

THE
CARTER CENTER



THE NOVEMBER 2011
ELECTIONS IN NICARAGUA

STUDY MISSION REPORT

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

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OVERVIEW

On November 6, 2011 Nicaragua held general elections for president and vice president, national and departmental deputies to the National Assembly, and members of the Central American Parliament. Fraudulent local elections in 2008, a questionable Supreme Court decision in October 2009 to permit the candidacy of incumbent President Daniel Ortega, and a presidential decree in January 2010 extending the Supreme Electoral Council (CSE) magistrates in office after their terms expired provided the context for a deeply flawed election process.

Partisan election preparations were followed by a non-transparent election day and count. The conditions for international and domestic election observation, and for party oversight, were insufficient to permit verification of compliance with election procedures and Nicaraguan electoral law, and numerous anomalies cast doubt on the quality of the process and honesty of the vote count. The most important opposition party rejected the election as fraudulent but took its seats in the legislature.

Nicaragua's Supreme Electoral Council dismissed opposition complaints and announced that President Daniel Ortega had been re-elected to a third term. In addition, the official results showed that Ortega's Sandinista National Liberation Front (FSLN) party had won enough legislative seats both to reform articles of the constitution (requires a 60% majority) and to call a constituent assembly to write a new constitution (requires 66%). Combined with its established dominance in the judicial and electoral branches of government, this outcome granted the governing party a virtual monopoly on state power.

This report summarizes the findings of The Carter Center's study mission to Nicaragua November 3-12, 2011, which focused on the election in relation to democratic development. Members of the delegation included Jennifer McCoy, Director of the Center's Americas Program (USA); Marcelo Varela, Associate Director (Costa Rica); former Ambassador John Graham, representing the Friends of the Democratic Charter (Canada); Professor of History and Constitutional Law at the University of San Salvador, Carlos Alberto Safadi Márquez (Argentina); Professor-Researcher at the Instituto Politécnico Nacional, Hector Díaz (Mexico); and Shelley McConnell, former Senior Associate Director of the Americas Program and Assistant Professor of Government at Saint Lawrence University (USA).

The Carter Center did not request credentials from the Nicaraguan government as an election observation group because the regulations for election monitoring were inconsistent with the Declaration of Principles for the International Observation of



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Elections that the Center had helped formulate and was committed to uphold. Nonetheless, the study mission was sufficiently engaged to lend perspective on this election and on its future impact. Building upon a prior visit in June 2011, the group conducted interviews over nine days in November with political party leaders, civil society and private sector representatives, constitutional scholars, domestic and international election observation groups, clergy and ordinary Nicaraguans. To gain perspective, they visited not only Managua but also the secondary cities of León, Matagalpa, Estelí and Masaya.

The 2011 elections were a watershed event, realigning political power, dealing a debilitating blow to Nicaraguan democracy, and illustrating the limits of the Inter-American Democratic Charter and the practice of election observation.

BACKGROUND TO THE ELECTIONS

Nicaragua's post-revolution politics have been characterized by pact-making, personalist politics, and politicized institutions – the responsibility of its entire political class. Since establishing its electoral system in 1984 and completing its transition to electoral democracy in 1990, Nicaragua had held general elections in 1996, 2001 and 2006. In addition, it held periodic municipal elections as well as regional elections for posts in the autonomous regions of the Caribbean coast. Between 1989 and 2006, all national and most regional and municipal races were monitored by international election observers and were generally viewed as reflecting the will of the people, although with varying degrees of irregularities and administrative problems.

In each of the national elections, the principle political forces were those that had contested politics through revolution and counterrevolution in the 1980s – the Sandinistas who had led the revolution and tried to bring about a transition to socialism, and the Liberals who resisted that change. Then in 1999, Liberal President Arnoldo Alemán struck a deal with Sandinista leader Daniel Ortega to reform the political system and divide power between their parties, excluding others to create a de facto two-party system. The number of magistrates on the Supreme Court was raised to 16 with each party naming eight members. The Supreme Electoral Council was expanded to seven members, with three from each party and a purportedly neutral president. Similarly, the Comptroller's office was transformed into a collective body appointed in accordance with partisan quotas of power. In addition, the Electoral Law was reformed to make it more difficult to form a political party and obtain campaign finance. In subsequent elections, either Alemán's Constitutionalist Liberal Party (PLC) or Ortega's Sandinista National Liberation Front (FSLN) won the presidency and between them the two parties controlled the majority of seats in the legislature.



