

Nicaragua

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1. During the civil war (1974-1990), connections among contra supporters, drug traffickers and the military made organised crime a threatening influence in Nicaragua. Nowadays, the threats seem to be more limited because the security situation has improved notably. However, the tactics of criminal organisations tend to change constantly given the geostrategic conditions of Central American countries. Therefore, the risks of penetration of criminal organisations into Nicaragua's political system cannot be underestimated and are associated with three factors at this particular moment:

- I. The increase in organised crime despite the recent decline in murder rates;
- II. The exclusionary character of the pacts between the FSLN and the PLC; and,
- III. The politicised judicial and electoral oversight institutions.

These conditions are described below in sections I, II, III. Sections IV, V, and VI, respectively describe the legal framework for campaign funding, the social response to existing laws and social advocacy for reform, and the recent incidence of corruption and illegal funding.

I. The increase in organised crime despite recent decline in murder rates

2. Nicaragua has considerably **lowered its murder rate** per 100,000 inhabitants from 35.6 in 1996 to 9.8 in 2005. It is now considered one of the safest countries in Central America. This is attributed to police reform based on community policing and efforts to reduce weapons in circulation. Additionally, unlike its neighbours, the gang problem is more limited. However, the incidence of other manifestations of crime is widespread.

3. Like other Central American countries, Nicaragua is a **transit point for drugs** to the US (and Europe to a smaller degree). Traffickers use mainly maritime routes along the Atlantic coast, which is particularly vulnerable to these activities. Ground transportation from Panama via the Pan American Highway is also used.

4. Although there are few conclusive reports, arms still circulating since the civil war nurture **arms trafficking** networks that distribute small arms at the domestic level and more sophisticated and heavy weapons to guerrilla groups in Colombia. In 2001, different sources reported that many of those arrested for gun running turned out to be former contras or members of the Sandinista Army (Arana, 2001). Furthermore, in 2005 the US government expressed concern about the Soviet-made missiles still in the hands of the military that could be stolen and sold on the black market. As a response, the government agreed to destroy 50 percent of the missiles, entering into a bitter confrontation with the two main political parties that oppose total disarmament on security grounds.

5. The border area with Honduras in the autonomous region of the Atlantic coast is the location of diverse forms of crime and corruption such as **illegal logging and trafficking of animals**, often interacting with drug trafficking. In addition, as in Honduras, drug traffickers use the legal exploitation of natural resources as a way to launder money.

6. According to the US Department of State, Nicaragua is a 'concern' location for **money laundering** because the Prosecutor General's Office lacks a Financial Analysis Unit and 'uses a narrow interpretation of the money laundering law and has not prosecuted corruption or narcotics offenders for money laundering'. Nicaragua is among the top ten countries in the world where money laundering through banking systems is more widespread (IDB, 2005).

7. According to the United Nations Office on Drugs and Crime (UNODC), Nicaragua ranks in the middle of the list of countries where human trafficking originates. According to the US Department of State the most prevalent forms of trafficking are sexual exploitation of women and children sent mainly to Guatemala, and the labour exploitation of men sent mainly to Costa Rica.

II. The exclusionary character of the pacts between the FSLN and the PLC

8. Two main parties, the Liberal Constitutionalist Party (*Partido Liberal Constitucional*, PLC) and the Sandinista National Liberation Front (*Frente Sandinista de Liberación Nacional*, FSLN), dominate the political spectrum and smaller parties have only figured in coalitions with larger parties. The parties have been stable, but unlike Honduras, they are ideologically polarised. Polarisation, however, has not prevented a type of coalitional politics which has reinforced bipartisan domination in the last ten years.

9. In 1997, President Arnoldo Alemán of the PLC and Daniel Ortega of the FSLN signed a pact aimed at protecting the power of the traditional parties which they feared was being seriously undermined by smaller parties.¹ This pact included the distribution of posts in oversight institutions along traditional party lines. In 2000 the pact was reinforced when the FSLN and the PLC agreed on reforms to the Constitution and the Electoral Law, and once again determined the membership of the Supreme Electoral Council (*Consejo Supremo Electoral*, CSE) and the Comptroller's Office along partisan lines. In 2003, the pact between Alemán and Ortega was again renewed in part in retaliation for President Bolaños' prosecution of Arnoldo Alemán on money laundering charges. Despite President Bolaños' opposition, Alemán and Ortega distributed key posts between the PLC and the FSLN, reinforcing both their own personal power and electoral machinery.

10. Between 1996 and 2004 Nicaragua experienced the most serious decline in support of democracy. This tendency changed notably in 2005 (Latinobarometro), but data on perceptions and actual levels of corruption reflect the lack of legitimacy of political processes and the precarious capacity of state institutions to prosecute organised crime.

