



# NICARAGUA

CAPITAL: Managua  
POPULATION: 5.7 million  
GNI PER CAPITA (PPP): \$2,620

<b>SCORES</b>	<b>2006</b>	<b>2010</b>
ACCOUNTABILITY AND PUBLIC VOICE:	4.44	3.31
CIVIL LIBERTIES:	4.13	3.86
RULE OF LAW:	3.61	3.43
ANTICORRUPTION AND TRANSPARENCY:	3.67	3.21

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

**David R. Dye**

## INTRODUCTION

The election of Daniel Ortega as president in November 2006 has launched Nicaragua on a path of radical change, as the leader of the left-wing Sandinista National Liberation Front (FSLN) seeks to install a variant of the authoritarian popular democracy he headed in the 1980s. This transformation has seriously compromised the country's fragile electoral democracy, which had managed to survive, but did not set down strong roots, during the 16 years since Violeta Chamorro ousted the Sandinistas from power in a 1990 election. The prospects for free elections in the future and the rights of regime opponents to political organization, assembly, and mobilization are particularly imperiled. Ortega resorted to flagrant fraud when he was unable to win the November 2008 municipal elections fairly, signaling his willingness to subvert democratic values in his efforts to retain power.

Originally the coordinator of the Sandinistas' revolutionary junta, Ortega settled in as the undisputed leader of the party after its defeat in the 1990 elections. The FSLN failed to remake itself as a democratic party of the left during the subsequent decade, preferring to use confrontational tactics to defend the interests of its constituents against the "neoliberal" policies of successive postwar governments. When this strategy lost steam at the end of the 1990s, Ortega resorted to penetration and corruption of state institutions through high-level

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political deal-making as a way to promote his interests, with a growing focus on regaining the presidency. The effort was aided by the failure of the Chamorro administration and the Liberal Constitutionalist Party–led governments that succeeded it to strengthen democratic institutions or mitigate the discontent caused by massive poverty and economic inequality.

After his 2006 election, Ortega aligned Nicaragua with the ideological if not the policy framework of Venezuelan president Hugo Chávez’s “Bolivarian revolution.” With the assistance of his wife, Rosario Murillo, Ortega has sought to refashion the FSLN as an instrument of political control by creating so-called Citizen Power Councils (CPCs), designed in theory to provide a direct link between the president and the citizens. In the process he has ridden roughshod over existing institutions of municipal autonomy and citizen participation, marginalizing civil society organizations that oppose his government and channeling resources to his supporters.

Because the FSLN holds only 38 of the National Assembly’s 91 seats, Ortega has so far relied on an informal alliance with former president Arnoldo Alemán, leader of the Liberal Constitutionalist Party (PLC), to pass legislation. These two leaders, known as the *caudillos* (strongmen) of Nicaraguan politics, sealed political pacts in 2000 and 2004 that divided up power in various state institutions and fostered intense corruption, as evidenced by Alemán’s conviction on graft charges in 2003.<sup>1</sup> More recently, they have discussed reforms to the 1987 constitution that would permit presidents to serve consecutive terms and change the system of government to a French-style semipresidential regime. However, Ortega’s drive for complete power may ultimately abort these changes and undermine the power-sharing arrangement with the PLC, which is seeking guarantees that free and fair elections will be held in November 2011.

Alongside the traditional, clientelist forces represented by the FSLN and PLC, modern opposition parties have gained a foothold in recent years despite harassment from the election authority. The right-leaning Vamos con Eduardo (VCE) movement, headed by former PLC member Eduardo Montealegre, fused with the Liberal Independent Party (PLI) in early 2009 in order to have a party banner under which it could run in 2011. On the other side of the spectrum, the Sandinista Renewal Movement (MRS), whose most prominent leader is Edmundo Jarquín, represents a moderate, social democratic alternative to the ruling Sandinistas but currently lacks legal status.

Persistent authoritarian tendencies and governance problems have impeded Nicaragua’s economic progress. It remains the Western Hemisphere’s second poorest country, with a per capita income of just US\$1,023 in 2007.<sup>2</sup> Though the percentage of Nicaraguans who are poor is stagnant, their absolute numbers are rising, and the distribution of national income is severely skewed. The Ortega administration has tried to combat these trends by expanding access to health and education as well as through novel programs called Zero Hunger and Zero Usury, but adverse economic conditions have so far overwhelmed its efforts. Coupled with the weaknesses in the political system, these severe social deficits have created

a situation in which most citizens, though aware that they are entitled to certain rights, lack the necessary resources to assert and defend them.

<b>ACCOUNTABILITY AND PUBLIC VOICE</b>	<b>3.31</b>
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	3.25
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	2.00
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.00

The 2000 pact between Alemán and Ortega had the effect of completely politicizing the Supreme Electoral Council (CSE), putting it firmly under the control of the FSLN and the PLC. In the wake of the pact, public trust in the fairness of elections slowly declined as incidents of localized fraud cropped up. Ortega won the presidency in 2006 with only 38 percent of the vote, thanks to a rule adopted in 2000 that allows a candidate to secure a first-round victory with as little as 35 percent of the ballots so long as he has at least a five-point lead over his nearest challenger. The Liberal vote was split almost evenly between Montealegre, who took 28 percent as the candidate of the Nicaraguan Liberal Alliance (ALN), and the PLC's José Rizo, who won 27 percent. Although campaigning was vigorous and the national-level outcome was unquestioned, observers denounced localized fraud in the lightly populated North Atlantic Autonomous Region (RAAN) in the aftermath of the voting.

The FSLN subsequently accumulated more power in the electoral authority, leaving all other parties, including the PLC, vulnerable to manipulation and fraud. Public confidence in the electoral system plummeted, except among Sandinistas, after the FSLN ostensibly swept 105 of the 146 municipalities at stake in the November 2008 local elections. Charging that a massive fraud had been committed, the opposition Liberal coalition, composed of the PLC and Montealegre's VCE, claimed to have won in 81 municipalities, including Managua.

