya, who had departed the FSLN for the Sandinista Renewal Movement (MRS) after the 1994 party split, covered it up.

Whether there was fraud or not, the reputation of the CSE in the eyes of the public dropped sharply as a result of the 1996 ballot mess. The CSE recovered its balance somewhat in March 1998, when voting for regional councils on the Atlantic Coast was held.<sup>116</sup> But as the poll data cited above indicate, the institution has not been able to recoup the very high credibility it enjoyed before 1996.

**New Electoral Authorities.** In March 2000, the pact-makers altered the political balance of the CSE by adding two members, Liberal Silvio Calderon and Sandinista Emmet Lang. A quick internal election then shunted aside Rosa Marina Zelaya as Council president before the end of her term. Elected in her stead was Roberto Rivas, a close aide of Cardinal Miguel Obando, who has admitted to Liberal sympathies but denies being a PLC member. The pacters thus established a foothold, and despite being temporarily in a minority, quickly dominated the Council's decisions.

This interim council managed the first phase of the 2000 municipal election process. Almost immediately, constitutional challenges to the election law reform sprang forth from numerous corners of society.<sup>117</sup> Complementing these was a suit by Zelaya challenging the shortening of her term of office as unconstitutional. Zelaya's brief also challenged the procedure whereby the Assembly changed the content of the constitutional amendments voted on in the 1999 legislative session during the 2000 session. The CSJ agreed to hear this writ on May 18.

In mid-June, with the magistrates elected in 1995 nearing the end of their terms, the National Assembly prepared to elect their replacements. Zelaya denounced the upcoming election as illegal, given that the Supreme Court

had not yet ruled on her suit, which affected the number of magistrates to be chosen. Rumors also circulated to the effect that the government was pressuring magistrate Fernando Silva to resign, although his term still had a year to go. Silva did resign on June 16, citing ill health and denying that he had accepted a hefty indemnity from the executive.<sup>118</sup> His move allowed the Liberals to go on to elect five instead of four new magistrates, thereby assuring that within the framework of the pact, the PLC would enjoy a majority of four on the seven-member Council.

On July 3, the Assembly proceeded to elect the five. The Liberals confirmed Roberto Rivas as a magistrate and added Mauricio Montealegre and Jorge Incer Barquero, while the Sandinistas voted in Jose Luis Villavicencio and Miguel Cordoba. The very same day, the Supreme Court issued a 13–2 ruling rejecting Zelaya's suit against the reforms.<sup>119</sup>

As happened with the CGR, the new CSE magistrates immediately began making personnel changes in the apparatus. The new authorities dumped key administrative staffers of long-standing merit who had previously handled election-mapping and cedula issuance, replacing them with Liberals. After a short time, the only major holdover from the Zelaya period was the head of the information systems division. According to recent interpretations, the Sandinista side of the new Council came to dominate the operative core of the CSE's administration, the so-called electoral affairs division; this would lead later to charges that technical fraud was being prepared.<sup>120</sup>

**Implementing the New Law.** Under the pact, political parties that did not win 3% of the vote in 1996 must re-register by submitting a quantity of signatures (with their cedula or ID card numbers) equal to 3% of the last national vote. Of some two dozen parties, only the FSLN and Camino Cristiano, a small evangelical party that has lent the PLC consistent support in the Assembly, were exempt. Because the PLC had run in 1996 as part of an alliance rather than individually, it was subject to the requirement.

The PLC was the first party to flex its political muscle by fielding activists to collect the needed names and cedula numbers. According to some reports, it applied pressure on public employees to obtain signatures: a young auditor in the DGI charged that he had been fired at the express order of Byron Jerez for refusing to sign.<sup>121</sup> Whatever the case, the results of its initial drive heralded the problems than most parties would face in the signature race. The CSE threw out 20,000 of an initial batch of 160,000 signatures submitted, on the grounds that the names and numbers entered did not correspond to those in CSE files.<sup>122</sup>

The CSE adopted a controversial, laborious procedure for signature verification. CSE staff typed the names and cedula numbers submitted into the Council's computers, with party representatives observing. They then checked to see if the names and numbers corresponded to those in CSE records, then cross checked against the names submitted by other parties to weed out duplicated names. By having its total list of 220,000 submitted first, the PLC effectively made it impossible for any other party to use any names on its list, even those in excess of the 3% requirement (76,623).<sup>123</sup>

By the mid-July cutoff date, eight parties had presented lists as follows:<sup>124</sup>

These results belied predictions that it would be impossible for small parties to meet the requirement. But the law placed an enormous

burden on the parties, the CSE and the electorate. The above numbers add up to 42% of those who registered for the 1996 election, and 66% of those who actually voted. Strapped for time and with a heavy burden made still heavier for those who were not as swift as the PLC, many parties appeared to throw their signature drives together hastily. Each had to go well above the 3% requirement out of worry over name duplication, typing errors and other obstacles.

In contrast to the PLC, two Liberal splinter parties, the PLN and the Liberal Salvation Movement (MSL), appeared to fail, as large majorities of their initial signature batches were ruled invalid. As the examination process wore on, leaders of both groups complained that the CSE, at the PLC's behest, was committing fraud against them, and warned of violence if the attempts continued.<sup>125</sup>

The Conservative Party presented what it claimed were 180,000 valid signatures to the CSE on April 27. Mayoral aspirant Pedro Solorzano confirmed to HI that, like other parties, the Conservatives had hurriedly thrown together their initial signature drive.<sup>126</sup> Hence it came as no surprise that during the first verification phase, the CSE rejected 102,127 of the signatures due to the fact that names and cedula numbers did not correspond.<sup>127</sup> Though this left the PCN over the required minimum, the party went out to collect a new batch of 50,000 names

| PARTY                                     | SIGNATURES |
|---|------------|
| Partido Liberal Constitucionalista (PLC)  | 220,000    |
| Partido Liberal Nacionalista (PLN)        | 169,728    |
| Movimiento de Salvacion Liberal (MSL)     | 151,270    |
| Partido Conservador de Nicaragua (PCN)    | 250,820    |
| Movimiento Democratico Nicaraguense (MDN) | 86,193     |
| Movimiento de Unidad Cristiana (MUC)      | 134,720    |
| Movimiento Renovador Sandinista (MRS)     | 145,950    |
| Alianza Conservadora (ALCON)              | 94,697     |

in order to bolster its cushion for phase two.

