

# Democracy and Governance Assessment in Nicaragua

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USAID/Nicaragua

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The views expressed in the following assessment are those of the authors and do not necessarily reflect the opinions or policies of the U.S. Government.

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# Acronyms and Abbreviations

AMUNIC	<i>Asociacion de Municipios de Nicaragua</i>
ANDEN	National Association of Educators of Nicaragua
APN	<i>Asociación de Periodistas Nicaragüenses</i>
ASOBAN	<i>Asociación de Bancos Nicaragüenses</i>
ATC	Farm Workers Association
CAFTA	Central American Free Trade Association
CAUS	Labor Action and Unity Central
CCER	<i>Coordinadora Civil para la Emergencia y la Reconstrucción</i>
CGT-I	Independent General Confederation of Labor
CONAPRO	Heroes and Martyrs Confederation of Professional Associations
CONPES	<i>Consejo Nacional de Planificación Económica Social</i>
COSEP	<i>Consejo Superior de Empresarios Privados</i>
CPP	Criminal Procedures Code
CSE	Supreme Electoral Council
CSO	Civil Society Organization
CST	<i>Sandinista</i> Workers Central
CTN-A	Autonomous Nicaraguan Workers Central
CTN	Nicaraguan Workers Central
CUS	Confederation of Labor Unification
DG	Democracy and Governance
FETASALUD	Health Workers Federation
FISE	<i>Fondo de Inversion Social y Economico</i>
FNT	The National Workers Front
FSLN	<i>Sandinista</i> National Liberation Front
FTS	Social Christian Workers Front
GDP	Gross Domestic Product
GON	Government of Nicaragua
HIPC	Highly Indebted Poor Country
IDB	Inter-American Development Bank
IDESCO	<i>Instituto de Encuestas y Sondeos</i>
IFI	International financial Institution
IMF	International Monetary Fund
INIFOM	<i>Instituto Nicaragüense de Informacion</i>
MDN	Nicaraguan Democratic Movement
MUN	Movement of National Unity
NGO	Nongovernmental Organization
ONU	Coalition of Anti- <i>Sandinistas</i>

PAO	Public Affairs Office
PALI	New Liberal Party
PCCN	Nicaraguan Party of Christian Path
PCN	Conservative Party of Nicaragua
PLC	Constitutionalist Liberation Party
PLIUN	Independent Liberal Party for National Unity
PM	Public Ministry
PUCA	Central American Unionist Party
ROL	Rule of Law
SO	Strategic Objective
UAM	<i>Universidad Americana</i>
UCA	<i>Universidad Centroamericana</i>
UCC	<i>Universidad Ciencias Comerciales</i>
UNAG	National Union of Farmers and Ranchers
UNAN	<i>Universidad Nacional Autonomo de Nicaragua</i>
UNE	National Union of Employees
UPN	<i>Union de Periodistas Nicaragüenses</i>
USG	United States Government

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# Executive Summary

In January 2003, a four-person team conducted a democracy and governance assessment in Nicaragua, with significant support from USAID/Nicaragua. The objective was to identify the basic problems impeding Nicaragua's democratic development, and opportunities for democratization progress, in order to recommend strategic approaches and program areas for USAID/Nicaragua democracy and governance (DG) support during the next five years. The Assessment Team used the analytical framework developed by USAID's Office of Democracy and Governance. The Mission reviewed this report in draft, but its recommendations are those of its authors.

## Nicaragua's Principal Democratization Challenge

Thirteen years after the initiation of democratically elected government, Nicaragua – like other Latin American countries – is a democracy in form but not substance. As David Dye notes, “In these *procedural democracies*...officials are elected in free and fair manner, and there is inclusive suffrage, freedom of expression and organization, and associational autonomy. 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.”<sup>1</sup> Nicaragua is a quasi-democracy, or electoral-authoritarian polity, because it has not yet been able to overcome entrenched clientelistic politicking and patrimonialistic governance resulting from low social capital, political polarization, and *caudillismo*.

***Nicaragua's primary democracy and governance challenge is to gradually substitute clientelistic and patrimonialistic political and governance practices with democratic competition and citizenship, good governance, and the rule of law.***

## Opportunities for Progress

In 1999, then President Alemán negotiated a pact with Nicaragua's other *caudillo*, Daniel Ortega, under which they agreed to share party control over key governmental bodies and limit competition from other political parties. This set the stage for Alemán to continue to rule from the National Assembly if his vice president, Enrique Bolaños, won the presidency in 2001. Once in office, however, President Bolaños led a successful effort to oust former President Alemán from the National Assembly and put him under house arrest. In the process, he split the Constitutionalist Liberal Party (PLC), increased the leverage available to Ortega's *Sandinista* Party, and made it much harder for his administration to govern.

Nicaragua has arrived at a turning point – the most significant one since democratic government was instituted in 1990 and one that is creating opportunities for system change. Dissatisfaction with the status quo among politicians on both sides is evident. With the exception of a few hard-line Ortega insiders, the *Sandinistas* know they cannot regain power with Daniel Ortega leading the party. Anti-*Sandinistas* are either tolerating loss of influence while betting that Alemán can

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<sup>1</sup> *Patchwork Democracy: Nicaraguan Politics Ten Years After the Fall*, David R. Dye. December 2000. Hemispheric Initiatives.

resuscitate himself, casting their lot with Bolaños and crossing their fingers, or looking for a “third way.” Business leaders are jockeying to reconstruct the anti-*Sandinista* opposition.

This partisan political maneuvering in respect to reform is being accompanied for the first time by a much more attentive news media and a relatively vibrant civil society, including numerous NGOs working throughout the country that have successfully provided social services and mobilized citizens over the last several years. In addition, a small number of dedicated reformers, often fostered by USAID and other donors, can be found within governmental organizations. These reformists are accustomed to waiting for Nicaragua’s *caudillos* and their cohorts to determine the country’s political future. However, the degree of protagonism they exert and the quality of leadership exercised by President Bolaños will be key in determining whether the current political crisis results in a political stalemate that prevents socioeconomic progress (and even leads to violence), or in positive democratic reforms.

### Recommended DG Strategy

The Assessment Team recommends that USAID/Nicaragua’s DG program build upon the opportunities identified above to address the key challenge identified in Section 1, namely persistent clientelistic and patrimonialistic political and governance practices. This may be done in a fashion that is consistent with the USAID Regional Strategy, and which targets the overarching DG problem at both national and local levels. The two IRs that are recommended are (1) **Strengthened Rule of Law** – with activities in criminal code implementation, justice sector independence, and removing legal impediments to trade and investment; and (2) **Greater Governmental Transparency and Accountability** – with activities to promote participatory local governance and development, and to improve democratic governance and political processes.

Improvements in the rule of law are essential to overcoming the personalistic dependence on the arbitrary decision-making authority that underlies the *caudillo* system. Three program areas are recommended: (1) Criminal Procedures Code Implementation – to take advantage of the commitment to working for a fairer and more efficient criminal justice system evident at many levels of the law enforcement community, and to increase public confidence in criminal justice; (2) Judicial Independence Reforms – needed to begin making available the most rudimentary check on executive power; and (3) Legal Security for Trade and Investment – needed if Nicaragua is to take advantage of CAFTA.

In order for the opaque practices that underlie the clientelistic and patrimonial *caudillo* system to be brought into light, it is vital that there be greater transparency and accountability in the public realm. Two program areas are recommended that allow for enhancement of these objectives at both the local and national levels: (1) Community Development – because it is in local areas that the greatest opportunities for citizen participation in more effective governance and socioeconomic development exists; and (2) Democratic Governance and Political Processes – because undemocratic political and governance practices need to be slowly eliminated if Nicaraguan governmental institutions are to operate effectively.

The Assessment Team also recommends that certain tactical guidelines be followed in designing and implementing the programs in the two IR areas described above. These tactical guidelines are: (1) supporting Nicaraguan reform coalitions, (2) seeking synergy with other USAID programs, and (3) complementing DG programs with USG and international community pressure for democratic reforms.

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## Historical Background

In order for the opaque practices that underlie the clientelistic and patrimonial *caudillo* system to be brought into light, it is vital that there be greater transparency and accountability in the public realm. Two program areas are recommended that allow for enhancement of these objectives at both the local and national levels: (1) Community Development – because it is in local areas that the greatest opportunities for citizen participation in more effective governance and socioeconomic development exists; and (2) Democratic Governance and Political Processes – because undemocratic political and governance practices need to be slowly eliminated if Nicaraguan governmental institutions are to operate effectively.

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The strategic recommendations and tactical guidelines are based on the Assessment’s analytical findings that the underlying clientelistic and patrimonial nature of Nicaraguan political and governance practices needs to be taken fully into account in making decisions regarding DG program strategy and content. The current status of the National Assembly, the Supreme Court, and the Controller General’s Office show how easily governmental institutions designed to fulfill democratic functions can still be captured by traditional political forces and manipulated. This occurred despite significant technical assistance from USAID and other donors, which shows how important it is for USAID and other donors to give priority first to collaborating with local reform agents charged with the political task of generating lasting reform coalitions, and then to improving technical capacities.

Four key characteristics have influenced Nicaragua’s political history since its 1821 independence from Spain. These key characteristics have played an important role in the country’s political development and led to establishment of an enduring political culture that is inconsistent with full democratization. To understand better the basic democracy and governance problem facing Nicaragua today, it is useful to see how these four characteristics have marked Nicaraguan political history.

One enduring characteristic of the Nicaraguan polity has been the **lack of political and governmental institutions reflecting a public consensus on democratic governance** based on the rule of law. Nicaragua has had 12 constitutions. Its original constitutions and institutions, first establishing the area as a province of the Mexican Empire and later as a member of a weak Federation of Central American States, were basically adaptations from the original Spanish

colonial model. Instead of deference to the rule of law, these placed priority on homage – first to the Throne, later to the Governor. Political connections and loyalties trumped entrepreneurship. Most subsequent constitutions and institutions were imposed, some from the outside, such as from the U.S.-brokered Espino Negro Pact of 1927 and again in 1933. Nicaragua’s current constitution, instituted by popular vote and adopted by a relatively large margin in 1987, would have been an exception to those of the past, but already it has been significantly modified twice. The first modification was due to pressure from the Northern Europeans in 1996 to strengthen the legislative branch. The most recent modification was made in 2000 to codify a highly unpopular pact between Alemán and Ortega.

Another key historical characteristic has been the **polarization of Nicaraguan society** into two fiercely opposed camps. Nowhere was the Conservative-Liberal rivalry more intense or violent than in Nicaragua. It began after independence, with skirmishes under Nicaragua’s 30-year Conservative period from 1857 to 1893, culminating in a civil war in which a coalition of liberals and dissident Conservatives ousted Conservative President Roberto Sacasa and replaced him with General Jose Santos Zelaya. The Liberal Zelaya, in turn, was forced out in 1909 by Conservatives aided by British money and U.S. marines. Polarization occurred in the 1920s between the part-Liberal, part-revolutionary Sandino and U.S.-backed Conservatives, then between *Sandinista* dissidents and the Samoja dynasty from 1936 to 1978. During the 1980s, *Sandinistas* and U.S.-backed *contras* fought, and since the beginning of the current democratic period, *Sandinista* and anti-*Sandinista* political parties vie for power.

Another important feature of Nicaraguan political life – one that derives from the above-mentioned lack of institutionalized rule of law and polarization – has been the country’s “**cycle of violence and pacts.**” As Alejandro Serrano describes it, “Violence is recurrent in Nicaragua’s history. Periods arise when the shooting stops and ‘pacts’ emerge, pacts which are never sufficient or representative of a social contract but rather short-term and practical and often predatory, which opens the way of new opposition and a new wave of violence.”<sup>2</sup>

<sup>2</sup> Serrano Caldera, Alejandro, “*La Democracy: concepto y desafíos actuales,*” in *Nicaragua: la incertidumbre y el futuro.*

### A History of Pacts

During the interviews, interviewees, in discussing the 1999 Liberal-*Sandinista* pact, echoed political scientist Alejandro Serrano’s statement that Nicaragua is a country whose history is of pacts, not of social contracts. Some of the major ones include:

**1857: Conservative-Liberal Pact**, which established the power-sharing arrangement that led to the 30-year peace under Conservative rule.

**1893: Pact of Sabana Grande y Monotombo**, where Conservatives arranged the Conservative succession to the presidency.

**1894: Forced Annexation of Eastern Nicaragua to Spanish Nicaragua.**

**1910: Dawson Pact**, which shared government institutions and brokered elections and continuity between Liberals and Conservatives.

**1927: Espino Negro Pact**, in which U.S. brokers negotiated to end Conservative-Liberal fighting and maintain Adolfo Diaz as president until elections and withdrawal of U.S. marines.

**1950: Samoja–Chamorro Vargas (Generals’) Pact**, which assured the Conservative Party one-third of the congressional delegates as well as representation in the cabinet in exchange for an end to dissent.

**1972: Kupia-Kumi Pact**, between Aguero’s Conservatives and Samoja’s Liberals, which installed a three-member junta that would rule until 1974 and assure Samoja’s control of government.

**1986: The Esquipulas Accords**, which called for an end to external aid to insurgencies in Central America and paved the way for restoration of Conservative rule under Violeta Chamorro.

**1990: Transition Agreement**, which outlined conditions of *Sandinista*-Conservative change of government, and which allowed Humberto Ortega to remain non-civilian head of military.

**1999: Liberal-*Sandinista* Pact**, which all but eliminated new entry of political parties into the political arena and which divided the Supreme Court, the Elections Council, and the Controller General’s Office between the Liberals and the *Sandinistas*.

Finally, as in other Latin American countries, **authoritarianism** has been a distinguishing factor of political life in Nicaragua. Traditionally, it was reflected in three influential centers of power: the Church, the family, and the military. Political scientist, Manuel Orozco, refers to this tight set of relationships as the “trinity” or “three padres.”<sup>3</sup> The Church championed Nicaragua’s independence, for which it was accorded a special role in the country’s political structure – a role which Church leaders have not hesitated to use. During the Samoza period, the Church was vociferous in its denouncing of human rights abuses. When the *Sandinistas* came to power and tried to unify public order under a party/army/state, the Church became a vocal opponent.

Arturo Cruz writes that “Nicaragua is a country of families, all of whom know one another, or at least *about* one another.”<sup>4</sup> As Gabriel Solorzano stated in his January 28, 2003 interview, “When we need help – whether it is a hurricane, earthquake, job or financial assistance – we don’t turn to government, we turn to our families.” Indeed, remittances from Nicaraguan family members overseas exceed 25 percent of the country’s GDP each year, approximately the same amount as international assistance. The third corner of the authoritarian triangle was traditionally the military, which typically assumed power when a dictator or two-party power-sharing group fell out of favor. Although it is now less powerful than previously, the military, Church, and family shared a tendency to view movement for increased political space as civil disobedience and acted to preserve the status quo, one that was authoritarian rather than democratic.

All these factors have been constants in Nicaraguan political history to this day.

### 1.1 The Samoza Dynasty (1936–1979)

After Samoza Garcia won Nicaragua’s presidency against a background of conflict, intimidation, and confrontation with a weak predecessor, he undertook a series of actions that led to dictatorial control from 1936 until his assassination in 1956. First, he resumed control of the National Guard, which he built in the 1920s with U.S. help. He strengthened his grip on the military and the government by replacing members of the “established families” in key positions with his own relatives. Through maneuvering and intimidation, Samoza wrested control of the National Liberal Party, which controlled the legislature and the judicial system, allowing some opposition as long as it did not confront his ruling scheme. Shortly after consolidating power, Samoza declared his intention to remain in power beyond his presidential term and, in 1938, he named a constituent assembly that gave him extensive power and another eight-year term. He proceeded to build an immense fortune for himself and his family during the 1940s through questionable business ventures, concessions granted to national and foreign companies, bribes, and illegal exports.

In light of post-World War II domestic and international pressures against his dictatorship, Samoza agreed not to run for reelection and orchestrated the nomination of the elderly Leonardo Arguello, believing he could control Arguello from behind the scenes. Using National Guard influence, Arguello was elected and Samoza Garcia remained head of the National Guard. When Arguello began showing signs of not falling in line, Samoza had him overthrown and installed a family associate, Benjamin Lacayo Sacasa, in the presidency. Under pressures from the U.S., Samoza called another constituent assembly that proceeded to appoint his uncle, Victor Roman Reyes, as

<sup>3</sup> For a detailed presentation of the “Trinity,” see Orozco, Manuel, Discussion Paper, *La Juventud, la Democracia y la Política en Nicaragua: un Reto y una Esperanza*, in *Procesos*, August 2001.

<sup>4</sup> Cruz, Arturo Jr., “One Hundred Years of Turpitude,” *The New Republic*, November 16, 1987.

president. Through concessions and bribes, opponents, such as a heretofore-independent labor movement, were co-opted further consolidating the Somoza family's control. In 1950, as dissent against Somoza from the Conservatives became serious, the nominally Liberal Somoza signed a pact with Conservative General Emiliano Chamorro Vargas that assured the Conservative Party one-third of the congressional delegates as well as limited representation in the cabinet and the courts. In 1955, Somoza manipulated a congressional amendment to the constitution to allow his reelection for yet another term.

After Somoza Garcia's assassination in 1956, his eldest son, Luis Somoza Debayle, succeeded him. Somoza Debayle made his brother, Anastasio, head of the National Guard. Together, the brothers reacted to their father's assassination with a major political repression campaign. Political opponents were imprisoned and tortured, and press censorship and civil liberties were suspended. When poor health prevented Luis Somoza Debayle from running again in 1967, his brother Anastasio won a highly irregular election, after which he also made himself head of the National Guard, giving him absolute political and military control. Despite increasing pressures against him, Anastasio Somoza amended the constitution to remain in power until 1972. With opposition becoming increasingly severe from all sectors of society, Anastasio Somoza negotiated a political pact, the Kupia-Kumi Pact, which installed a three-member junta that ruled between 1972 and 1974, with behind-the-scenes influence by the Somoza family.

When the December 23, 1972 earthquake shook Nicaragua and destroyed Managua, killing some 10,000 people and destroying 80 percent of the city's infrastructure, Somoza's National Guard joined the widespread looting of most of the remaining business establishments in Managua. When the relief operation was finished, the Somoza family and members of his National Guard shocked the international community with their illegal appropriation and mismanagement of the international relief effort. With estimates of Somoza Debayle's personal wealth catapulting to over \$400 million in 1974, all elements of Nicaragua society began to coalesce against him. The widespread national and international opposition to Somoza Debayle was met by significant political repression and further censorship of the media and the press. In 1977, with a coalition of supporting forces, the *Sandinista* National Liberation Front (FSLN) led Somoza's overthrow.<sup>5</sup>

## 1.2 The *Sandinista* Period (1979–1990)

By the time the *Sandinistas* drove Anastasio Somoza out in July 1979, they consisted of a diverse coalition of anti-Somoza forces. As the FSLN organized itself to govern, its more radical elements drove out many of the others who had joined forces with them to defeat Somoza. By their own declarations, the *Sandinistas* sought to move from a personalized regime to a more participatory democracy, but sought to do so under one-party rule similar to the Soviet Union and Cuba. Political polarization and eventually internal conflict resumed. By the early 1980s, the hard-line Ortega-led FSLN had consolidated its dominance over the new government, making deals with business interests that cared to deal with them, as the Somoza family did in the past. On the positive side, expanded health services and health education campaigns had significant impact, and massive literacy crusades raised literacy rates from under 50 percent to 87 percent. On the negative side, the FSLN controlled business and commerce, human rights were not respected, and party members and

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<sup>5</sup> Ibid.

the military ran a militarist state. The USG assisted the *contras* and, by 1987, over half the national budget went for military expenditures, and the armed forces had grown from 60,000 to 100,000.<sup>6</sup>

By 1986, international concern over FSLN human rights abuses and the *contra* and Salvadoran civil wars led Costa Rican President Oscar Arias Sanchez to propose a regional peace plan for the five Central American countries. This plan, known as the *Esquipulas Agreement*, called for an end to all external aid to insurgencies. Nicaragua created a National Reconciliation Commission headed by Cardinal Miguel Obando y Bravo. The *Sandinistas* agreed to democratic reforms leading to elections, and the USG encouraged the *contras* to negotiate. When Cuban and Soviet support dried up with the fall of the Soviet Union, the *Sandinistas* agreed to early elections, which were held in February 1990.<sup>7</sup>

### 1.3 The Chamorro Years (1990–1996)

Conservative Violeta Barrios de Chamorro, widow of an anti-Samoza newspaper editor who was assassinated, was elected president, leading a coalition of anti-*Sandinistas* (ONU). A peaceful transfer of power took place, but it did not take long for Nicaragua’s polarized forces to transfer their battle to the political realm, engaging in serious disputes over the return of expropriated properties, the removal of *Sandinista* security officers, attention to demobilized combatants, and many other unresolved issues. Civil disobedience was common, and violence even erupted again for a time between “re-*contras*” and the “re-*compas*.”

Given Nicaragua’s conflictive history, and the broken state of the economy by the early 1990s, President Chamorro’s contributions to Nicaraguan democratization were remarkable. Her government negotiated the formal demobilization of the *contras* and cut the *Sandinista*-dominated army from more than 80,000 to less than 15,000. She convinced Humberto Ortega to step down as head of the military in 1994, and a military code was drafted which introduced, albeit begrudgingly, a semblance of civilian control over the military.<sup>8</sup> National government organizations were established outside the control of any one political party. Legislative polarization was also reduced due to the emergence of moderate political forces, particularly the Christian Democrats and dissenting *Sandinista* groups. Important reforms in June 1995 not only opened up political space to smaller parties, but also provided for electoral and executive branch improvements and greater independence for the judiciary.

Increased protections for civil and political freedoms during the Chamorro administration were also significant. Her strategy was to promote civic involvement in various spheres of national life, encouraging civil society organizations to get involved in national issues and at the grassroots in local issues. The explosion of civil society organizations, even before Hurricane Mitch, was astounding. During Samoza’s final decades, there were approximately 11 NGOs functioning in the country, mostly for humanitarian assistance. Under the *Sandinistas*, with donor support for their efforts at improved health, literacy, and education, the number of NGOs grew to approximately 68.

<sup>6</sup> Ibid, Orozco, p. 100.

<sup>7</sup> For a more thorough review of the Samoza, *Sandinista*, and Chamorro years, see: Booth, John A. and Walker, Thomas W., *Understanding Central America*, Westview Press, 1999.

<sup>8</sup> In her biography, Violeta Chamorro writes that the worst episode in her presidency occurred when she publicly expressed her gratitude to Humberto Ortega for having transformed the *Sandinista* military into a “Nicaraguan” military and he hit her.

During the Chamorro years, with the help of an international community focused on the success of the regime and the need to employ thousands of ex-combatants and *Sandinistas*, the number of NGOs grew to 239, ranging from self-help groups to advocacy and oversight organizations.

Reforming the *Sandinista* state was no less remarkable. Under the *Sandinistas*, the State encompassed 19 ministries, 400 agencies, and over 285,000 employees.<sup>9</sup> The employment role was downsized to less than 67,000. What was left undone, according to observers, was training the government officials who remained, beginning to create a civil service, and promoting private sector employment for those who left military and government roles. Failure to begin to modernize the bureaucracy and improve transparency remain issues to this day.

#### 1.4 The Alemán Presidency (1996–2001)

In the 1990 elections, the Liberal Party received only 8 percent of the presidential vote. During his tenure as mayor of Managua, Arnoldo Alemán practiced the art of political patronage to make a name for himself nationally and to reconstruct the Liberal Party. By 1996, he was the preeminent non-*Sandinista* candidate and ran as the candidate of a coalition of three liberal parties, called the PLC or Constitutionalist Liberal Party, that were united chiefly by a common disdain and distrust for Daniel Ortega and his *Frente Sandinista*. Once elected president, Alemán thus set out to make the Liberal coalition into a forceful political machine and, in doing so, reversed many incipient governance reforms initiated by Mrs. Chamorro. He reintroduced the patronage system and consolidated his power, and wealth, in becoming a *caudillo*. In 1999, Alemán negotiated a pact with Daniel Ortega, with whom many say he had been collaborating from time to time as met mutual need. The pact divided power over key governmental bodies between the two *caudillos*' parties and provided for each to succeed the other in future elections. Both, as ex-presidents, were accorded automatic entrance into the National Assembly, thus guaranteeing permanent criminal immunity. The provisions of the Pact were incorporated in the constitution in 2000.

#### 1.5 The Bolaños Presidency (2001–Present)

Not being able to stand for reelection, Alemán sought a successor who would ensure his maintenance as *caudillo* of the PLC should he defeat Daniel Ortega (much like Samozá did with his elderly replacement Arturo Arguello in 1945). Alemán planned to rule the country as President of the National Assembly. Buoyed by strong anti-Ortega sentiment, his own popular political platform of anti-corruption, and political support from the U.S., Bolaños was elected president in 2001. Like Arguello before him under Samozá, Bolaños' phlegmatic style and go-it-alone approach made clear to all that he would not be the puppet Alemán had hoped for. As Alemán began to apply pressure and Bolaños pushed back, Alemán's past corruption provided Bolaños' with the vehicle he needed to create his own political space.

As president, Bolaños has indicated interest in more democratic governance, but his lack of political prowess has made it difficult for his administration to pursue reforms, and even to govern. After cooperating with the small Bolaños faction of the PLC to remove Alemán from the National Assembly and put him under house arrest, the *Sandinistas* began to play political hardball, knowing their support is necessary for the Bolaños Administration to pass needed legislation. The PLC is split into two factions, the small *Azul y Blancos* faction that supports Bolaños and the rest of the

<sup>9</sup> Ibid, Orozco.

party still supporting Alemán. By the time fieldwork for this assessment took place, a stalemate had been reached. Traditional clientelistic politics and patrimonialistic governance practices were no longer working.

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## The Democracy and Governance Problem

A viable and genuine democracy is characterized by five major overarching qualities: (1) *consensus* on the boundaries of the state and certain fundamental rules of the game that cannot be constantly under question and on which legitimacy and dispute regulation are based; (2) *rule of law*, which codifies the rules of the game and fairly and equitably resolves disputes; (3) *competition*, which provides both for principled discussion of interests and ideas and democratic means of reconciling them for the public good; (4) *inclusion*, where all citizens are free to participate both in governmental and non-governmental activities; and (5) *good governance*, in which those elected to govern provide desired services and guarantees to citizens efficiently, effectively, and with transparency and accountability.

### 2.1 Consensus

*Is there a basic consensus on the fundamental rules of the game, and is the political contest played by those rules? Is there a basic agreement on who belongs in the polity and who does not?*

Nicaragua has serious issues of consensus. Some degree of agreement has been reached over the years regarding basic rights to life, free speech, and assembly. Violence, for the moment, is not embraced as a way of changing the system. However, lack of basic national consensus on modes of democratic governance, political competition, and inclusion persist.

While a good number of Nicaraguan elites not active in the FSLN or PLC attest to a shared belief in the necessity of fair political competition and institutionally sound and authentic democratic governance institutions, many of those in the country's polarized political parties, including their two *caudillos*, profess different but equally undemocratic convictions about how their country should be governed. With the loss of Soviet and Cuban support, current FSLN party activists have been forced to espouse a less radical vision of national governance than what they were able to impose in the 1980s, which subordinated the state and the military to the party (and its *caudillo*). However, based on the undemocratic practices within the FSLN and continued support espoused for radical regimes in other countries, it is difficult to accept the FSLN's publicly claimed loyalty to democratic governance. The anti-*Sandinistas*, currently loyal to the PLC, purport to embrace a national vision combining neo-liberal economic policies and democracy, but their behavior often

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<sup>11</sup> Brinkerhoff, Derick W., and Goldsmith, Arthur A., *Clientelism, Patrimonialism and Democratic Governance: An Overview and Framework for Assessments and Programs*, December 2002 (unpublished, ABT, Assoc.).

<sup>12</sup> Brinkerhoff and Goldsmith, *Ibid.*

suggests an affinity for authoritarian regimes similar to Alemán’s regime. The most significant testament to both parties’ real sentiments regarding democracy is the set of pact-based constitutional reforms their members passed in 2000 following instructions of their *caudillos*. As a result of the behavior of Nicaraguan politicians, and the experience of Nicaraguan history, popular confidence in the guarantees provided by the constitution is low.

Fifty percent of Nicaragua’s territory, and a little over 10 percent of its population, belong to what are now known as the Autonomous Regions of the North Atlantic and the South Atlantic. The Afro-Caribe British protectorate was forcibly annexed to Western Nicaragua in 1894. “The Western Part,” as it is not so fondly called by Atlantic coast peoples, never moved from the concept of a nation of “sons of *conquistadores*” to one with a multiethnic, multilingual identity. Since the arrangement to designate two autonomous regions has never been honored in reality, the regions have maintained the status similar to that of colonies. Representation in the National Assembly is not based on local elections. The current presidential liaison to the Atlantic coast regions is not from the Atlantic coast. Many interviewees decried a lack of “inclusion”; others went as far as to say it was questionable whether Costeños were considered Nicaraguans by the Western Part or whether Costeños consider themselves Nicaraguans.