During the election process, the CSE had arbitrarily annulled the legal standing of two other parties, the MRS and the Conservative Party (PC), based on supposed violations of internal party rules. It also refused to recognize credible domestic or international election monitors on the grounds that their organizations were biased against the Ortega government and the CSE itself. The contest was also marked by the first significant electoral violence since 1990. In the months prior to election day, Sandinista militants forcibly disrupted protests by the MRS, including a rally in mid-September in León that led to violence. Although the Liberals were allowed to operate freely, their lack of funds made for a lackluster campaign. There was serious intimidation of voters on election day, and opposition poll watchers were forcibly excluded from polling stations before the votes were counted. Moreover, civil society groups alleged that voting sites in opposition strongholds were closed early, and that ballots from those

stations were improperly annulled even as blank votes were marked in favor of FSLN candidates.<sup>3</sup> Violence swelled as club-wielding Sandinista militants confronted opposition protesters on the streets of various cities and towns in the weeks after the voting.<sup>4</sup>

The electoral law (Law 331) spawned by the 2000 pact imposes some of Latin America's stiffest requirements for the registration of political parties and coalitions. Parties must maintain structures in all 153 municipalities and present candidates in every election to preserve their legal standing. Moreover, lack of clarity in the law allows the CSE to arbitrarily exclude or include political parties, and facilitates the manipulation of vote results. Among other shortcomings, the law does not require the CSE to publish full election results broken down by polling place; consequently, significant portions of the vote counts in both the 2006 presidential ballot and the 2008 municipal contest have never been reported.

Campaign finance rules are weak, allowing economically powerful actors to exert undue political influence. Although the law provides significant public funding for party campaigns, it imposes no restrictions on campaign media spending. Rules for the disclosure of campaign donors are imprecise, and enforcement is lax and subject to political manipulation.<sup>5</sup>

Since reaching their 2000 agreement, the FSLN and PLC have used their control over the National Assembly to colonize and subordinate other branches and agencies of government. Their successful appointment of representatives to the Supreme Court gave rise to party benches in the body that took their orders directly from Alemán and Ortega. In 2009, these parties continued to control the judiciary, the comptroller's office, the attorney general's office, and the ombudsman's office, politicizing each and fostering corruption through the resulting lack of checks and balances. In early 2009, the two caudillos were expected to negotiate constitutional reforms that would introduce a semipresidential system, in which executive power is shared between the president and a prime minister responsible to the legislature. However, Ortega dropped this idea in July, preferring to focus on a change that would permit him to serve a second consecutive term as president.

Ortega's strongman governing style has greatly reduced the ability of any social or economic group to influence public policy, which is dominated by close associates of the president and his wife. Making liberal use of tax and customs regulations, Ortega has curbed the extensive influence exerted by domestic bankers and other major entrepreneurs over economic decisions under his predecessor, Enrique Bolaños. Fully a third of the national budget is financed by foreign aid, and multilateral institutions and traditional bilateral donors still enjoy some influence over government policy. However, this has waned as Ortega has come to rely on assistance from Venezuela, which does not attach the transparency and other requirements imposed by traditional donors.

Ortega has also vitiated a 2003 civil service law that requires the recruitment and promotion of public servants to be based on merit. He ousted several

thousand public officials upon taking office, distributing the jobs to FSLN supporters. The resulting loss of expertise has hobbled the government ever since. There are frequent reports that those seeking government jobs must present letters of recommendation from neighborhood CPCs, an abuse reminiscent of the revolutionary period.

The National Assembly continues to grant legal status to new civil associations, including churches, without major restrictions. Under Ortega, however, civil society has been effectively bifurcated into progovernment and antigovernment segments. Under the supervision of Rosario Murillo, the presidency goes through the motions of consulting Sandinista union and popular organizations concerning some social and economic matters. Meanwhile, it stonewalls all attempts by civil society groups it defines as opponents, preventing them from exerting even minimal influence over public affairs. At the local level, the FSLN has also attempted to organize CPCs as privileged channels for citizens to have their voices heard. However, the unelected councils have failed to attract the support of non-Sandinistas and exclude people of other political persuasions, while usurping the functions of local officials and committees.<sup>6</sup>

Under Bolaños, civil society organizations were notably free from state interference. However, during 2007–08, select nongovernmental organizations (NGOs), both domestic and foreign, faced increasing harassment from the tax authorities, the governance ministry, and the attorney general (Public Ministry). This trend culminated in October 2008, when the attorney general raided the offices of the Center of Investigation and Communication (CINCO) and the Autonomous Women's Movement (MAM) without a court order, alleging that the two groups had illegally channeled funds from international sources to political purposes.<sup>7</sup> After an international outcry, in January 2009 the attorney general refrained from bringing charges against the organizations, but the threat of intervention by the governance ministry hangs over their heads. The government has investigated the activities of more than a dozen other organizations, including Oxfam Great Britain, for the same supposed reason.

By mid-2009, the foreign ministry was preparing a manual to regulate the activities of international NGOs, but it later backed off amid donor concerns. The authorities also appear to have foregone changes in the statutes governing local NGOs, perhaps deeming pressures on their funding sources to be a sufficient means of control. Still, government supporters continued to routinely disrupt marches and protest actions by opposition civil society groups, notably the Civil Coordinator, an umbrella organization for Nicaraguan NGOs.

Alone among the four post-1990 governments, the Bolaños administration accorded the constitutionally-mandated National Economic and Social Planning Council (Conpes) a modest, although intermittent, consultative role. In November 2007, Ortega announced a major restructuring of Conpes by decree, with the ostensible aim of packing the body with sympathetic social organizations and especially representatives of municipal CPCs.<sup>8</sup> However, the restructuring has not been effected, with the result that an entity previously

active in advising the government on budgetary matters and antipoverty strategy has become moribund, leaving civil society as a whole without organized access to high-level policymaking.