Another of the groupings that presented signatures to the CSE was the MDN-Alliance (see below). However, this amalgam of small parties promptly broke up, with the MDN party splitting off from the rest. The

alliance had formed under the MDN's party name to avoid the law's requirements that a multiparty alliance would have to gather the minimum 3% signatures for each party. In early June, the alliance's legal representative asked the Council to return the 86,000 signatures, arguing that citizens had been asked to sign in favor of an alliance, not just the MDN. By a 6–1 vote (Zelaya dissenting), the Council refused this request. The decision also denied the right of the remaining alliance parties to re-validate the signatures and resubmit them. On June 9, former president Violeta Chamorro called on the CSE to return or annul the signature she had affixed to an MDN petition.<sup>128</sup>

In the wake of this decision, the Sandinista Renewal Movement (MRS) regrouped some of the pieces of the fractured MDN-Alliance under its own banner. This new MRS-Alliance then sought to re-register by submitting 73,450 signatures of its own to the Council on July 6.<sup>129</sup> Party spokespeople claimed that the MRS had pre-checked its names and numbers against the official electoral roll. But the MRS fared no better. On the eve of the July 15 cutoff date, the verification process left it with only 34,110 valid signatures.<sup>130</sup>

**Demands For Reform.** By the end of June, the trend in the CSE's decisions led to a protest by nine parties banded into an "anti-fraud movement." The nine argued that the law did not call for verification at all, and that the CSE had violated the rights of Nicaraguans who did not have cédulas, could not write, or were forced to turn a private party preference into a public act.<sup>131</sup> The group demanded suspension of the verification process or an emergency reform of the law, and threatened to call for civil disobedience.<sup>132</sup> President Arnaldo Aleman responded by accusing what he called "micro-parties" of trying to perpetrate fraud themselves by fobbing off masses of phony signatures. Aleman also ventured to predict that only three parties — the PLC, FSLN, and Camino Cristiano — would be participating in the November election. This prediction led to a volley of criticism, and a threat from former contra chieftain Salvador Talavera that his followers could block

roads, take over CSE buildings, and even occupy the embassies of the principal foreign donors.<sup>133</sup>

**Verifying Signatures: Phase 2.** In addition to checking the *correspondence* between names and numbers, the CSE decided in early June on a procedure for verifying the *authenticity* of the signatures. The scheme required a direct optical comparison between submitted signatures and those in CSE files. As the Council could not examine huge numbers of signatures, it opted to take a random sample of 416 from the first 72,623 signatures entered by a given party. If, for example, 10% of the sample was ruled invalid, 10% of the first 72,623 would be struck. Then, if the party had submitted additional signatures, the procedure could be repeated until it reached, or failed to reach, the 3% minimum.<sup>134</sup>

There were obvious problems. Whether two signatures by the same person are really alike is something that even police experts often cannot determine. Before the exercise began, the party fiscales met and worked out a set of criteria. As it turned out, the criteria were exceedingly rigorous, so demanding, in fact, that the ruling PLC only made the grade because its huge signature total, about 220,000, allowed it five passes through the procedure just outlined.

The test of the procedure came on July 14, when the Conservatives got their turn to pass muster. This party had submitted even more signatures than the PLC, some 227,000. In the opinion of analysts, however, the PCN was Arnaldo Aleman's nightmare. If the Conservatives made it into the election race they would likely take votes away from the Liberals, which would help the FSLN.

Contrary to most expectations, the Conservatives made it over the second hurdle and into the election race. The chief PLC fiscal challenged the Council's decision, while an FSLN magistrate defended it.<sup>135</sup> Three interpretations of this outcome quickly emerged: (1) pressure from international organizations had dictated that the PCN get its chance; (2) the FSLN wanted the PCN to be eligible and exer-

cised its control of the information center to achieve this end; and (3) the PCN passed cleanly. The national observer organization Ethics and Transparency, the only independent and neutral observer on the spot, subscribed to the last interpretation.

**Denouement.** By the time the verification process ended on July 17, the interests of the pact-makers appeared largely to prevail. The CSE announced that out of nine aspiring national-level forces, only the PLC, FSLN, Camino Cristiano and the Conservative Party would be allowed to participate in the November municipal elections. The PLC saw two potential rivals on its flank sidelined (the PLN and MSL), the FSLN one (the MRS). In the one case where the pacters' interests diverged (the PCN), the outcome had favored the FSLN.

The denouement did not pass without protest. Leaders of the PLN promptly began a hunger strike outside CSE headquarters. A plan by PLN and Resistance activists to disrupt road traffic in the interior was soon aborted by police. Far from improving governability in Nicaragua, implementation of the political pact seemed to be adding one more potential cause for instability.

### THE POLITICAL PARTIES

The outcome of the verification suggests that the pact is operating successfully to restrict, though not annul, competition among Nicaragua's political parties. But whether the accord will cement *bipartisan hegemony* remains to be seen. In addition to the fate of the small parties, questions about the two pact makers simmer. Will dissent inside the big parties be stifled? Will the agreement contribute to the electoral decay of its signers?

On the last point, results from a March 2000 survey by the CID-Gallup organization may be suggestive. The combined preferences for the Liberal (21%) and Sandinista (20%) parties dropped to 41%, the lowest level in five years. At the same time, those holding a favorable opinion

of the two party leaders, Aleman (33%) and Ortega (29%), dropped to levels not previously recorded.<sup>136</sup> Both major parties have also experienced strong internal tensions and a tendency toward defections. Though attrition has not yet been dangerous to either, caudillistic control in the PLC and FSLN has weakened the electoral appeal of the two parties to municipal voters.

Meanwhile, the new election law practically commands Nicaragua's smaller parties to ally themselves together in some fashion in order to survive, but makes doing so extremely difficult. With a certain amount of funding from oligarchic sources, minor parties seeking avenues for their participation have in fact regrouped, in sometimes unexpected combinations. Although only one of these has so far gotten itself into this year's municipal election game, others will make the attempt by seeking to participate in the national race in 2001.

**The PLC.** During the period in which the pact was negotiated, few in the ruling PLC were willing to air publicly their fears about the agreement's possible impact on the party's fortunes. But since the pact's consummation, open opposition has emerged in a party that for years appeared to be totally dominated by the will of one individual. Although the president's hold over party affairs has not been seriously challenged, the post-pact period has illustrated the contradictions created by, and limits to, the exercise of Aleman's clientelistic control.

The challenge to Arnaldo Aleman's control of the ruling PLC does not stem from any differences over the pact's contents. The dissent has instead sprung from Aleman's attempt to use the agreement as a springboard for remaining indefinitely in power. From the beginning, the PLC has contained a series of figures vying fiercely to be the Aleman's successor in 2002. Though all of these have an interest in thwarting Aleman's pretensions, only one has so far had the temerity to try.

In the months following the pact, Aleman continued to brandish the option of a constitutional convention, or "*constituyente*." In May, he broached the idea that after voters elected a



president and Assembly deputies in November 2001, the latter could double as constitutional conventioners. After rewriting the constitution in a year and a half, the “sovereign” *constituyente* could call fresh elections. Though he did not say so, it was obvious that in those elections, Arnaldo Aleman could once again be a candidate, as the rule against consecutive terms would not be violated.

Opposition to Aleman from within the PLC had already surfaced by this point. In March, another presidential hopeful, INIFOM director Jose Rizo, suddenly advocated letting barred pre-candidate Pedro Solorzano run for mayor of Managua.<sup>137</sup> The PLC's leader in Managua, Eddy Gomez, then criticized Aleman's hand-picked candidate for mayor, who was scoring poorly in the polls.<sup>138</sup> In retaliation, Aleman immediately engineered Rizo's ouster as PLC party chief in his native Jinotega, and in another lightning reprisal removed Gomez from his post as party chief in the capital.

Despite this blunt exercise of presidential power, a high-ranking member of the party executive committee, defense minister Jose Antonio Alvarado, insisted on publicly rejecting Aleman's idea for a *constituyente*. When the PLC's nominating convention opened April 30, Alvarado further proposed a primary in 2001 to choose the party's candidate for president. The suggestion was fraught with risk, as such a mechanism would deprive the party executive committee, headed by Aleman and Byron Jerez, of much of their discretionary control over nominations.