## 2.2 Rule of Law

*Is there ordered liberty? Is politics, indeed are life, liberty, and property, bound by a rule of law?*

The high degree of clientelism and patrimonialism practiced in Nicaragua does not allow the rule of law to prevail. The institutions of democratic governance that should guarantee the rule of law have been co-opted by *caudillos*. The most basic requirement for effective rule of law – a functioning, independent justice system – has yet to be established. Individual Nicaraguan citizens cannot be sure the individual freedoms they are now accorded by societal consensus will always be theirs. They cannot rely on the state for personal security, protection of property rights, or dispute resolution. Their fates, and that of their nation, depend mostly on decisions of *caudillos* whose principal interest is their own personal welfare.

Experience has shown that the constitution’s democratic provisions are without practical meaning because they can be ignored with impunity and modified following power-sharing pacts. As a result, the two principal political parties act, and are perceived as acting, above the law. The 1999 Pact, which was incorporated into the Constitution of 2000 (see Box 1, the 1999 Pact) divided up two supposedly independent branches of government, the Judicial Branch and the Supreme Elections Commission, as well as the Controller General’s Office.

The lack of judicial security is one of the principal impediments to normal commerce as well as domestic and foreign investment.

## 2.3 Competition

*Is there competition in the system? Elections are one form of competition, but not the only one. Are there a competition of ideas and of social actors, a free media, and a vibrant civil society? Is a healthy set of checks and balances present in government?*

Elections have served to divide periodically governing power between polarized *Sandinista* and anti-*Sandinista* forces. Due to institutional weakness and partisan political control of the National Elections Commission, however, fair elections cannot be guaranteed.

Competition exists between the two *caudillos* and their parties for the “spoils of the system” rather than the public good. The 1999 Pact specifically excluded small parties from competition, but this was recently rescinded by the Supreme Electoral Council (CSE). Within the two main parties, competition is severely restricted since *caudillos* stay in place because they are not precluded from being elected president more than once. Parties do not aggregate various interests nor do they use elections and National Assembly negotiations to pursue the shared societal aspirations of members. Instead, they subordinate members’ interests to those of the *caudillo*. As one interviewee put it, “They operate like a factory or a business, not like a political party.”

Competition of ideas among civil society organizations exists, and there is consensus among them on public issues. However, the consensus views of civil society leaders on public policy issues and democratic governance have not been taken into account by party *caudillos*, and are often ignored by the general public due to lingering doubts about civil society organization (CSO) leaders’ motives.

The press, radio, and television media are now a force with which politicians must reckon, although professionalism in meeting responsibilities to inform the public can be improved. Public policy issues are routinely discussed in the media, academic circles, and other NGO forums. This relatively new and exciting phenomenon still needs to be harnessed for it to influence policy changes more consistently.

The checks and balances outlined in the constitution among the various branches of government are window-dressing since they operate subject to party leaders’ mandates.

## 2.4 Inclusion

*Are there problems of inclusion and exclusion? Are parts of the population formally excluded and disenfranchised from meaningful political, social, or economic participation? Is participation high or low?*

In addition to being the poorest country in the hemisphere with a per capita of \$470, Nicaragua has one of the worst income distributions in the world. Seventy percent of the population is considered extremely poor and 30 percent acutely poor. Unemployment and underemployment are estimated as high as 30 percent and 70 percent, respectively. These economic factors reflect the low level of socioeconomic inclusion. Political participation is trumped by day-to-day survival needs.

Connections are the only way of finding employment, and people are very careful not to participate in activities that would jeopardize the possibility of obtaining or holding a job. Public apathy concerning politics is extremely high.

Nicaragua has a tradition of discrimination against women. In Prof. Mitch Seligman’s 1997 survey, both men and women from all age groups and walks of life agreed that women are discriminated against. Laws exist that prohibit discrimination, and urban women fare better than in other societies of the region, but there is still discrimination.

Discrimination against ethnic minorities living in Atlantic coast regions is historical, cultural, linguistic, and racial. By way of comparison, while Nicaragua’s average per capita income is around \$470, per capita income in the municipality of Bonanca (autonomous region of the north) is approximately \$200. Infrastructure is almost nonexistent. Business interests of the Spanish-speaking west manipulate exploitation of wood, fish, and mines. Attempts by Atlantic coast peoples to penetrate the western Spanish system are met with resistance.

## 2.5 Good Governance

*Good governance refers to more than government itself. It refers to the way in which social institutions, both in the public and private sectors, actually work. Is there good governance, or at least the capacity for good governance – not only by the state but by social institutions in general?*

The public sector dominates Nicaragua since it accounts for about half of all spending (GDP is roughly divided equally among government, the private sector, foreign assistance, and remittances.) Almost all large firms belong to families and operate with little or no public scrutiny.

Nicaragua’s national government organizations operate according to the dictates of party *caudillos*. Corruption is rampant. Public policies are often not defined. When they are, they are not consistently followed and are subject to change. Ministries must depend on foreign donors for most resources to finance service delivery and public investment. Government is overly centralized, performs poorly in meeting citizens’ needs, and is not accountable to them. Checks and balances are not effective. Municipal residents look to their local governments to meet a long list of needs, but they, in turn, lack resources, taxing power, and institutional capability.

## 2.6 Distilling the DG Challenge: Clientelistic Politics and Patrimonialistic Governance

Nicaragua has serious problems in each of the five dimensions of democratic governance, as elaborated above. They result from traditional clientelistic political and patrimonialistic governance practices that have endured despite the establishment, beginning in 1990, of institutions associated with democratic governance. Low levels of social capital, political polarization, dominance by authoritarian *caudillos*, resorting to violence, and political pacts (as briefly summarized in the last section) are the factors that have led Nicaraguans to rely on clientelistic and patrimonialistic practices rather than democratic competition, good governance, and rule of law.

***Nicaragua’s primary democracy and governance challenge is to gradually substitute clientelistic and patrimonialistic political and governance practices with democratic competition and citizenship, good governance, and the rule of law.***

Clientelism refers to a complex chain of personal bonds between political patrons or bosses and their individual clients or followers. These bonds are founded on mutual material advantage.<sup>13</sup> In Nicaragua, strongmen or *caudillos* have always emerged to lead two polarized political movements. This phenomenon has transcended political ideology and personality differences. Nicaraguan *caudillos* have used their power to respond to the concerns of their clients and

<sup>13</sup> Brinkerhoff, Derick W., and Goldsmith, Arthur A., *Clientelism, Patrimonialism and Democratic Governance: An Overview and Framework for Assessments and Programs*, December 2002 (unpublished, ABT, Assoc.).

supporters, while generating significant personal wealth for themselves and their inner circles. Shifting alliances has been the norm as *caudillos* seek to disadvantage potential and real competitors. Nicaraguan *caudillos* have allied themselves with different actors for different purposes, as their interests and the political environment changed. Integral to this process has been the accountability of all appointed officials and most elected officials to *caudillos* rather than the citizenry. *Caudillos* have ruled with almost complete discretion, virtually unconstrained by the constitution and laws, and checked only by competition from other *caudillos* and foreign powers. When one *caudillo* has begun to dominate political decision making and rent-seeking beyond limits acceptable to the public and/or influential foreign governments, opposition has emerged, along with violence (and often foreign intervention) to reestablish the balance of power between two *caudillo*-led political forces. All but a few citizens who have had access to resources outside the system have found themselves forced to choose one side or the other for day-to-day survival.

Max Weber (1947) coined the phrase “patrimonialism” to describe situations where the administrative apparatus is appointed by, and responsible to, the top leader. The rulers’ deputies are delegated jurisdiction over certain domains, and given wide leeway regarding how to act. These measures are mostly informal or off the record.<sup>14</sup> While the constitution calls for four counterbalancing branches of government (executive, legislative, judicial, and electoral), all national government organizations have been co-opted to varying degrees by the *caudillo* system – either dominated during periods of one *caudillo*’s rule or divided up by means of temporary power-sharing pacts that provide for the two *caudillos* to appoint party allies to ensure the governmental organizations serve their clientelistic objectives. Consequently, Nicaraguan public services have never been adequate. Regulatory oversight and governmental checks and balances (e.g., Controller General, Courts, Supreme Electoral Council) have been manipulated to meet partisan or personal objectives. As a result of patrimonialistic governance, Nicaragua’s economy is in dismal shape with future prospects slim. The country’s per capita income level is similar to Haiti’s at the bottom rung in the Hemisphere; income distribution is the fourth worst in the world; and survival is dependent on international largesse and remittances from relatives, which together account for half of GDP.

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<sup>14</sup> Brinkerhoff and Goldsmith, *Ibid.*

## Actors, Their Interests, Capacities, and Opportunities for Reform

### 3.1 Political Parties

Nicaragua has two major political parties, the *Sandinista* National Liberation Front (FSLN), often referred to as the *Frente Sandinista*, and the Constitution Liberal Party (PLC). While the FSLN has maintained itself as a unified party, although a narrower one than it once was, the PLC is more an alliance of various anti-*Sandinista* parties. What divides these parties is sometimes less important than what unites them in their mutual disdain and attempts to compete and collude to maintain and increase their positions of power.

#### 3.1.1 *The Sandinista National Liberation Front (FSLN)*

Despite ideological and personal battles characterizing the FSLN's history, it remains the most unified and best-organized political party in Nicaragua, and arguably one of the strongest parties of the left in Latin America. Internal operations of the party are strictly controlled by its autocratic *caudillo*, Daniel Ortega. His dominance of the party, especially since 1990, has driven many former supporters from its ranks. As former FSLN congresswoman, Monica Boldonado, stated in an interview: "*Caudillismo* has destroyed the party. The attitude of Daniel Ortega and the attitude of the FSLN continue to damage the party. Daniel is not mindful of the interests of the FSLN party and if he were actually aiming at a more revolutionary attitude, then he would simply step aside." Although party leadership remains open to ideological debates and some philosophical changes may be occurring in the party since the revolution, internal party operations and governance are still characterized by strong clientelism, patrimonialism, and *caudillismo*.

In the wake of opponent Alemán's election in 1996, the FSLN faced questions of long-term political viability. Although Ortega was able to maintain strict control of the FSLN, the party itself had shown signs of weakening in the mid-nineties with the departure of former vice president, Sergio Ramirez, along with other party leaders, and the debilitating loss of the 1996 elections. Despite weaknesses, internal party discipline has remained strong and the stakes for dissidence are still extremely high – independence from the party leadership quickly translates into political suicide as only party bosses hold the key to future political positions.<sup>15</sup> The process by which the FSLN selects candidates is strictly controlled by Ortega and a closed inner circle. Party bosses

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<sup>15</sup> Although the PLC remains a loose anti-*Sandinista* coalition, party leadership understands that if the party were to split, then the electoral advantage would essentially fall into the hands of the *Sandinistas*. Sixty percent of Nicaragua's population by repeated polls and surveys would refuse to vote *Sandinista*. If that vote were divided, the 35 percent requirement to win the presidency agreed to in the 1999 Pact would be sufficient for a *Sandinista* victor.

essentially handpick representatives to the National Assembly<sup>16</sup> based on members' commitment to tow the party line. Though the process lacks any real transparency, party lists in the FSLN are sometimes vetted in preliminary elections throughout the country.

Despite this history, and maybe because of it, there are strong indications that progressive reform-minded cadres are slowly emerging within the party. Historically rooted ideology has been replaced with the semblance of a party platform, and many argue that there is rising, albeit still clandestinely, dissent within the *Sandinista* party. As several emerging political leaders within the parties are vying to become candidates, internal party lobbies are advocating more democratic procedures for candidate selection. The FSLN is debating ways to make its primaries more transparent and expand public consultation. Further, because of the democratic rhetoric used to challenge and strip the immunity of Alemán, both *Sandinista* and PLC leaders are under pressure – both domestically and internationally – to continue supporting democratic reform. The cost of clientelism, patronage, and corruption has been elevated, if only minimally, and many future party leaders now understand that it may be in their best interest to compete more democratically. Yet, as long as Daniel Ortega and his inner circle control the party, they will be more interested in using traditional techniques to try to oust the opposition and force Ortega into power.

### 3.1.2 *The Constitutionalist Liberal Party (PLC)*

Nicaragua's PLC is a ruling alliance of various anti-*Sandinista* parties, including the New Liberal Party (PALI), Independent Liberal Party for National Unity (PLIUN), and Central American Unionist Party (PUCA). Although a member of the Liberal International and the self-proclaimed heirs to Nicaragua's Liberal Party, the PLC is less ideologically consistent than united by its disdain and distrust for the *Sandinistas*. In a striking departure from historical Liberal tradition, the PLC allied itself with the historically Conservative-allied Catholic Church in order to ensure Alemán's 1996 electoral victory.

Arnoldo Alemán's election in 1996 ignited a new era of institutional tension and political dominance. His first months in office were marked by various protests against his government's policies. As the mayor of Managua, previous to his presidential election, Alemán was able to use his political base to consolidate anti-*Sandinista* support around himself and rebuild the Liberal Party coalition. With the help of finances coming from supporters in Miami and resources afforded to him as mayor of Managua, he ensured that Liberal Party loyalty was directed toward himself and that the principal ideological appeal of the party was to anti-*Sandinistas*.<sup>17</sup> By the time he became President of Nicaragua in 1996, party discipline had become strong enough that there were very few leaders in the PLC capable of challenging him. Those who failed to observe party discipline (for example, those who voted against the party boss in the National Assembly) were punished by being cut off from the PLC's patronage network, as were their relatives and supporters who had benefited by inheriting politically appointed positions.

<sup>16</sup> Although the *Sandinistas* have attempted to hold internal primaries for National Assembly positions, questions concerning the transparency of the vote-counting process have severely compromised the credibility of the elections.

<sup>17</sup> This anti-*Sandinismo* appeal helped generate much-needed support by the Catholic Church.

Alemán's victory consolidated key political alliances (providing him with support of a congressional majority) and exacerbated tensions between the Liberals and the *Sandinistas*, which remained the dominant opposition party. Although Alemán had gained strict control over much of the public domain by personally naming loyalists to key governing positions, various national protests and tensions with the FSLN threatened the sustainability of his control.

Since Enrique Bolaños' election and subsequent arrest of Alemán, the PLC has split into two camps – one that supports the current president and another that supports Alemán. How these factions negotiate, and with whom they form alliances, are the keys to Nicaragua's immediate future. In the long term, most academics, as well as *Sandinista* leadership, assume that the various anti-*Sandinista* political groups will do as they traditionally have done – form an alliance before the next presidential election in order to ensure their electoral victory.

Enrique Bolaños' surprise insistence on being his own man and unwillingness to tow the line in an Alemán-led PLC has created an unprecedented dynamic in Nicaragua's politics and particularly its National Assembly. For the ouster of Alemán from the National Assembly and removal of his immunity, Bolaños was able to coax nine PLC members to defect to his fraction, called *Azul y Blanco*. These nine votes coupled with the 38 from the *Frente Sandinista* achieved the 47-vote majority required. Once achieved, however, Bolaños could no longer count on *Azul y Blanco/Sandinista* cohesion to govern, and he must now try to craft voting coalitions on individual issues.

Bolaños is essentially a president without a party, and while most of the PLC continues to stay loyal to Alemán, the *Sandinistas* have made clear that their support is not going to be automatic or even easy. Indeed, Ortega seems to have decided that it is very much in his interest to exploit the reluctance of the PLC to support Bolaños, hold up *Sandinista* support for particular measures, and thereby paralyze the government.

### 3.1.3 A Third Force?

Although electoral law deriving from the 1999 Pact has nearly eliminated political competition, a number of smaller parties still exist. The principal ones are the Conservative Party of Nicaragua (PCN), Nicaraguan Party of Christian Path (PCCN), and Movement of National Unity (MUN). These parties do not play a role similar to that of the two traditional parties. They manage to endure but are unlikely to represent a legitimate challenge to the current system. Many Nicaraguans argue that restrictive electoral laws will ultimately force a coalition of Nicaragua's smaller political parties to unite and forge a viable alternative to the two primary parties. The Nicaraguan Democratic Movement (MDN) Alliance, which emerged prior to the presidential elections of 2001, consisted of individuals new to the political scene and some familiar faces from the Chamorro years. The party, as its name was intended to suggest, was established to represent a more neutral option untainted by the polarization of Nicaragua's political elite – a third force. After several months, the MDN began to deteriorate as the more experienced political members believed that the party was being marginalized by so many new faces. Eventually it was dismantled under allegations that both the Liberals and Conservatives had maneuvered to destabilize it.

Another *tercera fuerza* candidate may be the Movement of National Unity (MUN). Joaquin Cuadra, former Defense Minister, created the MUN as a catch-all political party for political forces with no other viable options. His electoral strategy was to recruit the smaller parties that were ruled out of existence by the CSE and others which did not receive enough votes in the municipal elections to maintain their official status. MUN became one of the few emerging parties that

managed to submit a completed application before the CSE. However, the CSE significantly delayed verifying MUN's application, and the FSLN magistrates alleged that there were problems with some of the party's municipal boards. Possibly related to the decision, the MUN is recognized as the only emerging party that would potentially split votes within the FSLN. It remains unclear whether this party, or any other *tercera fuerza*, will be allowed to contest openly for power in the near future. The most likely scenario is that these smaller parties will form alliances of convenience with one of the primary political parties. The danger is that if a "third force" does not actually become a "first force," the splintering will mostly be at the expense of the non-*Sandinistas* and play into *Sandinista* goals to win the presidency.

### 3.2 Local Government Actors

#### 3.2.1 *Mayors and Municipal Council Members*

Most mayors and council members in Nicaragua are closely linked to their parties. By virtue of the fact they are locally elected and by their physical proximity to their constituents, most local officials tend to be more inclined to know and care about citizen needs and demands. Mayors are also overwhelmingly in favor of decentralization, and it is in their interest to be so, as it would enhance their political powers. As a result, individually, and through their organizations, local officials can play a role in opening up the system, especially in light of the upcoming 2004 local elections where parties are praising decentralization to garner favor with constituents.

#### 3.2.2 *AMUNIC and Other Municipal Associations*

AMUNIC, *Asociacion de Municipios de Nicaragua*, is a "para-NGO" composed of mayors from all the municipalities of Nicaragua. Its current role is almost exclusively to advocate for greater autonomy for local governments. To its credit, it has successfully managed to remain non-partisan despite pressures by both parties. AMUNIC receives some funding from international donors and dues from local governments. Its current president, the mayor of Boaco, is considered dynamic and genuinely interested in promoting the interests of local governments outside party lines and with greater local citizen participation.

AMUNIC could take over other roles in addition to its decentralization advocacy role. For example, it could take over the technical assistance, training, and information-sharing roles currently held by the state-run INIFOM. This would be under the assumption that AMUNIC remain apolitical, non-partisan, and run democratically among its membership.

Other associations of municipalities have formed in order to achieve specific objectives. An association of the Lake Nicaragua Basin has been formed by some 32 municipalities to address the serious problems of lake pollution and poor watershed management. The six municipalities in Boaco have also formed an informal association to oversee regional projects such as roads and hospitals. These associations can also play a useful role in promoting democratic participation.

#### 3.2.3 *Central Government Actors in the Local Governance Arena*

**INIFOM:** INIFOM is the governmental agency originally designed to provide technical assistance and training to municipalities in local administration and project management. International donors have funded local government programs with INIFOM, with some \$57 million in donor and GON funds involved. The organization is viewed as non-responsive to local municipalities and its dissolution is being considered under the new government downsizing strategy.

**FISE:** The Fund for Development and Disasters was set up similar to the social investment funds set up with IFI resources throughout Latin America. It manages large amounts of funds for municipal development projects and has a sophisticated program for training local government administrations and assisting them in mobilizing local resources before disbursing funds as transfers. To date, 57 municipalities have “graduated” and theoretically have the right to manage transferred funds themselves. However, they must submit their budgets to the FISE, following which limited funding is released as needed for projects. In fact, FISE funding guidelines are never met and actual funds provided are usually half the amounts originally promised. This causes conflicts among competing citizen groups within municipalities. Because the World Bank and IDB have executed their loan agreements with central governments, FISE has been able to manage its programs according to GON rather than local priorities. Projects desired by the local governments and their communities are turned down in favor of central government priorities. Importantly, all GON budget earmarks for local government transfers are essentially only counterpart funds for the two central government agencies’ programs with international donors.

### 3.3 Nicaragua’s Military

Despite imperfections that remain, Nicaragua has made tremendous strides in civil-military relations. The *Sandinistas* consolidated FSLN control over both civil and military personnel in the 1980s. In the 1990s, the Chamorro government demilitarized the civil service and reduced the number of army personnel significantly. Today’s officer corps is composed of the older officers left over from the *Sandinista* years and younger officers without the civil war experience. Thus, within the officer corps, there are differences of vision about the role of the army itself. As the older officers are phased out and the newer generation comes into power, it is possible that, if Nicaragua can maintain social stability, a professional military force can evolve.

Today, it is generally recognized that the Army has accepted the fact it must be loyal to the president. For the military, this is not equivalent to submitting to civilian government authority, and, in fact, relationships with defense ministers are not easy. During the very public and controversial year of trying to oust Alemán from Congress and put him on trial, the Army Chief of Staff, Carlo Leon Cruz, stood firm in his declarations that the Army’s mission was to support the president and protect the borders from outside aggression. The Army has not been accused of any human rights violations for a number of years.

### 3.4 The Legal Arena

#### 3.4.1 The Courts

The Supreme Court manages the court system, which meets in four *salas* (constitutional, criminal, civil, and administrative). The court system includes appellate courts, district courts, and local courts.<sup>18</sup> The Supreme Court is responsible for both jurisprudence and administration of the court system. Three standing commissions – for administration, judicial career, and judicial discipline – carry out the administrative duties of the Supreme Court.<sup>19</sup> The President of the Supreme Court is Dra. Alba Luz Ramos Vanegas, the first female to hold the position.

<sup>18</sup> Military courts’ jurisdiction is strictly limited to military matters.

<sup>19</sup> While the Assessment Team was in country, the Disciplinary Commission was called into session to review the legal arguments and procedures followed by a district court judge who had just issued a sentence. Afterwards, she told the press she was thinking of amending the sentence.

Nicaragua's judicial authorities have been working to improve three basic aspects of the court system: updating laws, court organization, and procedures; improving technical and administrative capacities; and clarifying judicial career standards. Three basic laws governing the system have been passed: (a) the *Ley Orgánica del Poder Judicial*, which replaced an 1894 law; (b) the Criminal Procedures Code (CPP), which replaced an 1879 statute and moved Nicaragua from an inquisitorial system to an accusatorial system, and initiated oral hearings; and (c) the *Ley Regulatoria de la Jurisdicción de lo Contencioso*. The Supreme Court declared 50 articles of the last law unconstitutional in June 2000, thus nullifying its standing for the time being. A new Criminal Code was also drafted, but its approval by the Assembly has been held up.

In 1990, only 10 percent of local judges and 70 percent of district judges had law degrees; now, all judges possess them. With donor assistance, courthouses have been built or renovated in most municipalities. Two new administrative offices were established for judicial notifications and case assignments. Discussions regarding improving administration of the court system have just begun, covering options for professionalizing administrative functions and simultaneously providing for greater transparency and independence. A judicial career law and judicial ethics code are in the initial stages of discussion. Standards are needed to regulate selection, promotion, training, and discipline of judges and other judicial sector personnel, but given the politicization of the system, reforms in this area will take time to achieve.

### **3.4.2 The Public Ministry**

The 2000 *Ley Orgánica* split off the *Procuraduría* from the Public Ministry (PM), giving the former responsibility for defending state interests. The PM was one of the governmental organizations affected by the 1999 Pact. Its head, the *Fiscal General*, is from the *Arnoldista* faction of the PLC, and his deputy is *Sandinista*. The *Ley Orgánica* conveniently provides for the president to nominate the *Procurador General*. As a result, the current incumbent is loyal to President Bolaños. Both organizations are politicized at the top. Some PM prosecutors are faithfully trying to use the new CPP to carry out their duties.

### **3.4.3 The Defensoría Pública**

The Public Defenders Office functions under the authority of the Supreme Court but enjoys autonomy. A draft law to establish it as an independent entity has been prepared. Until recently, the *Defensoría* employed only 13 public defenders. They now number 39. Public defense services are also provided by law students who have completed three years of school and act as *defensores de oficio*. The *Defensoría* faces problems similar to those of sister organizations in other Latin American countries, and so far has been able to serve only 8 percent of arrested individuals requiring public defense services.

### **3.4.4 The Human Rights Ombudsman**

This governmental entity was created under the 1995 constitutional amendment. Although the current incumbent is not universally respected for his vigor, basic human rights conditions in Nicaragua have improved compared with the 1970s and 1980s. Serious problems continue to exist, however, regarding discrimination against women and Atlantic coast minorities, and with the treatment of minors. The human rights behavior of police and military is not worrisome. Human rights organizations are now concerned more with government's inability to ensure that basic economic and social welfare rights of the poor are met. Nicaragua's youth law conforms to international standards, but the country lacks resources needed to carry it out fully, for example

with respect to rehabilitation of juvenile delinquents. The deputy ombudsman for youth issues is well respected, but his actions are limited to public pronouncements.

### 3.5 Civil Society

The current status of four types of civil society organizations is described below: (1) NGOs (service providers and civic organizations), (2) labor unions, (3) business associations, and (4) universities. Among these, the most likely civil society organizations to lead DG reforms appear to be service delivery NGOs that are genuinely succeeding at facilitating citizen leadership for local initiatives and collaborating with other NGOs and local officials, and some national-level civic organizations. Both types of NGOs face challenges, however, if they are to play a more effective role in promoting DG reform.

Regrettably, unions and business associations are still operating as they always have within Nicaragua’s traditionally polarized patron-client political system, and so far, they have shown no real interest in promoting DG reforms.

#### 3.5.1 NGOs

As described in Section 3, two types of NGOs began to establish themselves in the early 1990s: national-level civic organizations directly concerned with promoting democratic development; and service-providing NGOs mostly working in rural areas in health, education, and environment.

Now, in the second year of the Bolaños presidency, national-level civic organizations see eye-to-eye on many social issues (i.e., gender, ethnicity, human rights, environment) as a result of having participated in public discussions and consultations with the GON about them. On issues more directly political (those regarding economic policies or alternatives for reform of the state), disagreement is common. What has changed for the majority of these organizations is that the political parties no longer dictate the positions they take, but rather represent the views of those working in or running the organizations.

Advocacy activities carried out by national-level civic organizations have made some difference in Nicaraguan political life, but not much. CSO leaders cite two reasons for this. One reason is the lack of “legitimacy” with which these organizations are viewed by the common Nicaraguan citizens. This perception is attributable to their lack of contact with them, the fact that they are led by Nicaraguan elites often sheltered from the day-to-day struggles of the majority, and commonplace suspicions that the leaders of such organizations are hiding their personal or partisan agendas.

The other reason is that political and governmental decision making continues to be completely dominated by political party leaders with whom non-partisan NGOs have no effective means of communicating. This accounts for the lack of effectiveness of the principal national-level vehicle for promoting dialogue on matters of public interest between government and civil society representatives – the *Consejo Nacional de Planificación Económica Social* (CONPES).

As of the Assessment Team’s visit, most national-level civic organizations confessed that they found themselves in somewhat of a malaise, not knowing how best to push DG reforms, and waiting for President Bolaños to make the first moves.

Meanwhile, service delivery NGOs continue to carry out successfully donor-financed activities throughout the country. Uncertainty reigns regarding how these efforts might fit with as yet undefined Bolaños Administration programs. Many NGOs working in the same service delivery areas have been successful over the last few years in establishing closer working relationships among each other, although different programmatic approaches to the social problems being addressed abound. They have also succeeded to varying degrees in cooperating with local government officials and officials from GON ministries assigned to regions where they are operating. Their efforts to promote greater citizen participation in their programs have had mixed results, reflecting the resilience of Nicaragua’s patron-client traditions.

Nicaraguan NGOs need to keep working to improve their own dedication to democracy and their effectiveness. Most are viewed by the public as partisan, even in the many cases where this is not so. Civil society leaders need to practice being non-partisan and transparent, encourage their colleagues in other organizations to do likewise, and find ways to convince the public that their organizations are non-partisan when that is the case.

Another challenge for NGOs is to ensure that their internal practices are as democratic as those they advocate for society. One of the most important challenges facing service delivery NGOs and civic organizations is to deal with their own constituents and clients democratically. Constituents and clients need to know that they are being served, and not dictated to, by civil society organizations.

NGO legitimacy is also a very big issue. NGO leaders wishing to promote democratic reforms need to be able to demonstrate that their organizations are in touch with, and genuinely represent, their constituencies and clients. Although, as in other countries, it is unlikely that civil society organizations will be able anytime soon to depend on local sources for their financial sustainability, without legitimate contact with, and service to, constituents, local support is neither likely nor merited.