In contrast to the Bolaños administration, which generally respected freedom of the press and media, the Ortega government has shown unremitting hostility toward major media organizations it identifies as its critics, especially those it links to the “oligarchy.”<sup>9</sup> Although the principal media outlets—television’s Channel 2 and the newspaper *La Prensa*—are held by upper-class families that were historically opposed to the Sandinistas, evidence of a concerted policy intended to sabotage the current government is lacking. Initially, Ortega expressed his hostility mainly through verbal abuse and restrictions on covering official events and activities. The government took more extreme measures amid the political conflicts of late 2008, allegedly including the jamming of several opposition radio stations. In the violent aftermath of the disputed municipal elections, FSLN sympathizers reportedly destroyed equipment at Radio Darío, a local station in León city.

Government advertisements, which carry considerable weight in the overall ad market, are allocated almost exclusively to progovernment outlets. Other media have criticized this as an unfair attempt to manipulate their reporting. Some charge privately that the government also uses the renewal of radio and television licenses as means of pressure. In July 2009, the telecommunications regulator cancelled the license of Radio Ley, a local station owned by a staunch critic of the FSLN. While the government owns Radio Nicaragua and the official gazette, it does not control any media distribution networks or printing facilities. However, it is believed to fund television’s Channel 4, controlled by the Ortega family, along with radio stations linked to the FSLN and a weekly online newspaper called *El 19*. All these outlets skew their coverage strongly in favor of the government.

For the first time since 1990, judicial harassment of the media has become a threat. In April 2008, a Sandinista judge convicted the editor in chief and one of the owners of *La Prensa* on a spurious slander charge, ostensibly brought by CPC representatives.<sup>10</sup> Threats to repeat this abuse have occurred sporadically. The eruption of political conflict in the streets since 2008 has also made journalists the targets of physical attack, including destruction of their equipment. Although violent incidents aimed at squelching political opposition have mainly affected independent journalists, progovernment reporters have on occasion suffered injury in clashes with opposition protesters. There have been no new assassinations of media workers since 2005, but the judicial system’s previous leniency toward the killers of two journalists has aroused concern about impunity. Such concern extends to the nonlethal attacks on journalists noted above, none of which have been properly investigated.

Membership in the College of Journalists, approved by the National Assembly in 2003, is supposedly required to practice the profession, presenting

a latent threat to press freedom. In elections held in early 2009, the government reportedly packed the body with its supporters, reviving fears that the college could work to infringe journalistic freedom.<sup>11</sup> The younger generation of Nicaraguan journalists has largely ignored the college and has so far suffered no repercussions. However, a reform proposed in August 2009 threatened to make membership genuinely obligatory. Like its predecessors, the Ortega administration does not interfere with access to or communications over the internet.

## CIVIL LIBERTIES

3.86

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.63
GENDER EQUITY	3.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	2.25
FREEDOM OF CONSCIENCE AND BELIEF	6.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	3.75

No state-sponsored murders or politically motivated disappearances have been recorded since the early 1990s. Similarly, arbitrary detentions of government opponents, banned by Article 33 of the 1987 constitution, are uncommon. However, a Roman Catholic missionary, Alberto Boschi, was arrested in mid-2008 and later convicted of inciting violence during a political disturbance, a charge local human rights groups deemed spurious. Boschi is currently outside the country awaiting an opportunity to return.

In 2007–08, members of the National Police were alleged to have committed unlawful killings. The most important case occurred at El Encanto ranch in the South Atlantic Autonomous Region (RAAS) in May 2008, when members of a police and military patrol opened fire, killing three workers who confronted them with shotguns.<sup>12</sup> Human rights groups strongly questioned the actions of the authorities, but a local court acquitted the three accused officers. Convictions have been obtained in several other deadly instances of security force brutality in recent years.<sup>13</sup> As in the past, denunciations of physical abuse and degrading treatment against civilians were frequent in relation to the size of the police force, which consists of just over 9,000 officers. Between September 2007 and August 2008, the internal affairs division of the police inspectorate investigated 2,044 complaints against more than 3,200 personnel; of these, 895 received some sort of sanction, and 210 were dishonorably discharged.<sup>14</sup> However, it is not clear how many were remanded to the courts for processing. In general, few court verdicts have been issued against police personnel in recent years, suggesting a significant level of impunity.

While the police inspectorate continues to impose some discipline on personnel who abuse civilians, recent events have called into question the ability of the police to protect opposition parties and civil society organizations from

physical attack in the streets. Such groups attempted in late 2008 and early 2009 to mount protest marches, and the police visibly declined to intervene when government supporters engaged in low-level violence and intimidation. This passive behavior reportedly stemmed from direct presidential orders.

The human rights ombudsman has also grown weaker as a barrier against abuses by the security forces. Pact-making between Ortega and Alemán subjected this entity to political control in late 2004, and its once-substantial credibility and effectiveness have declined enormously. In 2008, ombudsman Omar Cabezas, a Sandinista, displayed blatant bias against opposition forces, publicly describing their attempts to protest the denial of their political rights as “provocations” against the Ortega government. Though annual reports of the ombudsman’s office continue to record hundreds of denunciations of abuses by the National Police and prison officials, they do not detail what action the ombudsman took in response.<sup>15</sup>

With the 2002 criminal procedure code fully in force, instances of long-term detention without trial have waned, though they are still a problem on the Atlantic Coast. Police holding cells, where short-term detainees are routinely held in wretched conditions during their trials, are grossly overcrowded. With 6,701 inmates in 2007, the prison system was running well above its capacity of 5,446. Food rations are clearly inadequate for even minimum nutrition, and medical care and drugs are sorely lacking. Prison guards, who receive human rights training from international donors and the Nicaraguan Human Rights Center (CENIDH), are judged to treat prisoners reasonably well. The position of a special procurator for prisons was created in 2006. However, the Ortega government has on occasion denied independent human rights groups and even the ombudsman access to prisons to monitor conditions. CENIDH reported prison riots in several facilities during 2006–07, due either to poor conditions or to anger over detention without trial. Violence among rival prison gangs is an aggravating factor.<sup>16</sup>

Protection against abuse by nonstate actors is weak. Corruption in the judicial system has fostered impunity in a significant number of drug-related trials, increasing fear in the population and making control of the drug trade more difficult. However, on the highly vulnerable Atlantic Coast, more effective policing in recent years has reduced drug traffickers’ ability to intimidate judicial personnel. Though far less developed than in other Central American countries, juvenile gangs (*pandillas*) cause pervasive insecurity in poor neighborhoods in Managua, where they are linked to narcotics distribution. Since 2003, police efforts to organize vigilance by local residents and civil society activists’ work with youthful offenders have curbed the gangs in certain areas of the capital. Due to the country’s lower incidence of drug trafficking and youth gangs, the murder rate in Nicaragua is well below that of most of its neighbors, but overall crime rates are similar and other violent crimes are rapidly increasing.