A few days later, Alvarado announced his resignation as defense minister. In the PLC, this move was unprecedented independence, as for the first time a Liberal “good soldier” was refusing to be detailed where the chief dictated. Though he couched his critique in timid language, Alvarado scored Aleman for failing to separate the strategic interests of his government from those of the PLC. More to the point, he stated “I am promoting an internal reexamination to give space for the aspirations of everyone [in the party].”<sup>139</sup>

The president's reprisal was once again swift. On May 16, governance minister Rene Herrera announced that Alvarado's 1990 reacquisition of Nicaraguan citizenship was being annulled.<sup>140</sup> This would bar a presidential candidacy. A campaign to discredit the dissident was then unleashed—other party officials began calling Alvarado a traitor and indicated he might be expelled temporarily from the party. But private human rights organizations in Nicaragua and the official Human Rights Procurator both supported Alvarado, as did the Catholic Church.<sup>141</sup>

Though support from these sources was noteworthy, other PLC bigwigs failed to come to Alvarado's aid against the president. According to informed sources, Aleman meanwhile worked behind the scenes relentlessly to punish anyone in the municipios who showed a sign of backing his rival. In early July, the dissident leader announced the formation of an internal movement he called “Liberals for Change”.<sup>142</sup> Leaders of the Liberal party youth organization promptly came out publicly in support, accompanied by figures covered in red hoods (red is the Liberal party's color) claiming to be public employees who also backed the dissident leader but were not showing their faces for fear of losing their jobs.<sup>143</sup>

In the end, however, the dissidents decided they could not maintain a foothold within the party structure in the face of Aleman's relentless pressure. On July 25, Alvarado announced a rupture with the PLC and an intention to convert his movement into a new “Democratic Liberal Party.” With this action, the PLC suffered its third split since the 1996 elections and the first related directly to the pact.

According to sources close to the party, Alvarado's move complements serious attrition taking place at the base of the PLC for other reasons. Another major cause of disaffection has been Aleman's insistence on controlling party nominations, a practice that clashes with the preferences of local party bodies. On the eve of the PLC's nominating convention, La Prensa published a list of 21 municipios, 15% of the total, where infighting in Liberal ranks had broken out.<sup>144</sup> At the convention, delegations from

the cities of Chinandega and Jinotega walked out after the conclave ratified official slates with which they disagreed. Managua party leader Gomez and Matagalpa mayor Jaime Castro bolted to the PLN, which received them with open arms and named them as its own candidates for mayor of their respective cities.<sup>145</sup> In Masaya, a party faction resentful over control of the party's mayoral candidates by vice-president Bolanos also jumped to the PLN.<sup>146</sup>

**The FSLN.** Like Aleman, Daniel Ortega appears to be dropping in the polls due to the pact. The February IEN survey indicated that 65% of those polled disapproved of Ortega's performance as leader of the principal opposition, as compared with 53% in September 1999. Also like his rival, Ortega has had to manage serious dissidence in his party generated by the pact's negotiation and later implementation. This process has cost the FSLN the defection of previously important party figures and will probably weaken its election effort.

The first Ortega opponent to go was Managua mayoral aspirant Carlos Guadamuz, who had obtained the FSLN's nomination for mayor in 1996 against Ortega's wishes. Evangelical leader Miguel Angel Casco, who offered the fallen Guadamuz moral support, was then summarily removed from control of the FSLN's Religious Affairs Commission. In response, Casco, the leader of the FSLN team that had negotiated the pact in the National Assembly, declared publicly that he had not been privy to the more hidden aspects of the big-party bargain, resigned as a member of the FSLN's National Directorate, and later withdrew from the party.<sup>147</sup>

Mariano Fiallos, the former president of the CSE who was slated to have become foreign minister had Daniel Ortega won in 1996, also left the FSLN to become national coordinator of the MDN-alliance (see below), while his brother Alvaro, vice-president of the National Union of Farmers and Ranchers (UNAG) and Ortega's 1996 campaign chief, withdrew his support from the Sandinista party saying "the FSLN has ceased to be an electoral option."<sup>148</sup>

In contrast to these figures, the group of four FSLN deputies who voted against the pact on the Assembly floor have stuck it out in the party despite an invitation to them by Ortega to decamp.<sup>149</sup> By March, the "Democratic Left" was organizing a campaign to be recognized as a legitimate intra-party current and openly discussed names of leaders who might take over the helm from Ortega.<sup>150</sup> By early May, deputy Victor Hugo Tinoco broached the possibility of running against Ortega for his party's nomination in 2001.<sup>151</sup>

The Sandinista leader has tried to clamp down on the dissidents in the course of preparing for the upcoming elections. The FSLN has nominated a significant number of former Sandinista military and interior ministry personnel to its posts on the departmental councils of the CSE.<sup>152</sup> And it put in charge of its apparatus to defend the vote none other than former state security chief Lenin Cerna.<sup>153</sup> Dissident deputies have charged that this apparatus has tried to thwart their internal organizing and created an atmosphere of fear in party ranks.

The FSLN is now making what appear to be feverish preparations for November. There is reason to doubt, however, that the party will match its 1996 election effort, which was judged by insiders as notoriously deficient.<sup>154</sup> Apathy in the party base is palpable — in Managua, only some 20,000 party members participated in the recent "popular consultation" to select the party's candidates compared to more than 100,000 four years ago. In the country at large, moreover, the *consulta* was marked by numerous irregularities and squabbles over the ensuing results. As in the PLC, interference in the local selection process by party higher-ups has caused frictions, leading Daniel Ortega to spend much time in the hinterland mending fences. Though in some cases Ortega had to accept candidates he did not want, his imposed choices in several major towns led local candidates to bolt from the party and join Camino Cristiano.

Beyond the party apparatus per se, the pact has created strains and division within most of the social organizations still linked in some

fashion to the FSLN.<sup>155</sup> The most loyal of these is the National Workers Front (FNT), a union umbrella grouping whose leaders aspire to place their cadre in FSLN electoral slots. But the National Union of Farmers and Ranchers (UNAG), which formed the backbone of the Front's 1996 election effort in rural areas, announced in June that it was distancing itself from the party's campaign. Differences over the pact also split the Nicaraguan Communal Movement (MCN), where a leadership loyal to Ortega recently regained control. In June, this organization also announced that it was supporting candidates of different parties, and conditioned its support for FSLN municipal candidates on acceptance of an agenda of interest to community residents.

The most surprising opposition came from agricultural workers and cooperative peasants who occupy much agrarian reform land that is still untitled and contested by former owners. These were supposed to be among the principal beneficiaries of a side-pact on properties supposedly negotiated along with the constitutional and election reforms. But when Ortega proposed a reform to the 1997 property law to extend the period allowed for them to purchase their holdings, they opposed him, apparently fearing that high-ranking Sandinistas could manipulate a requirement that they take out new mortgages to ultimately gain possession of the land for themselves.<sup>156</sup>

**Small Party Opposition To The Pact.** As anticipated, the restrictive electoral rules spurred a serious regrouping of Nicaragua's small parties in an effort to forge viable alternatives to the PLC and FSLN. Expectations centered initially on an existing grouping called the Patria Movement, which since 1998 had served as a forum for small-party bargaining. However, unity talks in this movement broke down and two strands emerged, one represented by the Nicaraguan Conservative Party (PCN), the other by a broad array of small forces. In light of the extremely fractious history of Nicaraguan parties, the failure to unite was not surprising. But with polls indicating a *third force* might

gain 20% of the vote in November, it was disappointing to many.<sup>157</sup>

In part, the emergence of competing "third force" projects reflected the interests of wealthy members of the Nicaraguan oligarchy who do not traditionally participate openly in politics. Since 1997, government policies have damaged the economic interests of several of these elite families. Combined with upper class disdain for the arriviste elements surrounding Aleman, this has sparked strong antipathy to the Liberal president. Carlos Pellas, whose principal interests are in sugar producing and the sale of Toyota automobiles, has emerged openly as the principal funder of the Conservative Party, while Manuel Ignacio Lacayo, who competes with Pellas by selling Nissan cars, has bankrolled the "third force" and participated directly in its organization.