III. The politicised judicial and electoral oversight institutions

11. In March 2006 the US Ambassador in Nicaragua stated that the country could become a narco-state as a result of the corruption in the judiciary by the drug trade. The statement was an indication of the poor reputation of the politicised judiciary. Corruption can be seen in part as a result of the pacts between the FSLN and the PLC that included agreements on the distribution of public posts in order to control the bureaucracy. In institutions such as the Supreme Court, judges' appointments are distributed equally to the two parties, which in turn also appoint judges to lower courts, thereby reducing independence in judicial decisions (EIU, 2005).

¹ For the 1996 legislative elections, the share of seats in Congress of the two main parties decreased to 83.9 percent from 97.8 percent obtained in 1990. At the same time, the number of parties with seats in Congress increased (UNDP, 2002).

12. In the same vein, the Supreme Electoral Council is elected by the National Assembly (Congress). Both the President and parliamentarians propose candidates for the eight magistrates' positions which are supposed to be consulted with civil organisations (E&T). In reality, there is scant discussion on the candidates and their election depends on party allegiance. In February 2006, a crisis within the CSE between the two parties made this problem evident. Magistrates of the two sectors made it impossible to reach a quorum, thereby delaying decisions on crucial electoral matters affecting their own parties.

IV. Legal framework for campaign funding

The 2000 Electoral Law sets out the framework for campaign funding.

13. **Direct public funding** is granted as a cash contribution after elections. Parties as well as popular associations that compete in any election are eligible for funding provided that they obtain at least 4 percent of valid votes.

14. The total amount of public funding is determined as a percentage of the national general budget: 1 percent for general elections, 0.5 percent for municipal elections and 0.25 percent for regional elections along the Atlantic coast. This total is then divided among the different parties in proportion to their electoral results.

15. **Indirect public funding** is provided as tax exemptions to parties for importing publicity material and to companies or individuals for making private contributions.

16. **Access to media:** The electoral authority must guarantee party access to **state media** daily during campaign periods distributing time as follows: 45 minutes on each radio station and 30 on each TV station for national elections; 20 minutes on radio and five minutes on TV for regional elections; and 15 minutes on radio and three on TV for municipal elections. These time slots should be distributed equally among all parties. **Access to private media** is not regulated.

17. **Private contributions:** The Law prohibits contributions from state institutions, foreign contributions (except for political education) and anonymous contributions except those obtained in fund raising events amongst sympathisers. Contributions must be deposited in special accounts within the national banking system, separating those used in campaigns from those directed to political education. The law does not set a **limit on the amount of private contributions**.

18. **Indirect limit to expenditures:** By limiting the length of the campaign to 75 days for national elections and 42 days for municipal elections the Law attempts to reduce indirectly the amount of money spent in campaigns.

19. **Transparency and disclosure:** Parties must present their accounts to the General Controller, the Finance Minister and the CSE during campaign periods as a prerequisite to receive public funding. After the Controller audits the accounts, the CSE decides if the party is able to receive public funds.

20. **Sanctions:** Parties receiving prohibited contributions must pay a fine equivalent to double the amount of the original contribution. The sanction applies to party leadership as well as to contributors.

Shortcomings of the legal framework

21. Several organisations highlight that the Law is plagued by contradictions.
22. Criteria to distribute public funding are considered flawed because the percentage of public funding does not depend on levels of participation. Therefore, when turnout is low, the amount of public money assigned per vote becomes excessive.
23. There is no rigour in the audit of political party accounts as both the employees of the Controller's Office and the CSE function along party lines. Furthermore, there is no accountability on the use of public funds.

24. Disclosure of party finances is mandatory only during campaign periods. Furthermore, there is no provision requiring parties or enforcement actors to make public the information on party finances. Therefore, in practice the information is not made public.

25. There is no reliable data on the number of party members and the amount of their contributions to parties. Therefore, illegal contributions can be hidden as proceeds from fund raising events.

26. Sanctions are vaguely specified and only cover parties and not individuals.

27. Public servants contribute to the campaign of the incumbent party in order to obtain tax exemptions on their salaries, thereby contradicting the ban on contributions from state institutions. There are more incentives for this practice because the distribution of public funding takes place after elections (Carter Center, 2000) and parties must get funds before the campaign starts.

28. Provisions on the access to media are inapplicable because public media has not existed since 1997. In this context, and given the high amount spent on publicity, lack of regulations on private media is particularly problematic.

Recent Advances

29. In 2004 the CSE accepted a recommendation from the *Grupo Cívico Ética y Transparencia* (E&T) to eliminate a provision that granted funds for food and training of party attorneys on the Election Day. It was perceived as a mechanism that increased unnecessarily the burden of public funding on the government.

30. In 2006 Nicaragua ratified the UN Convention against corruption.

V. Social response to existing laws and social advocacy for reform

31. The E&T is the most active non-governmental organisation (NGO) in party funding and transparency, and has proposed electoral reforms on different occasions. It is part of the Lima Agreement (*Acuerdo de Lima*)² and is the nascent chapter of Transparency International. E&T has now launched a campaign calling for parties to disclose the amount and origin of contributions for the 2006 elections.