### 3.5.2 Labor Unions

Today, after 12 years of non-*Sandinista* government, including six with President Alemán who had close ties with many traditional private sector families, Nicaragua’s labor unions are not powerful social actors, either when focusing on partisan political issues or labor-management relations. The constitution provides for the right to bargain collectively, and the 1996 Labor Code reaffirmed this right. According to the 1996 Code, companies engaged in disputes with employees must negotiate with the employees’ union if the employees are organized. However, more than one union can exist at any place of employment. This often results in each union pushing its own demands.

Labor unions are divided into four groups. **The National Workers Front (FNT)** is a *Sandinista* umbrella group that includes eight labor unions: the Farm Workers Association (ATC); the Health Workers Federation (FETASALUD); the Heroes and Martyrs Confederation of Professional Associations (CONAPRO); the National Association of Educators of Nicaragua (ANDEN); the National Union of Employees (UNE); the National Union of Farmers and Ranchers (UNAG); the Union of Journalists of Nicaragua (UPN); and the *Sandinista* Workers Central (CST).

**The Permanent Congress of Workers (CPT)** is an umbrella group of four non-*Sandinista* labor unions: the Autonomous Nicaraguan Workers Central (CTN-A); the Confederation of Labor Unification (CUS); the Independent General Confederation of Labor (CGT-I); and the Labor Action and Unity Central (CAUS).

**The Nicaraguan Workers’ Central (CTN)** is an independent labor union, and the **Social Christian Workers’ Front (FTS)** has ties with the Nicaraguan Social Christian Party.

### 3.5.3 Business Organizations

Commerce grew in the 1990s, but traditional agricultural products continue to account for the bulk of output and exports, and industrial production is aimed mostly at the domestic market. Nicaraguan GDP is divided as follows: agriculture (31 percent), industry (27 percent), services (36 percent), and government (6 percent). Most agriculture production is still concentrated in traditional products (coffee, sugar, citrus) produced on small and medium-sized farms. Some agro-industrial activity occurs, and a small free trade zone assembly industry has developed. Farms and businesses are almost universally family-owned.

Businesses, like other segments of Nicaraguan society, continue to operate in an atomized fashion. Family-owned businesses continue to predominate. There is almost no evidence of the emergence of a more competitive and progressive segment of private sector leaders (usually exporters of non-traditional products), as has been the case in neighboring countries, where they have often become protagonists for open markets, sound economic policies, and good governance. Nicaragua’s private businesses are much more passive than their colleagues in other countries. They react individually and through their associations to moves by political leaders rather than try to influence them ahead of time. Cooperative, self-help initiatives by the private sector itself to improve business conditions are almost unknown. Virtually no business support initiatives (research, market investigation, business service infrastructure) exist in either the private or public sectors.

Today, COSEP includes nine business chambers/associations, covering agricultural producers, construction companies, commerce, non-traditional agricultural exporters, industries, professionals, fisheries, poultry businesses, and tourism, along with the Nicaraguan Development Institute.<sup>20</sup> Other important business and trade associations include ASOBAN, the bankers’ association, and associations for coffee and sugar producers. Nicaraguan business associations continue to operate solely as lobbying entities, and show no real interest in democracy and governance issues. Associations lobby to obtain or preserve subsidies and to get the GON to act on issues of interest to their members.

The conclusions of COSEP’s *Gran Convención de Sector Privado* dated August 27, 2000 contain a litany of unprioritized pleas to the government to take care of business’ problems. Political party and civil society leaders cannot take seriously occasional statements made by COSEP leaders in favor of governance improvements – for example, noting the need for a more professional and independent judicial system to support business expansion and economic growth – because members do nothing to help bring about such changes. In fact, they contradict what they purportedly support with their actions as individual businessmen.

Absent more unity and protagonism, the private sector is “easy pickings” for *caudillo* political leaders. COSEP executives told the Assessment Team the *Consejo* “vehemently opposed” the Alemán-Ortega Pact, but could do nothing to prevent it. When asked what was needed to overcome the current governance crisis facing the country and improve Nicaragua’s democracy, their only reply was “re-unite the PLC.” When asked what should be done to begin addressing Nicaragua’s problems, one prominent business leader suggested that donors should capitalize a development

<sup>20</sup> The entity under which COSEP was originally established.

bank and put it in the hands of private sector business leaders who could then lend the funds to small and medium-sized businesses to cooperate with them in ventures to increase economic growth and employment. In his opinion, governance problems would then take care of themselves.

### 3.5.4 Universities

There are 12 universities in Nicaragua. The oldest and largest is the *Universidad Nacional Autónoma de Nicaragua* (UNAN) in Leon, which was founded some 190 years ago and now has 10,000 students. The *Universidad Centroamericana* (UCA) was founded in 1960 by the Jesuits and is the oldest private university in Central America. In addition to these two, perhaps best-known Nicaraguan universities, the others currently operating are *Universidad Americana* (UAM), *Universidad Católica Redemptoris Mater*, *Universidad Centroamericana de Ciencias Empresariales* (UCEM), *Universidad Ciencias Comerciales* (UCC), *Universidad de las Regiones Autónomas de la Costa Caribe Nicaragüense*, *Universidad Iberoamericana de Ciencia y Tecnología*, *Universidad Nacional Agraria*, *Universidad Nacional de Ingeniería*, *Universidad Politécnica de Nicaragua*, and *Universidad del Valle*.

Although access to higher education continues to be very limited, during the 1990s universities began playing a more important role in Nicaraguan society. They operate free from governmental or party interference. In line with their desire to prepare young adults for professions in which they can contribute to meeting the country's needs, many universities have entered into cooperative agreements with other Nicaraguan organizations, both private and public, to help them meet their needs while simultaneously providing space for practical education and contributions to Nicaraguan society by students and faculty.

UNAN, for example, now operates seven university institutes, one associated with each of its faculties. Among the activities the institutes currently carry out are a Kellogg Foundation-funded program entitled "Healthy Communities" implemented in cooperation with several municipal governments, training programs for police and army officers, and the operation of mediation centers.

The UCA also operates institutes for social action, education, research and development, history, and the *Instituto de Encuestas y Sondeos* (IDESCO) – Nicaragua's premier polling organization and the one most cited in public opinion surveys. UCA institutes carry out a wide variety of programs with other organizations, from work with shrimp farming cooperatives on the Atlantic coast to municipal government management with INIFOM and public defender programs. It, too, has received grants from U.S. foundations (McArthur and Ford).

Time did not permit the Assessment Team to visit more than two universities, but from those visits it appears that universities might make good partners with USAID for DG and other programs. In general, universities have interest and experience in outreach activities, experience cooperating with other civil society and public organizations, are autonomous, most are not unduly influenced by political parties, and they offer opportunities for involving Nicaraguan youth in new initiatives.

## 3.6 The Media

The role of news media has also evolved since 1990 to the point where now they are recognized as important actors in political life, both by citizens who follow public issues and by politicians. To politicians, news media and journalists are now a force with which to reckon – with threats, bribes, or public relations attempts – but nevertheless, a force. The political game is no longer played just

behind closed doors. To citizens interested in public affairs, news media are a more reliable source of information about political happenings. News media now play a more important role in Nicaragua's democracy, and that role is evolving.

Journalists and owners of media outlets have responded to these changes in different ways. Some (notably a few television stations) strive to present the public with balanced reporting around issues of current concern. Others – such as *La Prensa* and *El Nuevo Diario*, Nicaragua's two daily newspapers, and TV Channel 4 – maintain staunchly pro-*Sandinista* or anti-*Sandinista* stances. Many reporters act as “avenging angels” (in the words of the current Embassy PAO), especially since the long period of clamor over corruption leading up to the arrest of President Alemán.

The source citizens say they depend upon first for news is radio – 80 percent of those in department capitals and 43 percent of those in rural areas. There are now 117 stations registered, 67 of which broadcast in Managua. Most of them are *Sandinista*-slanted. The second source of news to which citizens turn is television – 75 percent in urban areas and 28 percent in the countryside. Television viewers report having more confidence in what they see on TV than what they hear on the radio or read in newspapers. There are seven TV channels, six of which present news. The most respected for objectivity and professionalism is Channel 2, owned by the Zacasa family.

Nicaragua's two dailies, *La Prensa* and *El Nuevo Diario*, serve as primary news sources for 45 percent of those in urban areas and 27 percent of those living outside departmental capitals. Both are associated with the Chamorro family. Doña Violeta's husband, Pedro Joaquin Chamorro, took over *La Prensa*, a Conservative Party-oriented paper, from his father in the 1950s until his assassination in 1978. When the *Sandinistas* took power, Chamorro relatives broke with *La Prensa* in 1981 to found the pro-*Sandinista* *El Nuevo Diario*. Today, it still pushes the *Sandinista* line but is anti-Ortega. During the 1980s, after Doña Violeta's disaffection with the *Sandinistas*, *La Prensa* turned anti-*Sandinista* and the paper was frequently closed down by the *Sandinistas*. Doña Violeta fought the *Sandinistas* for the right to publish without censorship and, in 1987, the government backed down and allowed her to resume publication as an opposition newspaper.

Starting a few years ago, weekly news bulletins began circulating in Managua. Numerous readers rely on them to provide more in-depth and/or accurate reporting. They are *Confidencial*, *Bolsa de Noticias*, and *Trinchera de la Noticia*. It should also be mentioned that three magazines are published: *La Boletina*, *Municipalidades*, and *Revista 7 Días*. None of these print media enjoy wide circulation, but the bulletin-type publications can influence political decision making. Finally, it is notable that some 60 TV cable systems are now licensed to operate. They represent a potential source of local news, especially in departmental capitals.

There are two journalist associations: the pro-*Sandinista* *Union de Periodistas Nicaragüenses* (UPN) and the anti-*Sandinista* *Asociación de Periodistas Nicaragüenses* (APN). The *Universidad Centroamericana* (UCA) offers the country's only degree in journalism and communications. Journalists and news media owners, some of whom are already involved in promoting democratic governance, will probably be willing to improve their effectiveness in providing information useful to those pursuing democratic reforms. Three main issues face Nicaraguan journalism: freedom from governmental interference, journalistic professionalism, and bridging the span between politics and day-to-day relevance in the daily lives of most Nicaraguans.

### 3.7 The Catholic Church

Obviously, the Church is not an actor with which USAID can cooperate directly, although USAID does assist some Church-affiliated NGOs to carry out social welfare and DG activities. For that reason, and because the Catholic Church continues to be an important voice in most Latin American societies, the role of the Church was briefly examined for this assessment.

Two observations regarding the role of the Church in DG matters can be made. First, the Nicaraguan Church's hierarchy has chosen to stay out of "reform of the state" and democratization issues being played out on the national stage. The Cardinal and bishops refrain from making statements in favor of specific democratization reforms except in the most general of terms. They have not chosen to emulate the more proactive stance of the Church hierarchy elsewhere (for instance, in Honduras, where clientelism and institutional integrity are also issues and the Cardinal has chosen to involve himself personally in efforts to facilitate agreement among civil authorities on democratic reforms). The reluctance of the Nicaraguan hierarchy to do so can be contrasted with the more proactive stance taken by Church authorities in governance and citizenship at the local level. This, perhaps, is how the Nicaraguan hierarchy has chosen to involve the Church in DG issues in Nicaragua, ever aware of its polarized history and its own marked opposition to the FSLN.<sup>21</sup>

The second observation is the Church's unequivocal stance against the FSLN. This, combined with the Church's historical association with Nicaragua's traditional elites, and the Cardinal's public defense of former President Alemán while he was still in the National Assembly, have made it clear to Nicaraguans where the hierarchy stands in Nicaragua's polarized society, and thus limited its potential effectiveness in facilitating agreement on democratization reforms.

### 3.8 The International Community

The international community, and most notably the United States, has always played an important role in promoting or imposing changes, peace, or agreements in Nicaragua. From the early days, when the Conservatives or Liberals would seek assistance from their Central American counterparts to reinforce their positions, to the calling in of the U.S. marines to settle revolts and impose post-fighting agreements, Nicaraguans have shown a preference for bringing in outsiders to further their causes rather than sitting down and hammering out a compromise and consensus.

Certainly Oscar Arias played a major role in crafting the end of the *Sandinista*-contra war of the 1980s and laying the rudimentary foundation of an agreement on which Nicaragua's political life would move forward peacefully. Since the *Sandinistas*, international donors have applied pressure on the issue of human rights and provided financing and training to local human rights groups and NGOs – both those advocating democratization and those providing services.

Donor contributions constitute 25 percent of Nicaragua's GDP or \$600 million per year. Thus, donor influence, historically and in present day, is substantial. Given the inadequacy of effective political will within Nicaragua; the challenges its civil society organizations face; mounting

<sup>21</sup> The Assessment Team heard from the bishop of Matagalpa and his colleagues about many of the activities of a diocesan organization (CODIAL) involved with citizen participation in local governance, reconciliation, and the like.

concerns over the potential for growth in illicit activities, terrorism, and social unrest in the face of the absolutely urgent economic, social, and political needs of the population, it is hard to imagine that the international donor community will not be hard-pressed to be one of the agents of change in Nicaragua’s democratic and economic development over the years to come. On the other hand, donors continue to have different or conflicting priorities in Nicaragua, and many admit to “donor fatigue” given the very limited success to date in helping meet economic growth and democratization goals.

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## Arenas

### 4.1 The Governance Arena

#### 4.1.1 *The Legislative Branch*

Nicaragua's unicameral National Assembly consists of 92 members, 90 of whom are elected from party lists every six years, at the same time as the presidential elections. Under the constitutional reform of 2000, the ex-president (Arnoldo Alemán) and ex-runner up (Daniel Ortega) were also granted seats in the National Assembly bringing the total number of seats at the time to 92, and more importantly assuring immunity from prosecution. Under a less than enthusiastic Chamorro government and at the behest of some of Nicaragua's donors, the 1996 constitutional reforms took many powers away from the executive branch and vested them with the legislative branch. Most important was a reversal of the practice that once a law was voted by the National Assembly, all other implementation laws and regulations were done by presidential decree.

Were it not for the fact that Nicaragua's political parties, under their *caudillos*, use government to serve personal and partisan objectives, as opposed to respecting the institutional functions of governmental bodies within a democratic system, the legislature might today serve as a significant check on the executive branch. All executive branch budgets, programs, and nominations must go through the National Assembly. However, until recently, with the Bolaños-Alemán split, the president's party majority in the National Assembly has guaranteed approval of budgets and major legislation. Changes to the Constitution and approval of Supreme Court magistrates require a 60 percent vote, meaning both parties normally need to cooperate on those decisions.

Each member of the Assembly is beholden to one of the two *caudillos*, and only with President Bolaños' recent splinter group has the traditional dynamic stopped at least temporarily. Of the 92 seats, *Sandinistas* hold 38; the PLC, 54. The National Assembly holds debates, mostly based on the two parties' positions. If the issue is of little interest or significance, there is some individual input into the debate. For important issues, debate is limited to presentation of each party's position. The party list system all but assures that the National Assembly does not serve as a vehicle of representation for citizen interests. The National Assembly does not particularly feel it has to abide by its own statutes or rules. As point in fact, while the limit on the number of committees a member may sit is two, many members sit on up to four.

The issue of immunity also deserves special emphasis. It covers liability for acts carried out in one's official capacity as well as in one's personal life, and the immunity while in office extends to actions taken before being elected or appointed. As a result, one of the primary attractions for the elite themselves to hold office is the blanket civil and criminal immunity from prosecution that high office conveys. Immunity creates a perverse incentive for corruption that Nicaragua can ill afford.

### 4.1.2 *The Executive Branch*

Historically, Nicaragua’s executive branch has been politically strong due to the fact that it was in the hands of a dictator or a *caudillo*, or because of the president’s ability to dictate laws by decree, at least until the Chamorro reforms. Further, the president controlled the National Assembly. Notwithstanding its political strength, because of patrimonialistic governance, the executive branch has not provided effective leadership in economic and social development, nor have its social service functions been administered well. Education and health are often pointed to as the exceptions, but those are areas where outside assistance has been significant, with much of it administered through outside public channels.

There is no civil service, and a civil service bill is languishing in the National Assembly. The bureaucracy was significantly downsized and demilitarized under President Chamorro, yet much remains to be done. The country has some 85,000 bureaucrats to manage a budget of under \$2 billion. Certain ministries (health and water) are said to be oversized by as much as 20 percent. The executive branch, notorious for its lack of transparency, is where much of the corruption and party patronage take place.

### 4.1.3 *Local Government*

Nicaraguan politics and administration are highly centralized. Administratively, the national territory is broken down into 17 regional units (15 departments and 2 autonomous regions) and 152 municipalities. Managua, with 25 percent of the country’s population, possesses the only local government with significant influence. The 15 departments resemble the “prefectures” of the French-style system where a governor is designated by the president and coordinates large projects that are designed to benefit all or most of the municipalities within its borders. In addition, representatives of the major ministries are assigned to departments (education, health, infrastructure, etc.). Governors lack their own program budget and thus are relatively powerless.

#### The Municipalities

Administration of municipalities very much mirrors the structure of the central government. There is a mayor, directly elected since 1996. Each municipality has 6, 10, or 25 council members, depending on municipality size. They function primarily in a parliamentary fashion, where the mayor is the head of the municipal council. Responsibilities of the municipalities are similar to those in other countries with highly centralized governments: feeder roads, garbage collection, water and sanitation, cemeteries, parks, sports, culture, and environmental protection. The mayor proposes a budget, and the city council vets it, modifies it, and approves it based on one degree or another of legally required citizen input. The ability of the municipalities to provide systemic checks on the central administration or even to deliver the services mandated to them is impeded by two significant factors: first and foremost is the serious dependency on the central administration for resources. Second is the web of party allegiances of the mayor and council members. Direct election of mayors in 1996 has brought some degree of local accountability, but allegiance to the party and connections still dominate. Nicaragua has not yet introduced a viable means of municipal financing. At the behest of the international donors and led by the World Bank and IDB, Nicaragua introduced the “FISE” system in 1999.

A typical municipality consists of numerous small communities, each with its own system of leader selection, decision-making processes, needs identification, priority setting, and production methods. The level of democracy within communities varies greatly. There is usually poor coordination

between communities and their municipal government, and also with local and national NGOs that try to represent them. Several municipalities have endeavored to incorporate community groups into the local decision-making process, at the behest of national programs such as the former USAID/PADCO MDD project or the current IDB/World Bank projects of FISE and INIFOM.

### The Autonomous Regions of the Atlantic Coast

The Atlantic coast areas comprise over 50 percent of Nicaragua's national territory and some 12 percent of its population. The regions include the original Moskitos, Sumomayangnas, and Ramas indigenous groups as well as the Afro-Colombians who were sent by Spain to the area for their part in the slave uprisings in San Vicente. In addition, there are the Garifunas (mixed Afro-Indian) and the more recently arrived Spanish-speaking colonizers from the western part of Nicaragua.

Importantly, Spain never exercised sovereignty over the Atlantic (Mosquito) coast, which was first mostly a pirate colony, then an English protectorate until its forced annexation to western Nicaragua in 1894 with the help of the U.S. marines under an agreement with then dictator General Zelaya. Zelaya immediately embarked on a process of "Nicaraguanization" of the coastal peoples, forcing Spanish as the official language, closing schools for 40 years, and forging a policy of second-class citizenry. From the onset, there was no fluid means of communication between Spanish-speaking Nicaragua and the coastal peoples.

The *Sandinistas* needed to pacify the coastal regions in order to prevent having to fight on two fronts. As a result, the *Sandinistas* resuscitated the 1894 offer, never carried out, of establishing the coastal regions as "autonomous" within Nicaragua. In 1986, the constitution recognized the special status of the peoples of the Atlantic coast and, in 1987, the Law of Autonomy was promulgated, (re) creating the Northern Autonomous Region and the Southern Autonomous Region.

The law established a Regional Council of 47 representatives that, in turn, selects a Governing Board that then elects the Regional Governor. The first autonomous governments took office in 1990. However, while this was established in the constitution, regulatory laws or decrees supporting the law of autonomy have not yet been passed. Thus, the relationship between what is referred to as the "western Spanish part" and the coastal peoples is one of extreme distrust to the point where both sides question even the authenticity of the coastal peoples as Nicaraguans.

The two major parties have co-opted the Regional Governors and other officials. None of a promised \$20 million in transfers for development projects has been made available. The local party, the Tatamatas, was excluded from the most recent elections as a result of the 1999 Pact. When promoting the candidates for official positions, both parties seek out the less respected, less reputable members of the coastal peoples, further pushing the allegiance away from the local populations and toward the two parties.

Historical, racial, ethnic, language, and cultural problems notwithstanding, the basic issues of local administration and representation mirror those throughout Nicaragua regarding local autonomy and the ability of local communities to initiate their own activities or decide their own priorities.

#### **4.1.4 Accountability, Transparency, and Corruption in the Public Sector**

In Nicaragua, the history of corruption, patronage, and clientelism is vast and virtually uninterrupted, from the looting of the colonies by the *conquistadores* to the present day. Indeed, public frustration with unbridled corruption played major roles in the revolt against Somoza for his

post-earthquake bilking, the *Sandinista* pillaging of the state, and the post-Mitch and corrupt business practices which facilitated former President Alemán's arrest.

The 1999 Pact subverted the governmental institutions that had the nominal authority to combat corruption. The *Controlaria General* was put under the control of operatives from both parties. Similarly, the Supreme Court, which had traditionally functioned under the party with executive and legislative power, was put under dual party control, thus making it easier for officials from both parties to maintain impunity.

#### The National Integrity Commission and the Office of Public Ethics

In the wake of the Latin American Special Conference against Corruption held in Caracas, Venezuela in 1996, then Vice-President Bolaños promoted establishment of Nicaragua's National Integrity Commission. It is composed of the Vice President, the Supreme Court President, the President of the Elections Council, the Controller General, the Attorney General, the Special Attorney General for Human Rights, and representatives of the Ministries of Interior and Education, as well as the Catholic Church and the Civic Council. Its mission is to promote integrity and transparency in government transactions.

The official offshoot of this Commission is the Office of Public Ethics. Both the Commission and the Office are headed by the same director, Haydee Acosta. The mission of the Office of Public Ethics is to attempt to prevent corruption with citizen participation, to institute procedural manuals for government services and procurements, and to assist in promoting legislative actions that foster transparency and integrity in government. The office is small, seriously under-funded, and has had limited impact, by its own admission. Its three main planned programs are establishment of *inspectorias* in seven of the ministries, not as auditors, but trainers; training in good management and government as a public service; and establishment of an information system on government procurement.

#### 4.2 The Electoral Arena

The electoral branch of Nicaragua's government, the Supreme Electoral Council (CSE), was established in 1983 and was intended to ensure that electoral administration remained nonpartisan. The CSE performed well in the mid-1980s, setting a high standard for honesty and competence, and was recognized as a significant measure responsible for the legitimacy of the hotly contested 1990 elections. The organization's democratic reputation was tainted by perceived irregularities in the 1996 elections and dismantled by new electoral legislation established under the Pact, which both politicized the CSE and closed off political participation. There is currently a general consensus that the CSE is too partisan to be efficient; parties manipulate it in order to gain an electoral edge, and there are significant deficiencies in its ability to adjudicate electoral disputes.

Former President of the CSE Mariano Fiallos notes that the new electoral law, established under the Pact, did two things – “it politicized the CSE and it further closed off political participation.” The CSE uses the new rules to close off participation to some parties entirely or allow participation to other parties based on partisan calculations. Fiallos mentioned that for the presidential elections of 2001, the initial intention of both the Liberals and *Sandinistas* was to declare that the Conservative Party and others trying to compete did not have enough valid signatures to gain legal standing. Rumors to that effect led to various protests – both domestic and international – and the decision was ultimately made to allow the Conservatives to take part.

Electoral legislation established under the Pact authorizes the use of partisan criteria for selecting administrators and directors of the electoral process at all levels, thus handing control of both the institution and the overall electoral processes to the two dominant political parties. Constitutional changes in 2000 expanded the number of magistrates from five to seven and gave the PLC and the FSLN a freer hand to name party activists to the Council, prompting allegations that both parties sought to over-politicize the electoral institution. In the same year, newly designated magistrates quickly replaced longstanding administrators who had previously handled election-mapping and *cedula* assistance with less qualified party loyalists. Partisan control over the electoral authority has eroded the objectivity and credibility of the institution to perform its role adequately. The ability of the CSE to resolve conflicts in electoral competition has also been compromised by its partisan nature, leading to mutual sabotage and institutional paralysis that has impeded the institution's capacity to function as a neutral judge and has significantly increased the cost of elections. The CSE unanimously rules on issues that will benefit both parties and is paralyzed on issues that favor one party over the other.

The partisan character of the CSE also extends into the Departmental and Municipal Electoral Councils. Electoral law stipulates that municipal and departmental levels of the election system must be composed of three members selected on political criteria. Of the three, presidents and “first members” of local electoral councils must come from the two political parties who finished first and second in the most recent municipal election. Given the limited political space for competition, this means that also at the local level, electoral councils are dominated by the two primary political parties.

Elections in Nicaragua are more costly than any other in the region – approximately \$30 per voter and half of the annual investment in education. Figures for administering elections are based on the 1990 elections, which generated significant international support. The CSE, with seven magistrates from the two political parties (two additional magistrates were added under the Pact) generally functions as two independent electoral authorities, thus inflating costs of the elections. Under the Pact, 150 new municipal CSE offices were opened throughout the country, which increased costs but produced only limited value-added. With excessive electoral costs and questionable value-added in elections over the past three years, there is general consensus among governing officials, academics, and civil society that reforms in this area are needed. Further, the elevated funds flowing into elections raises incentive for corruption.

Electoral law severely limits the ability of parties to receive public funds. Political parties can only receive public funding *after* they have received 4 percent of the vote in an election, which represents the same percentage of votes necessary for parties to remain officially competitive actors. This campaign finance reform has been widely supported by Nicaraguans who claim that it has successfully reduced the incentive for opportunists to stage campaigns in order to receive state funding.

Electoral law, however, is permissive in respect to the amount of financial resources that parties can obtain from private sources to assist in their campaign strategies. At the same time, electoral law is extremely weak concerning basic oversight and disclosure of private campaign finance contributions. According to the law, direct foreign contributions to campaigns are limited to training activities. However, allegations have arisen in recent elections, including the 2001 presidential elections, that candidates are receiving significant funding from foreign sources. As money is influencing election outcomes, there is general consensus that this issue must be addressed.

Political parties enjoy unfettered control over their party's ballots, which they use to determine who reaches office if their party is elected. Nicaraguan voters elect parties, not individual party candidates. Although it is a closed list, the order in which deputy positions appear on a ballot is important because, under Nicaraguan proportional representation rules, the allocation of deputies elected from each department is made according to the proportion of votes received by each party, starting at the top of each party's list of candidates. The practice of closed lists subsequently fosters candidate loyalty to party hierarchies and *caudillos* over constituents. Citizens do not know the individuals for whom they vote or who "represents" them once elected. However, Nicaraguans continue to display their desire to participate in the political realm by churning out votes.

Despite a relatively high voter turnout in elections, the Nicaraguan electorate remains extremely polarized and lacks trust in the political elite. However, President Enrique Bolaños' simultaneous fight against corruption and his predecessor, PLC party boss Arnoldo Alemán, has jolted the system. The power struggle within the PLC and its splintering produced at least three actors in the political realm (FSLN and two PLC factions), and negotiations between the three have already commenced. This rupture does not necessarily indicate a bona fide shift away from *caudillismo*, as recent history has proved that fragmented Liberal coalitions generally unite around a common anti-*Sandinista* agenda in order to win elections. However, it does represent at least a slight opening in the current system that, for the time being, has changed the ways in which the political game is being played.

Changing the incentive structure requires desire for change, and the main desire for change is not often from those who benefit greatly from the status quo. For these reasons, breaking with the legacy of Nicaragua's political history requires not only will, but innovation, energy, and expertise that can accelerate political reform with international support. Electoral reforms that change the rules of the competition game could stimulate political will within the parties to reform and encourage them to be more accountable to their constituencies. With the leadership of the dominant parties impeding systemic reform, progress in the arena of competition will largely depend on how key agents within the political elite react to changes in the political environment in which they operate, as well as the emergence of new competitors.

It is useful to examine how Nicaragua's political parties are fulfilling their main functions. Annex B presents a detailed synopsis of how the political parties in Nicaragua operate.

### 4.3 The Legal Arena

#### 4.3.1 Constitutional Framework

Nicaragua's constitution has gone through 12 versions, the latest of which was drafted in 1987 and has been amended three times. In 1995, among the various amendments intended to institutionalize democratic governance, the independence of the judicial branch was declared, and several judicial bodies were established: the *Procuraduría de Derechos Humanos* (Ombudsman); the *Ministerio Público* (Attorney General/Independent Prosecutors Office); the *Tribunal Superior de Trabajo*, and administrative courts.<sup>22</sup> The January 2000 constitutional amendments reduced the terms of Supreme Court justices from seven to five years, expanded the number of justices from 12 to 16, and confirmed the Supreme Court's authority to name appellate court judges. As a result of these last amendments, *Sandinista* justices now predominate, although justices from both parties are

<sup>22</sup> *Tribunales contencioso administrativos*.

included on the Court. Currently, only 11 judges are in place since the National Assembly has not been able to agree on replacements for those whose terms expired last year. The terms of five more justices will expire next June.