**The MDN-Alliance.** This coalition of small parties elicited much initial sympathy as a pluralistic conglomeration in which leaders new to the political scene blended with familiar faces in Nicaraguan politics. Some of the latter had made positive contributions to democratic institutionalization during the Chamorro years. For the sake of survival under the new election rules, the alliance registered with the CSE under the aegis of the Nicaraguan Democratic Movement (MDN), a letterhead party possessed of an appropriately neutral label. By late April, three presidential pre-candidates had surfaced in the alliance's ranks. These were former Comptroller Agustin Jarquin, originally a social Christian; former army chief Joaquin Cuadra, once a Sandinista; and Ernesto Leal, until recently an MDN adherent. In May, the grouping announced that Lucia Salvo, a respected businesswoman new to the political rough and tumble, would be its candidate for mayor of Managua.

The same month, however, a political maneuver torpedoed the grouping. Several members of the MDN decided to disavow the coalition, protesting that MDN party members had been marginalized by the avalanche of new faces. In June, the alliance suddenly fell apart amidst

accusations that both the Liberals and the Conservatives were maneuvering to undermine it. Led by former minister Leal, the MDN party then exited for greener pastures in the form of an alliance with the Conservatives.

After the exit of the MDN, other small parties similarly sought options elsewhere. A number of parties led by the MRS, and supported by the Nicaragua Puede and Nicaragua Joven movements, decided to seek fresh signatures and contest the municipal elections under the MRS banner. Former Sandinista guerrilla commander Dora Maria Tellez replaced Lucia Salvo as the MRS-Alliance's mayoral candidate. But former Comptroller Agustin Jarquin and the Social Christian Union (USC) took another route shortly thereafter, entering into talks about a possible election alliance with the FSLN.<sup>158</sup>

The other putative alliance leader, Joaquin Cuadra, announced that he would absent himself from the municipal race to work to create a separate national movement. Chief of the Nicaraguan army from 1995–2000, former general Cuadra is a scion of a wealthy Granada family involved in producing and exporting coffee. On June 22, he presented the CSE the initial documentation necessary to found a new party which he named the "Movement of National Unity" (MUN). To all appearances, Cuadra's strategy was to work slowly to set the structures of his new party in place while the CSE either ruled existing parties out of existence or the latter stumbled in the 2000 municipal elections, thus losing their legal status. The new party would then be positioned to serve as a catchall for political forces with nowhere else to go, putting the general in the driver's seat.<sup>159</sup>

**The Nicaraguan Conservative Party (PCN).** Heir to a political tradition stretching back to the early nineteenth century, the Conservative Party seems to have the best chance of forging a viable opposition to the pacting parties in the upcoming elections.

Upon the breakup of the Patria Movement, then PCN party leader Noel Vidaurre announced he would attempt to forge a broad alliance under the Conservative banner. The

immediate aim of this drive was to secure the adhesion of independent mayoral candidate Pedro Solorzano, whose mass following in Managua made him a prized acquisition once he could no longer run under the "popular subscription" formula. Solorzano had vaulted into public prominence in the early 1990s by organizing what became an immensely popular sporting event for the poor, the so-called "Ben Hur chariot race" for horse cart drivers. CID-Gallup's March poll showed him running neck in neck with Sandinista candidate Herty Lewites, each man garnering about 25% of the vote in Managua. Its August poll showed Solorzano in second place (17%) to Ortega (21%) when respondents were asked to state a presidential candidate preference.

Solorzano vacillated at first between the Conservatives and the MDN-Alliance (see below), eventually choosing the former on the grounds that they evinced superior organization and cohesion. In addition to absorbing his "Viva Managua" movement, a PCN convention elected Solorzano as party president on June 25. Bringing this fresh face on board has clearly helped the PCN improve its image. However, the CSE ruled unanimously on August 8 to bar Solorzano's candidacy for mayor of Managua on the grounds that he is no longer a capital resident.<sup>160</sup>

In all probability, this decision backfired, helping to turn the Conservatives into a significant rival of the pacters. But to become a major player, the PCN will need to undergo further change. Under Vidaurre, the PCN portrayed itself as an implacable enemy of corruption and has recently been a vigorous opponent of the pact. But critics complain that the party has not undergone programmatic updating and lacks internal democracy. The party will also have to demonstrate some potential in this year's mayoral races to be a credible contender in 2001. Finally a three-way struggle for the PCN's presidential nomination among Solorzano, former party president Vidaurre and newcomer Ernesto Leal, who was foreign minister in the Chamorro administration, is now likely. The fight promises to test the party's uneasy unity.

## CONCLUSIONS

In August news reports in Nicaragua claimed that president Arnaldo Aleman had issued instructions that all public employees above a certain income level must contribute an entire month's wages to help fund the PLC's 2000 municipal election campaign or lose their jobs. In November the election observation team from The Carter Center raised the issue of campaign finance with President Aleman. He agreed that it would be incorrect to deduct employee contributions from government paychecks. The Carter Center, in its report, expressed the hope that President Aleman would personally see that such a practice not take place.<sup>161</sup>

No mention was made of other means of making contributions. These reports suggest the clientelistic excesses that have marked, and marred, the Aleman administration's exercise of power.

Throughout this report, we have stressed that the pact-making which has dominated recent Nicaraguan politics has deep structural and historical roots in the country. In this tradition, leaders strive to accumulate personal power and exercise it in caudillo-like fashion, without regard for institutional constraints. They dispense favors in order to develop a support-base that will do their bidding loyally and without complaint. In a society just beginning to recover from a destructive experience with revolution and war, finding such clientele is relatively easy. An economy that does not provide avenues for social mobility by creating jobs and a legal system that does not afford security for beneficiaries of revolutionary property reforms contribute mightily to nourishing such followings.

This tradition seems to be reflected in the style and behavior of the two principal pact-makers, Arnaldo Aleman and Daniel Ortega. The behavior of these leaders over the course of the last decade, and the pass to which they have now led the country, has led many Nicaraguans to fear that the country is reverting to authori-

tarian patterns that existed prior to the Sandinista revolution in 1979. The two leaders have submerged deep-seated personal and ideological animosities to collaborate in a pact that maintains democratic forms but diminishes democratic content in key institutions.

### THE LIMITS OF HISTORICAL ANALOGY

The fears of Nicaraguan analysts about the potential impact of the Liberal-Sandinista agreement are shaped by a 180-year national history in which political "pacts" have had nefarious consequences. As ex-foreign minister Emilio Alvarez Montalvan put it, "all the pacts celebrated in Nicaragua, about a dozen, have had the common denominator of limiting competition from parties that were not part of the arrangement."<sup>162</sup> The Somozas also typically used pacts with the Conservative party of their era to engineer their re-election as presidents of the republic.

Today's Liberal-Sandinista entente cannot be compared directly to pacts of the past. The Nicaragua of the Somozas was a true dictatorship, with military power centralized in the hands of a familial dynasty, which rigged elections to stay in power, did not brook real opposition, and suffered no institutional counterweights. During most of the Cold War, the Somoza tyranny also enjoyed firm foreign backing from the United States. None of this holds true today. Though institutional counterweights to executive power remain weak, the armed forces are no longer simply an instrument of presidential whim. The country has passed through several elections which, while not unblemished, have been more or less fairly contested. Though they are currently dominant, the resurgent Liberals cannot count on remaining in power for decades.