The constitution bans discrimination based on gender, ethnic origin, and nationality, though not sexual orientation. Although legal bases for



discrimination suits exist in the new penal code approved in November 2007 and the Equal Rights and Opportunities law passed by the legislature in February 2008, such actions are rare. Women and children are very poorly protected against sexual abuse and domestic violence, which is endemic. In recent years, the Institute of Forensic Medicine has recorded more than 10,000 cases of domestic violence annually, half of them spousal abuse. National Police chief Aminta Granera has augmented her force's training to deal with such violence, which is handled in the first instance by its women's commissariats. The Nicaraguan Human Rights Center has criticized the insensitivity often shown to victims, however, arguing that it amounts to "re-victimization."<sup>17</sup> Beyond the initial contact, the government does little to help, and civil society organizations run most centers for battered women. Despite the fact that the new penal code identifies intrafamily violence as a crime, prosecutions for domestic and sexual abuse remain rare.

The Ortega administration has supported some initiatives designed to combat and compensate for discrimination against women, including the Zero Hunger and Zero Usury programs mentioned above, whose beneficiaries are mostly female. The Equal Rights and Opportunities Law gives some teeth to constitutional provisions banning discrimination, imposing modest fines on officials who flout its precepts.<sup>18</sup> However, human rights groups allege that the law is not being enforced, and that discrimination against women in hiring and wages remains very strong. Sexual harassment is also known to be a frequent problem in the workplace, and little is done to stop it. Although the new legislation may eventually bring some benefits, it is currently overshadowed by the ban on therapeutic abortions, passed by the assembly in 2006 with FSLN support. Women's organizations charge that this prohibition, incorporated into the 2007 penal code, has led to dozens of preventable deaths.<sup>19</sup>

The new penal code outlaws human trafficking. The organized trafficking of young Nicaraguan women to work as prostitutes in other Central American countries and Mexico appears to be increasing. Both the women's commissariats and a national coalition of antitrafficking groups have done educational work in high schools on the problem. Although government efforts to stop the trade are limited in scope, prosecutors have obtained convictions against a handful of traffickers.

The human and civil rights of minority religious groups, mainly evangelical Protestants, are respected without limitation. However, the full exercise of rights by the ethnic minorities of the Atlantic Coast (Miskito, Mayangna, Creole, Garifuna, and Rama) is a distant prospect, particularly in light of the very weak fiscal base of the regional governments. Although committed to social improvements, the Ortega government, like its predecessors, has also sidelined local participation in the planning of regional development. An unacknowledged racism complicates the problem; in early 2009, a Managua discotheque refused to allow entry by black people from the southern Atlantic Coast, raising a storm of protest.<sup>20</sup> On the positive side, pursuant to a law passed in 1993, indigenous

children receive education in their native tongues through the third grade, and in the RAAS most judges are now bilingual in Creole and Spanish.

The 1987 Autonomy Statute, together with existing electoral legislation, mandates some representation for the Atlantic Coast minorities on the autonomous regional councils by requiring that indigenous candidates head the election lists in certain districts. Tokenism has prevailed in implementing this provision, however, as the FSLN and PLC dominate the political scene in these areas; the Miskito-based Yatama party in the RAAN is the only sizable ethnically-based force. With migration from the Pacific Coast constantly altering the ethnic balance to the detriment of the indigenous residents, there have been periodic calls for changes in the existing scheme of political representation to empower indigenous groups, but no action has been taken. In 2003, the National Assembly passed a law providing for the demarcation and titling of indigenous landholdings to stop land invasions by mestizos. But the slow progress in the law's implementation has not stemmed the tide of encroachment, and land-based ethnic tensions simmer. Tensions also rose following the devastation of Hurricane Felix in 2007, which wiped out infrastructure and crops for tens of thousands of RAAN residents. In 2009, a group of activists known as the Council of Miskito Elders declared that the entire RAAN and RAAS zones were seceding from Nicaragua. Though few regional or national authorities took the threat seriously, it highlighted the depth of discontent in the region.

A 1998 law enjoins the government to take positive steps to assist people with disabilities, estimated to number more than 500,000 as part of the legacy of civil war. But aside from occasional public relations efforts, there are no government programs on this issue, and civil society provides the little help that is available. As is the case with women and indigenous people, protection for people with disabilities against discrimination in hiring and wages is basically nonexistent.

Although 75 percent of Nicaraguans are Roman Catholics, there is no state religion, and the government has consistently respected the right of citizens to hold and freely express their religious beliefs.<sup>21</sup> The state places no restrictions on religious observance or education, though only Catholic schools receive subsidies. The government also refrains from interference in the appointment of religious leaders or the internal affairs of churches. There is a long history of strained relations between Sandinistas and the Catholic Church, and Ortega's support for the ban on abortions was viewed as a ploy to reduce opposition to his candidacy from within the Church.

The constitution guarantees the freedoms of association and assembly, with the usual exceptions for military and police personnel. The government long ago ratified the International Labor Organization's Conventions 87 and 88 on freedom of union organization. However, the 1996 labor code makes union organization difficult, as employers can legally fire organizers if they are willing to pay for extensive severance benefits. The restrictive labor code also mandates

complicated and cumbersome procedures for going on strike, making legal strikes rare and dampening the incentive to unionize. Overall, the left-wing Ortega government has done a somewhat better job than its predecessors in protecting union rights and enforcing collective bargaining agreements. A total of 192 new unions were formed in 2008, bringing the increase over a two-year period to nearly 400.<sup>22</sup> Despite this growth, unions are still not significant political actors except in the transport sector, where strikes occasionally force concessions from the government. There continue to be reports of cases in which garment companies in special export-processing zones have thwarted union activities by firing workers or threatening to close factories.