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

The legal framework for the elections was marred by two important issues. First, the presidential candidacy of incumbent Daniel Ortega was inadmissible under the 1987 constitution because he had already served the maximum two terms (1984-1990; 2006-2011), and because a reform passed in 1995 banned immediate re-election of the president. The Supreme Court of Justice (CSJ) had ruled in 2009 that these restrictions violated another constitutional principle of individual equality (and therefore the right of Daniel Ortega to run for office), but the partisan make-up of the court and procedural irregularities in that decision called its validity into question. Second, the Supreme Electoral Council (CSE) was composed of members who had overstayed their terms of office, having been authorized to do so by a questionable presidential decree in 2010.¹ The CSE's partisan composition and the dominance of the FSLN within the technical and administrative structure of the electoral branch were additional cause for concern, especially given that the same CSE magistrates had presided over municipal elections in 2008 in which opposition parties and domestic organizations presented significant evidence of fraud to the benefit of the governing party.

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

Meanwhile, the leading opposition PLI alliance was newly-formed of conservative and progressive remnants of other parties. Its presidential candidate was an octogenarian

¹ The constitution gives the National Assembly responsibility for appointing these authorities, but it had not been able to agree on candidates. In this vacuum, President Ortega decreed that they should remain in office until the Assembly could present new nominations. The constitution does not provide guidance for such situations, however to prevent institutional voids international jurisprudence considers the tacit renewal of authorities until new ones are elected or appointed. (Reconducción tácita in Spanish).



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

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

2011 ELECTION RESULTS

The Supreme Electoral Council concluded the vote tabulation on November 11, 2011. In the presidential race, the FSLN was reported to have won 62.46% of the vote, the PLI 31.00%, the PLC 5.91%, ALN .40% and APRE .23%. On November 15, 2011, Daniel Ortega Saavedra was declared president, and Omar Halleslevens Acevedo vice president. The OAS would later affirm that its quick count on the presidential race produced similar results, though its methods were not specified and the expulsion of 4 of its 50 observers from the polling stations prior to the vote count may have damaged the representativeness of the organization's sample.

Percentages were similar in the national and departmental deputy races, as well as elections for the Central American Parliament. According to the CSE, the FSLN won 62 of the 90 elected seats in the National Assembly. The PLI won 26 seats, and the PLC just 2 seats, and no other party won a seat in the legislature. Though it refuses to accept this distribution as valid, the PLI has not laid claim to a specific alternative number of Assembly seats. However, it argues that the CSE illegally allocated both of the seats in Rivas department to the FSLN in violation of Article 147 of the election law, which in

the PLI's interpretation stipulates that in departments that elect only two deputies the first and second place parties each get one spot.

NATIONAL ASSEMBLY AND CENTRAL AMERICAN PARLIAMENT RESULTS

	National	Departmental	Seats	PARLACEN	Seats
FSLN	60.85%	60.64%	62	60.94%	13
PLI	31.59%	31.33%	26	31.58%	6
PLC	6.44%	6.59%	2	6.45%	1
ALN	.76%	.95%	--	.68%	--
APRE	.36%	.5%	--	.34%	--

In addition, under article 133 of the constitution, as the second place finisher in the presidential race the PLI candidate Fabio Gadea won a seat in the legislature. So did President Daniel Ortega as the former president from the most recent past election, a constitutional provision meant to provide a seat to the outgoing president in a system that disallowed immediate re-election but which now perversely gave the president a legislative presence and immunity. Whether current vice-president Jaime Morales Carazo, who will not occupy the vice presidential position in the coming term, will fill this seat remains unclear due to ill health.