The falsity of easy historical analogies, however, does not dispel deep concern about the trend of Nicaraguan politics. A prime worry is over the fate of democratic institutions, whose

consolidation since 1993 has been at best erratic. The denouement of the Jerez affair suggests the direction in which big-party colonization of key positions of institutional power may lead both the CGR and the court system, the two institutions on which any eventual consolidation of the fragile rule of law in Nicaragua most depends.

There are countervailing forces working against this troubling trend. In Nicaragua's private sector, both the large oligarchic interests and the lesser elements represented in the Higher Council of Private Enterprise (COSEP) have recently bestirred themselves to more vigorously oppose corruption and governmental authoritarianism. Though prone to sensationalism, the news media have also displayed greater tenacity and sophistication in investigating malfeasance by those in public office. And both international organizations and NGOs have funded myriad initiatives to strengthen institutions.

Though important, the role of international actors in the consolidation process should not be overstated. Aleman has signaled to donor countries that his aid-dependency calculus is different from Mrs. Chamorro's. In semi-chronic crisis during her administration, Nicaragua was vulnerable to threats of aid cut-offs. In contrast, with a degree of economic recovery underway and fortified by his pact with the FSLN, Aleman appears to believe that the tables have turned—international donors have invested so much in Nicaragua, and developed so many vested interests, that they need to aid him as much as he needs their assistance. If this calculus prevails, international leverage over Nicaragua's political evolution diminishes.

The UNDP, IDB, IRBD, USAID and a host of foreign governments have executed an impressive range of programs designed to strengthen democratic institutions at all levels. These programs are increasingly complemented by efforts to assist the growth of advocacy capabilities in civil society. As the pact negotiation was winding up, a number of these expressed discontent and dismay over the changes they saw coming. But the foreign players were

unable to prevent the pact from coming to fruition.

Since January 2000, important bilateral actors have exerted pressures designed to steer the agreement's implementation. But, as the example of the Nordics and the Comptroller suggests, it cannot be convincingly argued that they have exercised much influence over how the political pact has played out so far. On July 11, a delegation of bilateral donors visited the CSE to urge greater inclusiveness in this year's municipal race, only to be met with charges that they were interfering in Nicaragua's internal affairs.<sup>163</sup>

In the course of the HIPC process, foreign donors will continue to provide incentives and expertise to promote further institutional strengthening. But in all likelihood, the IMF and World Bank will vote to permit Nicaragua to reach "decision point" in the HIPC debt reduction procedure before the end of the year 2000, in exchange for a series of commitments from the government to strengthen institutions later. A decision point occurs when countries declared eligible for debt reduction are formally accepted into the HIPC program. They undoubtedly believe that getting Aleman onboard HIPC now will give them greater leverage down the line. But whether those commitments will be fulfilled before HIPC "completion point" remains to be seen, and will be subject to further bargaining. At "completion point," a large volume of bilateral and multilateral debt stock will, in theory, be forgiven.

#### THE PRICE OF POLITICAL EXCLUSION

Institutional consolidation, then, depends fundamentally on what Nicaraguans do. With the dominant party leadership blocking systematic reform, progress in this area depends vitally on the emergence of new competitors and new leaders—in short, on a turnover in the party political elite. But as we have seen, the reformed election law is working to inhibit this turnover. The law and its implementation have proven to be so burdensome on all but the largest parties as to invite haste, lead to frustra-

tion, and provide incentives to drop out of participation.<sup>164</sup>

The circle of players in Nicaraguan politics is therefore narrowing.

There is merit to arguments that the new elections law has worked to end the formation of “sofa” parties of one or two leaders who hoped to benefit from easy public campaign money and a chance to squeeze over the relatively low threshold necessary to win public office. But they have also worked to shut out participation by new actors, including young people and honest business elements entering the political game for the first time.

As a test of the pact-makers’ power to achieve their objectives the reformed election procedures worked almost to perfection. Although fraud charges flew freely during and after the signature verification, they were not substantiated, and the national observer group Ethics and Transparency has not supported them. To all appearances, a draconian law was itself sufficient to exclude most of those whom the pacters wanted to exclude without having to resort to the rigging of results.

Only one group seeking to form a new political party managed to place a completed application before the CSE, the National Unity Movement (MUN) headed by former Defense Minister Joaquin Cuadra. Jose Antonio Alvarado’s Democratic Liberal Party (PLD) began the qualification process, but they failed to get CSE certification that they had formed municipal boards in all municipalities as required by law. Alvarado alleges that the boards were established but that representatives of Departmental Electoral Councils failed to show up to verify the process. CSE President Rivas confirmed to Carter Center representatives that electoral authorities did not have the capacity to meet the rigorous timetable submitted by the PLD. Alvarado has filed suit against the CSE.

In the case of the MUN, the CSE has confirmed that a sufficient number of signatures of eligible voters were submitted, but is conducting a signature-by-signature verification of

authenticity. The Council must also certify that the MUN formed municipal boards in accordance with the law. During the process of verification, the CSE ruled that all signatures must be from voters on the rolls in 1996, and not from voters since added to the rolls. This ruling was not applied to other parties who applied earlier. When it became obvious that the CSE could not complete the verification process prior to the November 5 municipal elections (the electoral law says that for parties to be eligible to compete in national elections next year they must have been certified by the time of the municipal elections), after significant internal arguments between FMLN and PLC magistrates the CSE decided to postpone a decision until after the municipal elections but to make the date of postponement the effective date of certification.

This last decision came after significant international pressure from donor governments and election observer missions, but it is not at all clear whether the MUN will ultimately be certified. FSLN magistrates have privately suggested that there are problems with some of the municipal boards of the MUN, and former CSE president Mariano Fialos believes that the decision to make the effective date prior to the municipal elections even though the actual decision will be made later is vulnerable to constitutional challenge under Nicaraguan law.<sup>165</sup>

After analyzing the outcome of the signatures tangle, the national observer group Ethics and Transparency criticized the 3% signatures requirement in Law 331 as unnecessary and onerous. The group pointed out that, in effect, this requirement had forced parties to present up to 250,000 signatures, nearly 10% of the electoral roll, to pass the verification hurdle. Ethics and Transparency closed its brief calling for “a prompt reform of the current election law to suppress this requisite, which has been demonstrated in practice...to be a mechanism that promotes the undemocratic exclusion of different political options, contradicting the political pluralism guaranteed in the constitution.”<sup>166</sup>

To this we add that the laws requirements for coalitions in effect outlawed them.

For a democratic system that must constantly renew people's faith in the possibilities for peaceful alternation in office, this is a dangerous outcome and one that, if prolonged, can only breed future discontent and apathy. Indeed, as indicated below, voter turnout in November was substantially down. Compared to 1996, voters who might have preferred an alternative to the Liberals or the FSLN but saw none that they liked stayed home in very large numbers.

#### WILL THE PACT ABIDE?

With the pacting parties in firm control of the National Assembly, what are the prospects for further election reform? As long as the PLC and FSLN remain united in their purposes, the answer is probably "none." But if Arnoldo Aleman and Daniel Ortega have a joint interest in sharing space in institutions, they are—at least for the moment—still electoral rivals. Each leader gambled that the pact would favor his pretensions—the *constituyente* in the case of Aleman and a comeback chance for Ortega—as well as provide them with protection and immunity from attack.