The labor code forbids compulsory membership in unions, and many workplaces have more than one union. Whereas governments after 1990 organized progovernment unions to counter those affiliated with the FSLN, the Ortega government has been accused of attempting to disband non-Sandinista syndicates, particularly in the health system. A 2007 law mandates the creation of professional colleges with broad powers to regulate the activities of their members, but as of mid-2009 none have been set up.

Social and political protests have been frequent since the early 1990s but are almost always small in scale and generally pose no threat to public order. Since mid-2008, the Ortega regime has responded to protest demonstrations with a type of informal repression, sending its supporters (and occasionally members of urban youth gangs) into the streets to impede and intimidate opposition marchers. It simultaneously orders the National Police not to use violence against “the people,” thus facilitating intimidation and violating the opposition’s right to peacefully assemble. Scores of protesters have been injured during these clashes, though there have not been fatalities.

## **RULE OF LAW**

**3.43**

INDEPENDENT JUDICIARY	2.20
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	4.00
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	3.50
PROTECTION OF PROPERTY RIGHTS	4.00

The judiciary’s lack of independence from political influence is one of Nicaragua’s most severe governance problems. The FSLN-PLC pacts have allowed the party caudillos, Ortega and Alemán, to use their control over the National Assembly to handpick loyal magistrates for the Supreme Court, which in turn appoints all lower-level personnel. The independence of the lower-court justices is therefore scant, as the upper ranks interfere pervasively in decisions. A judicial career law passed in October 2004 aimed to provide a nonpolitical merit system for the hiring, promotion, and discipline of lower-court judges. However,

regulations implementing this law were not issued until 2008, and in practice clientelism still dominates in the selection of judges. Both judicial training and general legal education are weak.

As a result of these deficiencies, public and ruling party officials are rarely prosecuted for abuse of power and wrongdoing. In the most celebrated exception to this rule, former president Alemán was convicted on fraud and money laundering charges in late 2003. However, rather than let justice take its course, Ortega used his control over the court system to manipulate the processing of Alemán's appeal and extract political concessions from the Liberal leader. With positions in the appeals courts also divided between the FSLN and PLC, appellate rulings are occasionally used as bargaining cards between the two parties, but rulings in favor of ordinary citizens that unequivocally contradict the interests of the party caudillos are difficult to imagine.

In this environment, the belief that judicial rulings can be bought is widespread. Yet 45 percent of firms polled in a 2006 survey indicated that, whatever the merits of their judgments, the courts could at least enforce them. This percentage is somewhat higher than the Latin American and Caribbean average of 39 percent.<sup>23</sup> Nevertheless, decisions on whether to enforce rulings are subject to political considerations and influence peddling.

According to the constitution, criminal defendants are presumed innocent until proven guilty. A new criminal procedure code introduced in December 2002 established an oral accusatory system, and proceedings are now relatively prompt and generally seen as more fair. A drawback is that the politicized Public Ministry (attorney general) now has most control over which cases are taken to court, a fact that allows politically sensitive cases to be delayed. Human rights defenders argue that many crime victims suffer from this prerogative, as their cases are not pushed forward and they are disadvantaged by mediation procedures designed to reduce the load on the courts and prosecutors.<sup>24</sup> The jury system has also proved to be subject to bribery or pressure from judges, especially in drug cases. The code of civil procedure has not been similarly reformed, and gross case backlogs exist. Courts are absent from outlying rural areas, where a system of judicial volunteers sponsored by the Organization of American States operates alternative dispute resolution mechanisms.

Since 2002, the state has made public defenders available on a limited basis to indigent defendants. Though these lawyers are well trained, there were still just 150 nationwide in 2008, meeting only a small part of the demand.<sup>25</sup> Judges may compel private attorneys to fill this role, but most pay a fine to avoid service. Under the new procedural code, a more professional corps of public prosecutors was recruited and trained by foreign assistance missions. But the public ministry remains politicized, and prosecutors at all levels continue to be pressured by their superiors on how to handle certain cases. In a recent survey, only 16 percent of respondents expressed confidence that a court proceeding would treat them fairly.<sup>26</sup>

The civilian branches of state do not exercise full and effective control over the military and its intelligence branch. Presidential authority is limited to the naming of the three top-ranking officers in the army, and it is unlikely that Ortega will be able to handpick the successor to the current army chief in 2010. While the legislature exercises pro forma supervision of the military budget, there are few outward signs that deputies are informed about its details or question military budget requests. Supervision by the finance ministry and comptrollers general of the assets held in the army's pension fund is similarly weak, leaving it open to possible malfeasance.

Despite this de facto autonomy, the armed forces have refrained from interfering in the political process. They actively resist calls from civilians to become involved in the power struggles among political groups, and have been notably silent concerning the 2008 municipal elections controversy. Both the army and the police receive extensive human rights training from donor groups and civil society organizations. Few army officers have been accused of human rights violations in recent years.

A legal change in early 2007 removed the police force from the purview of the governance ministry and put it directly under the presidency, raising serious concerns that the force could be turned into a politicized instrument of control over the citizenry.<sup>27</sup> In 2008, Ortega ordered a series of changes in the police leadership that critics believe are designed to pave the way for the replacement of the existing chief; one of the new commissioners, in charge of public security, is a relative of Ortega's. Indeed, some suspect that a part of the force is already under Ortega's effective command, as human rights groups claim to have evidence that orders by police chief Aminta Granera on how to handle protest demonstrations have been mysteriously countermanded by subordinates.