This brought the total to 92 seats, and 56 votes would be required to reform the constitution. In this scenario and given its party discipline, the FSLN would be able to muster the necessary votes from within its own legislative bench without needing any opposition party votes. The deputies will take their seats in the legislature on January 9, 2012, and the PARLACEN on January 15, 2012.

THE QUALITY OF THE ELECTION

According to diverse assessments including international and domestic observers, the 2011 elections in Nicaragua were not transparent, and none of the opposition parties accepted the results. Credible domestic and international observers catalogued a raft of serious irregularities and were unable to verify the election results. It is particularly telling that many of the problems stemmed from the election authorities rather than being remedied by them.

Because The Carter Center did not monitor the elections, conducting a study mission instead of a larger effort to systematically collect information about the quality of the elections, this report will only mention the most serious flaws brought to the group's attention and documented in the reports of the European Union (EU) and credible

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

Limits on Election Observation

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

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

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

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

Irregularities in the Preparations

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

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may have died or permanently emigrated. As a consequence, the list is inflated beyond the actual number of eligible voters expected to appear at the polls. The voters list had roughly 4,200,000 names, but the CSE's own estimate of the real 2011 election roll was 3,360,000 people.

Protests were held by some citizens who had applied for but not received their citizen identity document, and others expressed concern about partisan distribution of the *cédulas* by lower level election authorities. The CSE showed data indicating that it had issued 283,015 new documents, more than in any past election, but because many documents expired in 2011 citizens were anxious to obtain new ones. They remained eligible to vote with an expired *cédula*, but the document is needed for other purposes.

Other serious faults emerged in the final days before the vote, when errors and lateness in credentialing resulted in substantial numbers of opposition political party agents being unable to monitor at the polls. In addition, the timing and manner in which party representatives were selected to staff the voting tables (*Juntas Receptoras de Votos*, or *JRVs*) did not accord with past procedure or the electoral calendar, and the PLI-UNE alliance was largely left out of representation among the electoral workers at the precinct, municipal and departmental levels, contrary to the intent of the law. The addition by the CSE of a "Voting Center Coordinator" whose role was not specified in law, and the late change in ballot format, added confusion and doubts to the process and may have confused voters. Widely suspected problems that were nonetheless impossible to confirm included the use of state resources in the governing party's campaign and the suborning of opposition party personnel.

Irregularities in Procedures During Voting

Although the vote was peaceful, it became clear during the day that the election authorities had systematically eliminated many of the checks which are normally in place to prevent ballot box fraud. In a break with past tradition, opposition oversight had not been allowed during the packaging of election materials. Then on voting day many opposition pollwatchers had difficulty entering the polling stations and so were not present when materials were unpacked and ballot boxes assembled; a large percentage hence could not verify whether the boxes were empty before the voting began. Opposition parties also reported that JRV presidents were instructed not to count the ballots or record the number of ballots used and unused, a normal control procedure, and indeed these data were not published after the vote. Whereas in past elections an *ad hoc* code was generated at the polling station and marked on ballots such that the introduction of outside ballots would be discoverable, the 2011 ballots came from the CSE with pre-marked security codes. All these changes could have facilitated ballot box stuffing.

Problems with the Count and Reporting of Results

The PLI reported that some of its pollwatchers were expelled from the voting stations before the votes were counted. Prior to the counting of votes, four OAS observers were



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expelled from the polling stations they were assigned to monitor. This may have been an attempt to sabotage the OAS quick count on the presidential race; the EU, which did not claim to be conducting a quick count, did not have any observers expelled during the count.

In past elections, the CSE has published the vote count for each JRV separately, and in real time as the data were entered, so that parties could immediately catch any discrepancies. In 2011, by contrast, the CSE published summary numbers of votes for each candidate or party list, but did not publish the data for each polling station separately, although data were published by voting center (which may contain multiple polling stations). Consequently political parties could not compare their copies of the tally sheets to the numbers entered into computers and totaled to determine the winners. No explanation for this change of procedure was offered by the electoral authorities. It rendered the results largely unverifiable.