Arnoldo Aleman wants the political battles in 2000 and 2001 restricted basically to the PLC and FSLN. Given the lingering Sandinista-anti-Sandinista polarization among voters, he believes an election featuring only the two big players is one his party cannot lose. In contrast, Daniel Ortega needs at least one other contender to thwart this scenario. The Conservative Party's qualification to participate in the coming elections was thus a boost for Ortega's fortunes, and an indication that he, not Aleman, had won the pact gamble.

The results of the municipal elections at first glance seem to support this interpretation. The overall number of municipalities controlled by the FSLN and the PLC did not change. (The Liberals bested the FSLN 92–51 in 1996 and 94–52 this year, with the Conservatives taking 5 this year.) But the Sandinistas did significant-

ly better in larger cities, taking Managua, Matagalpa, Chinandega, Tipitapa, Diriamba and Juigalpa from Liberal incumbent governments and winning again in Leon and Esteli. The PLC held on to Masaya and Jinotega, but in Granada the incumbent Liberal forces finished third while the Conservative Party gained control. The FSLN also increased its share of the valid vote over the 1996 municipal results from 31% to 40.4%, closing a 9 point gap to 1 point.<sup>167</sup>

However, a closer look at the results does not suggest an overall pattern of the Liberals losing percentage share due to gains of the Conservatives benefiting the Sandinistas. Rather the Liberals suffered an absolute vote decline of 9%. The conservative party did gain, but votes going to parties other than the big two declined drastically, by 43%. And the Sandinistas gained absolute numbers of votes (15%).<sup>168</sup>

The results of the election suggest that the exclusionary impact of the pact affected voter participation. The number of valid votes cast was 174,000 less than in the 1996 municipal elections despite an increase of 366,000 registered voters. Some of the decline is probably due to the fact that this was the first time municipal elections were held separately from presidential and national assembly elections. But the extent of the decline, viewed in light of the above cited public opinion polls about the Pact, strongly indicates an increase in voter cynicism and apathy. Calculating valid votes as a percentage of the electoral roll there would appear to have been a drop in turnout of 20 points, from 75% to 55%.<sup>169</sup>

The distribution of the vote also suggests that the elimination of parties, and the virtual outlawing of coalitions, was a significant factor in the decline. Votes for all other parties declined by 42.5%.

Decline in participation very likely worked to the advantage of the Sandinistas. The Sandinistas made it a closer contest and can take heart in increasing their votes. But given the increase in the number of registered voters



it is much easier to perceive a strong decline in interest than an increase in popularity. The Sandinistas increased vote amounted to exactly the same percentage of registered voters (22%) that they got in 1996.

Given these results, President Aleman backed off from his proposed *constituyente* in early December, again an indicate of a relative increase in FSLN strength. But the FSLN's success, particularly in Managua may well have been due to another chapter in the Pact's exclusionary strategy—the crude gerrymander that prevented a mayoral run by the popular new member of the Conservative Party, Pedro Solorzano. The Pactmakers cleaved off two areas of Managua into separate municipalities (one won by the FSLN, the other by Aleman) and declared that Solorzano no longer lived in Managua.

A December, 1999 poll in Managua rated the positive images of twenty two political figures (subtracting unfavorable ratings from favorable). Solorzano easily topped the field with a plus 68. Others who did well included former president Violetta Chamorro (plus 57), soon-to-ousted Comptroller Jarquin (plus 47). Herty Lewites (the FSLN candidate who then did win Managua) had a plus 18 and Cardenal Obando y Bravo a plus 17. At the bottom of the pack were D. Ortega (minus 10) and A Aleman (minus 18).<sup>170</sup>

With a year to go, the Conservatives have time to build on their limited success in the municipal elections, and in Pedro Solorzano would have a popular candidate who could not be gerrymandered out. With Aleman apparently out, Ortega (and so far Aleman has prevented the emergence of any strong alternative PNC candidate) could end up in the scenario he wanted to avoid—a two man race. Solorzano could pull votes from Liberals (and so far Aleman's monopoly in the party has not prevented a strong, nationally known figure), from Conservatives, and from the many thousands who sat out the 2000 election..

The results may also lead to a significant fight within the CSE over certification of the

MUN. The PLC can only interpret the results to mean that its chances are diminished without the presence of a party that can draw votes away from the FSLN. At the same time, the Sandinistas are likely to be even more vigorous in trying to exclude the MUN. Infighting between the pact-makers could conceivably create an opening for positive change. The crunch may come in November 2001 if the Conservative party gathers enough strength to be a serious contender for power. Would the parties in control of the CSE then conspire to block a Conservative victory? Alternatively, would one of the two negotiate with the Conservatives to produce some other outcome?

Our own view is that Nicaragua is not predestined to suffer a new breakdown of political order. But in a region where democratic progress has appeared to run aground in several countries, its current course is worrying. Ten years after the fall of revolution, Nicaragua appears to be trapped in a vicious cycle. In this cycle, politics is dominated by caudillos who benefit from the public treasury while institutions fail to curb the impunity of the powerful. Meanwhile government is insufficiently effective at overcoming entrenched poverty. As a result, people's faith in democracy sputters, large numbers of voters stay home, and problems of public order simmer. At the end of one cycle, unending poverty and the attendant lack of opportunities in life prompt a new cohort of political hopefuls to eye the government purse, and the cycle begins anew.

While Nicaragua's international friends can and must firmly support the strengthening of enfeebled democratic institutions and make clear their opposition to today's trends, the burden of preventing a failure of the democratic project will fall, as it has so many times in the past, on Nicaraguans, themselves. Their long history of resistance to authoritarian rulers and continuing struggles to participate effectively in governance provide reasons to be optimistic, even as the pact-makers celebrate the fruits of their uneasy alliance.

# ENDNOTES

## PROLOGUE

(pages 1–2)

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## BASIC POLITICAL TRENDS: 1990-2000

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Granada: 1992–1999," *El Observador Económico*, FIDEG, no. 94, November 1999; and Banco Central de Nicaragua, *Informe Anual 1999*, pp.23–24.

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23 For an analysis of what went wrong, see Hemisphere Initiatives, *Democracy Weakened?: A Report on the October 20, 1996 Nicaraguan Elections*, November 1997.

## THE PACT

(pages 7–11)

- 24 For official texts of the constitutional and electoral changes, see *Constitución Política de la República de Nicaragua*, First Edition 2000 and *La Gaceta: Diario Oficial*, January 24, 2000, pp.361–88.
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- 27 *Confidencial*, “Managua: Pedro Solorzano adelante,” December 12–28, 2000.
- 28 Daniel Zovatto and Tatiana Benavides, “Análisis de la reforma electoral nicaragüense promulgada el 24 de enero 2000,” mimeo, n.d. See also *Confidencial*, “Ley electoral nica desputa con barreras,” March 12–18, 2000.
- 29 A municipio in Nicaragua is similar to a county in the US, and generally consists of one or more major towns surrounded by a rural hinterland.
- 30 In the 1996 elections, only the PLC, the FSLN and the evangelical party Camino Cristiano exceeded this 3% threshold.
- 31 *La Prensa*, “Atol con el dedo,” January 27, 2000.
- 32 Interview with Daniel Ortega in *El Nuevo Diario*, “Ortega descalifica toda disidencia,” November 27, 1999.
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- 35 *La Tribuna*, “¿Qué se hicieron los demócratas?,” February 7, 2000.
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## WHO BENEFITS?