32. In 2005, the Institute for Democracy and Development (*Instituto para la Democracia y el Desarrollo*, IPADE) initiated a campaign for transparency in elections and has monitored elections regularly. IPADE has worked together with E&T on some of the initiatives.

² A network of organisations in 19 countries of the Americas that provides mutual support for electoral monitoring.

VI. Recent incidence of corruption and illegal funding

33. There is no proven case of party funding with illegal proceeds from crime, but the perception that criminal lords control politicians is latent (Zelaya, 2004). The 2001 campaign election was permeated by huge scandals of illegal funding. In 2005 the First Vice President of the National Assembly of the PLC launched accusations that proceeds from drug trafficking were going into the FSLN finances. Accusations of illegal funding have also appeared in the current (2006) campaign.

34. The case of former President Arnaldo Alemán has been the most publicised case of illegal funding. In 2003 Alemán was convicted on money laundering in Panama and embezzlement in Nicaragua. It was found that he had transferred US \$10 million from 15 different government agencies into bank accounts of his own in Panama and part of these funds went to the PLC. The Chief Prosecutor's Office at the time said that the full amount diverted could be US \$100 million. However, Alemán was only prosecuted for money laundering and the accusations on the use of embezzled money in the PLC's campaign were never fully investigated. Despite the conviction, Alemán remains politically active working from house arrest.

35. Two former members of the PLC who had worked closely with Alemán - President Bolaños and ex mayoral candidate Alejandro Fiallos - became Alemán's main opponents and were crucial in his prosecution. Both of them have been also involved in scandals. The investigation of these scandals reflects also how political considerations prevail over judicial ones. On the one hand, Bolaños was accused of receiving some of the money stolen by Alemán to fund his own presidential campaign in 2001. Congress (dominated by the PLC and the FSLN) threatened to impeach Bolaños, but in the end Bolaños' immunity was not lifted mainly because both the PLC and the FSLN preferred to keep Bolaños in power. On the other hand, the Fiallos case was quickly resolved, giving him 22 months and 45 days in jail, for abuse of authority, threats and extortion. Reportedly, there was a quick judicial decision on the Fiallos case in retaliation for his opposition to the PLC and Alemán.

36. Although foreign contributions are prohibited, the accounting of money coming from foreign governments or international accounts has been a source of confusion. In 2000 the FSLN received money from the Lebanese government, which was criticised as intervention in internal affairs. In May 2006, the controversy appeared again with the accusation that presidential candidate Daniel Ortega received financial support from Venezuela's President Hugo Chavez for his campaign. But the clearest connection of a foreign contribution and illegal activities was traced to Taiwanese bank accounts in connection with the Alemán scandal and the subsequent accusations against Bolaños.

37. The case of a judge who in 2005 legalised anonymous contributions illustrates the role that judicial decisions play in facilitating the penetration of illegal funds. His decision led to the dismissal of the charges that had been filed against the PLC for receiving national and international anonymous contributions that had not been reported to the CSE or to the Controller's office.

VII. Conclusions

38. The centrality of the figure of Arnaldo Alemán, both before and after being convicted, is a manifestation of Nicaragua's main problems: the personalisation and excessive centralisation of political parties; the absence of independent prosecutors; the influence of political parties on the judiciary; and the weakness of sanctions (Alemán is still powerful despite his conviction). Such problems are also confirmed by the limited number of investigations concluded successfully despite extensive allegations of illegal behaviour.

Because accusations of electoral misbehaviour are usually discarded without serious investigation, politicians are more compelled to use accusations as a tool in electoral competition.

39. The pact between the FSLN and the PLC has exacerbated the lack of independence in the judiciary and oversight institutions while extending the clientelist control over posts and limiting competition. Limited competition creates incentives for emerging politicians at the national level, and especially at the local level, to accept money from criminal sources in order to level the competition field. This risk can be particularly worrying for the consolidation of the democratic and electoral processes in the Autonomous Regions of the Atlantic (RAAN and RAAS).³

40. The convergence of the two parties around a bureaucratic pact contrasts with the polarisation of political views. Such polarisation becomes an excuse – real or alleged - not to disclose information. For example, the late presidential candidate Herty Lewites, who agreed to disclose contributions made to his campaign in May 2006, said that many of his private donors asked him not to disclose their names fearing that they could become subjects of threats and retaliation by opposing political forces.

41. The legal framework on party funding contributes to impunity. The loopholes of the law become an excuse favouring illegal practices. Particularly problematic is the acceptance of anonymous contributions and the provision that requires information on contributions to be disclosed only during campaign periods. President Bolaños and Daniel Ortega both refuted accusations based on these provisions.

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³ North Atlantic Autonomous Region (RAAN) and South Atlantic Autonomous Region (RAAS).