#### **4.3.2 Rule-of-Law Problems**

The most glaring problem with Nicaraguan justice is its lack of independence. This is so serious a problem that it cannot be said that Nicaragua functions under the rule of law. All important judicial sector organizations are controlled by political parties. It is impossible to become a judge without political connections, or personal connections with a Supreme Court justice. Once appointed, it is understood that judges will respond to the wishes of their sponsors. Cases brought without political support languish in the courts.

Independence is both an internal and external problem within the court system. Judges report directly to Supreme Court justices in charge of courts in geographic regions, and are subject to interference, usually not resisted, both from party operatives and Supreme Court justices with administrative clout over them. Senior officials in the Public Ministry and *Procuraduría* also respond primarily to political party mandates, which has resulted in low public confidence in the integrity of the justice system.<sup>23</sup>

Criminal impunity is a problem under Nicaragua’s politicized justice system. In part, it is a result of the immunity attached to senior government and Assembly deputy positions, but in general, it is because of political party interference in the justice system and citizens’ tolerance of it. For a more extensive description of Nicaragua’s justice sector, we refer the reader to Annex C.

#### **4.4 The Civil Society Arena**

Nicaraguan civil society organizations can be divided into four types: (1) unions and other member-service/affinity group organizations, (2) NGOs (service-providers and civic organizations), (3) business associations, and (4) universities. The first civil society organizations allowed to establish themselves were unions and other member-service organizations, community committees, and youth and women’s groups. These later evolved into the labor unions and NGOs. Business associations began to form much later, in the late 1960s. Most universities were established after 1990, and those that existed prior to that only began to consider themselves civil society actors during the last 12 years. Annex D contains a short history of Nicaraguan civil society.

##### **4.4.1 Socio-cultural and Political Roots**

To understand the characteristics of Nicaraguan civil society organizations, and the potential roles they can play in the country’s democratization process, it is important to take account of the socio-cultural and political environment in which Nicaraguans created these organizations. Nicaraguan socio-cultural characteristics and the patron-client nature of Nicaraguan politics and governance are longstanding and enduring. The influences of these factors can be found in all of the country’s civil society organizations.<sup>24</sup>

<sup>23</sup> A USAID-sponsored University of Pittsburgh survey conducted in 1999 revealed that 56 percent of crime victims do not bother to report violations because “it won’t make any difference.”

<sup>24</sup> For those interested in learning more about cultural factors affecting Nicaraguan political life, a very useful reference is *Cultura Política Nicaragüense* by Emilio Alvarez Montalván, Hispanamer 2000.

Social bonds in Nicaragua are profoundly personalistic, revolving around extended families and alliances (often temporary) with other individuals. It is striking to find that as late as August 2001, 76 percent of Nicaraguans surveyed responded “never, or almost never” to the statement “The majority of people can be trusted.”<sup>25</sup> This is indicative of the very low level of social capital in Nicaraguan society, that, in turn, helps explain the difficulty Nicaraguans have had in cooperating in both the public and private spheres to govern themselves democratically. Although it is too much of a generalization to say that public and private organizations are almost always seen as extensions of the individuals who run them, rather than institutions serving enduring group or societal purposes, this idea is useful in understanding the skepticism with which Nicaraguans view almost all social organizations. Throughout their history, lack of trust and reliance on personal relationships have been two of the most important cultural factors leading Nicaraguans to establish their version of patron-client politics and governance: authoritarian *caudillos* operating in a polarized society through political parties with which individuals and civil society organizations have to cooperate as uneven partners in order to meet their needs.

Until 1990, *caudillos* and their political parties established clear boundaries within which all civil society organizations had to work.<sup>26</sup> *Caudillos* found it very effective politically to use their parties to deal with the sectors they favored by allowing them to form *gremios* and other associational structures. For their part, the leaders of these organizations were willing to trade dependence on the *caudillo*'s party in return for governmental acknowledgement of certain rights for their members, financing for programs benefiting members, political protection, and personal gain. Although the subordinate relationship of these organizations was clear (parties always had the final word on political matters), some degree of autonomy was always granted to association leaders to handle social issues affecting their membership. Not surprisingly, they exercised their leadership in authoritarian ways, and members of their organizations accepted this as naturally as the authoritarianism they encountered in other areas of their lives.

Since 1990, as efforts proceeded to establish democratic institutions of governance, and as it became permissible for foreign donors to cooperate directly with NGOs, more “political space” has opened within which both new and already established Nicaraguan civil society organizations have chosen to operate. At the same time, many organizations created before 1990 still operate within the patron-client political system that continues to exist despite attempts to establish democratic institutions of government.

#### **4.4.2 Coordination Among Civil Society Organizations**

Service delivery NGOs working in the same technical areas and regions have formed coordinating committees, for purposes of trading information, coordinating lobbying efforts with municipal and national government officials, and undertaking occasional joint projects. These coordination initiatives have been the most successful to date among Nicaraguan civil society organizations because they are based on interests and needs shared by organizations with responsibility for carrying out practical programs.

<sup>25</sup> *Encuesta Nacional de Aspiraciones*, PNUD. Paradoxically, in the same survey, 67 percent of those asked said they participated in a group or organization, although that included church attendance.

<sup>26</sup> For a more detailed accounting of this phenomenon, see *Mitos y Paradojas sobre la Sociedad Civil* edited by the *Centro de Derechos Constitucionales*, March 2001.

At the national level, coordination efforts have not been as successful, except during Hurricane Mitch reconstruction, when organizations had a common and urgent interest to pursue. When coordination has been attempted among civic organizations, or more broadly within civil society, regarding policy recommendations, especially those dealing with sensitive economic issues and democratization, effective cooperation has been much more difficult to achieve. One reason is that the two principal coordination initiatives carried out to date have attempted to cover a very ambitious array of issues and include a wide variety of actors. Leadership of these efforts and commitment of various civil society actors to substantive exchanges and negotiations have also been deficient.

### Coordinadora Civil

The first civil society organization coalition, formed by 33 *Sandinista*-origin NGOs in 1989, called itself the “Federation.” After Hurricane Mitch in 1998, when donors expressed an interest in promoting citizen participation in reconstruction efforts, Federation members formed the *Coordinadora Civil para la Emergencia y la Reconstrucción* (CCER). A similar coordinating body (CIVITAS) was started among non-*Sandinista* NGOs interested in post-Mitch programs, but eventually most of its members merged into the CCER.

Last year, the CCER transformed itself into the *Coordinadora Civil* with a broader mandate to facilitate agreement among its members on policy issues and represent them in negotiations with the GON. It now includes 19 NGO networks with some 350 member organizations. The *Coordinadora Civil* often identifies itself as “civil society,” but under the best of circumstances, it can only represent itself to speak for a portion of Nicaraguan civil society – service delivery and advocacy NGOs, *gremios*, and other associations belonging to it – but not for business associations, universities, and other non-member NGOs. Even so, the *Coordinadora Civil* often finds it difficult to speak for the members of civil society it purports to represent because of suspicions by some of them that its leaders have political ambitions or want to favor one or another political party.

### CONPES

The *Consejo Nacional de Planificación Económica Social* (CONPES) was proposed to Doña Violeta by labor unions as a substitute for national planning. Some members of the donor community also supported the proposal. She accepted the idea of governmental consultation with a broad array of civil society representatives under the aegis of the presidency, but the *Consejo* did not begin functioning until November 1999.

President Alemán used CONPES to give civil society organizations (and the international community) the impression that his government was listening, and continued to make decisions “the old fashioned way” – with his party colleagues. When President Bolaños took office, he proposed that CONPES be reorganized and indicated a number of areas in which he would welcome advice (making it clear *he* would still make policy decisions). Bolaños even allowed governance reforms to be discussed for the first time in 2002. The result was a series of recommendations concerning electoral and justice sector reforms and anti-corruption measures, none of which had been acted upon as of January 2003.

CONPES includes representatives from all nongovernmental sectors of Nicaraguan society: business associations, bankers, farmers and ranchers, small and medium-sized businesses, television, labor unions, NGOs from autonomous territories, AMUNIC, *barrio* and community

groups, the *Coordinadora Civil*, universities, professional associations, youth groups, journalists, women's organizations, cultural organizations, and political parties. As noted above, its agenda has been very broad. Meetings are large. The Executive Secretary (he has served since CONPES began) and his assistant are charged with coordinating most of the consultations carried out and the recommendations drafted. Whether action is taken on any of them is entirely in the hands of the president.

Political parties are not supportive of CONPES' work. Following the 2002 decision to allow CONPES to get into political and governance areas, the National Assembly cut CONPES' budget for 2003 from \$200,000 to \$30,000.

Meanwhile, a few civil society leaders now working for the Bolaños Administration who, for various reasons, are not satisfied with CONPES or its leaders, are organizing informal meetings between civil society actors and President Bolaños. CONPES will probably continue to exist as an entity for formal contact between the president and his cabinet and civil society representatives from a broad spectrum of organizations, but its utility will continue to depend solely on the president.

The various component organizations of Nicaraguan civil society need to devise more effective ways to communicate with each other and promote collaboration to meet shared goals. Doing so in specific interest areas, as opposed to the broad approach taken to date by the *Coordinadora* and CONPES, could prove to be much more effective. Numerous topic-specific networks of service delivery NGOs already exist where they share information and cooperate with each other and government officials. This could be built upon by promoting more contact and collaboration between national-level civic organizations and service delivery NGOs operating outside the capital. In addition, unless NGO leaders succeed in attracting cooperation from leaders operating in other segments of civil society (business, unions, and universities) and with political parties, they will have little chance for success in promoting DG reforms.

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## Strategic and Programmatic Recommendations

### 5.1 Conclusions on Nicaragua's Democratic Status and Current Political Environment

Thirteen years after the initiation of democratically elected government, Nicaragua – like other Latin American countries – is a democracy in form but not substance. As David Dye notes, “In these *procedural democracies*...officials are elected in free and fair manner, and there is inclusive suffrage, freedom of expression and organization, and associational autonomy. 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.”<sup>27</sup> Nicaragua is a quasi-democracy, or electoral-authoritarian polity, because it has not yet been able to overcome entrenched clientelistic politicking and patrimonialistic governance resulting from low social capital, political polarization, and *caudillismo*.

Following the 2000 Alemán-Ortega Pact and the split of the PLC after the Bolaños-Alemán rift, Nicaragua has arrived at another turning point, the most significant one since 1990, when Violeta Chamorro was elected president. Nicaragua's traditional political and governance practices have not changed with the establishment of political party and governmental institutions normally associated with democratic governance. These clientelistic and patrimonialistic practices, however, are increasingly ineffective for Nicaragua's elite, let alone its poorer citizens and communities. Average citizens are expressing discontent with democracy itself, unaware that more effective democratic governance alternatives exist that could work better than the political system they know well. Even viewed through the eyes of the country's traditional rent-seekers in political parties and elite groups, the current system is failing to produce as it “should.”

President Bolaños' move against former President Alemán jolted the system of two-party *caudillos* and is creating opportunities for change. The president appears to want to be an effective national leader and to be in favor of more democratic governance, but he and his pro-democratic collaborators lack political strength or prowess within Nicaragua's current system. Nevertheless, actions he takes inside the executive branch and toward the political parties (*if* he takes them) can provide opportunities for democratic reforms. Dissatisfaction with the status quo among politicians on both sides is evident. With the exception of a few hard-line Ortega insiders, the *Sandinistas* know they cannot regain power with Daniel Ortega leading the party. Many disagree with his policies and his determination to put his own interests over those of the party. *Anti-Sandinistas* are

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<sup>27</sup> *Patchwork Democracy: Nicaraguan Politics Ten Years After the Fall*, David R. Dye. December 2000. Hemispheric Initiatives.

either tolerating loss of influence while betting that Alemán can make a comeback, casting their lot with Bolaños and crossing their fingers, or looking for a “third way.” Business leaders and politicians are jockeying to reconstruct the anti-*Sandinista* opposition. Ortega’s FSLN is trying to exploit the current situation to increase his power.

This partisan political maneuvering to reestablish a new version of the status quo is being accompanied for the first time by a much more attentive news media and a relatively vibrant civil society, including numerous NGOs working throughout the country that have successfully provided social services and mobilized citizens over the last several years. A small number of dedicated reformers, often fostered by USAID and other donors, also can be found within governmental organizations. These other actors – and the donor community, often described as in a state of fatigue, but without whose cooperation the GON would not be able to function – are accustomed to waiting for Nicaragua’s *caudillos* and their cohorts to determine the country’s political future. The degree of protagonism they exert, however, and the quality of leadership exercised by President Bolaños, will be key in determining whether the current political crisis results in a political stalemate that prevents socioeconomic progress (and even leads to violence), or in positive democratic reforms.

## 5.2 Recommended DG Strategy

The Assessment Team recommends that USAID/Nicaragua’s DG program build upon the opportunities identified above to address the key challenge identified in Section 1, namely persistent clientelistic and patrimonialistic political and governance practices. This may be done in a fashion that is consistent with the USAID Regional Strategy, and which targets the overarching DG problem at both national and local levels. The two IRs that are recommended are (1) **Strengthened Rule of Law** – with activities in criminal code implementation, justice sector independence, and removing legal impediments to trade and investment; and (2) **Greater Governmental Transparency and Accountability** – with activities to promote participatory local governance and development, and to improve democratic governance and political processes.

### 5.2.1 IR 1: Strengthened Rule of Law

Improvements in the rule of law are essential to overcoming the personalistic dependence on the arbitrary decision-making authority that underlies the *caudillo* system. Three program areas are recommended: (1) Criminal Procedures Code Implementation – to take advantage of the commitment to working for a fairer and more efficient criminal justice system evident at many levels of the law enforcement community, and to increase public confidence in criminal justice; (2) Judicial Independence Reforms – needed to begin making available the most rudimentary check on executive power; and (3) Legal Security for Trade and Investment – needed if Nicaragua is to take advantage of CAFTA.

#### Criminal Procedures Code

USAID has had considerable success collaborating with Nicaraguan reformers to draft and pass potentially revolutionary changes in the Criminal Procedures Code and beginning to train justice sector operators to implement the Code, but much remains to be done. Experience in other countries, such as Guatemala where a CPP was passed in 1996, shows that years of support are required before such codes are fully adopted and reasonably effective. Technical assistance and training, as well as support for criminal justice/human rights advocates, are needed. Future support

in Nicaragua should come in the form of training, adaptation of law enforcement and prosecutorial practices to meet differing contingencies around the country, and exchanges of experience with other Latin American countries also implementing new codes.

### Judicial Sector Independence

Purely technical approaches will not succeed in addressing the problem of judicial independence. Fortunately, a number of opportunities are available to generate support for judicial sector independence, something that can only be achieved gradually. In order for these opportunities to be exploited, USAID and other donor support is needed because the status quo is entrenched.

Opportunities to build support for judicial sector independence exist in civil society, in the Bolaños Administration, and within the justice sector itself, but it needs to be mobilized. The most consistent refrain the Assessment Team heard from civil society actors interviewed when asked to identify the most important challenges to Nicaraguan democratic development was the need for rule of law. Many civil society advocates (working in NGOs and universities) are not familiar with steps taken by those outside the judicial system in other countries to build constituencies for reform. Some, such as larger business concerns, talk a good game, but still need to decide whether their interests are better served by an independent justice system or not. Some in the Bolaños Administration, especially those attracted to it from civil society rather than the PLC, are responding to interest expressed in judicial reform and are assisting President Bolaños to craft judicial reform measures he has promised to present. Finally, among the ranks of justice sector operators themselves, just as in other Latin American countries, dedicated individuals – mid-level prosecutors, police, and some judges – can be found who are trying to use important reforms, such as the new CPP, to make the system function better.

What is missing in Nicaragua so far is more contact and collaboration among these advocates, and this is where USAID can make a significant contribution. The Assessment Team believes the strategy described above for partnering with reform agents interested in promoting reform coalitions will be effective in the ROL arena, especially the formation of a broad-based group of reformers from different sectors of society to identify and pursue reform initiatives. The group should include advocates for judicial independence from a variety of sectors, including large businesses and small commercial firms, law schools, human rights NGOs concerned with monitoring the government's economic and social welfare responsibilities, judicial sector operators working with the Supreme Court, the Public Ministry, the *Defensoría*, respected officials from the Human Rights Ombudsman's Office, representatives of Catholic and evangelical churches, and NGO officials. Once gathered together, these reform agents can investigate reform initiatives being undertaken in other Latin American countries and establish contact with the donor community. In that way, they can identify reforms to pursue in Nicaragua. The idea of setting up a separate entity for nomination of judges and court administration, as done in other countries with entities like a *consejo de la magistratura* has been proposed, but the advantages and disadvantages of doing so under political conditions in Nicaragua need to be explored fully and publicly. The same is true of alternatives for promotion and discipline of judges. Formation of a broad-based reform coalition would be the first step in trying to arrive at a consensus on reforms to pursue.

### Legal Security for Trade and Investment

Prospects for participation in CAFTA provide one of the most important external incentives for a more independent and effective judicial system. Since it will take years for Nicaragua's justice sector to function as needed to provide judicial security to foreign local investors, shorter-term

measures to pragmatically address the key concerns of business (e.g., use of compulsory arbitration) need to be identified and developed. For this reason, the Assessment Team recommends that USAID hire a corporate lawyer to work with local business leaders to identify legal and regulatory constraints to business expansion and suggest possible measures to address them.

### **5.2.2 IR 2: Greater Governmental Transparency and Accountability**

In order for the opaque practices that underlie the clientelistic and patrimonial *caudillo* system to be brought into light, it is vital that there be greater transparency and accountability in the public realm. Two program areas are recommended that allow for enhancement of these objectives at both the local and national levels: (1) Community Development – because it is in local areas that the greatest opportunities for citizen participation in more effective governance and socioeconomic development exists; and (2) Democratic Governance and Political Processes – because undemocratic political and governance practices need to be slowly eliminated if Nicaraguan governmental institutions are to operate effectively.

#### **Community Development**

Promoting greater local governance and local development provides the greatest potential for dynamism and expanding political space in Nicaragua. Local governments and communities can begin to counterbalance highly centralized governance. It is also a tenet of good governance that decision making and resource allocation be undertaken at the lowest appropriate level of government. This improves efficiency, effectiveness, and often transparency and resource mobilization. Nicaragua’s significant income distribution problem, poor delivery of public services, and low productivity underscore the serious needs at the local level. At the local level, citizens can increasingly keep developing habits of demanding accountability and input into decisions affecting their welfare and the welfare of their families. A well-conceived community development program will promote a culture of transparency and accountability. If citizens are directly involved in the selection, implementation, and financial oversight of investment projects, and trained to exercise their oversight responsibilities, experience has shown that those projects will more likely be well run and managed. Such efforts also create citizen demand for accountability in decision making and funds management.

The Assessment Team chose to call this program “community development” rather than “local governance” to reflect its conviction that USAID’s various local development programs should take advantage of opportunities for synergy. It is recommended that community development programs have four elements: (1) a social and productive infrastructure fund to provide local citizens with the incentive to develop their capacities to participate in development; (2) activities to strengthen community and local government cooperation in those municipalities where there are genuinely participative and oversight mechanisms in place; (3) a component to strengthen community, producers’, and municipal organizations to provide information, self-help, technical assistance, and advocacy to their members and clients; and (4) a municipal strengthening component that targets improvements in the transparency of public budgeting and expenditures, and provides technical assistance in encouraging public participation in the planning and prioritization process. Community development programs should be multi-dimensional as well as needs and capacities-focused. Activities carried out in each community should be priorities of residents – ones in which they are willing and able to participate. Some would be self-help projects carried out by grassroots groups, some would be NGO activities, and some would involve

collaboration with municipal or central government authorities. Importantly, USAID programs under all SOs would possess three features: (1) public decision making on projects, such as through a *mesa de concertación*; (2) direct citizen responsibility for implementation, such as through a *comité operativo*; and (3) a system of direct citizen financial oversight, referred to in other countries as *véedurías*.

Under the community development program, USAID would assist interested municipalities to support community initiatives with participatory budgets, project selection, and oversight. Assistance would also be provided to Nicaraguan NGOs with a positive track record to improve their performance in building productive relationships with citizens at the local level that enable them to collaborate among themselves and with governmental officials to meet their day-to-day needs. To help ensure citizen control, the Mission should consider channeling some investment funds through a nongovernment entity or contractor rather than FISE, for use by communities themselves rather than municipalities.

In order to facilitate community development activities, the GON needs to rationalize the operations of ministries with programs throughout the country (e.g., Education, Health), and improve the efficiency of transfer payment systems. AMUNIC could also improve its performance in lobbying for, and training, municipalities. Through support for reform coalitions, and in collaboration with other donors, USAID would work to help ensure that GON decentralization policies and practices allow citizens to exercise democratic governance where they live. This would include efforts to obtain passage of the current citizen participation bill.

Since it will not be possible to implement community development efforts throughout the country, they should be carried out in municipalities that meet criteria established by the Mission, such as (a) ones possessing progressive and dedicated mayors<sup>28</sup> and other local officials, experienced NGOs, and grassroots organizations, and a number of well established communities, all with political will; and (b) ones with viable private sector economic activity. It will be important that the municipalities selected for the first phase of the program be those where the chances for success are highest so that they serve as models for future expansion of the program.

Local initiative will be the key in this program. The approach outlined above sounds similar to the local government programs already supported by the World Bank and IDB. However, these programs are dominated by central government agencies and agendas and most often do not reflect priorities or inputs of the local communities. Thus, while the “supply” side of supporting municipal strengthening has gotten attention and training, the “demand” side of citizen groups and communities requires support.

### Improving Democratic Governance and Political Processes

Nicaragua’s traditional clientelistic politics and partrimonialistic governance practices can only change as governmental organizations become accountable and political parties become democratic. The key to progress in governmental accountability is transparency. The key to progress in political party democratization is discontent among party faithful and partisans. Opportunities exist for USAID to cooperate with reform agents to implement legal and procedural

<sup>28</sup> It is important to note that most municipalities are not yet well connected with their communities, but this has begun to improve since mayors began to be directly elected.

reforms that will induce government organizations to operate more transparently and accountably, and political parties to function more democratically.

Under conditions currently present in Nicaragua, accountability/anti-corruption approaches need to concentrate first on increasing the transparency of governmental operations. The reason is that corruption is endemic in Nicaragua's patron-client system: citizens accept it, either as the price for some degree of governance or, in a few cases, because they also benefit from it. Governmental organizations responsible for controlling and punishing corrupt acts (e.g., Controller General, the National Assembly, and the courts) are dominated by the political parties that benefit from corruption. Under these conditions, neither demand- nor supply-oriented strategies can be effective. However, shining light on whether government organizations meet program targets and how they operate can help citizens focus attention on how well government is meeting shared public interests and at what cost, and create pressure for better performance.

For this to occur, reform coalitions need to have access to information on government operations, and government officials need to make themselves available to the public. This, in turn, requires legislation and civil society pressure for compliance. It is in these areas that the activities of reform coalitions operating at the national level can be useful, and deserve USAID support. Likely candidates for "sunshine laws," social auditing, *rendición de cuentas* practices, and the like are ministries dealing with decentralization, the courts, and the National Assembly. In addition, fostering transparency and access to information at municipal levels will be necessary in order to implement the community development initiatives recommended above, since civil society monitoring and public opinion mobilization is dependent on availability of information.

News media have traditionally played an important role in focusing public attention on issues regarding elections and corruption as well as problems with legislative action on the economy and budget. USAID should cooperate with the PAO to identify and take advantage of opportunities to improve the professional capacities of journalists and news media to fill the role of providing citizens with the information they need to exercise their rights and responsibilities. Other possibilities for increasing access of citizens to public affairs information should also be given serious consideration, such as use of rural cable television systems and the Internet. Civil society organizations can also be trained to publicize information they gather on the operations of governmental organizations and their progress on reforms.

There may be some opportunities within the GON itself regarding transparency initiatives, and these could be explored. President Bolaños has expressed interest in making the executive branch more transparent. The Office of Ethics that he set up in the vice presidency may benefit from support to improve its catalytic role within government.

President Bolaños' shock to the system has highlighted discontent among political party and civil society actors with the patron-client political and governance system and led them to begin discussing possible changes in electoral laws and party operations. Recommendations for changes have been made by CONPES, individual NGOs, and the parties themselves. President Bolaños also indicated he would propose electoral law changes.

Reforms are likely to take time to gel, but as the Nicaraguan political situation sorts itself out during the Bolaños presidency, opportunities to support initiatives by both civil society and party members are likely to arise. USAID assistance in this arena should first support reforms in those parts of the

electoral law where political will already appears to be forming. Areas of particular interest for combating clientelism and patrimonialism are changes that would help make elected officials more responsive to constituents or increase democracy and transparency within parties. USAID should support initiatives only where its partners feel opportunities for developing political will are strong. If success is achieved in bringing about important individual reforms, consideration could then be given to providing support for reforming the CSE and eventually the political parties themselves.

To begin, a targeted assistance package in the elections/political party arena would identify one or two specific reforms and begin to identify reform agents capable of replacing mid-level party leaders who could help them legitimize themselves by supporting desired reforms. If reform-minded leaders are difficult to identify within the parties, then opportunities might exist to work with disenfranchised groups or former political leaders.

Among the reforms currently under discussion are (1) eliminating restraints placed by the 1999 Pact on competition among parties, (2) alternatives to the closed-list system for election of Assembly deputies, (3) campaign finance restrictions, and even (4) prohibiting re-election of presidents. More progressive party members consulted by the Assessment Team, and numerous civil society leaders, suggested ways political parties might function differently, including procedures for genuinely competitive selection of candidates, gradually increasing democratic decision making inside parties, and promoting discussion of issues during campaigns.

In order for political parties to better aggregate and represent members' broad interests, they first must stand for particular ideological and policy positions that offer voters a choice. Prior to the 2004 municipal elections, there is an opportunity for USAID to initiate reflection within political parties, together with academics, civil society, and journalists, on an agenda for political reform. In the lead up to the 2004 elections approach (or 2006 Presidential Elections), a series of university-sponsored conferences would create a "space" for Nicaraguan political parties to reflect on key policy issues soon to face the executive and legislative branch or political reforms more generally. Both parties expressed interest in organizing and attending such conferences. USAID might also work with political parties, through NGOs, to help them identify local needs and implement social development activities that are not seen as political.

Finally, 72 percent of Nicaragua's population is under the age of 30. Both political parties understand that it is essential to reach out to this increasingly growing constituency. Therefore, political will exists in Nicaragua's main parties to support young political leaders through training, technical assistance, and exchange events. Although training party youth will have short-term impact, the innovations of youth sponsors can help to convince party leadership that reform is needed. Activities in this area would help to cultivate political will within the parties toward greater reform.

### 5.3 Recommended Tactical Guidelines

The Assessment Team also recommends that certain tactical guidelines be followed in designing and implementing the programs in the two IR areas described above. These tactical guidelines are: (1) supporting Nicaraguan reform coalitions, (2) seeking synergy with other USAID programs, and (3) complementing DG programs with USG and international community pressure for democratic reforms.

Were it not for the pervasively clientelistic and patrimonialistic nature of Nicaraguan politics and governance, USAID might implement a traditional, institution-strengthening DG strategy, complemented by civil society advocacy. But, as noted by Dye, “In reality, the consolidation of democratic government is at best in its early stages.”<sup>29</sup> Nicaragua’s democratic institutions (political parties and governmental organizations) have been “captured” by its *caudillos*, with most citizens acquiescing to the continued operation of informal patron-client networks. In such situations, Brinkerhoff and Goldsmith<sup>30</sup> note:

“Even when they mostly obstruct economic development and democratization, the informal institutions of governance are hard to dismantle because they serve the immediate needs and narrow interests of many individuals. Those persons are highly motivated to block, slow down, or dilute any statutory changes that imperil the informal set of connections from which they benefit. The potential beneficiaries of formal institutions tend to be a diffuse, latent group, uncertain where their interests lie. This creates a classic collective action or free-rider problem. What is rational at the level of society (a fairer political and administrative system for all) makes less sense at the level of the individual, and creates disincentives for people to get together to press for changes in governance that would benefit the majority.”