(pages 12–18)

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- 42 Interview with Josefina Vannini, former Liberal vice-minister for foreign relations, July 20, 2000.

- 43 For a sample, see *La Tribuna*, “Reflexiones en cuanto a la crisis del PLC,” May 11, 1999; “Adendum a mis reflexiones liberales,” September 10, 1999.
- 44 *La Prensa*, “Bolaños condena checazo y pide que haya sanción,” March 26, 2000.
- 45 Interview, Jose Antonio Alvarado, July 5, 2000.
- 46 *Confidencial*, “Duro golpe al municipalismo,” March 14–20, 2000.
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- 48 *Confidencial*, “Lógica política en la rotación del gabinete,” July 26–August 1, 1998; “Rotación partidaria,” September 26–October 2, 1999.
- 49 *La Tribuna*, “Anuncian Plan Nacional de Educación para adecuarlo al desarrollo del país,” May 7, 2000.
- 50 *Interview*, municipal expert Manuel Ortega Hegg, June 20, 2000.
- 51 *Confidencial*, “Ejecutivo realizara carambola a dos bandos,” November 2–8, 1997.
- 52 *Confidencial*, “El rostro empresarial del ejército nicaragüense,” November 30–December 6, 1997.
- 53 *Confidencial*, “Suspensión de proyecto podría repatriar fondos europeos,” July 25–31, 1999; “Provivienda sigue paralizado,” August 15–21, 1999.
- 54 *Confidencial*, “Represión fiscal asfixia a empresarios,” November 21–27, 1999.
- 55 *Confidencial*, “No hay reglas del juego claras,” September 5–11, 1999.
- 56 Interview with *La Prensa* editor Luis Sánchez, June 25, 2000.
- 57 *La Prensa*, “¿Cuánto posee Alemán?,” March 6, 2000.
- 58 *Confidencial*, “La supercarretera de Alemán,” March 7–13, 1999.
- 59 *Confidencial*, “Modultecsa en millonaria construcción de puentes,” March 21–27, 1999.
- 60 *Confidencial*, “Cooperantes inquietos por contratación de 50 megavatios,” April 19–25, 1998.
- 61 *La Prensa*, “Donald Spencer: es trama política,” September 8, 1999.
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- 63 The Costa Rican polling firm CID-Gallup creates these scores by subtracting the percentages of respondents with negative judgments of a government’s performance from those with a positive judgment.
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(pages 18–34)

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 104 *La Prensa*, "Jerez hace su gusto con juez," June 22, 2000; *El Nuevo Diario*, "Aumentan evidencias de juicio venal," June 23, 2000.  
 105 *El Nuevo Diario*, "Centeno reta y Cordova replica," June 24, 2000; *La Prensa*, "Aquí no hay evidencias," July 3, 2000.  
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 107 *La Prensa*, "Juez Walter Solís culpa al sistema," July 4, 2000.  
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October 1996 and Hemisphere Initiatives/WOLA, *Democracy Weakened? A Report on the October 20, 1996 Nicaraguan Elections*, November, 1997.

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119 *La Prensa*, "Corte Suprema sostiene pacto," July 4, 2000.

120 *Confidencial*, "FSLN controla columna vertebral de elecciones," July 23–29, 2000.

121 *La Prensa*, "Le corrieron en el DGI por negar la firma al PLC," March 17, 2000.

122 *La Prensa*, "Rebotan firmas de respaldo al PLC," April 27, 2000.

123 In early May, the CSE decided it would not review the totality of the signatures submitted by a given party, only a number sufficient to establish if the party had reached the 3% requirement. Observers later criticized the Council for not proceeding to publish lists of the signatures left unreviewed so that other parties could know if they could use them or not. *Ética y Transparencia*, "See "Pronunciamento de Ética y Transparencia en torno al proceso electoral municipal," July 18, 2000.

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127 *El Nuevo Diario*, "Sigue el jueguito fraudulento en el CSE," June 27, 2000; *La Prensa*, "Alerta verde en Partido Conservador," June 29, 2000.

128 *La Prensa*, "Firmas son del MDN," June 7, 2000; *El Semanario*, "La firma," June 8–14, 2000; *La Prensa*, "Doña Violeta pide al CSE que le anulen su firma," June 10, 2000.

129 *La Tribuna*, "MRS exige transparencia al CSE," July 7, 2000.

130 *El Nuevo Diario*, "CSE dedicado a confiscar firmas," July 15, 2000; *La Prensa*, "MRS al filo de la inhibición," July 15, 2000.

131 *El Nuevo Diario*, "Bloque contra fraude," July 1, 2000. The parties included were the PCN, MRS, PLN, MSLN, MUC, MUN, MPDN, PRN. and ALCON.

132 *El Nuevo Diario*, "Ultimatum al CSE," July 2, 2000.

133 *La Prensa*, "Movimiento antifraude llamará a protestas si CSE no elimina verificación," July 5, 2000; *La Tribuna*, "Denuncian ante cuerpo diplomático las arbitrariedades del CSE," July 7, 2000.

134 *La Prensa*, "CSE inicia verificación de firmas," June 8–14, 2000. HI wishes to thank the national observer group *Ética y Transparencia* for clarifying the mechanics of this procedure. Interview, Nadia Arévalo, ET training coordinator, July 21, 2000.

135 *La Prensa*, "Conservadores a la pelea," July 16, 2000.

136 CID-Gallup Latinoamérica, *Opinión Pública Nicaragua: Abril 2000*, pp. 14, 21. The poll was conducted March 23–29, 2000.

137 *El Nuevo Diario*, "Dejen que participe Pedro Solórzano," *El Nuevo Diario*, March 19, 2000.

138 *La Prensa*, "Navarro no levanta cabeza," and "La candidatura de Wilfredo Navarro no logra impactar," March 13, 2000.

139 *La Prensa*, "Alvarado adelanta renuncia," May 7, 2000.

140 *La Tribuna*, "Alvarado inhibido;" *El Nuevo Diario*, "Brutal golpe a Alvarado," May 17, 2000.

141 *La Tribuna*, "Juicio político afecta al país;" *La Prensa*, "Podemos encontrar dificultades en Washington," May 22, 2000.

142 *La Tribuna*, "Surge Movimiento de Liberales por el Cambio," July 7, 2000.

143 *El Nuevo Diario*, "Juventud del PLC apoya a Alvarado;" *La Prensa*, "Encapuchados salen en apoyo de Alvarado," July 15, 2000.

144 *La Prensa*, "Se esperan enfrentamientos liberales por dedazos," April 29, 2000.

145 *El Nuevo Diario*, "Gómez: Alemán nos traicionó," May 8, 2000; Se pasan al PLN en medio de vivas a los Somoza," May 11, 2000.

146 *La Tribuna*, "Directivos de Masaya abandonan el PLC," May 9, 2000.

147 *El Nuevo Diario*, "Casco oficializa su renuncia," March 25, 2000.

148 *El Semanario*, "El FSLN dejó de ser opción electoral," February 2–8, 2000.

149 *7 Días Ilustrado*, "Me siento más comandante que doña," March 23–30, 2000; *El Semanario*, "En Nicaragua no hay oposición," March 23–29, 2000.

150 *El Nuevo Diario*, "Mencionan a varios candidatos FSLN," March 27, 2000.

151 *La Tribuna*, "Ortega no debe postularse," May 7, 2000.