The right to individual private property is recognized in the constitution, while cooperative and indigenous communal holdings are covered by ordinary law. The executive branch has not committed acts of expropriation without fair and prior compensation in many years. However, the Ortega government allegedly forced U.S.-based oil firm Exxon Mobil to cede its oil storage tanks in 2007, based on a tax claim whose validity the company disputed; other cases of this kind are rumored to have occurred. Political agents of the FSLN have also been accused of extortion against owners of beachfront property in Tola municipality on the southern coast as well as in other areas.<sup>28</sup> In such cases, favorable court decisions on property litigation—often instigated deliberately for this purpose—are allegedly exchanged for bribes.

Property rights in general are very poorly enforced, and Nicaragua ranked 100 out of 115 countries in a recent index.<sup>29</sup> A politicized and poorly trained judiciary also makes contract enforcement fragile. On procedural complexity and time necessary for contract enforcement, Nicaragua ranks below the Latin American averages.<sup>30</sup> Registration of property is also more cumbersome and time consuming than the already high Latin American averages. An outmoded

set of property registers, administered by the Supreme Court and subject to political manipulation and bribes, contribute substantially to the problem.<sup>31</sup> On a more positive note, the state attorney (*procurador general*) has clamped down on an organization of illegal land traffickers, seeking to stabilize titles for the government's rural supporters. The Ortega authorities have also complied with a 2001 ruling of the Inter-American Court of Human Rights, and have titled 73,000 hectares of land to the Miskito community of Awas Tingni in the RAAN.<sup>32</sup> Nonetheless, groups in the RAAN accused the government of ignoring illegal land incursions in the chaos following Hurricane Felix.

## ANTICORRUPTION AND TRANSPARENCY 3.21

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.75
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	2.75
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	3.00
GOVERNMENTAL TRANSPARENCY	3.33

As is common in Latin America, Nicaraguan public administration is beset by excessive regulations and red tape. However, in a 2006 survey, senior business executives reported spending 9.3 percent of their time dealing with regulations, a bit below the Latin American average and lower than in previous years.<sup>33</sup> This reflects the efforts of previous governments, which eliminated unnecessary regulations in areas of importance to major economic agents, opening so-called one-stop windows for exporters and foreign investors and greatly reducing the time needed to open a business.

Government interference in the economy is minimal. With very few exceptions, the vast system of state enterprises inherited from the earlier Sandinista period has long since been liquidated, many public utilities have been privatized, and few prices are controlled. The FSLN government has voiced a long-term aspiration to renationalize the energy system and other utilities, but no action in this direction has been taken.

The separation of officeholders' public functions from their private interests is established in Article 130 of the constitution, and conflicts of interest are dealt with in the Probity Law approved in mid-2002.<sup>34</sup> The law lacks both coercive power and clarity regarding enforcement. Under the Bolaños administration, which was well regarded abroad for its honesty, 17 percent of firms surveyed by the World Bank indicated that they had to make unofficial payments to get things done, somewhat below the 20 percent regional average.<sup>35</sup> Comparable data for the Ortega period are lacking, but anecdotal evidence suggests that pledges of political support are now as important as money in getting official levers to move.

The law also provides rules for asset declarations by public officials. However, declarations are made only upon officials' entering and leaving office, not on a

yearly basis. More important, the law does not enjoin the comptrollers' office to publish the declarations, greatly reducing transparency. While Bolaños administration officials generally filed asset declarations upon taking and leaving their posts, compliance appears to have slipped during the Ortega period.

An office of public ethics, established in 2003 and now lodged under the presidency, continues to conduct training seminars for public officials concerning the rules described above, especially in the education ministry and local governments, but it has a very low profile overall. Citizens may denounce corrupt acts to the state attorney, the Public Ministry (headed by the attorney general, who is elected by the National Assembly), or the police. In theory, a citizen could also seek an injunction known as a writ of amparo and bring suit before the administrative law chamber of the Supreme Court, but this undertaking is very complex, and given the court's politicization, the chances of success are minimal. Denunciations are relatively rare due to fear of reprisals and the lack of whistleblower protections.

Although a revised budget law passed in 2005 obliges the public universities to account for how they spend a constitutionally mandated 6 percent share of all government revenue, they have so far failed to fully comply. The allocation of some 15 percent of these universities' registration fees to support the Sandinista-dominated university student union (UNEN) has drawn fire as a source of corruption and a prop for political clientelism in which some rectors collude.<sup>36</sup> Cases of public schoolteachers selling grades to students are occasionally reported, but the extent of the practice is difficult to determine. Control over tax collection by the finance ministry is regarded as adequate, but is lax with regard to fees for government services.

Formally speaking, both the general comptrollers of the republic (CGR) and the human rights defense procurator (PDDH, or ombudsman) are independent organs of state elected by the National Assembly. In practice, the institutions have become highly politicized, and their effectiveness is severely compromised.<sup>37</sup> Corruption investigations by the Public Ministry are selective and distinctly lacking in vigor; after letting the five-year statute of limitations on accusations against members of the Alemán administration (1997–2002) expire, it announced in February 2009 that it would prosecute 38 officials of the Bolaños administration, which is not represented politically in the body.<sup>38</sup> In contrast, foreign assistance has strengthened the anticorruption efforts of the state attorney in recent years, and this office now takes some cases to court for prosecution and collects fines levied against officials for violating administrative regulations. The existing code of criminal procedure allows the state attorney to initiate court proceedings in cases of alleged corruption only when the attorney general declines to act.

Coupled with judicial system malfeasance, the limitations described above mean that most corruption allegations are never properly investigated, and courts issue few if any convictions. In 2008, the Global Integrity Index, a measure of the effectiveness of anticorruption mechanisms, accorded Nicaragua a

score of just 58 out of 100, which is considered very low.<sup>39</sup> Although Alemán himself was sentenced to 20 years' imprisonment for fraud and money laundering in late 2003, the Supreme Court overturned this conviction in January 2009, after Alemán assisted Ortega in maintaining his control over the governing board of the National Assembly. This reversed the pattern of prior years, when Ortega used his control over the judicial process to extract concessions from Alemán and enhance his quotas in state institutions under their political pact.