They conclude that “...technocratic and legalistic approaches do not work absent broad-based political backing and supportive constituencies” so donor strategies need to support “agents of reform, both in government and civil society”<sup>31</sup> to increase political competition, good governance, and citizen participation

### 5.3.1 Engaging Reform Coalitions

The Assessment Team therefore recommends that USAID/Nicaragua’s DG program for the upcoming period be based where possible upon **supporting Nicaraguan reform coalitions**. Since the two *caudillos* and their close collaborators cannot be depended upon to change their ways, for democratization to take place, Nicaraguan reform agents need to mobilize reform constituencies among elites already possessing influence and normal citizens accustomed to the existing patron-client system. Citizens, rich and poor, need to experience their individual and shared needs being better met as a result of their participating in, and supporting, democratic governance, rather than acquiescing to the patron-client system. Then they will consider joining forces with reform agents to expand constituencies for new laws, more effective and democratic government institutions and political parties, and better citizenship practices. Their goal will be to replace the current patron-client system with (a) collaborative self-help efforts by citizens to meet their day-to-day needs in their communities, and (b) participatory political and governance institutions that adhere to standards of fairness and equal access for all.

When examined from the point of view of the five lenses used in DG assessments, the areas where opportunities for reform appear to be most promising (and most needed in terms of combating clientelism and patrimonialism) are competition, good governance, and rule of law. Competition,

<sup>29</sup> David R. Dye, *ibid.*

<sup>30</sup> *Clientelism, Patrimonialism and Democratic Governance: An Overview and Framework for Assessment and Programming*, David W. Brinkerhoff and Arthur A. Goldsmith. December 2002. Abt and Associates, Inc. report prepared for USAID Office of Democracy and Governance. p. 39

<sup>31</sup> David W. Brinkerhoff and Arthur A. Goldsmith. *Ibid.* p. 25.

good governance and the rule of law were the areas most adversely affected by the Alemán-Ortega Pact, and where discontent with the current state of affairs has begun to be expressed among both elites and the poor. Progress in building consensus in favor of democracy and inclusion necessarily takes longer to achieve, and Nicaragua will be no different in that respect.

Brinkerhoff and Goldsmith<sup>32</sup> note three areas in which reform agents can help increase competition: (1) reforming electoral laws with a view to making candidates more beholden to constituents than party leaders; (2) political party reforms designed to lessen the influence of entrenched bosses<sup>33</sup> and to begin fostering issue-based platforms; and (3) developing participatory “institutional options for people to meet their day-to-day needs.” They note that the last strategy is usually most feasible at the community level, where the poor can mobilize for collective action and self-help. Good governance reforms are also most likely to be feasible at the local level, both because mayors and council members are more attentive to the needs of local constituents, and because it is there that citizen participation is most viable.

The Assessment Team envisages USAID cooperating with reform coalitions at both national and local levels. At the national level, USAID would cooperate with coalitions of civil society organizations and reform agents working inside governmental organizations and political parties to mobilize support for high-priority legal and institutional reforms in the governance, rule of law, and electoral/political party arenas, and to monitor commitments made by government officials and political party leaders to carry them out. At the local level, USAID would cooperate with NGOs and grassroots organizations involved in strengthening participatory decision making, self-help, and oversight within communities.

The recommended approach for cooperating with reform coalitions at local levels is outlined below. The basic approach at the national level would be as follows, allowing, of course, for variation at the discretion of USAID’s Nicaraguan partners:

- 1) For each program area or sector (elections/parties, ROL, etc.), identify reform agents in civil society and within government who are willing and able to pursue reforms, and facilitate formation of open-ended reform coalitions.<sup>34</sup> Because different social actors are often reluctant to make contact with others, USAID can play a very useful catalytic role in bringing various stakeholders together.
- 2) Help those reform coalitions sponsor public discussion of issues, inviting a broad array of stakeholders and citizens.
- 3) Complement public discussions with press coverage and diplomatic pressure, from both the USG and other governments.
- 4) When initiatives for new laws, new procedures, or organizational reforms emerge that enjoy private and public sector support, reform coalitions devise an action plan. One of the most important steps at this point will be for the coalition to convince all stakeholders that the proposed intervention is likely to lead to democratic change in the system and not simply make the flawed patron-client system more efficient.

<sup>32</sup> *Ibid.* p. 35.

<sup>33</sup> Dye notes that progress in consolidating democratic institutions of governance “depends vitally on the emergence of new competitors and new leaders – in short, on a turnover in the party political elite.” *Ibid.* p. 36.

<sup>34</sup> These groups would correspond to the “public-private partnerships” mentioned in the Central American Regional Strategy.

- 5) Negotiate an agreement between willing members of the reform coalition and the governmental or political party organizations involved to carry out reforms, with mileposts that can be made public and monitored.

Annex E provides suggestions for USAID partnering with reform coalitions.

USAID/Nicaragua enjoys excellent working relationships with a variety of civil society organizations as a result of supporting those organizations over the years. In addition to civic organizations, service providing NGOs, and perhaps business associations, the Assessment Team recommends that USAID reach out to Nicaraguan universities and journalists. The former, in addition to offering technical expertise, are often seen as nonpartisan, and have valuable experience in community outreach programs. USAID also enjoys good working relationships with respected individuals working in various ministries and the justice system, and these contacts should be very useful in helping assemble reform coalitions. Another very useful partner in such efforts would be the UNDP, both because it has been successful in numerous countries fostering electoral and governance reforms (e.g., Honduras), and because some actors are more comfortable collaborating with a U.N.-sponsored program than one sponsored by the USG.

Significant host country-related challenges will need to be addressed by USAID’s local partners in order to successfully implement the strategic thrust of cooperating with Nicaraguan reform coalitions. First and foremost, the majority of Nicaraguan citizens are completely immersed in the existing patron-client political and governance system, one resulting from very low levels of social capital. Civil society leaders will continue to face major challenges convincing their fellow citizens to exercise their democratic rights and responsibilities. Second, political party leaders are certain to continue opposing civil society involvement in politics and governance, so civil society leaders will need to find better ways to counterbalance that opposition.<sup>35</sup> Third, as noted earlier, Nicaraguan civil society organizations face a series of challenges to their own effectiveness. In addition, one of the most influential segments of Nicaraguan civil society – business leaders and business associations – has shown almost no interest in democratic system change.<sup>36</sup> Civil society leaders (and donors) will need to keep searching for business leaders willing to work for democratic reforms. Finally, channels for dialogue and cooperation between citizens and civil society organizations, and governmental officials – at both the national and local levels – need improvement. In April 2001, the *Grupo Gestor de Participación Ciudadana*<sup>37</sup> presented the National Assembly with a draft Citizen Participation Law. This law would codify the rights of citizens to meet with, and monitor the actions of, government officials, both national and local, and set up procedures and forums for doing so. The proposed law was ignored by the Assembly, but initiatives to solidify citizen access to government officials and promote their responsiveness still need to be pursued. Likewise, although CONPES and the *Coordinadora Civil* are likely to continue

<sup>35</sup> Such opposition comes from both sides. Rene Herrera (anti-*Sandinista*) was quoted to the Assessment Team as saying, “Citizen participation is accomplished through political parties.” Ballardo Arce (*Sandinista*) was reported to have said, “You NGOs want to have the power we won at the polls.”

<sup>36</sup> The business leaders who established *Hagamos Democracia* are an exception to this.

<sup>37</sup> Composed of the *Centro de Derechos Constitucionales*, *AMUNIC*, *Hagamos Democracia*, *Comisión Pro Derechos Humanos y la Paz*, *Comité Nacional de Intergridad*, *Universidad Centroamericana*, and *Procuraduría para la Defensa de los Derechos Humanos*.

functioning, more effective channels for contacts and exchanges between civil society representatives and government (in all four branches) need to be devised.

A final word of caution regarding reform efforts at the national level: USAID and its civil society partners should cooperate in institutional strengthening efforts only with organizations where adequate levels of support for real reforms exist inside those organizations. To do otherwise would risk improving the technical capability of organizations administered in a partisan manner to the benefit of political patrons.

### **5.3.2 Program Synergy**

The second recommended tactical guideline for the DG program is to seek synergy with activities carried out under the economic growth and human development SOs. The most obvious place for this to occur is at the local level where local governance efforts can be combined with efforts to decentralize health and education and involve citizens more actively. In fact, the Assessment Team recommends that an Intermediate Result be established for all USAID programs – DG, economic, and social infrastructure – that calls for deconcentration and local participation and oversight. One of the best examples of activities already supported by USAID that do this is the “model schools” program. Here the Ministry of Education has promoted local selection of school principals and other elements of parental oversight of schools, including establishment of parents’ associations. Another USAID program that provides an example is the environmental protection project, COMAP, which organizes community groups to both manage resources and promote policy changes. USAID’s health sector, in cooperation with Harvard is also exploring ways to decentralize certain health services.

Opportunities for program synergy also should be sought at the national level, although the degree of political will exhibited by reform agents should always be given primary weight in selecting reform areas to support. Areas in which synergy might be achieved at the national level include reforms in GON ministries or laws and regulations to improve prospects for health, education, and decentralization programs supported by the Mission, along with efforts to remove legal impediments to trade and investment.

### **5.3.3 Outside Pressure for DG Reforms**

As the third tactical guideline, the Assessment Team recommends that USAID cooperate with other U.S. Mission agencies, and other donors, in efforts to complement support for local reform coalitions with more vigorous diplomatic pressure for specific democratization initiatives. History shows that outside pressure has almost always been a vital component to move Nicaragua’s polarized forces. Precedents for this type of strategic approach have already been established in the elections and human rights areas. When those issues were judged important enough both to Nicaraguan reformers and the international community, donor countries collaborated with, and nurtured, local civil society organizations that pressed for changes, concurrently with their own diplomatic initiatives and pressure.

USG emphasis on the benefits to be derived from membership in the Central American Free Trade Association (CAFTA) – and on the disadvantages for Nicaragua vis-à-vis its neighbors in falling behind them in the economic and governance reforms needed to accede to CAFTA and compete for investment and trade – should be an important element of the bilateral pressure for democratic reforms.

Lastly, given the importance of multilateral assistance to Nicaragua, and the leverage that can thus be exerted with it, more vigorous coordination with the U.S. executive directors at the IDB, World Bank, and IMF should also be pursued.

## 5.4 Final Considerations

A few other factors should be considered in devising a DG program: (1) achievements under prior USAID programs; (2) USG foreign policy priorities; (3) USAID funding, program planning, and procurement regulations; and (4) other donor programs.

### 5.4.1 *Prior USAID DG Programs*

USAID has provided assistance in a wide variety of DG areas since 1990. This assessment's main conclusion is that the underlying clientelistic and patrimonialistic nature of Nicaraguan political and governance practices needs to be taken fully into account in making decisions regarding DG program strategy and content. The current status of the National Assembly, the Supreme Court, and the Controller General's Office show how easily governmental institutions designed to fulfill democratic functions can still be captured by traditional political forces and manipulated. This occurred despite significant technical assistance from USAID and other donors. In the case of the Controller General's Office, technical assistance was accompanied by civil society public education and anti-corruption campaigns also financed by USAID. The assistance to these organizations was valuable of course, especially in the case of assistance for the new Criminal Procedures Code. However, the current status of these Nicaraguan governmental organizations does show how important it is for USAID and other donors to give priority first to collaborating with local reform agents charged with the political task of generating lasting reform coalitions and then turning attention to improving technical capacities.

The DG strategy recommended above is consistent with USAID's prior DG program investments. As already noted, it will be important to continue to provide support for the training and capacity building needed to implement the CPP. Beyond that, USAID, should focus on promoting reforms that provide for judicial sector independence and an improved environment for trade and investment, and leave higher cost institution-building support to the IDB and World Bank. Investment in constructing Nicaraguan civil society was well spent, especially considering the nascent and very partisan nature of civil society following the *Sandinista* years. Now, as also noted above, and as the Mission already started to do, support provided to civil society needs to be more focused on specific DG reform topics, and broadened to coalitions rather than individual CSOs.

Finally, support in the elections/political party arena should be focused on system reform rather than elections administration.

### 5.4.2 *USG Foreign Policy*

Nicaragua very much needs to be on the political screen of the United States and the international community over the next five years. Nicaragua is desperately poor and badly governed. Overwhelming numbers of Nicaraguans face chronic poverty and cannot depend on their political system to allow them to improve their situation. These governance and socioeconomic conditions make Nicaragua once again a potentially destabilizing force in the region. Whether because of the "vicious cycle of violence" alluded to by Serrano, or because of the rampant corruption that is permitted (e.g., the recent illicit sale of AK-15s to Colombia's paramilitaries, its role as the

intermediary dropoff point for drug trafficking to the U.S., or as the source of large numbers of economic immigrants), Nicaragua can play a very negative role in a region full of fragile democracies.

With this in mind, the U.S. Mission identifies continued democratization as the highest priority of the U.S. Government. The DG program recommended above can make the most significant USG contribution to attainment of Nicaraguan democratization. To be most effective, it is recommended that USAID programs be accompanied by more vigorous USG diplomatic pressures for DG reform, in collaboration with the international community. In this regard, the ability some partisan political forces in Nicaragua still possess to influence the USG to act in ways that can accentuate polarization rather than at the expense of democratic reform is a concern. One issue that will continue to require attention is approval for USAID to collaborate with former or current *Sandinista* Party members in democratic reform efforts, when doing so is not judged to contribute materially to FSLN partisan objectives. The Mission told the Assessment Team that concerns in this area have been handled on a case-by-case basis.

#### **5.4.3 USAID Funding, Program Planning, and Procurement Regulations**

Nicaragua is anticipating as much as \$6 million per year in DG funds and over \$30 million per year overall in assistance funds. While the needs in Nicaragua are enormous and the reform tasks daunting, this is still a significant amount of money for a nation of five million inhabitants, and the Assessment Team concludes that it should be adequate to finance DG programs in the three areas recommended.

The recommended DG strategy recognizes the deep-seated nature of Nicaragua's challenges and the fact they can only be addressed over the long term. Modest expectations need to condition the Mission's DG strategy because change is likely to be incremental and gradual. While USAID support is unlikely to produce a clear "breakthrough" to a democratic state, steady progress moving from a patron-client system to a more democratic one can be made.

The Mission should work with partners to identify results that are specific, realistic, and meaningful. In the area of community development initiatives, results can include the number of communities where effective citizen-based initiatives and citizen participation in local governance occurs; specific community development results achieved; changes in indicators of social capital, legal, and institutional reforms that facilitate local initiatives; and improvements in AMUNIC's performance. In the area of improving democratic governance and political processes, results can include ongoing civil society coalitions formed, laws passed and implemented, and organizational improvements. In the area of ROL reform, results can include targeted capacity-strengthening measures achieved by judicial organizations, new judicial career standards, and trade and investment barriers addressed.

Procurement-related issues include whether careful, direct selection of civil society organizations with which to partner is feasible, and whether more than one grant or contract can be used in any one DG program area. To address these concerns, USAID/Nicaragua can (a) consider using waiver authority when necessary to collaborate with partner organizations deemed most appropriate for given initiatives; and (b) let one contract or grant for each DG program and allow the contractor or grantee to make subcontracts and grants.

#### **5.4.4 Other Donors**

Nicaragua receives over \$600 million per year in resources from the international finance institutions, bilateral donors, and international nongovernmental organizations. This is equal to 25 percent of its GDP and \$115 per capita, or essentially equal to what the private sector produces in goods and services. It should not be surprising that there are a wide variety of donor motives, objectives, and priorities despite attempts to focus under the Consultative Group and HIPC. Multilateral donor organizations provide significant funding for “reform of the state” programs. While these have not overlapped directly with recommended USAID initiatives, the USG will need to ensure that activities financed by the IFIs do not undermine the strategic approach to DG reform. Some bilateral donors, notably the Scandinavian countries and Spain, provide democracy-related assistance, but to date, coordination with them has not been a problem. In fact, it is anticipated that they will welcome the opportunity to help implement the strategic approaches recommended above.

## Annex A

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### CONTINUUM OF DECISION-MAKING AND ADMINISTRATIVE SYSTEMS

The Assessment Team relied heavily on concepts presented by Derick Brinkerhoff and Arthur Goldsmith in *Clientelism, Patrimonialism and Democratic Governance: An Overview and Framework for Assessment and Programming*<sup>1</sup> in preparing this assessment. Brinkerhoff and Goldsmith prepared two tables that contrast clientelistic and patrimonialistic practices with democratic practices. These tables are useful in considering the distance countries need to travel, and the comprehensiveness of reforms needed, to become more genuinely democratic. Descriptions of Nicaragua’s clientelistic and patrimonialistic practices are presented below.

<b>Continuum of Political/Decision-making Systems</b>	
←————→ <b>Clientelistic</b>	<b>Democratic</b>
<ul style="list-style-type: none"> <li>◆ Authority is personal, resides with individuals</li> <li>◆ Personal enrichment and aggrandizement are core values</li> <li>◆ Leaders tend to monopolize power and are unaccountable for their actions</li> <li>◆ Leaders’ relationship to supporters is opaque and may be unreliable</li> <li>◆ No regular procedures exist regarding leaders’ replacement</li> <li>◆ Leaders hold onto power by providing personal favors that secure loyalty of key followers</li> <li>◆ Policy decisions are taken in secret without public discussion or involvement</li> <li>◆ Political parties are organized around personalities</li> <li>◆ Civil society is fragmented and characterized by vertical links</li> <li>◆ Decision-making standards are tacit and procedures are impossible to follow from outside</li> <li>◆ Supporters’ interests guide decisions</li> <li>◆ Extensive scope exists for patronage appointments</li> </ul>	<ul style="list-style-type: none"> <li>◆ Authority is institutional, resides with official roles</li> <li>◆ Rule of law, fair elections, and majority rule are core values</li> <li>◆ Leaders share power with others and are accountable for actions</li> <li>◆ Leaders’ relationship to supporters is transparent and predictable</li> <li>◆ Regular procedures exist regarding leaders’ replacement</li> <li>◆ Leaders hold onto power by providing collective benefits that earn support of large segments of society</li> <li>◆ Policy decisions are taken in the open after public discussion and review</li> <li>◆ Political parties are organized around stated programs</li> <li>◆ Civil society is deep and characterized by horizontal links</li> <li>◆ Decision-making standards are explicit and procedures are transparent</li> <li>◆ Public interest guides decisions</li> <li>◆ Limited scope exists for patronage appointments</li> </ul>

<sup>1</sup> Brinkerhoff, Derick W., and Goldsmith, Arthur A., *Clientelism, Patrimonialism and Democratic Governance: An Overview and Framework for Assessments and Programs*, December 2002 (unpublished, ABT, Assoc.)

## Continuum of Administrative Systems

←————→ <i>Patrimonial</i>	<i>Rational-legal Bureaucratic</i>
<ul style="list-style-type: none"> <li>◆ Administrators are recruited and promoted as reward for personal connections with political leaders</li> <li>◆ Administrators can be dismissed for no reason</li> <li>◆ There is an unspoken hierarchy, with little specialization or specification of output and uncertain reporting channels</li> <li>◆ Important orders may be given orally</li> <li>◆ The public and private realms are blurred</li> <li>◆ Administrators supplement their salary with bribes and kickbacks</li> <li>◆ System is decentralized allowing wide discretion on the job</li> <li>◆ Administrators' actions are arbitrary, based on subjective reasoning, and follow ad hoc procedures</li> <li>◆ Rules are applied with partiality and some citizens get preferential treatment</li> <li>◆ Verbal agreements are used in government procurement and sales</li> <li>◆ Internal controls are lax</li> <li>◆ Documentation is spotty with sensitive matters left off the books</li> <li>◆ Subjects have little recourse for poor service</li> </ul>	<ul style="list-style-type: none"> <li>◆ Administrators are recruited and promoted in competitive processes that judge their merit and expertise</li> <li>◆ Administrators can only be dismissed with cause</li> <li>◆ There is an authorized hierarchy with clear division of labor, specific standards for output, and well-defined reporting channels</li> <li>◆ Important orders are put in writing</li> <li>◆ The public and private realms are kept separate</li> <li>◆ Administrators are prohibited from supplementing their salary</li> <li>◆ System is centralized with little room for discretion on the job</li> <li>◆ Administrators' actions are predictable, based on objective methods, and follow uniform procedures</li> <li>◆ Rules are applied with neutrality and all citizens receive equal treatment</li> <li>◆ Binding legal contracts are used in government procurement and sales</li> <li>◆ Internal controls are strict</li> <li>◆ Thorough records are maintained and regularly audited</li> <li>◆ Citizens have appeal channels if given poor service</li> </ul>

## Annex B

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### HOW NICARAGUA'S POLITICAL PARTIES OPERATE

## How Nicaragua's Political Parties Operate

1. Recruiting and nominating candidates for elective office. Traditionally, candidates have been recruited and nominated on the basis of personal connection, resources that could be used for campaigning, and/or popularity rather than their connections to a social base or shared ideology. Neither party conducts open and transparent internal elections for candidates at any political level – President, National Assembly, or Municipal elections.<sup>1</sup> Candidates are placed on closed lists comprised of only those party members who have proven their commitment to toe the party line. Political competition within the parties is based primarily on the client-patron relationship. Although party bosses have publicly claimed to use opinion polls and public consultations to help select candidates in municipal elections, they have frequently overruled the polls when it was in their self-interest.
2. Mobilizing electoral support and stimulating electoral competition. Nearly 90% of the total population of Nicaragua voted in the 2001 presidential elections. However, various opinion polls have indicated that despite their active participation at the ballot box, most Nicaraguans do not trust the principal powers and institutions of the state nor do they believe that their interests are being met by elected officials. The explanation behind the paradox of relatively high voter turnout and the lack of trust in the political elite is often explained as a result of the bipolarized nature of the Nicaraguan electorate, rather than strategic campaign platforms by the parties. Moreover, increased abstention (174,000 more abstentions despite an increase of 366,000 registered voters) in the most recent municipal elections (November 2000) *might* indicate a growing political apathy and cynicism among voters that will need to be better addressed by political parties vying for power.
3. Structuring choices among competing groups of candidates along different issue dimensions. Both political parties generally adopt electoral mobilization strategies primarily stressing questions of transient relevance, rather than focusing on the more durable interests of various social groups. As is increasingly common throughout the world, ideological divides between parties have been narrowing, and personalities are becoming more dominant. The trend is reinforced by a growing apathy among Nicaraguan citizens and a lack of incentive for political parties to form common messages and ideology among candidates. Parties believe that issues are not central to popular decision-making. According to Herty Lewites, *Sandinista* Mayor of Managua, “People are tired of ideology and confrontation.”
4. Representing different social groups, either symbolically or in advancing different specific interests. One of the greatest deficiencies of the Nicaraguan political parties principally resides in their historic disconnection with citizens. Political parties often engage in clientelism under which party faithfuls are offered positions in exchange for a commitment to voting in the boss' interests, and

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<sup>1</sup> FSLN leadership claimed to conduct internal elections in a recent meeting, but allegations of lack of transparency in the vote-counting process erodes credibility.

individual citizens are promised favors in exchange for votes. Political parties rarely discuss the issue of representing different social groups, as the majority of their support comes from traditional bases or clientelism. Although more women are currently competing for electoral office and occupying key national positions, overall representation of women's interests within the political parties is developing at a slow pace. Political parties have demonstrated a limited appreciation for involving youth, but currently view the younger generation as an important constituency, as youth are quickly becoming the largest demographic in the country.

The closed list system and proportional representation means that elected officials generally are unaware of the constituencies and are accountable and representative only to the party leadership. At the local level, party activists tend to utilize limited resources to engage in development activities that respond more to the needs of the local citizenry. *Sandinista* activists opined in a recent interview that although the party's interest at the national level is in maintaining electoral support in municipalities, limited resources distributed by the party can be invested in non-politicized social and economic development programs.

5. Aggregating specific interests into broader electoral and governing coalitions. Many NGO leaders and academics tend to support political reform because both the political parties and the political system remain controlled and manipulated by very few political actors to such an extent that one academic interviewed proclaimed that "...the current electoral system in Nicaragua is the most personalistic in the world." Although parties function in the Parliament and as legislative blocks, representatives automatically support the position of the party boss. Impediments to reform in this area are often attributed to the current polarized political situation and Nicaragua's low level of social capital. However, as the Liberal party continues trudging along with internal negotiations to unify, legislative blocks over key issues have for the first time been formed across party lines. Fragmentation of the Liberal party, along with the emergence of new political alliances, might create the incentive for elected officials to aggregate more specific issues and reform in this area. Although new political alliances may form, they may still be based on allegiance to individual leaders rather than issues of interest to various interest groups.
6. Forming and sustaining governments. Political parties have not excelled at forming governments that are responsive and accountable to citizens and, by most indications, nor have they tried. Parties dominate the executive, judicial, and electoral branches and legislative representatives are accountable to their party boss. An informal system of clientelism and patrimonialism simultaneously guides the public decision-making process and impedes popular participation in the government, distorts service delivery, and opens the door to widespread corruption. Historically, political parties have not successfully formed sustainable governments. Nicaragua has had 12 constitutions, various power-sharing pacts, and cycles of violence. Governments are most frequently used as vehicles to dominate the state spoils, and major policy decisions are generally based on short-term gain. Patrimonialistic

governments formed by *caudillo* party leaders have not provided consistency or continuity in Nicaragua's governance.

7. Integrating citizens more broadly into the nation-state and its political process. This is another area that represents one of the biggest shortcomings of Nicaraguan political parties and the state in general. The personalistic and exclusionary system leaves even those within the party, never mind the electorate, feeling left out. Moderates in both parties, especially the *Sandinistas*, face enormous political consequences for dissenting. Although a diverse array of political groups that oppose both the PLC and FSLN have emerged over the past decade, they have not been able to successfully generate popular dissatisfaction with the traditional parties. Even respected former party leaders, including former Vice President Sergio Ramirez, have not been successful in mobilizing public support to new opposition parties. Since 1990, no third party has received more than 10% of the total vote. The current system favors party loyalists and existing legislation excludes opposition from the political arena. Parties have not traditionally enabled citizens to participate effectively in the political process – aside from merely voting – nor have they developed a vested interest in its perpetuation. This points to one of the most profound impediments to democracy: lack of interest by individuals in democratic citizenship.

## Annex C

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### PAPER ON THE DEMOCRATIC PROCESS IN NICARAGUA

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# EL PROCESO DEMOCRÁTICO EN NICARAGUA

DEMOCRACIA Y GOBERNABILIDAD

**¿ ESTADO DE DERECHO EN NICARAGUA ?**

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Consultora Nacional

Managua, 16 de febrero del 2003

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## **I. INTRODUCCIÓN**

Hablar de Estado de Derecho en Nicaragua, es hablar de uno de los grandes retos que aún tiene pendiente el Estado nicaragüense; tarea que debe iniciar con el fortalecimiento y respeto a las instituciones y la transformación profunda del sistema de administración de justicia como fundamentos básicos para la institucionalización del Estado de Derecho en nuestro país.

Las repercusiones negativas de la casi inexistencia de un Estado de Derecho se evidencian en los daños causados a la frágil y precaria institucionalidad democrática -impulsada en los años noventa- mediante el deterioro institucional ocasionado por el control partidario de las estructuras del Estado como consecuencia del “pacto libero-sandinista”, y el sometimiento de los intereses generales a los intereses personales y partidarios. A esta polarización política habría que agregar la crisis socio-económica profunda que ubica a Nicaragua como uno de los países más empobrecidos y altamente endeudados del continente americano.

En lo que respecta a la vigencia y respeto de los derechos humanos los indicadores sociales son poco optimistas; en los últimos años se ha experimentado un crecimiento en la tasa de analfabetismo<sup>1</sup>, deterioro en el sistema de salud y en el sistema de educación pública, aumento de los niveles de desnutrición en la población adulta e infantil y el hambre junto con el déficit de vivienda y el desempleo –que alcanza extraoficialmente el 60%- son ejemplos claros de la violación de los derechos sociales y económicos, situaciones que contrastan con el uso indiscriminado de fondos públicos –que todavía subsiste- en la Asamblea Nacional mediante el otorgamiento de 400,000 córdobas (un total de más de 36 millones de córdobas del Presupuesto Nacional) a cada uno de los diputados para “proyectos comunitarios”; los salarios de los funcionarios públicos del actual gobierno siguen siendo los más altos de Centroamérica pese al Plan de Austeridad presentado por el Ejecutivo, el mismo Presidente, el Ing. Enrique Bolaños ha sido cuestionado por sectores de la sociedad civil al recibir además de su salario como Presidente una pensión vitalicia como ex-vicepresidente.

Los movimientos sociales en su mayoría siguen marcados por el populismo y la participación ciudadana es un desafío que debe enfrentar la sociedad civil, aún débil, dispersa y mayormente representada por ONGs o ex líderes partidarios que han sido excluidos de sus espacios políticos, lo que ha restado fuerza a sus iniciativas. Por ello, hay que dar lugar al surgimiento de liderazgos que tengan paciencia y capacidad de organización social para que guíe a una sociedad civil que todavía no encuentra un verdadero espacio para participar en el diseño de un Plan de desarrollo Nacional.

Por su parte, el sector empresarial nicaragüense se caracteriza por su pasividad social y exige constantemente al Estado le otorgue mayores beneficios, de los que hasta ahora han gozado con las políticas tributarias y crediticias; convirtiéndose en un sector que también demanda

atención pero todavía no se decide a asumir su rol para contribuir al desarrollo económico y social del país<sup>2</sup> y creación de empleos<sup>3</sup>.