152 *El Nuevo Diario*, "Vencer el miedo," March 14, 2000. [Vilma Nuñez]. *El Semanario*, "Hay terrorismo interno en el Frente Sandinista," March 9–15, 2000.

153 *La Prensa*, "FSLN se miitariza," June 12, 2000.

154 *La Prensa*, "Maquinaria electoral rojinegra falló en 1996," July 10, 2000.

155 *Confidencial*, "UNAG toma distancia; FNT mantiene apoyo," June 25–July 1, 2000.

156 *El Semanario*, "Contrarreforma agraria a la vista," March 9–15, 2000; "Campesinos toman la palabra a diputado," March 16–22, 2000.

157 *La Tribuna*, "La tercera fuerza, el eslabón perdido de la política nacional," February 6, 2000; *Confidencial*, "¿Tercera fuerza?: Un enigma," January 23–29, 2000; *Confidencial*, "Intento de "tercera fuerza" se dispersa," February 13–19, 2000; *El Semanario*, "Coalición es programática, no ideológica," February 24–March 1, 2000; *La Prensa*, "MDN postula a Lucía Salvo," March 22, 2000.

158 The parties were prior to Jarquín's move: Movimiento Democrático Nicaragüense (MDN), Unidad Social Cristiana (USC), Movimiento Renovador Sandinista (MRS), Proyecto Nacional (PRONAL), Movimiento de Unidad Revolucionaria (MUR), Alianza Popular Conservadora (APC), Nicaragua Puede and Nicaragua Joven.

159 *Tiempos del Mundo*, "General Cuadra no se siente amenazado por abandonar el FSLN," May 25, 2000. The Conservatives have in fact negotiated support from other parties too small to survive on their own, and will go into the municipal elections backed by the Liberal Independent party (PLI), the Nicaraguan Democratic Movement (MDN) and other groupings. *La Prensa, Triple Empate*, August 22, 2000.

160 *La Prensa*, "Solorzano inhibido," August 9, 2000.

## CONCLUSIONS

(pages 35–39)

161 The accusation was aired on Channel 2's national news program TV Noticias on August 15. See also *El Nuevo Diario*, "Confirman atraco PLC," August 16, 2000. Second Report of The Carter Center Mission to Evaluate the Nicaraguan Municipal Elections, November 1–8, 2000.

162 Interview in *Tiempos del Mundo*, "Si no se consolida la tercera vía, habrá liberalismo para rato," February 24, 2000.

163 *El Nuevo Diario*, "ACSE aferrado al fraude," July 13, 2000.

164 Even the Conservatives, the only party to make it through, lost 53% of its 227,454 signatures in the first verification phase. The losses included 57,296 (25%) due to invalid cédula numbers, 26,545 (12%) due to duplication with other parties, and 17,551 (8%) to duplication on its own list. Official Consejo Supremo Electoral data, July 15, 2000.

165 Interview with Mariano Fialos, November 5, 2000.

166 Ethics and Transparency, "Pronunciamiento en torno al proceso electoral municipal," July 18, 2000.

167 This is in contrast to the 1996 presidential vote in which Alemán won 51% and Ortega 38%. Other parties captured a

larger share of the municipal and Assembly votes in 1996 than they did in the presidential election.

168 The national totals mask significant regional and urban rural differences. In 91 small municipalities with under 7500 valid votes cast the Liberals had 46% of the vote compared to the FSLN's 36%. The Liberals took 67, often by huge margins particularly in Madriz, rural Matagalpa, Chontales, Boaco, Nueva Segovia and the Southern Atlantic Autonomous Region. The Liberals also outdistanced the FSLN in medium sized municipalities (measured by numbers of valid votes) by 8 points, but in the 8 largest municipalities (not counting Managua) the FSLN finished 7 points ahead of the Liberals.

169 A more normal calculation of turnout is the percent of total votes to registered voters, but those data are not available to us as we go to press. Our calculations of 1996 municipal data are based on data published in the daily newspaper *La Prensa* for each municipality. Those calculations are made more difficult by the fact that election problems in 1996 eliminated the counting of the votes of about 5% of the voting tables, predominantly in the municipalities of Managua and Matagalpa.

After the election the final playing out of the vote count probably increased citizen cynicism. The Sandinistas claimed Liberals on the CSE were preventing final results by boycotting CSE meetings. While the delay went on, disturbances broke out in several municipalities. Then, more than three weeks after the election, Daniel Ortega mounted demonstrations against the CSE demanding correct final results. The CSE produced the results in the midst of this political theater. This endgame did not exactly shore up the pactmakers' argument that better governability would result from the Pact.

170 M&R Consultores, 2da. Encuesta, Elecciones Municipales Managua 2000, December 1–8, 1999.

Hemisphere Initiatives has published the following reports. Please send requests to Hemisphere Initiatives c/o Jack Spence, jack.spence@umb.edu or jackspence@terra.com.br.

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*Nicaragua's Elections: A Step Towards Democracy?*, Ralph Fine, Jack Spence, George Vickers and David Krusé, January 1990.

*Endgame: A Progress Report on Implementation of the Salvadoran Peace Accords*,\* George Vickers and Jack Spence with David Holiday, Margaret Popkin and Philip Williams, December 3, 1992, 16,500 words.

*Justice Impugned: The Salvadoran Peace Accords and the Problem of Impunity*, Margaret Popkin with Vickers and Spence, June 1993, 11,000 words.

*The Voter Registration Tangle*,\* Madalene O'Donnell with Vickers and Spence, July 1993, 11,000 words.

*Risking Failure: The Problems and Promise of the New Civilian Police in El Salvador*, Bill Stanley with Vickers and Spence, September 1993, 15,000 words.

*Voter Registration and the Tasks Ahead*,\* Madalene O'Donnell with Vickers and Spence, November 1993, 11,000 words.

*Toward a Level Playing Field?: A Report on the Post-War Salvadoran Electoral Process*,\* Jack Spence and George Vickers, January 1994, 15,000 words.

*A Negotiated Revolution? A Two Year Progress Report on the Salvadoran Peace Accords*,\* Jack Spence and George Vickers with Margaret Popkin, Philip Williams and Kevin Murray, March 1994, 24,000 words.

*Rescuing Reconstruction: The Debate on Post-War Economic Recovery in El Salvador*,\* Kevin Murray, with Ellen Coletti, and Jack Spence, and Cynthia Curtis, Garth David Cheff, René Ramos, José Chacón, Mary Thompson, May 1994, 35,000 words.

*El Salvador's Elections of the Century: Results, Recommendations, Analysis*,\* Jack Spence, David Dye, and George Vickers with Garth David Cheff, Carol Lynne D'Arcangelis and Ken Ward, July 1994, 25,000 words.

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*Chapultepec Five Years Later: El Salvador's Political Reality and Uncertain Future*,\* Jack Spence, David R. Dye, Mike Lanchin, and Geoff Thale, with George Vickers, January 1997, 28,000 words.

*Democracy and Its Discontents*, Judy Butler, David R. Dye, and Jack Spence with George Vickers, October 1996, 24,000 words.

*Democracy Weakened: A Report on the October 20, 1996 Nicaraguan Elections*,\* Jack Spence, November 1997, 15,000 words. A co-production of Hemisphere Initiatives and the Washington Office on Latin America.

*Promise and Reality: Implementation of the Guatemalan Peace Accords*, Jack Spence, David R. Dye, Paula Worby, Carmen Rosa de Leon-Escribano, George Vickers, and Mike Lanchin, August 1998, 37,000 words.

\* available in Spanish



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