Starting in the Alemán years, newspapers and television became the most vigorous investigators of official abuses, and they have consequently won public confidence. Press exposés of alleged corruption regularly spark at least pro forma responses by relevant state organs, though follow-up is generally lacking. In 2007, one such exposé apparently prompted the authorities to desist from a questionable investment in the energy sector.<sup>40</sup> With political polarization increasing since 2007, muckraking is largely directed at the Sandinista government, and less attention is given to the private sector. The government's response to critical news outlets has generally been to withdraw advertising and restrict their access to public functions.

Nicaraguans still lack practical tools to demand information from most government agencies. However, the assembly passed an access to information law in May 2007, putting a legal framework in place. Despite the exclusion of the armed forces from its purview, the law is basically adequate. More obstructive is the administration's reluctance to implement it. Few ministries and other government agencies have established access to information offices to respond to citizen inquiries, and response rates to journalists' requests have so far been low.<sup>41</sup> A study of government websites in 2007 revealed a stark impoverishment of their content under the current administration.<sup>42</sup>

Under Ortega, the budget-making process has become incomplete and opaque.<sup>43</sup> Because sizable foreign assistance from Venezuela is kept off-budget, a significant volume of quasi-public spending goes unrecorded.<sup>44</sup> Moreover, with Conpes inactive, civil society has lost all chance to provide input into the budget that is officially presented. Once the draft makes it to the assembly, legislative consultations with affected social sectors are spotty in comparison with prior years. Legislative oversight of expenditure and revenue is enshrined in law and is effectively applied, but analysis and debate of budgetary questions by the lawmakers is considered by experts to be relatively superficial. Similarly, the Ministry of Finance and Public Credit publishes a quarterly report on budget execution on its website, but the data are neither complete nor presented in a detailed fashion, and they do not provide a basis for evaluating government policy performance.

Under the Bolaños administration, an Inter-American Development Bank-funded efficiency and transparency program improved transparency in bidding for public contracts. Scandals involving bidding processes nevertheless erupted in Bolaños's last year in office, and anecdotal evidence from businesspeople



indicated that his government did not succeed in decisively curbing unfair manipulation of bidding terms and procedures by public officials. Performance since the beginning of 2007 is hard to assess given the secretive nature of the Ortega government, but several cases have been reported in which contracts were apparently granted to political cronies.<sup>45</sup> The frequency with which either the central or municipal governments ask the comptrollers general to waive bidding procedures in favor of direct contracting (for “emergency” reasons) appears to have greatly increased.

Overall, corruption in Nicaragua is endemic and constitutes a serious brake on development. While already abysmal, Nicaragua’s scores on Transparency International’s Corruption Perceptions Index have gradually declined in recent years (2.8 in 2005, 2.6 in 2006 and 2007, and 2.5 in 2008), and the country has dropped to a ranking of 134 out of 180 countries surveyed.<sup>46</sup> Factors thought to have influenced the most recent measurement are the opacity surrounding flows of Venezuelan aid and frequent use of direct contracting.

In May 2005, major European donors together with the World Bank agreed to begin converting a part of their project assistance into undifferentiated budget support for the central government. However, budget support funds were put on hold after the election fraud in 2008. The U.S. Millennium Challenge Corporation suspended the remaining US\$63 million from its large-scale aid program in Nicaragua for the same reason. Many donors are now assessing ways in which their assistance can be channeled to thwart government attempts to politicize its use.

## RECOMMENDATIONS

- To restore credibility to elections, the National Assembly must appoint CSE members on a strictly professional and nonpartisan basis. The elections law should be reformed to eliminate partisan influence from the rest of the electoral administration, facilitate the registration of parties and alliances, and strengthen checks against fraudulent practices.
- The government should respect the right of opposition political parties and civil society organizations to assemble peacefully in the streets and protest the actions and policies with which they disagree, and refrain from encouraging “counterprotests” designed to intimidate political dissenters.
- Absent a change to guarantee the selection of independent Supreme Court justices, the 2004 Judicial Career Law should be revised to transfer control of the hiring, promotion, and disciplining of all lower-level judges from the Supreme Court to an independent body.
- The executive branch should finalize a general anticorruption strategy, channel all foreign assistance through the official public budget, and ensure that public spending is governed by policy priorities as established by a reactivated, nonpartisan Conpes rather than political or clientelist considerations.

## NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at <http://freedomhouse.org/template.cfm?page=139&edition=8>.

- <sup>1</sup> For a brief discussion of political trends during these years, see David R. Dye, *Democracy Adrift: Caudillo Politics in Nicaragua* (Managua: Prodeni, 2004).
- <sup>2</sup> Banco Central de Nicaragua, *Memoria Anual* (Managua: Banco Central de Nicaragua, 2007), i.
- <sup>3</sup> Grupo Cívico Ética y Transparencia (EyT), “Valoración Preliminar de Problemas Encontrados: Elecciones Municipales 2008,” November 2008.
- <sup>4</sup> EyT, *Informe Final Elecciones Municipales 2008* (Managua: EyT, February 2009).
- <sup>5</sup> Transparency International and the Carter Center noted these weaknesses in their 2006 Crinis project, a comparison of eight Latin American countries.
- <sup>6</sup> These local-level dynamics are discussed in Silvio Prado, *Entre los CDM y los CPC* (Managua: Centro de Análisis Político [CEAP], 2008).
- <sup>7</sup> Iván Olivares, “Asalto Ilegal contra CINCO,” *Confidencial*, October 12–18, 2008.
- <sup>8</sup> Wendy Álvarez, “Conpes Protege los CPC,” *La Prensa*, November 30, 2007.
- <sup>9</sup> For an overview of this topic, see Centro de Investigación de la Comunicación (CINCO), *Estado de la Libertad de Expresión en Nicaragua 2007–2008* (Managua: CINCO, February 18, 2009).
- <sup>10</sup> Eduardo Cruz, “Fallo Abominable,” *La Prensa*, April 19, 2008.
- <sup>11</sup> Yader Luna, “Golpe Bajo al Periodismo,” *La Prensa*, February 22, 2009.
- <sup>12</sup> Centro Nicaraguense de Derechos Humanos (CENIDH) et al., *Violaciones de los Derechos Humanos en Nicaragua: Informe Presentado al Comité de Derechos Humanos* (Managua: CENIDH et al., October 2008), 22–23.
- <sup>13</sup> CENIDH et al., *Derechos Humanos en Nicaragua 2008* (Managua: CENIDH, February 2009), 15–17.
- <sup>14</sup> CENIDH et al., *Violaciones de los Derechos Humanos en Nicaragua*, 30.
- <sup>15</sup> Procuraduría para la Defensa de los Derechos Humanos (PDDH), *Informe Final 2007* (Managua: PDDH, 2007), 12.
- <sup>16</sup> CENIDH et al., *Violaciones de los Derechos Humanos en Nicaragua*, 40.
- <sup>17</sup> *Ibid.*, 14.
- <sup>18</sup> Ley de Igualdad de Derechos y Oportunidades, (Law 648), 13. Among other novelties, the law prohibits employment ads addressed to only one sex and bars the use of pregnancy tests for female applicants.
- <sup>19</sup> Human Rights Watch, *Over Their Dead Bodies* (New York: Human Rights Watch, October 2007).
- <sup>20</sup> José Adán Silva, “Discriminación Es en Todos los Niveles,” *El Nuevo Diario*, February 16, 2009.
- <sup>21</sup> Bureau of Democracy, Human Rights, and Labor, “Nicaragua,” in *International Religious Freedom Report 2007* (Washington, D.C.: U.S. Department of State, September 14, 2007).
- <sup>22</sup> CENIDH, *Derechos Humanos en Nicaragua 2008*.
- <sup>23</sup> World Bank, “Nicaragua: Country Profile 2006,” in *Enterprise Surveys* (Washington, D.C.: World Bank, 2006), 13.
- <sup>24</sup> CENIDH et al., *Violaciones de los Derechos Humanos en Nicaragua*, 16–17.
- <sup>25</sup> Martha Vásquez, “Presupuesto Recortado Golpea a la Defensoría,” *El Nuevo Diario*, March 5, 2009.

- <sup>26</sup> Instituto para la Democracia y el Desarrollo (IPADE), *Tercer Informe de Monitoreo sobre el Estado de la Democracia en Nicaragua* (Managua: IPADE, May 2007), 33.
- <sup>27</sup> For a full discussion, see Instituto de Estudios Estratégicos para Políticas Públicas (IEEPP), *Cuarto Informe de Gestión del Sector de Defensa, Seguridad Pública y Política Exterior* (Managua: IEEPP, January–July 2008).
- <sup>28</sup> Lourdes Arróliga, “Ortega Evade Grave Caso de Corrupción,” *Confidencial*, June 3–9, 2007.
- <sup>29</sup> Anne Chandima Dedigama, ed., “Country Data: Nicaragua,” in *International Property Rights Index 2009* (Washington, D.C.: Property Rights Alliance, 2009).
- <sup>30</sup> World Bank, “Nicaragua,” in *Doing Business 2009: Comparing Regulation in 181 Economies* (Washington, D.C.: World Bank, 2009). Enforcing a contract in Nicaragua takes 540 days, compared with 710 days in Latin America and the Caribbean and 463 days in the countries of the Organization for Economic Cooperation and Development.
- <sup>31</sup> For a discussion of these problems, see World Bank, *Nicaragua: Institutional and Governance Review* (Washington, D.C.: April 17, 2008), 30–38.
- <sup>32</sup> Inter-American Commission for Human Rights (IACHR), “IACHR Hails Titling of Awas Tingni Community Lands in Nicaragua,” news release, December 18, 2008.
- <sup>33</sup> World Bank, *Nicaragua: Country Profile 2006*.
- <sup>34</sup> For basic background on the law, see Transparency International, “Los Estudios de Integridad en Detalle: Servicio Público en Nicaragua,” in *Estudios de Integridad en Centroamérica* (Berlin: Transparency International, 2008).
- <sup>35</sup> World Bank, *Nicaragua: Country Profile 2006*.
- <sup>36</sup> Channel 8’s *Esta Noche* program, conducted by Carlos F. Chamorro, aired these issues on March 11, 2009.
- <sup>37</sup> The World Bank has deemed the impact of the CGR on governmental accountability to be “marginal.” World Bank, *Nicaragua: Institutional and Governance Review*, 50.
- <sup>38</sup> Martha Vásquez, “Lluvia de Acusaciones contra Funcionarios de la Administración Bolaños,” *El Nuevo Diario*, February 20, 2009.
- <sup>39</sup> Global Integrity, “Nicaragua,” in *2008 Global Integrity Report* (Washington, D.C.: Global Integrity). While Nicaragua’s legal framework merited a score of 76, implementation earned a mere 39.
- <sup>40</sup> Oliver Bodán, “Quién Está detrás de Kamuzi Investment?” *Confidencial*, September 9–15, 2007.
- <sup>41</sup> CINCO, *Estado de la Libertad de Expresión en Nicaragua 2007–2008*.
- <sup>42</sup> Sandra Cricianelli, “Los Sitios Web Gubernamentales como Herramientas del Control Social y del Periodismo Investigativo,” *Sala de Prensa 4*, no. 108 (October 2008).
- <sup>43</sup> In 2008, the Open Budget Index judged Nicaraguan budget documents to provide the public with “scant information” and gave them a score of 18 percent, down from 20 percent in 2006.
- <sup>44</sup> Owing to this factor among others, the Índice Latinoamericano de Transparencia Presupuestaria [Latin American Index of Budget Transparency] gave Nicaragua a rating of 40 in 2007, the third lowest among 10 countries surveyed.
- <sup>45</sup> For an example, see Iván Olivares, “INSS-TECNOSA: Gobierno Rectifica,” *Confidencial*, June 8–14, 2008.
- <sup>46</sup> Transparency International, *2008 Corruption Perceptions Index* (Berlin: Transparency International, September 22, 2008).