El presente informe retoma una serie de entrevistas realizadas a personas que representan a la sociedad civil, líderes de opinión, líderes políticos y actores del sector justicia (CSJ, Defensoría Pública, Ministerio Público, Procuraduría para la Defensa de los Derechos Humanos, entre otros). Se parte pues, de un análisis del contexto socio-político del país en el que están inmersos los distintos poderes del Estado e instituciones gubernamentales, y que en cierta medida influye sobre la percepción que la ciudadanía tiene del Estado nicaragüense y las actitudes de éste para enfrentar la crisis institucional que atraviesa a todos los sectores sociales, políticos y económicos. Igualmente, se utiliza como recurso informativo adicional las encuestas realizadas en los últimos 6 meses.

El Sistema de Administración de Justicia, como uno de los pilares principales para consolidar el Estado Democrático Social y de Derecho consignado en la Constitución Política, no es ajeno a la corrupción institucional, ya sea por razones partidarias o por razones económicas; como veremos en el apartado correspondiente al sector justicia en el que identificamos los problemas principales que enfrenta y sus repercusiones en el lento desarrollo del proceso democrático nicaragüense.

Finalmente, sugerimos algunas estrategias y recomendaciones para aprovechar las oportunidades y superar, en la medida de lo posible, los obstáculos que tienen sumido al Estado en general, y al gobierno en particular, en una crisis de credibilidad ante sus ciudadanos<sup>4</sup>; debido a la poca cercanía entre éstos y los distintos sectores sociales.

a) *El proceso democrático del Estado nicaragüense. Contexto Socio-político*

En la actualidad la población nicaragüense asciende a más de cinco millones de habitantes, de los cuales el 72% tiene menos de 30 años, es decir, que Nicaragua es un país joven que no tiene una política estratégica para ofrecer mayores oportunidades a una juventud que observa como única alternativa la emigración<sup>5</sup> a los Estados Unidos o a otros países vecinos (Costa

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<sup>2</sup> Según la encuesta realizada por M&R, durante el período de 28 de enero al 7 de febrero del 2003 (Publicada en La prensa, del 19 de febrero del 2003 8 A - "**Ciudadanos no confían en el sector Privado**") el 76.5 % de la población encuestadas (1,500 personas de entre 16 y 65 años de edad) dice tener poca o ninguna confianza en el sector privado

<sup>3</sup> La misma encuesta de M&R, revela que el 83.3% de los encuestados sostienen que el sector privado contribuye poco o nada a la creación de empleos.

<sup>4</sup> "**Bolaños pierde su encanto**", es el título principal de La Prensa del día 17 de febrero del 2003, al reflejar los resultados de la encuesta de M&R (publicada en dos ediciones continuas de éste diario de circulación nacional) que revela que el 44.3% lo considera "hablador y ambiguo".

<sup>5</sup> Según la última encuesta realizada por M&R, durante el período de 28 de enero al 7 de febrero del 2003 (Publicada en La prensa, del 19 de febrero del 2003 8 A - "**Mayoría quiere largarse de Nicaragua**") el 61.5 % de los encuestados abandonaría el país si pudieran. En el mismo sentido, una

Rica, y ahora Guatemala). Y es que lo que más exporta Nicaragua es mano de obra barata, ante la ausencia de políticas de desarrollo, no sólo para la juventud, sino para toda la población en general; las mujeres emigran para que sus hijos puedan sobrevivir con las remesas que les envían y en el último año, se ha observado una paulatina emigración de profesionales que buscan mejorar su calidad de vida (20% de la población nacional)..

Un dato que resulta interesante es que los jóvenes representan el 50% del padrón electoral, por lo que su relación con el Estado es de gran importancia para el fortalecimiento de nuestra democracia y el desarrollo sostenible del país.

En este contexto, los nicaragüenses siguen sobreviviendo de la colaboración y créditos internacionales además de las remesas (aprox. \$ 800 millones de dólares anuales) que envían los emigrantes que están en Estados Unidos y en Costa Rica a sus familiares en Nicaragua las cuales superan el total de las exportaciones de productos agrícolas del país<sup>6</sup>.

En el aspecto político, como es sabido, el Estado nicaragüense en los años 80 estaba diseñado como un Estado-partido, por lo que el proceso de democratización política inició con la celebración de las primeras elecciones libres realizadas en 1990 que llevaron a la presidencia a Doña Violeta Barrios de Chamorro, cuyo gobierno introdujo grandes cambios en la cultura política nicaragüense al realizar una serie de transformaciones y esfuerzos en pro del fortalecimiento, democratización y despartidarización de las instituciones, buen ejemplo de ello, es la profesionalización y despartidarización experimentada en la Policía Nacional y el Ejército de Nicaragua, lo cual no era más que el inicio de un proceso más profundo de institucionalización de los diferentes entes gubernamentales, ministerios y poderes del Estado. No obstante, este proceso de democratización estatal no sólo se paralizó al llegar a la Presidencia de la República el Dr. Arnoldo Alemán Lacayo en 1996, sino que su ruta fue desviada hacia la concepción de un Estado-botín.

Los resultados de las elecciones celebradas en noviembre del 2001 dieron la victoria al candidato del Partido Liberal Independiente (PLC), Ing. Enrique Bolaños Geyer, sobre quien pesaba la incógnita y la desconfianza por su omisión para combatir la corrupción durante su desempeño como vice-presidente y responsable de la Comisión Nacional de Integridad, victoria que fue reconocida de forma pacífica y ejemplar por Daniel Ortega quien pierde por tercera vez en los comicios electorales y en esta ocasión con una diferencia de 14 puntos<sup>7</sup>. El programa del nuevo gobierno tenía prevista una novedosa estrategia política: empezar a

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[encuesta por estudiantes universitarios de la UNAN \(Universidad Nacional Autónoma de Nicaragua\) reveló que el 57% de los encuestados hubieran preferido haber nacido en otro país. \(Publicada en El Nuevo Diario, del 10 de febrero del 2003\)](#)

<sup>6</sup> Situación que se vio afectada principalmente por la caída de los precios internacionales del café –uno de los productos básicos de la agro- economía del país- y la no exportación de carne a otros países de la región, lo que contribuyó al aumento del desempleo en las zonas rurales y consecuentemente a la hambruna y al éxodo de las familias campesinas hacia las ciudades.

<sup>7</sup> Proceso electoral caracterizado por un alto nivel de participación ( más del 90% de la población apta para votar) .

superar la concepción del Estado-botín; así en el discurso de toma de posesión del Presidente Bolaños se refirió a la necesidad de erradicar los tres grandes problemas que padece el Estado nicaragüense “la corrupción, el caudillismo y la perversión en el uso del poder”, planteando una política de institucionalización de la transparencia en la administración pública y el comportamiento ético de los funcionarios públicos.

La falta de transparencia del gobierno del Dr. Arnoldo Alemán –considerado el más corrupto en la historia- se puso en evidencia cuando el discurso presidencial empezó a materializarse a través de una lucha anticorrupción respaldada por la mayoría de la población que ha dado como resultado el procesamiento de varios ex funcionarios públicos –algunos de ellos detenidos y otros prófugos de la justicia- e incluso el arresto domiciliario del propio ex presidente Dr. Arnoldo Alemán, después de una fuerte “batalla legal” que se desarrolló en la Asamblea Nacional, cuando la bancada liberal dio su apoyo incondicional al Dr. Alemán y se opuso a su desaforación.

Así pues, la lucha anticorrupción –que fue el tema principal del año 2002- generó una nueva percepción en la conciencia social<sup>8</sup>, ya que la ciudadanía comenzó a entender y a reflexionar acerca del vínculo existente entre la corrupción y el empobrecimiento de la mayoría, produciendo un repudio de la sociedad a los descarados niveles de corrupción e impunidad y una conciencia de crear instituciones y leyes que permitan a la ciudadanía participar de forma responsable en el control de las actuaciones de quienes les representan en las instancias gubernamentales y poderes del Estado.

En este proceso de concientización social los medios de comunicación han jugado un papel muy importante, no obstante, hay que señalar que la lucha anticorrupción también trajo consigo un desgaste del propio gobierno<sup>9</sup> al ser una lucha selectiva y con poca solidez legal que todavía no ha terminado; todo ello ha producido la frustración de las expectativas sociales en torno al castigo de los corruptos, pero sobre todo en torno a la recuperación del dinero sustraído de los fondos públicos.

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<sup>8</sup> Según una Encuesta realizada entre la población urbana de Managua, por ITESO de la Universidad Centroamericana, el 97% expresó estar de acuerdo con la lucha anticorrupción. Aunque un dato interesante es que el 30% de los encuestados indica un grado de tolerancia hacia la corrupción al estar de acuerdo con la expresión “**No importa que el funcionario robe con tal que haga algo por la gente pobre**”.

<sup>9</sup> Desgaste que inició con la decepción social ante las declaraciones que hizo el propio Presidente de la República Ing. Enrique Bolaños Geyer cuando se le pidió que renunciará a la pensión vitalicia que recibe como ex vicepresidente, además de su salario como Presidente. Cuando la sociedad civil le cuestionó esta situación considerada poco ética e ilegítima dado los niveles de pobreza del país dijo: “**que la merecía porque a él y a su familia les habían robado nueve millones de dólares cuando el gobierno sandinista les confiscó injustamente propiedades y bienes, por luchar para recuperar la democracia**”, estas declaraciones revelan, en cierta medida, la ya conocida concepción del Estado como Estado-botín.

Cuando los medios informaron sobre la millonaria indemnización que recibió en efectivo, nuevamente el Presidente declara que “*que él había sido muy millonario y que todavía no se sentía compensado por todo el dinero perdido*”.

Situaciones como éstas ofrecen un panorama político interesante porque inducen a la ciudadanía a reflexionar sobre el deber que tienen los funcionarios públicos de administrar los fondos del Estado de forma transparente, y crear las condiciones para enfrentar el desafío principal que actualmente tiene el gobierno como es la REFORMA DEL ESTADO, una tarea difícil de emprender si tenemos en cuenta la situación político-social que generó el Pacto libero-sandinista celebrado en 1999 entre los dos partidos mayoritarios (PLC y FSLN) cuyas estructuras están basadas en un régimen tradicional caudillesco que tiene inmersa a la sociedad nicaragüense en un contexto bipartidario y sujeto a los intereses personales de dos caudillos (Ortega y Alemán) que ejercen el poder no sólo dentro de sus partidos –rodeándose de correligionarios “incondicionales” a base de prebendas y cuotas de poder- sino en los diferentes poderes del Estado; así pues, los poderes legislativo, judicial y electoral y la Contraloría General están distribuidos en cuotas de poder político concentradas en los dos partidos mencionados, de tal forma que cuando es necesario tomar alguna decisión de trascendencia nacional siempre se requiere de “negociaciones” y “acuerdos” no muy alejados de los intereses personales y económicos de los caudillos.

Pero además de las condiciones institucionales antes referidas, es necesario que el gobierno formule por su parte políticas que den respuesta a las demandas sociales más sentidas por la mayoría de la población nicaragüense que pide más salud, más educación y, sobre todo, más empleo<sup>10</sup>. Se debe ofrecer a los jóvenes espacios para la toma de decisiones y representación proporcional en los espacios políticos como la Asamblea Nacional, Concejos municipales y regionales autónomos, ya que es una contradicción imperante el hecho de que siendo Nicaragua un país de gente joven –como recurso principal de desarrollo- estos queden excluidos de la participación social y política.

*b) Instituciones y poderes del Estado nicaragüense. Consecuencias del pacto*

Las reformas constitucionales realizadas en enero del 2000, materializaron los objetivos partidarios plasmados en el pacto libero-sandinista que trajo consigo la repartición de cuotas de poder político, lo que representó un retroceso para el frágil proceso de institucionalización y en consecuencia el debilitamiento de la incipiente democracia nicaragüense, ya que cada uno de los poderes e instituciones del Estado fueron estructurados para beneficiar y garantizar los intereses de los dos partidos y excluir las manifestaciones de otras fuerzas políticas y los intereses generales de la población.

Para poder tener un panorama de la magnitud del deterioro institucional ocasionado por el pacto, basta conocer los aspectos más relevantes de la última reforma constitucional:

1. **La delimitación territorial:** se establece con mayor precisión la delimitación territorial señalando que la jurisdicción y derechos de los nicaragüenses se extienden

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<sup>10</sup> Según una consulta realizada por CONPES los “Nicaragüenses piden justicia y empleo”, (La Prensa), edición de 16 de agosto del 2001, pág. 7 A. Recientemente, una encuesta reveló que el 36.9% de los encuestados sostiene que lo que más le disgusta del gobierno es la falta de empleos (Publicada en La Prensa, el 17 de febrero del 2003).

sobre el espacio aéreo, islas y cayos adyacentes, de conformidad con la ley y las normas del Derecho Internacional (arto. 10).

Al abordar este tema se trató de dejar sentada la posición del Estado de Nicaragua con relación a los conflictos territoriales con Honduras y Colombia, ya que otro de los aspectos de la reforma prescribe que “Nicaragua no acepta los tratados suscritos por otros países en los cuales no sea parte contratante”.

2. **Sobre la nacionalidad:** con la reforma se deja sentado que la nacionalidad nicaragüense no se pierde por el hecho de adquirir otra nacionalidad, eliminando de esta forma la excepción que existía anteriormente (art. 20).
3. **Poder Legislativo:** se modificó la facultad de la Asamblea Nacional para privar a los funcionarios públicos de su inmunidad (arto. 130 inc 3 Cn), ya que el texto antes de la reforma establecía que la Asamblea Nacional con el voto favorable de la mayoría absoluta de los diputados deberá autorizar previamente y declarar la privación de inmunidad y sin este procedimiento ningún funcionario podría ser detenido ni procesado, excepto por causas relativas a los derechos de familia y laborales. Aquí también se incluía al Presidente de la República. Asimismo, se establecía que la inmunidad es renunciable. Sin embargo, con la reforma –aunque se mantiene esta disposición- se precisa la cantidad de votos que se requieren para privar de la inmunidad al Presidente de la República, estableciendo que la Asamblea Nacional mediante resolución aprobada por dos tercios de votos de sus miembros podrá declarar la privación de inmunidad del Presidente de la República.

Respecto a otros funcionarios la resolución será aprobada con el voto favorable de la mayoría de sus miembros. Igualmente, se mantiene la excepción de responsabilidad de los funcionarios por causas relativas a los derechos de familia y laborales; además se establece la renunciabilidad de la inmunidad.

4. **Diputaciones constitucionales:** la reforma del arto. 133 de la Constitución fue una de las grandes sorpresas, al establecer que forman parte de la Asamblea Nacional como diputados, propietario y suplente respectivamente, el *Ex Presidente de la República* y *Ex Vicepresidente electos por el voto popular directo en el período inmediato anterior;* y, como diputados, propietarios y suplente, *los candidatos a Presidente y Vicepresidente de la República que participaron en la elección correspondiente, y hubiesen obtenido el segundo lugar*”, eliminando así lo relativo a los cocientes electorales.
5. **Requisitos para participar en las elecciones:** a través de la reforma del art. 134 literal a) se estableció que quienes hayan adquirido otra nacionalidad deberán haber renunciado a ella al menos cuatro años antes de verificarse la elección”. Además de haber residido en forma continua en el país los cuatro años anteriores a la elección (literal d) ampliándose el término original de dos años.
6. **Las prohibiciones para ser diputado:** se ampliaron a los miembros del Consejo Superior de la Contraloría General de la República, el Procurador y Sub procurador

General de Justicia, el Procurador y Sub-procurador para la Defensa de los Derechos Humanos, el Fiscal General de la República y el Fiscal General Adjunto de la República, a menos que renuncien al cargo doce meses antes de la elección.

Se eliminó el inciso de los que hubieren renunciado a la nacionalidad nicaragüense, salvo que la hubiesen recuperado al menos cinco años antes de verificarse la elección.

7. **Poder Judicial:** la reforma del art. 138 inc 7 Cn se refiere a la elección de los Magistrados de la Corte Suprema de Justicia con el voto favorable de por lo menos el 60 % de los diputados, y esos mismos requisitos fueron establecidos para la elección de los Conjuces.
8. Con relación a los **requisitos para ser Magistrado de los Tribunales de Apelaciones** se establecía que era necesario “Ser Nacional de Nicaragua y no haber renunciado a la nacionalidad nicaragüense, salvo que la hubieran recuperado por lo menos en los *últimos cinco años anteriores* a su elección”. Sin embargo, mediante la reforma del 2000 se estableció que para ser Magistrado es necesario “Ser nacional de Nicaragua. Los que hubiesen adquirido otra nacionalidad deberán haber renunciado a ella *al menos cuatro años* antes de la fecha de elección”. (Arto. 161, 1 Cn). Asimismo, se agregó un inciso 7) el cual prescribe “Haber residido en forma continuada en el país los cuatro años anteriores a la fecha de su elección, salvo que durante dicho período cumpliera Misión Diplomática, trabajare en Organismos Internacionales o realizare estudios en el extranjero”.
9. Con la reforma se **disminuyó el período de funciones de los Magistrados de la Corte Suprema de Justicia** que era *de siete años* y se estableció que ahora es de *cinco años* al igual que los Magistrados de los Tribunales de Apelaciones. Se mantiene la disposición que establece que los Magistrados de la Corte Suprema de Justicia gozan de inmunidad. (arto. 162 Cn).
10. Otra gran novedad de la reforma es el **aumento del número de Magistrados** de la Corte Suprema de Justicia *que pasó de doce (12) a dieciséis (16)*, los que serán electos por la Asamblea Nacional, para un período de cinco años. Asimismo, se retoma lo del nombramiento de un conjuce por cada Magistrado (por parte de la Asamblea), quienes serán llamados a integrar Corte Plena o cualquiera de las salas, cuando se produjera ausencia, excusa, implicancia o recusación de cualquiera de los Magistrados (arto. 163 Cn).

Dentro de las atribuciones de la Corte Suprema de Justicia se estableció que esta institución además de nombrar a los Magistrados de los Tribunales de Apelaciones, puede destituirlos con el voto favorable de las tres cuartas partes de sus miembros (Arto. 164, 5 Cn).

11. **Elección de autoridades gubernamentales:** El arto. 138 inc 9 Cn varía de forma tal que además de elegir al Superintendente, Vice-superintendente, Procurador y Sub-procurador para la defensa de los Derechos Humanos, la Asamblea Nacional también debe elegir al *Fiscal General de la República* quien estará a cargo del Ministerio

Público y al *Fiscal general Adjunto* de la República, los que serán electos por un período de cinco años contados desde la toma de posesión, deberán tener las mismas calidades que se requieren para ser Magistrado de la Corte Suprema de Justicia y gozarán de inmunidad. Asimismo, deben elegir a los miembros del *Consejo Superior de la Contraloría General de la República*, cada candidato debe ser electo con el voto favorable de por lo menos el 60% de los diputados de la Asamblea Nacional.

Además, se prohíbe que los candidatos propuestos para los cargos de Magistrado de la CSJ, Conjuetz, Magistrado del Consejo Supremo Electoral, Superintendente y Vice-Superintendente de Bancos, Fiscal General y Fiscal General Adjunto de la República, tengan relación de parentesco (hasta el cuarto grado de consanguinidad y segundo de afinidad) con el Presidente de la República o con los diputados que los proponen. También establece la prohibición de realizar actividades partidarias durante el ejercicio del cargo.

12. **Rendición de informe:** El inc. 29 del arto. 138 Cn establecía el deber de rendir informe por parte del Contralor General de la República, del Procurador para la defensa de los Derechos Humanos, del Superintendente de Bancos y del Presidente del Banco Central; con la Reforma se agrega al Presidente del Consejo Superior de la Contraloría General de la República o del que el Consejo designe y al Fiscal General de la República.
13. **Porcentaje electoral:** El arto. 147 Cn cambió con relación al porcentaje requerido para ser Presidente o Vice-presidente, ya que anteriormente se exigía al menos el cuarenta y cinco por ciento de los votos válidos (45%), pues, de lo contrario, se tendría que realizar una segunda vuelta entre los que hubiesen obtenido el primer y segundo lugar. Con la reforma se estableció que “Para ser elegidos Presidente y Vicepresidente los candidatos a tales cargos deberán obtener como mayoría relativa al menos el *cuarenta por ciento (40%) de los votos válidos*, salvo el caso de aquellos que habiendo obtenido un mínimo de treinta y cinco por ciento de los votos válidos superen a los candidatos que obtuvieron el segundo lugar por una diferencia mínima de cinco puntos porcentuales. Si ninguno de los candidatos alcanzara el porcentaje para ser electo, se realizará una segunda elección únicamente entre los candidatos que hubiesen obtenido el primero y segundo lugar y serán electos los que obtengan el mayor número de votos. *En caso de renuncia, falta definitiva o incapacidad permanente de cualquiera de los candidatos a Presidente o del Vicepresidente de la República, durante el proceso electoral, el partido político al que pertenecieren designará a quien o quienes deban sustituirlos*”.
14. Con la reforma se derogó (suprimió, eliminó) el literal g) del arto. 147 Cn que establecía que no podían ser candidatos a Presidente o Vicepresidente “Quienes hubiesen renunciado en alguna oportunidad a la nacionalidad nicaragüense”.
15. Con relación a las **atribuciones del Presidente de la República** se reformó el inc 14 del arto. 150 Cn, estableciéndose que, el Presidente puede proponer a la Asamblea Nacional, listas o ternas en su caso, de candidatos para la elección de los magistrados de la Corte Suprema de Justicia, del Consejo Supremo Electoral, los miembros del

Consejo Superior de la Contraloría General de la República, del Superintendente y Vice-superintendente de Bancos, del Fiscal General de la República y Fiscal General Adjunto de la República.

16. Otra novedad de la reforma es **la creación de la Contraloría Colegiada**, cuya base legal la constituye la reforma del arto. 154 Cn que en su primer párrafo mantiene la naturaleza de la institución como verdadero organismo rector del sistema de control y fiscalización de los bienes y recursos del Estado. No obstante, con la reforma se estableció que “Para dirigirla créase el Consejo Superior de la Contraloría General de la República, que estará integrado por cinco miembros propietarios y tres suplentes, electos por la Asamblea Nacional para un período de cinco años, dentro del cual gozarán de inmunidad. Las funciones de los miembros suplentes son para suplir única y exclusivamente las ausencias temporales de los miembros propietarios, quienes la ejercerán por previa escogencia del miembro propietario a quien sustituyan”.

Con relación a los informes que el contralor debía entregar personalmente a la Asamblea cada año o cuando ésta lo solicitaba (arto. 156 Cn), fue reformada esta modalidad de gestión y se estableció posteriormente que “La Asamblea Nacional autorizará auditorias sobre su gestión”.

17. Un aspecto de mucha trascendencia lo constituyó las reformas a la institución del **Poder Electoral**. Así, se incrementó el número de Magistrados del Consejo Supremo Electoral *de cinco a siete, y se redujo de cinco suplentes a tres*. Anteriormente el Presidente del Consejo Supremo Electoral era elegido por la Asamblea Nacional con el sesenta por ciento (60%) de los votos de los diputados para un período de un año; no obstante, con la reforma se estableció que dicho *Presidente y Vicepresidente deberán ser electos por los miembros del Consejo para un año, pudiendo reelegirse* (Arto. 170 Cn).

18. Con relación a los requisitos para ser Magistrados del Consejo Supremo Electoral (CSE), se reformó el inciso 1) del arto 171 Cn, ya que antes sólo se exigía ser nacional de Nicaragua, pero con la reforma se determinó que “en caso de quien hubiere adquirido otra nacionalidad deberá haber renunciado a ella al menos cuatro años antes de ser electo para el cargo”. Asimismo, se agregó un numeral 4) que exige “Haber residido en forma continuada en el país los cuatro años anteriores a su elección, salvo que durante ese período cumpliera alguna misión diplomática”.

19. Dentro de las atribuciones del CSE se agregó el deber de velar por el cumplimiento de las disposiciones electorales por los candidatos que participen en las elecciones generales y municipales. Además, se exige para ser Alcalde, vice- alcalde, o concejal, haber residido o trabajado en forma continuada en el país los cuatro años anteriores a la elección, salvo que cumpliera misiones diplomáticas en el extranjero. Además, se exige haber residido en forma continuada los dos últimos años en el municipio por el cual se pretende salir electo (Arto. 173, 4 Cn).

20. Otra novedad dentro de las atribuciones del CSE es que antes para cancelar y suspender la personalidad jurídica de un partido político se exigía que éstos no

lograran al menos la elección de un diputado en las elecciones de autoridades generales; en cambio con la reforma se determinó que para cancelar dicha personalidad se requiere que los Partidos Políticos no hayan alcanzado al menos un cuatro por ciento (4%) del total de votos válidos en las elecciones de autoridades generales (Arto. 173 inc 12 Cn).

Las consecuencias de las reformas constitucionales no se hicieron esperar, la bipartidarización de todos los poderes del Estado<sup>11</sup> y de las principales instituciones gubernamentales se manifestó casi de inmediato, así pues el **Consejo Supremo Electoral** aplicó de forma inflexible la reforma a la ley electoral que se centró en la exclusión de las demás fuerzas políticas y el fortalecimiento de los dos partidos, dando lugar a un proceso electoral poco democrático para el electorado quienes tuvieron pocas opciones electorales (FSLN, PLC y un débil Partido Conservador) . No obstante, pese al ambiente de tensión e incertidumbre que caracterizó al proceso electoral debido a la polarización bipartidaria de las campañas electorales, las elecciones fueron tranquilas y con una participación equivalente al 90% de los ciudadanos.

El **Poder legislativo** quedó compuesto por 53 diputados liberales, 38 sandinistas y un conservador; no obstante, debido al distanciamiento que estableció el Presidente de la República con su partido, y principalmente, con su líder el ex -presidente Arnoldo Alemán, pronto surgió una crisis que todavía persiste, y que ha tenido estancado al país en pugnas políticas y partidarias que han dado ventajas al Frente Sandinista de Liberación Nacional, sin cuyos votos (38) no hubiese sido posible la desaforación y procesamiento del Dr. Arnoldo Alemán. Las fuerzas políticas dentro de la Asamblea han experimentado una correlación de poder, algunos liberales se han separado del arnoldismo para apoyar al Presidente –la autodenominada bancada azul y blanco- pero con poca fuerza al contar con solo nueve diputados, lo que pone al Ejecutivo en una situación muy difícil al no contar con los suficientes diputados para que sus proyectos e iniciativas sean aprobadas.

En el ámbito del **Poder Judicial** observamos una Corte Suprema de Justicia totalmente politizada, magistrados que se acusan recíprocamente de responder más que al principio de justicia, a los intereses del partido al que pertenecen o, incluso, de responder a los intereses de una sola persona, no en vano algunos han manifestado que el sistema judicial nicaragüense “es la institución más débil y corrupta”<sup>12</sup>, sin que falten quienes otorgan ese calificativo a otros poderes del Estado. Actualmente, sólo cuenta con 11 de los 16 magistrados, ya que todavía no se ha llegado a un “consenso” sobre el nombramiento de 5 magistrados que concluyeron su período a mediados del año 2002.

La elección de los titulares **del Ministerio Público**, no fue ajena a la repartición de cuotas de poder dentro de las instituciones, así el Fiscal General de la República representa los intereses del arnoldismo y la Fiscal Adjunta los intereses del Frente Sandinista.

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<sup>11</sup> Según una Encuesta realizada entre la población urbana de Managua, por ITESO de la Universidad Centroamericana, en el mes de junio del 2002 los encuestados calificaron en una escala de 1 al 10 a la Asamblea Nacional como una institución corrupta (3.7%), seguida por la iglesia (4.8%) y la nota más alta la recibió la Presidencia de la República (6.7%).

<sup>12</sup> David R. Dye, Retazos de Democracia, 2000, 24.

El Procurador General de la República es propuesto por el Ejecutivo, por lo tanto, el Presidente cuenta con el apoyo de la **Procuraduría General de la República**.

**La Contraloría General de la República** es una de las instituciones estatales directamente afectada por el pacto, al transformarse su dirección unipersonal –el último contralor fue Agustín Jarquín Anaya- en un órgano colegiado de cinco miembros (3 liberales y 2 sandinistas), y su actuar hasta el día de hoy, es partidario y político.

Por otra parte, tenemos un **Poder Ejecutivo** débil y con poca capacidad y posibilidad para gobernar<sup>13</sup> al contar únicamente con el apoyo de nueve (9) diputados en la Asamblea Nacional–grupo que se denomina bancada Azul y Blanco- y cuya popularidad<sup>14</sup>–alcanzada con la lucha anticorrupción- va en descenso debido a la falta de cumplimiento de la agenda social basada en una de las principales promesas electorales: la creación de empleos.

En conclusión, tenemos un Estado cuyas instituciones y poderes están distribuidos entre los partidarios del arnoldismo y los partidarios del Frente Sandinista; así pues, los liberales dominan políticamente la Contraloría General de la República y el Poder Electoral; el Poder Legislativo –lo comparten los dos partidos (PLC y FSLN)- el Frente Sandinista tiene pleno dominio en el Poder Judicial.

La partidarización de los poderes e instituciones del Estado, hace que éstos no gocen de independencia y estén sujetos a los intereses personales y económicos de los líderes partidarios –a quienes les deben lealtad- y por lo tanto, actúan con desprecio a los intereses generales de la Nación.

### *c) Crisis de los Poderes del Estado*

Durante los últimos diez meses, el Consejo Supremo Electoral, la Corte Suprema de Justicia y la Asamblea Nacional, tres de los cuatro poderes que conforman el Estado nicaragüense, han atravesado por graves crisis institucionales. El Consejo Supremo Electoral, estuvo desintegrado por más de cuatro meses. Sus actuaciones en la instalación de los Consejos Regionales Autónomos, tanto del Atlántico norte como sur, fueron impugnadas ante la Corte Suprema de Justicia, violentando de esta forma los derechos económicos, sociales, culturales y políticos de todas las y los habitantes de esas regiones. El Consejo, ahora, ha logrado integrarse con la elección del nuevo presidente y empieza a abordar sus asuntos pendientes, sin embargo sufre de una erosión grave en la credibilidad y la confianza de amplios sectores de la ciudadanía, si bien el Consejo Supremo ha dado pasos importantes en la solución de su crisis, aún no concluye con ella.

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<sup>13</sup> Según la encuesta realizada por CID GALLUP y publicada en el diario La Prensa, del 5 de diciembre del 2002, el 61 % de la población considera que el Presidente Bolaños no cuenta con el apoyo necesario para realizar su gestión .

<sup>14</sup> Una encuesta publicada el 5 de diciembre de 2002 en el diario La Prensa, reveló que de abril a noviembre del 2002 el presidente perdió veinte puntos en popularidad.

La Corte Suprema de Justicia que integrada por 16 magistrados, funciona actualmente sólo con 11, ya que a cinco de sus integrantes se les venció el período a mitad de este año y la Asamblea Nacional no ha procedido a la elección de los cinco reemplazos. A pesar de una controversia acerca de si la Corte puede funcionar con sólo 11 de sus miembros, el Poder Judicial ha operado con bastante normalidad, incluyendo la propia Corte Suprema que eligió nueva presidenta y recompuso todas sus salas. Sin embargo, la situación del Poder Judicial podría complicarse en el año 2003, puesto que se vence el período de otros cinco magistrados, sin los cuales, la CSJ definitivamente ya quedaría desintegrada.

La crisis de los órganos constitucionales ha impactado de manera muy especial a la Asamblea Nacional la cual, por primera vez en el curso de los últimos 25 años por lo menos, tuvo que anticipar el final del período de su Junta Directiva para elegir una nueva en el mes de septiembre. Ya este hecho por sí mismo revela la profundidad de las tensiones dentro del parlamento. Este cambio de directiva se produjo con la mayoría mínima indispensable para poderla realizar, es decir, 47 votos contra 45.

## **II. SECTOR JUSTICIA** <sup>15</sup>

### *a) La Constitución Política y sus reformas*

La historia constitucional nicaragüense nos refleja una producción de constituciones -12 en total- que han sido aprobadas y reformadas a la medida de los “intereses de los gobernantes de turno”. La Constitución Política vigente desde 1987, es un ejemplo claro, de cómo la clase política recurre a las reformas parciales o totales para ajustar el marco constitucional a sus intereses, generalmente, alejados de los intereses de la Nación, así pues nuestra Constitución ha sido objeto de tres reformas “parciales”; en 1989 se reformó únicamente la disposición relativa al período de gobierno, el cual se redujo para dar lugar a las elecciones de 1990, la segunda reforma es del año 1995 y la tercera, como vimos y luego retomaremos, del año 2000.

Con el triunfo electoral de Dña Violeta Barrios de Chamorro, quien era la candidata de la UNO (Unión Nacional Opositora), se inició un proceso de modernización del Estado, que pretendía pasar de un modelo de Estado-partido, a un modelo de Estado-Nación, para ello fue necesario plantear una segunda reforma parcial de la Constitución basada en las siguientes líneas institucionales:

- El perfeccionamiento del Estado de Derecho para el ejercicio de una plena democracia con justicia social.
- Abolición del Servicio Militar Patriótico
- Estabilizar e institucionalizar el sistema democrático en el país
- El respeto a la propiedad privada, y por lo tanto la prohibición absoluta de cualquier confiscación.

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<sup>15</sup> Un diagnóstico bastante completo sobre el sector justicia en Nicaragua puede consultarse en. ARAUZ ULLOA, Manuel / MORENO CASTILLO, Ma. Asunción “Imagen de la Justicia”, Editorial UCA, 2001.

- Otorgar a la Asamblea Nacional la facultad de modificar, crear y suprimir impuestos.
- Creación de nuevas instituciones en beneficio de la ciudadanía: La Procuraduría para la Defensa de los Derechos Humanos; Ministerio Público, Tribunal Superior del trabajo y los Tribunales contencioso administrativos.
- Establecimiento de un solo órgano legislativo.
- Endeudamiento externo sólo a través de ley de la República.
- Conceder a los municipios un porcentaje anual del presupuesto general de la República
- Independencia del Poder Judicial
- Reformas al Poder Electoral.

Cinco años después -en enero del 2000- se aprueba la tercera reforma parcial a la Constitución Política como consecuencia de un arreglo o “acuerdo político” realizado en 1999 entre los dos líderes del PLC y FSLN. Los motivos que se argumentaron<sup>16</sup> para realizar esta reforma distan mucho de los resultados obtenidos, como podemos observar, en el apartado de las instituciones y poderes del Estado anteriormente descrito.

*b) Características estructurales del Poder Judicial (Corte Suprema de Justicia, Tribunales de apelaciones, Juzgados de Distrito y Juzgados Locales)*

El sistema de administración de justicia no se encuentra ajeno al contexto socio-político planteado anteriormente, el Poder Judicial nicaragüense, además de estar partidarizado, descansa sobre una estructura vertical, en la que la Corte Suprema de Justicia es el órgano superior que ejerce funciones administrativas y jurisdiccionales, de conformidad con el artículo 159 párrafo 1 de la Constitución<sup>17</sup>.

La **Corte Suprema de Justicia** está integrada por dieciséis magistrados- aunque actualmente sólo hay once- electos por la Asamblea Nacional para un periodo de cinco años, los cuales gozan de inmunidad. A su vez, la Corte se divide en cuatro salas (Sala Penal, Sala Constitucional, Sala Contencioso-administrativa y Sala Civil) cuya organización e integración se acuerda entre los mismos magistrados .

La Corte Suprema de Justicia como órgano superior del Poder Judicial está facultada para decidir sobre su presupuesto, organizar y dirigir la administración de justicia, nombrar a sus funcionarios y reglamentar lo referido a su organización y estructura, entre otras atribuciones reconocidas en el artículo 164 de la Constitución. Además de ejercer la función jurisdiccional

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<sup>16</sup> La reforma del año 2000 presentó los siguientes motivos:

- Afianzar la gobernabilidad, a través de la adecuación de la carta magna
- Búsqueda del perfeccionamiento del sistema democrático
- El ejercicio de los derechos políticos
- Dotar a las instituciones públicas de mayor capacidad funcional
- Fortalecer la naturaleza de la nacionalidad, entre otros.

<sup>17</sup> Esta concepción jerárquica se establece en la Constitución que señala “ que *los tribunales de justicia forman un sistema unitario cuyo órgano superior es la Corte Suprema de Justicia*”.

la Corte ejerce funciones administrativas a través de tres comisiones permanentes: la Comisión de Administración, la Comisión de la Carrera judicial y la Comisión de régimen disciplinario.

Así pues, en la estructura organizativa de nuestro Poder Judicial se puede claramente distinguir una estructura jerárquica tradicional con un elevado verticalismo, ya que cuenta con tribunales superiores e inferiores<sup>18</sup> que integran un mismo sistema el cual ha adquirido características propias al estar organizado bajo un concepto de pirámide jerárquica de subordinación en el que encuentra terreno propicio la injerencia político-partidaria.

Un aspecto que merece destacarse es la elección de la Dra. Alba Luz Ramos Vanegas, como Presidenta de la Corte Suprema de Justicia, ya que como señala la periodista *Karla Marengo* en un artículo reciente<sup>19</sup>, es la primera vez en la historia de Nicaragua que la Presidencia de la Corte Suprema de Justicia es ocupada por una mujer, pues tradicionalmente ese cargo había sido ocupado por hombres, es más, en la historia de nuestro país en el sistema de administración de justicia predominó siempre, la abrumadora mayoría, la presencia de hombres en los cargos de Juez o Magistrado, bien es cierto que actualmente hay una tendencia inversa, aunque aún están limitadas las oportunidades de acceso a cargos superiores.

#### *b) Avances del proceso de modernización y desafíos del poder judicial nicaragüense*

Los avances del proceso de modernización del Poder Judicial se pueden evaluar en dos ámbitos: el de recursos humanos e infraestructura y el aspecto de modernización normativa.

- **Sobre los recursos humanos e infraestructura**, el sistema de Administración de Justicia nicaragüense a inicios de los noventa se caracterizaba por estar conformado en su mayoría por jueces que no contaban con una preparación adecuada para ejercer la función jurisdiccional<sup>20</sup> y por la falta de condiciones (infraestructura, comunicación, recursos) necesarias en los lugares donde se impartía justicia. Con el proceso de modernización que inició en 1991 se han venido implementando una serie de modificaciones en las instalaciones de los despachos judiciales, así como la construcción de las casas de justicia en casi todos los municipios del país y la

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<sup>18</sup> Según el artículo 22 LOPJ los órganos jurisdiccionales del Poder judicial son:

1. *La Corte Suprema de Justicia*
2. *Los tribunales de apelaciones*
3. *Los juzgados de distrito*
4. *Los juzgados locales*

*Los tribunales militares sólo conocerán de las faltas y delitos estrictamente militares, sin perjuicio de las instancias y recursos ante la Corte Suprema de Justicia (...).*

<sup>19</sup> Cfr. La Prensa del 20 de enero de 2003 (edición número 22977).

<sup>20</sup> Un dato representativo es que en el año de 1990 sólo el 10 % de los jueces locales y el 70 % de los jueces de distrito eran abogados. Cfr. Revista *Justicia* N° 5/1996, pág. 10.

edificación de complejos judiciales que prestan mejores condiciones para el desempeño de la función jurisdiccional. En lo que respecta a la preparación de los funcionarios judiciales, se ha superado la figura del juez lego y, actualmente, todos los jueces cuentan con el título de Licenciados en Derecho.

- **En el aspecto normativo**, era necesario modernizar la regulación contenida en el Código de Instrucción Criminal (vigente desde 1879), Código Penal (1974), la elaboración de un Código de Ética Judicial que sirviera como paliativo de la corrupción en este poder del Estado, la elaboración de la Ley de Carrera Judicial, de una Ley de la Jurisdicción contenciosa Administrativa y de una Ley Orgánica del Poder Judicial que sustituyera a la entonces vigente Ley Orgánica de Tribunales de 1894. En este ámbito también se han producido avances dignos de destacar; del conjunto de necesidades normativas mencionadas, la primera en aprobarse fue la Ley Orgánica del Poder Judicial (LOPJ) a la que le ha seguido la Ley de Regulación de la Jurisdicción de lo Contencioso-Administrativo<sup>21</sup> y el Código Procesal Penal.

Es importante destacar que después de intentos infructuosos por parte de algunos sectores “anti-reforma” por atrasar la entrada en vigencia del nuevo Código Procesal Penal –llegaron a circular incluso dos anteproyectos de ley, que pretendían aplazar o suspender la entrada en vigencia del nuevo proceso oral y acusatorio- se llegó a un consenso altamente positivo en el que la Corte Suprema de Justicia sostuvo que a pesar de los problemas económicos y de infraestructura que pudieran existir convenía más, a efectos de la justicia, la entrada en vigencia del Nuevo Código Procesal Penal en la fecha señalada por el texto legal<sup>22</sup>; es así cómo el día 24 de diciembre de 2002 entró en vigor este nuevo proceso que, a pesar de las ya acostumbradas opiniones divergentes, no ha generado la alarma social que algunos vaticinaban; por el contrario, el nuevo sistema está dando muestras de contribuir a la celeridad procesal y a la no retardación de justicia, y tanto es así que a poco más de un mes de su vigencia ya se han celebrado más de cinco juicios orales y públicos.

En el último trimestre del año 2002 la gran mayoría de los jueces penales del país se sometieron a un proceso intenso de capacitación para la aplicación del nuevo sistema de justicia penal, el sistema de juicio acusatorio, oral y público, bajo la lógica de que la aplicación de este nuevo sistema requerirá de personal más capacitado y en algunas dependencias del sistema de administración de justicia –que dicho sea de paso también se han sometido a un intenso proceso de capacitación- de un mayor número de funcionarios, así el caso de la Defensoría Pública -que aumentó el número de defensores a 39- y del Ministerio Público que cuenta actualmente con 100 fiscales, aunque hay que reconocer que en ninguno de los dos últimos casos se cuenta con el personal necesario para cubrir las necesidades del país y mejorar el acceso a la justicia.

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<sup>21</sup> Declarada en su mayoría inconstitucional, por una resolución de la Sala Constitucional de la Corte Suprema de Justicia.

<sup>22</sup> Así el artículo 426 señala: “**Vigencia.** *El presente Código será publicado en La Gaceta, Diario Oficial, y entrará en vigencia doce meses después de su publicación, con excepción de las normas contenidas en el Título II, Capítulo Único "De la Coordinación Interinstitucional", que entrará en vigor a partir de la publicación antes citada.*

También se crearon nuevas estructuras como la Oficina de notificaciones para acabar con el “clientelismo judicial”, de tal manera, que nadie tenga que pagar por las notificaciones, inspecciones, etc. Igualmente, la Oficina de distribución de causas ha sido creada para erradicar “el tráfico de influencias” dada la preferencia que “tenían” ciertos litigantes por llevar sus causas en determinados juzgados.

Pero aún hay tareas que cumplir como es la aprobación de una Ley de Carrera Judicial, un Código de Ética Judicial y una normativa de evaluación del desempeño de todos los funcionarios judiciales que sirva como mecanismo de control de la actividad judicial propiamente dicha y que no dé lugar a valoraciones políticas y conveniencias partidarias, lo cual contribuiría a proporcionar estabilidad a los distintos funcionarios judiciales que integran el actual poder judicial.

Por otra parte, el Proyecto de Reforma al Código Penal ya ha sido aprobado en lo General por la Asamblea Nacional, quedando pendiente su discusión en lo particular; mientras tanto, la reciente entrada en vigencia del nuevo Código Procesal Penal es una gran oportunidad para que el sistema de administración de justicia gane en transparencia y agilidad.

La transformación y fortalecimiento de un sistema judicial democrático debe pasar necesariamente por el establecimiento de su imparcialidad e independencia en relación con los restantes poderes del Estado y cúpulas de poder existentes en nuestra sociedad, de ello resulta que ante un Poder Judicial dependiente y partidarizado es imposible hablar de la existencia de un Estado de Derecho en Nicaragua. Así, por ejemplo, los nombramientos de los magistrados de la Corte Suprema de Justicia todavía responden a intereses políticos y muchas resoluciones de las distintas instancias del Poder Judicial revelan ese mismo interés al ser emitidas con celeridad y bajo interpretaciones legales “poco convincentes”, de tal forma que, se ha normativizado la costumbre de que si la acción legal presentada no tiene un interés político y partidario, el interesado debe prepararse para esperar varios años antes de que su caso sea resuelto.

Si bien es cierto, la aprobación del nuevo Código Procesal Penal tiene como objetivo la modernización de la justicia penal que pasó de un sistema inquisitivo violador de las mínimas garantías, a un sistema acusatorio y oral, y su desafío es convertirse en un sistema de justicia ágil, justo y transparente, para alcanzar la meta se necesita además de la modernización del ordenamiento jurídico y su consecuente creación de instituciones que fortalezcan el sistema de administración de justicia, es imprescindible que el Poder Ejecutivo, los medios de comunicación y los partidos políticos acepten que el Poder Judicial no debe ser un espacio de lucha partidista, y por lo tanto, deben abandonar de una vez por todas cualquier tentación de incidir en el desempeño de las actividades propias de los funcionarios judiciales y crear las condiciones para que la imparcialidad e independencia judicial sea una realidad en Nicaragua.

### *c) Retrocesos y desafíos del Sistema de Administración de Justicia*

El proceso de modernización del Poder Judicial descrito anteriormente, también a tenido retrocesos significativos, el ejemplo más relevante de ello, es la declaración de inconstitucionalidad por parte de la Sala Constitucional de la Corte Suprema de Justicia de

más de 50 artículos de la Ley N° 35/2000 “*Ley de Regulación de la Jurisdicción de los contencioso administrativo*”<sup>23</sup>, lo que trajo como consecuencia la inaplicabilidad de esta nueva jurisdicción resultando consecuentemente infructuosos todos los esfuerzos realizados (por la ciudadanía, expertos y países donantes) para la elaboración y aprobación de esta ley.

También cabe destacar, la reforma a la Ley Orgánica del Poder Judicial (Ley N° 260/1998)<sup>24</sup> en lo que se refiere al quórum para integrar Corte Plena y los votos necesarios para que la misma pueda tomar resoluciones, pasando de una mayoría cualificada a una mayoría simple<sup>25</sup>.

En cuanto a los desafíos que tiene el Poder Judicial está el de mejorar la falta de credibilidad y desprestigio que padece el sistema de administración de justicia en Nicaragua. Así pues, una encuesta realizada por el Instituto de Estudios Nicaragüenses (IEN), entre el 5 y el 12 de septiembre de 1999 y patrocinada por la Agencia Sueca para el Desarrollo Internacional (ASDI), indicó que un 51.8 % de consultados estiman que la administración de justicia “está peor” que el año pasado (refiriéndose a 1998)<sup>26</sup>.

Más aún, un 31.5 % de personas encuestadas en Managua valoran que la justicia estará “peor” el próximo año, lo que denota una gran carga de pesimismo, contra un 21.4 % de ciudadanos que consideraban que las cosas mejorarían en el año 2000.

Este panorama no ha variado mucho, en julio del 2000 la *University of Pittsburgh* publicó un estudio titulado “*Auditoría de la democracia, Nicaragua 1999*”, en el que las víctimas del delito reconocen que no denuncian los delitos porque “no sirve de nada” (56.1 %), dato que respalda los resultados de la encuesta del IEN que reflejó que un 44.8 % de los ciudadanos no confían en el sistema de administración de justicia porque “no sirve para nada”<sup>27</sup>.

El 41.2 % de los encuestados por el IEN también respondió que los funcionarios del Estado que cometen actos de corrupción y pasan a juicios, son juzgados por sus conexiones políticas, mientras que un 41.7 % opina que ni siquiera llegan a ser juzgados. En relación con la interferencia del Poder Ejecutivo en el Poder Judicial el estudio de la *University of Pittsburgh* revela que un alto porcentaje de la población percibe una interferencia indebida<sup>28</sup>.

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<sup>23</sup> Publicada en la Gaceta Diario Oficial, N° 140 y 141 de 25 y 26 de junio del 2000.

<sup>24</sup> Publicada en la Gaceta Diario Oficial, N° 137 de 23 de julio de 1998.

<sup>25</sup> La relevancia de esta reforma estriba, entre otras cosas, en el hecho de que si la Corte Plena es la facultada constitucionalmente para juzgar al Presidente de la República, el quórum necesario para tomar decisiones es más que fundamental, máxime cuando el Presidente y Vicepresidente de la República están siendo investigados por la supuesta comisión de delitos electorales.

<sup>26</sup> Esta encuesta fue publicada en la Prensa bajo el título “*Justicia por el suelo*”, edición 29 de octubre de 1999.

<sup>27</sup> Esta encuesta fue rechazada por la Corte, en La Prensa, edición de 30 de octubre de 1999.

<sup>28</sup> Véase, Auditoría de la democracia, Nicaragua, 1999, pág. 72-74

Una encuesta reciente (diciembre del 2002) reveló que la población nicaragüense no confía en su sistema de administración de justicia, pues sólo uno de cada tres ciudadanos reconoce algún nivel de confianza en la justicia al momento de procesar a los acusados de cometer actos de corrupción. El 30% no confía “para nada en el sistema de justicia” y 29% confía “un poco” .

La última encuesta realizada por M&R (Publicada en La Prensa, del 19 de febrero del 2003 “*Poder Judicial con severas críticas*”) reveló que el 50% de los encuestados “cree que la aplicación de la justicia en Nicaragua no funciona”.

La falta de credibilidad del poder judicial por parte de la sociedad pasa necesariamente por la falta de independencia externa del poder judicial, por la incidencia que ejercen los otros poderes del Estado y recientemente los medios de comunicación y la falta de independencia interna de los jueces, si tenemos en cuenta que los miembros del Poder Judicial desde los magistrados de la CSJ hasta los jueces locales son nombrados conforme a intereses partidarios y personales.

Ello trae consigo el cuestionamiento de la independencia judicial, ya que los magistrados tienen una enorme influencia sobre los funcionarios judiciales inferiores, dando lugar a una cultura jerárquica en la que los magistrados de apelaciones y jueces –ya sean de distrito o locales- están subordinados, no sólo desde el punto de vista administrativo, sino jurisdiccional (llamadas telefónicas). Pero además, esta subordinación indebida también se presenta en los magistrados de la Corte Suprema de Justicia, quienes por su filiación y lealtad partidaria sucumben a los intereses de “su partido” o intereses económicos<sup>29</sup>..

Esta situación impide hablar de la independencia de los jueces y magistrados en el Poder Judicial nicaragüense, pues, tanto unos como otros, se encuentran limitados en su ejercicio, límites que unas veces vienen dados por la Ley y otras por las circunstancias concretas de la realidad nacional. Desde el propio ámbito de la ley debe decirse que la realización de funciones judiciales y administrativas lleva consigo mecanismos de presión de unas respecto a otras; sin ningún género de duda, podemos afirmar, abstrayéndonos de momento de las presiones externas al propio Poder Judicial, la existencia de una “interdependencia” en el sistema de administración de justicia; así, cada Magistrado es miembro en dos salas distintas (penal, constitucional, civil y de lo contencioso administrativo), también lo es de una de las tres comisiones establecidas por la ley (comisión de administración, de régimen disciplinario y de carrera judicial) y, por si fuera poco, cada uno de ellos tiene asignado la administración de uno o varios departamentos del país.

Visto lo anterior resulta simple, y así ha sucedido en múltiples ocasiones, que los intereses, políticos o de cualquier otra índole, de cada Magistrado lo llevan a utilizar como moneda de cambio su voto favorable o desfavorable a una determinada resolución, al nombramiento de un Magistrado de los tribunales de apelaciones, al nombramiento de un juez, de un registrador, etc. Los nombrados, por su parte, actúan con estricto apego a los intereses de aquél o aquellos que hicieron posible su nombramiento y no sólo en asuntos administrativos, también a la hora de impartir justicia; de manera pues, que la independencia interna de los jueces es prácticamente inexistente.

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<sup>29</sup> La encuesta de M&R (febrero 2003) revela que el 43.1% opina que la máximas autoridades del poder judicial responden a cualquier tipo de interés menos a los de la ciudadanía.

Es oportuno señalar, que la actual percepción del Poder Judicial está también influenciada por un conjunto de circunstancias en la que no sólo han jugado un papel importante los distintos poderes del Estado sino también algunos sectores sociales, como los medios de comunicación, el sector empresarial y económico, etc. Todo ello, ha llevado a que la “imagen de la justicia” en general pueda reflejarse como el tránsito que va del RESCATE DE LA JUSTICIA, la colocación de los operadores de justicia en el punto más alto de popularidad, a la VICTIMIZACIÓN Y UTILIZACIÓN DEL SISTEMA DE JUSTICIA para resolver los problemas nacionales y, como vimos en la encuesta publicada el 5 de diciembre del 2002, al descenso de los niveles de credibilidad por parte de la población en general<sup>30</sup>.

*c) Situación actual de la Defensoría Pública*

La Defensoría Pública es un órgano que depende de la Corte Suprema de Justicia quien a través de su comisión administrativa se encarga de crear delegaciones de la Dirección en las circunscripciones departamentales y su supervisión. No obstante, la Defensoría Pública goza de autonomía en sus funciones.

Los artículos 212 y 213 de la LOPJ están dedicados a la Defensoría Pública en armonía con la proclamación constitucional establecida en el artículo 34.4 al señalar que la Defensoría Pública proveerá la defensa a las personas que no tengan capacidad económica para sufragar los gastos de un abogado particular. También se dice que la Defensoría Pública deberá disponer de un número de defensores proporcional a las necesidades que requiera la administración de justicia, sin embargo, la realidad es otra<sup>31</sup>, han pasado casi tres años desde que entró en vigencia la LOPJ y únicamente cuenta con 39 defensores públicos.

La Dirección de Defensores Públicos también puede contar con el número necesario de auxiliares en abogacía, para que colaboren con los Defensores Públicos en el ejercicio de sus cargos y tendrán las funciones que les señale la Dirección y la presente Ley. Los estudiantes de las Escuelas de Derecho que hubiesen concluido el tercer año de la carrera, incorporados en Bufetes Jurídicos, podrán ejercer las funciones equivalentes de auxiliares de Defensa Pública o Defensores de Oficio.

Los estudiantes activos de las Escuelas de Derecho que hubiesen concluido el tercer año, podrán ejercer como Pasantes de Derecho sometidos a las reglamentaciones y condiciones señaladas en la ley de la materia. El mismo artículo 218 de la LOPJ señala las sanciones que se impondrán a los abogados de oficio que no cumplan con la defensa sin justa causa y las responsabilidades civiles y penales en las que puedan incurrir.

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<sup>30</sup> La Prensa, de 5 de diciembre 2002. Según la clasificación de la última encuesta de CID GALLUP, el 18 por ciento de los entrevistados tiene mucha confianza en la correcta aplicación de la justicia, un 16 por ciento concede algo de crédito, el 29 por ciento cree poco, un 30 por ciento no confía en nada, y un 7 por ciento dijo no saber o no respondió.

<sup>31</sup> Véase, “*Defensoría Pública: un reto que debe ser asumido por todos*”, en: La Revista Justicia N° 15/1998, pág. 30 y ss.

Es importante señalar que entre las funciones de la defensoría pública, destaca el hecho de no circunscribirse únicamente al ámbito penal, ya que de conformidad con el artículo 212 de la LOPJ, ésta debe ser garantizada en las demandas de alimentos, y en las litis de orden mercantil, familiar, agrario y laboral. También es oportuno señalar que el cargo de defensor público adscrito a la carrera judicial es incompatible con el ejercicio privado de la Abogacía.

En la actualidad la Oficina de la Defensoría Pública creada por la LOPJ constituye, en gran parte, una manifestación formal de la voluntad política de ofrecer al ciudadano que no cuenta con recursos económicos para pagar un abogado particular. A pesar de que han pasado más de cuatro años desde que la Corte Suprema de Justicia instaló la oficina de la defensoría pública en Managua, el acceso gratuito a la justicia todavía sigue siendo un mito<sup>32</sup>, ello se debe al escaso presupuesto y un número mínimo de defensores que no pueden atender todos los casos que se presentan<sup>33</sup>.

Al respecto, un estudio realizado por la Sala Penal de la CSJ reveló que al año se registra un promedio de 50, 000 detenidos en el todo el país, de los cuales la mitad (25,000) corresponden a Managua. Los trece defensores con los que hasta hace poco tiempo contaba la Oficina de la defensoría atendían un promedio de 250 casos cada uno, es decir que, a pesar del enorme esfuerzo que realizan, únicamente podían atender el 8% (3250 detenidos) del total de detenidos. Ante esta situación, la Dirección de la Defensoría Pública ha solicitado el nombramiento de más defensores y la ampliación de sus servicios a otros departamentos que lo están demandando<sup>34</sup>, es así como llegamos a que en la actualidad existan 39 defensores, aunque se requieren más.

Respecto al desarrollo de la normativa de la defensoría pública se conoce un Anteproyecto de Reglamento de la Dirección de Defensores Públicos, compuesto por XI Capítulo relativos a la naturaleza y fines, a la estructura y organización de los defensores públicos, de los pasantes de Derecho, de los usuarios del servicio, de los requisitos y procedimientos para optar al servicio, del contenido y alcance del servicio y de la actividad administrativa de la defensa pública (103 artículos en total).

### **III. OTROS ACTORES DEL SISTEMA DE ADMINISTRACIÓN DE JUSTICIA**

#### *1. Ministerio Público y Policía Nacional*

La Ley Orgánica del Ministerio Público (LOMP) instituye la carrera fiscal en Nicaragua. El Ministerio Público, tal y como está configurado en su ley, goza de independencia institucional, orgánica, funcional y administrativa, actúa por su propio impulso cuando tiene conocimiento de la existencia de un hecho delictivo, sin necesidad que otro ente del Estado se lo requiera, ya

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<sup>32</sup> La Prensa, “Acceso a la justicia gratuita es un mito”, edición de 29 de junio del 2001, pág. 7 A; también el editorial “Justicia injusta”, edición (La Prensa) de 1 de agosto del 2001.

<sup>33</sup> La Prensa, “Defensa Pública brilla por su ausencia”, edición de 31 de julio del 2001.

<sup>34</sup> Pese a la gran demanda, véase, La Prensa, “Urgen defensores en las Segovias”, edición julio 2001; “Mito de la justicia”, edición de 29 de julio del 2001, reportaje especial.

que es su responsabilidad ejercer la acción penal en los casos previstos en la ley. La ley del Ministerio Público separó las funciones de la fiscalía y la procuraduría.

La institucionalidad e independencia prevista en la normativa de la Fiscalía había decaído progresivamente debido a la actuación de sus titulares en la persecución de los actos de corrupción, no obstante, después de la entrada en vigencia del Código Procesal Penal la actuación de la fiscalía está siendo profesional y beligerante pese a las limitaciones de personal y condiciones materiales. El Ministerio Público desempeña en el nuevo proceso penal una función irremplazable y las carencias antes señaladas ponen a esta institución en una situación muy difícil para realizar sus funciones, situación que afecta principalmente el acceso a la justicia, sólo se cuenta con 100 fiscales de 300 que se necesitan.

Tampoco cuentan con las instalaciones y condiciones materiales para atender a las víctimas de los delitos.

Las condiciones carcelarias que tienen la Policía Nacional y el Sistema Penitenciario son totalmente deplorables incluso no se tiene presupuesto necesario para la alimentación de los reos, el hacinamiento en las celdas, la falta de transporte y un número limitado de policías en relación con las necesidades de la población aumentan la inseguridad ciudadana y vulneran los derechos humanos de las personas privadas de libertad.

#### **IV. DERECHOS HUMANOS**

##### *1. Situación de los Derechos Humanos*

En materia de Derechos Humanos durante el primer año de gobierno del Ing. Enrique Bolaños Gayer, sobresalen los siguientes elementos contextuales:

1. La lucha en contra de la corrupción;
2. Un debilitamiento de la institucionalidad en todos los poderes del Estado;
3. Una generalizada pobreza de la población más vulnerable y el peso de la deuda externa e interna, elementos todos que impiden a la nueva administración disponer de la base necesaria que sustente el inicio de un proceso de desarrollo socioeconómico y moral que demanda el Estado nicaragüense.

Esta situación brevemente descrita genera un ambiente poco positivo para el ejercicio y vigencia de los derechos humanos de los nicaragüenses y comprometen los esfuerzos y responsabilidades que el gobierno y las instituciones defensoras de Derechos Humanos deben asumir para la superación progresiva de las limitaciones que padece la población.

##### **1.1. Código de la Niñez y la adolescencia**

El Código de la Niñez y Adolescencia se aprobó en 1998, adoptándose de esta manera a nivel interno los principios de la Convención de las Naciones Unidas sobre los Derechos del Niño, lo cual trajo consigo la modernización de la legislación existente en materia tutelar de menores

planteando importantes novedades en el ámbito de protección integral para la niñez, como en lo relativo al tratamiento de adolescentes infractores de la ley penal.

Sin embargo, todavía no se han creados los centros especiales para la aplicación de medidas reeducativas, y los adolescentes procesados y condenados están cumpliendo sus penas sin garantizarles las condiciones que señala el Código. Ha hecho falta una debida divulgación de su contenido a la ciudadanía, lo cual es muy importante ya que esta regulación es respetuosa de los derechos fundamentales de los niños y adolescentes del todo el país ( 49.4% de la población actual).

El problema principal del Código de la niñez es la percepción de impunidad que tiene la ciudadanía, el cual no ha sido superado pese a los esfuerzos realizados por organizaciones de la sociedad civil por promover la integralidad de esta regulación. Lamentablemente esta percepción no se aleja de la realidad, debido a la falta de voluntad política del poder ejecutivo y poder judicial para crear las instancias que garanticen el buen funcionamiento del sistema de justicia para adolescentes.

## **V. PROBLEMAS PRINCIPALES**

Los principales problemas que se identifican son:

- Un Poder Judicial partidarizado en todas sus instancias.
- Un Ministerio Público, y Defensoría Pública institucionalmente débiles.
- Existencia de una sociedad civil todavía tímida y sin espacio propio para participar en el proceso de institucionalización democrática.
- Ausencia de políticas gubernamentales dirigidas a garantizar la vigencia y respeto de los Derechos Humanos

Entre los factores que contribuyen a agravar la situación antes planteada están:

- a) Crisis económica profunda y falta de empleo
- b) Politización de todos los sectores sociales (rurales y urbanos).
- c) Un poder ejecutivo débil y frágil e incapaz de gobernar y comprometido con los intereses de la oligarquía y alejado de la ciudadanía
- d) Crecimiento de la pobreza y el analfabetismo
- e) La partidarización de la iglesia (un gran poder en nuestra realidad)
- f) Un sistema de salud en franco proceso de deterioro.
- g) La centralización en la administración pública, entre otros.
- h) Violación de los Derechos Humanos, en general, predominando la falta de garantía de los derechos sociales y políticos.

## **VI. OBSTÁCULOS**

- **La inexistencia de un Estado de Derecho**

En Nicaragua, el Estado de Derecho como modelo de Estado adoptado por la Constitución está en vías de formación en el marco de una cultura cívica incipiente, no exenta de dificultades, que necesita la instauración de una cultura política democrática que trascienda la mera declaración formal y propicie la participación ciudadana y la concertación de la sociedad civil y el poder político para coincidir en una plataforma básica que fortalezca la institucionalidad a través de la eficacia en la administración de justicia, la elección de funcionarios en virtud de su competencia y méritos profesionales, y un alto nivel de transparencia en la administración pública.

- **Falta de independencia judicial**

De todos es conocido que la administración de justicia nicaragüense es lenta, cara, partidarizada e insegura desde el punto de vista jurídico, ya que tal y como se ha manifestado anteriormente, el Poder Judicial es uno de los poderes del Estado que mayor desprestigio tiene frente a la sociedad. Las crisis que ha tenido en los últimos años evidencian, como algunos han sostenido, que estamos ante una de las instituciones más débiles y corruptas del Estado.

Así pues, la percepción de politización y de simpatías o preferencias partidistas de los jueces y magistrados del Poder Judicial constituye uno de los problemas más graves del sector justicia en Nicaragua, lo que conjuntamente con procedimientos de nominación y ascenso ajenos a la capacidad y los méritos o la falta de conocimiento de las razones justificativas de la designación o de concursos públicos, tienen como consecuencia vinculaciones subjetivas o partidarias que inciden en las resoluciones judiciales, provocando con ello una creciente desconfianza hacia las instituciones del Estado en general, y un preocupante desprestigio del Poder Judicial, en particular. Razón por la cual urge la aprobación de una Ley de Carrera Judicial que regule el ingreso y ascenso de jueces y magistrados mediante concursos públicos, de méritos y capacidad, en donde se establezca la excelencia profesional para optar al cargo y se termine para siempre la dependencia, la sujeción y la manipulación del sistema de administración de justicia por parte de los dirigentes políticos.

- **Ausencia de institucionalidad y falta de atención a la problemática de los Derechos Humanos**

El hecho que la base del funcionamiento de todas las instituciones sean los intereses personales y económicos de los partidos, trae como consecuencia la poca credibilidad en la institucionalidad.

En cuanto a la vigencia de los derechos humanos, la situación es lamentable no sólo por la ausencia de políticas gubernamentales que atiendan adecuadamente los problemas sociales y económicos sino que las instituciones como el Ministerio Público, Policía Nacional y Defensoría Pública están trabajando limitadamente al no contar con los recursos humanos y materiales necesarios para cumplir con las funciones que la ley les manda.

## VII. DESAFIOS Y OPORTUNIDADES

- **Fortalecimiento de la institucionalidad y del Estado de Derecho**

La consolidación de un verdadero Estado de Derecho en Nicaragua requiere del fortalecimiento democrático de las instituciones que proporcionen estabilidad, credibilidad y confianza en las leyes, en los jueces y magistrados, en la propia Constitución Política y los tratados internacionales ratificados por Nicaragua.

Se necesitan pues, soluciones conjuntas, que den respuesta a una población cada vez más pobre, abriéndole espacio a la participación ciudadana responsable en la elaboración de un Plan de desarrollo Nacional que tenga como base las necesidades de la mayoría y en el que desaparezcan verdaderamente los “lujos” que siempre ha tenido el aparato político a costa de los impuestos de una ciudadanía que no tiene alternativas de desarrollo en su país. La lucha por erradicar las prácticas corruptas apenas inicia, hay que seguir adelante y fortalecer un Estado de Derecho que tenga como pilares la creación y respeto de una verdadera institucionalidad, en la que los partidos no tengan un “campo de batalla” para satisfacer sus intereses partidarios y “personales”.

La solución para la crisis institucional que enfrenta Nicaragua debe pasar por evitar la polarización en la búsqueda de respuestas a la pobreza, a la corrupción y a la falta de democracia. Estableciendo programas que fomenten la equidad, transparencia y una democracia participativa en la que los gobernantes se encuentren con sus ciudadanos, para escuchar las expectativas sociales, económicas y política; y juntos hacer un Proyecto de Estado-Nación que cuente con fuertes lazos democráticos.

Para ello, hay que crear programas que faciliten la despartidarización de las instituciones y el sometimiento de éstas a las leyes del país e intereses de los ciudadanos a los que debe servir.

Es necesario que se apruebe una Ley de Servicio Civil y de Carrera Administrativa, y se establezcan programas que tiendan a establecer un sistema de control y transparencia en el ejercicio de la función pública.

- **Crear un sistema de justicia independencia**

Uno de los grandes retos que debe enfrentar la Corte Suprema de Justicia como órgano superior del Poder Judicial, es la recuperación de la credibilidad en el sistema de administración de justicia, tarea nada fácil si tenemos en cuenta que la clase política nicaragüense se niega a renunciar a este espacio de “poder partidario”<sup>35</sup>.

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<sup>35</sup> Situación reflejada en noticias nacionales del diario La Prensa, que con titulares como “*Los trueques de la Suprema*” (edición del 30 de octubre del 2001, pág. 13 A) no dejan lugar a la duda sobre el reparto de cuotas de poder dentro del Poder Judicial. También en La Prensa, “*Batalla por cargos en la Corte*”, edición del 12 de octubre del 2001, pág. 12 A; La Prensa, “*Magistrados sandinistas desmiente apoyo a Selva*”, edición de 20 de octubre del 2001; La Prensa, “*Magistrados se reparten el pastel*”, edición de 26 de octubre del 2001, pág. 8 A.

Para crear las condiciones que den lugar a un sistema de administración de justicia independiente, urge una reforma judicial, que tenga como objetivo respetar y tutelar de forma efectiva el máximo de los derechos individuales y colectivos. Para ello, es indispensable una justicia independiente y eficiente; únicamente apegada a la Constitución y las leyes, lo cual plantea la urgente necesidad de aprobar una Ley de Carrera Judicial y Estatutos judiciales que garanticen la inamovilidad, la autonomía presupuestaria e independencia respecto de las interferencias del poder político, grupos de presión.

Esta búsqueda de la independencia del poder judicial tiene que ser en dos líneas: la independencia interna (con el establecimiento de un sistema horizontal) y la independencia externa, que implica la no interferencia de los demás poderes del Estado y sectores sociales (medios de comunicación) en el sistema de administración de justicia.

Así pues, el desafío más grande es la REFORMA DEL ESTADO, la cual debe iniciar por el Poder Judicial, ya que este es una de los problemas principales de la democracia nicaragüense. En materia normativa aún está pendiente la conclusión del proceso de modernización de leyes fundamentales como: el Código Penal, un Código de Ética Judicial, aprobación de una Ley de Carrera Fiscal, la creación de un Consejo de Judicatura que se encargue de las funciones administrativas que hoy tiene junta con las funciones jurisdiccionales la Corte Suprema de Justicia, La ley de Carrera Judicial, Código Civil (1904); Código de Comercio.

#### ***a) Iniciativa de Ley de Carrera Judicial una gran oportunidad***

La Constitución Política establece, en la parte final de primer párrafo del artículo 159, el principio de carrera judicial y manda que éste sea regulada por la ley. No obstante, han pasado más de cuatro años desde su proclamación formal y aún no se ha aprobado la ley que desarrolle el referido mandato, lo cual se ha traducido en una serie de problemas, limitaciones y presiones de carácter político que han afectado considerablemente la credibilidad y confianza en el sistema de administración de justicia.

La entrada en vigencia de la LOPJ puso de manifiesto la necesidad de impulsar la discusión y aprobación de una Ley de Carrera Judicial que establezca los principios, normas y procedimientos del ingreso, permanencia, ascenso, capacitación, disciplina causales de remoción del cargo a fin de asegurar la imparcialidad e independencia de jueces y magistrados, así como la creación de los órganos necesarios para la administración y operación de la Carrera Judicial. Así pues, encontramos un sin número de disposiciones de esta Ley que nos remiten a la “ley de la materia”.

Recientemente, se ha presentado una iniciativa de Ley de Carrera Judicial<sup>36</sup> compuesta por seis títulos sobre la organización y administración de la Carrera Judicial, la clasificación, ingreso y permanencia, derechos, deberes y prohibiciones, sobre los jueces y magistrados suplentes, el

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<sup>36</sup> Véase, La Prensa, “*Proponen ley para independizar el Poder Judicial*”, edición del 10 de octubre del 2001, pág. 10 A.

régimen disciplinario y las disposiciones finales y transitorias, en total esta iniciativa tiene 51 artículos.

Este proyecto destaca el principio de independencia e imparcialidad del Poder Judicial, el nombramiento de los funcionarios judiciales por capacidad, méritos y honorabilidad mediante concurso público, y para ello, propone la conformación de un Consejo de Carrera Judicial integrado por el presidente de la Comisión Carrera Judicial de la Corte Suprema, el presidente de la Comisión de Justicia de la Asamblea Nacional, el Procurador para la Defensa de los Derechos Humanos, dos representantes del Consejo Nacional de Universidades, un representante de los jueces y magistrados y el Director de la inspectoría Judicial disciplinaria de la Corte Suprema, además del establecimiento de prohibiciones como la de participar activamente en política partidaria, mítines o cualquier otro acto público mientras se ejerza la judicatura.

El espíritu de esta iniciativa -según uno de los diputados que presentaron el proyecto- es brindar estabilidad laboral a los actores de la administración de justicia, así como la despolarización en las decisiones y sentencias que éstos tomen. En este sentido, “preocupa la partidización del Poder Judicial y las presiones que sufren algunos jueces y magistrados para dictar sentencia a favor de los allegados al poder”.

Un hecho reciente que vale la pena destacar es la aparición de un nuevo borrador de Proyecto de Ley de carrera Judicial elaborado por la Corte Suprema de Justicia que, unido al Proyecto presentado en octubre del 2001<sup>37</sup>, cristalizan las intenciones y el consenso de la sociedad nicaragüense para contar con un instrumento legal que establezca las reglas del juego acerca del acceso, permanencia, promoción, ascenso y destitución de los cargos de jueces y magistrados de la República de Nicaragua. Entre los aspectos más importantes de este (segundo) Anteproyecto de Ley conviene destacar que uno de los objetivos de la Ley es “garantizar la idoneidad, profesionalización y perfeccionamiento de la Administración de Justicia, (...) la independencia e imparcialidad de la Administración de Justicia y de sus profesionales<sup>38</sup>”.

Pero junto a la aprobación de la Ley de Carrera Judicial es necesario establecer mecanismos que permitan la evaluación del desempeño judicial.

- **Construir una nueva conciencia política y democrática**

La construcción de una nueva conciencia política que apueste por la transparencia, despartidización de las instituciones y poderes del Estado, a la profesionalización y la tolerancia y respeto a la institucionalidad y un verdadero Estado de Derecho, para que sean las herramientas democráticas que se utilicen para solucionar los problemas sociales, políticos y económicos y construir un Estado-Nación democrático.

Los ONGs deben establecer una relación con la sociedad civil, y “**no representarla**”, su nuevo rol podría ser acompañar a los sectores sociales para fortalecer a una sociedad civil débil y tiene muchos desafíos. Obviamente, para que se dé esta alianza Sociedad Civil/

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<sup>37</sup> Véase el anexo número 16 de nuestro diagnóstico “La imagen de la Justicia”, Pág. 125 y ss.

<sup>38</sup> Así en la exposición de motivos del cuarto borrador del Anteproyecto de Ley de Carrera Judicial.

ONGs es necesario que también se despoliticen y velen por los verdaderos intereses de la mayoría.

La participación de la juventud en los distintos ámbitos políticos podría ser una oportunidad para el fortalecimiento de nuestra democracia, al ser el principal recurso del desarrollo del país.

## **VIII. RECOMENDACIONES Y ESTRATEGIAS**

- Es necesario que la misión continúe con programas de asistencia que promuevan el fortalecimiento del Estado de Derecho, dentro de este contexto el apoyo a las diferentes instituciones de la administración de justicia se hace imprescindible, en primer lugar, dando seguimiento al proceso de modernización normativa que tal y como señalamos anteriormente, aun no ha concluido, están pendiente una serie de leyes principales como: el Código Penal, un Código de Ética Judicial, aprobación de una Ley de Carrera Fiscal, la creación de un Consejo de Judicatura que se encargue de las funciones administrativas que hoy tiene junta con las funciones jurisdiccionales la Corte Suprema de Justicia, La ley de Carrera Judicial, Código Civil (1904); Código de Comercio.
- La misión debe también volver sus ojos hacia las instituciones más sensibles del sistema de justicia, como por ejemplo, aquella que garantiza el derecho constitucional de defensa, apoyando de forma decisiva a la Defensoría Pública. Igualmente el Ministerio Público esta enfrenta dificultades en la implementación del nuevo Código Procesal Penal al no contar con el personal y condiciones necesarias (el número de fiscales, falta infraestructuras, capacitación) y en lo que respecta a la Policía Nacional apoyar en la infraestructura y capacitación en los cambios normativos ( hay hacinamientos en las cárceles, e incluso falta una alimentación adecuada) , lo cual repercute en la situación de los Derechos Humanos y la seguridad ciudadana.
- También es necesario que la misión continúe trabajando para asegurar el éxito de la implementación del Código Procesal Penal y la aprobación de un nuevo Código Penal. Igualmente, debe desarrollar una estrategia y programas de actividades para promover e instaurar la independencia judicial interna y externa. Esto podría incluir un trabajo con la Corte Suprema de Justicia, tribunales inferiores, Escuela Judicial, sociedad civil, Escuelas de Derecho.
- Como parte de esto, las actividades deberían ser estar encaminadas a promover la elección por mérito entre los jueces de menor rango, implementar el entrenamiento y continua capacitación judicial para jueces de todo el país, implementar estrategias anticorrupción de los tribunales, e impulsar la elaboración de un Código de Etica Judicial y creación de un sistema de evaluación del desempeño de los funcionarios judiciales, junto a la separación de funciones administrativas y jurisdiccionales. De igual forma es necesario impulsar la Ley de Carrera Fiscal.

Estas estrategias y actividades van dirigidas a promover el Estado de Derecho y prevenir las violaciones a los Derechos Humanos, especialmente en las áreas rurales y la protección de los Derechos de los niños, niñas, jóvenes, mujeres y grupos étnicos.

- También es necesario realizar programas de difusión sobre los derechos de los ciudadanos y los mecanismos alternos de solución al conflicto y la aprobación de una Ley de participación ciudadana y una Ley de acceso a la información junto a las iniciativas de descentralización local, para fortalecer la gobernabilidad democrática a través de mecanismos participativos y transparentes que permitan una toma de decisiones de acuerdo con las necesidades sociales y la eficiencia en la utilización de los recursos.

## Annex D

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### SHORT HISTORICAL PERSPECTIVE OF NGO DEVELOPMENT IN NICARAGUA

## Short Historical Perspective of NGO Development in Nicaragua

### *Samoza Period*

The first civil society organizations in Nicaragua were mutual assistance organizations founded under President Zelaya. Later, Samoza oversaw an explosion in the number of citizen associations, which he saw as means of stabilizing political support for himself over competing local *caciques* and other elites. Samoza helped establish associations for public employees, youth, women, university students, retired military, and numerous *campesino* groups. In the 1940s and 1950s, worker and artisan groups formed in association with both the Liberal Party, which had been captured by Samoza, and leftist parties.<sup>1</sup> The Church reacted to the latter trend by establishing some unions itself. Samoza's organizations dominated the landscape, however, consolidating and sustaining the Samoza family's power, but also helping in the process to bring about some important social reforms, such as the Labor Code in 1944 and social security legislation in the 1970s.

The *Sandinistas* began organizing opposition groups during the 1960s. These included university and secondary school students, neighborhood committees to carry out self-help activities and petition the government, rural worker groups, and women – all eventually brought under the wing of the FSLN opposition.

As was the case during much of the latter half of the last century all over Latin America, the owners of private companies during the Samoza era benefited from protection from import competition and government subsidies provided by the state. Business owners operating in various sectors began organizing associations in the late 1960s. An “apex” organization, or confederation of business associations representing several sectors, was established in 1974 under the auspices of the Nicaraguan Development Institute (INDE). It was initially called COSIP (Superior Council of Private Initiative), and included 11 associations.

### *Sandinista Period*

With government under its control in the 1980s, the FSLN sponsored a second explosion of NGOs in a manner reminiscent of Samoza. These included unions and union federations for rural and urban workers, teachers, public employees, and health workers; community development organizations, farmer “cooperatives,” women and youth groups, and more – all intended primarily to serve FSLN party objectives. Organizations that had represented sectors of Nicaraguan society under Samoza were pressured to cease operations – through assassinations and exile of their leaders and competition from *Sandinista* organizations set up for the same sectors.

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<sup>1</sup> *Partido Socialista Nicaragua, Partido Comunista, Frente Obrero.*

The owners of many private sector companies, both elites and middle class merchants, left the country. Rural land holdings (and homes in urban areas) were expropriated and turned over to *Sandinista* sympathizers. Businesses willing to collaborate with *Sandinista* party operatives took up the slack and some prospered. Businesses that chose not to cooperate with the *Sandinistas* failed, or barely survived, as the economy declined sharply in the 1980s. COSIP member associations barely functioned and continually struggled with *Sandinista* refusal to recognize their legal status.

### *Post-1990*

The traditionally clientelistic relationship between Nicaraguan civil society organizations and parties began to change in the 1990s. Anti-*Sandinista* leaders started new types of civil society organizations: national-level civic organizations. These organizations were not associated with any single political party, and most obtained foreign donor support.<sup>2</sup> A great number of service-delivery NGOs were also established - mostly to work in rural areas, in health, education, and community development. These organizations also received support from foreign donors. They primarily concerned themselves with serving their clients, and dealt with politicians and governments only in that context. USAID has been cooperating for several years with a great number of such organizations in its human development programs.

Under the Government of Violeta Chamorro, FSLN-controlled organizations found themselves in a new world. They not only lost access to the political power and resources they enjoyed in the 1980s but also had to learn how to operate in a more pluralistic situation. This coincided with the disillusionment on behalf of some civil society activists with Daniel Ortega's leadership of the FSLN, a process that continued throughout the 1990s. Many leaders of FSLN organizations began operating their organizations more autonomously, either as national-level civic organizations<sup>3</sup> or NGO service-delivery organizations. The leaders and key members of these organizations still have a very difficult time convincing fellow Nicaraguans - so used to their country's polarization and the continued dominance of political decision-making by opposing political parties - that their organizations are no longer being used primarily to serve FSLN objectives. Many of these leaders left the *Sandinista* Party altogether because of its continued dominance by Daniel Ortega. Others still vote *Sandinista*, or even continue membership in the party, but they no longer allow their organizations to be dominated by party operatives. One of the primary obstacles they face in Nicaragua's current quasi-democratic environment is the continued perception by many that their organizations still serve as FSLN stooges.<sup>4</sup>

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<sup>2</sup> Some of those supported by USAID were: *Grupo Fundemos*, *Centro de Educación para la Democracia (CED)*, *Centro de Estudios Estratégicos de Nicaragua (CEEN)*, *Hagamos Democracia*, and *Mujeres Niaragienses Conciencia*.

<sup>3</sup> Two good examples of such organizations are *Centro de Derechos Constitucionales Carlos Núñez Téllez* and *Federación Nacional de los Derechos Humanos*.

<sup>4</sup> USG efforts to promote Nicaraguan democratization are often countermanded by Nicaraguans who think this way and say so to influential colleagues in Washington.

Many organizations with *Sandinista* roots still operate within the FSLN party orbit, much like most *Sandinista* unions continue to do. As in other Latin American countries, leaders of those unions decided to continue their leftist party affiliation, focusing on the “class struggle” against capitalism and thus becoming even more party-dominated than during the 1980s, when at least those they represented had an opportunity to benefit from FSLN government favors. Other formerly *Sandinista* unions eventually left the FSLN party orbit.<sup>5</sup>

In the early 1990s, many sons of emigrant families who had spent their formative years outside Nicaragua returned to restart family businesses, some moving their families back to Nicaragua, and others engaging in business ventures while still residing overseas. In November 1991, COSIP reestablished itself as COSEP – *Consejo Superior de Empresarios Privados*. COSEP and its member associations resumed lobbying as they had under Somoza.

By 1998, Nicaragua’s national-level civic organizations were as polarized as the rest of society. But following Hurricane Mitch, civic and service-delivery organizations with *Sandinista* and anti-*Sandinista* origins began to cooperate with each other to face a common challenge: a desire to support citizen involvement in relief and reconstruction activities – one also being pushed by the international community. These organizations learned to cooperate with each other, and did so effectively throughout the reconstruction period. Collegial relationships among NGOs were also facilitated during that period by President Alemán’s decision to move against NGOs, more or less indiscriminately, because he saw them as challenging his power.

In the latter part of the 1990s, universities strengthened their outreach programs and began cooperating with various civil society actors. Recently, some began showing interest in democracy and governance reforms (for instance, *Universidad Católica*’s efforts in support of the new Criminal Procedures Code).

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<sup>5</sup> Two non-*Sandinista* labor federations also exist.

## Annex E

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### RECOMMENDATIONS FOR USAID PARTNERING

## Recommendations for USAID Partnering

- ◆ Carefully and proactively **select** Nicaraguan partners to support—ones committed to democratic reforms; able to mobilize reform constituencies, by reason of their position and/or connections; willing to confront obstacles likely to emerge; and unlikely to be constrained from acting as agreed due to personal motives.<sup>1</sup>
- ◆ Disenfranchised population groups, especially women, are a good source of leaders, both in civil society and within government and political parties. Opportunities for middle and upper class women to exert leadership in the organizations in which they have been participating since the 1980s have expanded greatly. They and other disenfranchised groups who share democratic reform goals can be significant forces for change.
- ◆ Be as imaginative, collaborative, and democratic with potential partner civil society organizations as USAID would like them to be in working with others in Nicaragua in pursuit of DG reforms.
- ◆ Assist Nicaraguan partners pursuing reforms in specific DG areas to collaborate with a broad spectrum of civil society organizations.
- ◆ Promote dialogue and consensus building among Nicaraguan citizens from various sectors in order to help them increase social capital and system trust.
- ◆ In partnership with Nicaraguan civil society leaders, develop criteria for the selection of initiatives to strengthen democratic institutions that help ensure that those selected counteract clientelistic and patrimonialistic practices. We agree with Brinkerhoff and Goldsmith that “it is important to identify the structures and incentives that limit or encourage clientelism and patronage.” Criteria suggested in the democracy assessment carried out for Macedonia (slightly revised) were:
  - Does the intervention increase peaceful competition?
  - Does it decrease undue party interference in governmental decisions?
  - Does it diminish the allocation of public resources for clientelistic or party-based objectives?
  - Does it decrease the centralization of power, especially in the hands of current political elites?
- ◆ Monitor partners’ democratic reform strategies closely, and be prepared to make changes should local constituencies be slow to develop or counterproductive conflict arise.

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<sup>1</sup> This is especially important to watch in Nicaragua. It will be important to judge accurately whether individual Nicaraguans are adequately committed to democratic reform, no matter what other motives they may have. Obviously, partnering with leaders who are primarily motivated by partisan or non-democratic ambitions will not help advance democratization.

- ◆ Work with the Department of Treasury to help ensure that IDB and the World Bank programs affecting Nicaraguan democracy and governance are carried out in ways that reinforce USAID's DG strategy.

## Annex F

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### POTENTIAL JUDICIAL REFORM PHASING

# Potential Judicial Reform Phasing