According to the electoral calendar, the results of the election were not scheduled to be published until November 22, followed by a three day period to submit complaints, resolution of complaints, and the proclamation of elected persons was scheduled for December 1, 2011. Instead, the CSE published the results on November 11 and shortly thereafter announced the winners, depriving the opposition of time to prepare and submit documents challenging the process. On November 14 the PLI submitted a complaint to the CSE arguing, among other things, that the Electoral Calendar establishes that preliminary official results should be published on November 22 and that by having published results on the 11th the CSE reduced by half the time allowed to political parties to gather information and to file complaints. The CSE turned down the PLI's complaint and officially announced the winners on the 15th.

As published, the data gave no indication of the number of blank or spoiled ballots, making any audit of ballot use impossible. Oddly, the final results gave the presidential candidates 89,252 fewer votes than those cast for the nationally elected seats in the National Assembly, and 118,305 fewer than those for departmental deputies to the National Assembly, in an election where the legislative races were more vulnerable to fraud. While not per se an indication of vote tampering, it is highly unusual for voters to leave the presidential portion of the ballot blank while voting for lower level posts.

An accurate abstention rate could not be calculated given that the real number of potential voters was unknown because the voters list was inaccurate.

Electoral Violence

In the months leading up to the election, spontaneous protests broke out in the north of the country (where the counterrevolution was fought) among citizens who had not received a new national i.d. card (*cédula*). Though they could vote with their expired card, the *cédula* is a vital document for citizens to exercise their rights and the perception that



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cédula production had been politicized fostered resentment. The night before the election, rioters attacked the municipal electoral council building in Sébaco overturning and burning several cars.

Immediately following the election, three PLI activists were murdered and two badly wounded in an incident that was allegedly election-related, and separately an FSLN cadre also was killed. After a period of calm, a flurry of apparently election related violence occurred in December, when in four separate incidents three police officers and another FSLN party secretary were murdered in various localities in the RAAN. Throughout this period, independent human rights organizations have accused the Nicaraguan army and national police of violating the human rights of opposition supporters in their pursuit of those suspected of participating in some of these killings.

Opposition supporters argued that Nicaraguans feared the kind of repression used against protesters after the 2008 municipal election fraud and were therefore reluctant to take to the streets to protest the 2011 vote. Nicaraguans told Carter Center delegates they trusted the armed forces despite the fact that Gral. Omar Hallelevens, a former chief of the army, was Daniel Ortega's running mate, but opposition party members and domestic observers were not confident that the police would protect them from attacks by thugs (*turbas*) alleged to be directed by the FSLN.

REACTIONS TO THE RESULTS

The opposition did not accept the election results as legitimate, and the flawed election process sparked small protests and a few violent incidents. The Nicaraguan Episcopal Conference stated concern that the results could not be guaranteed to accurately reflect the will of the people. The Higher Council of Private Enterprise (COSEP) called for replacement of the discredited CSE. Reaction in the international community was mixed.

Opposition Reaction

Almost immediately, PLI presidential candidate Fabio Gadea denounced the elections as fraudulent. As reports of anomalies in the process flowed in, PLI supporters mounted sporadic protests in Managua and PLI strongholds such as Matagalpa. These were small and peaceful gatherings, with protesters numbering in the dozens rather than thousands, but on several occasions FSLN supporters displaced the protests by staging victory celebrations at the planned protest site. Later, on December 3, civil society groups organized a protest march in which as many as 5,000 may have participated.

Although the count could not be verified absent publication of the results on a JRV-by-JRV basis, few doubted that President Ortega had won a first round victory, which requires just 35% of the vote and a five point lead over the next closest contender. Rather, it was the percentage of seats in the National Assembly that was disputed. Gadea's

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insistence that fraud in the presidential race had denied him a run-off was initially understood as a means of buying time for the PLI to gather its party agents' copies of the tally sheets and prepare an official complaint, but he maintained his position even after complaints were dismissed and winners announced, declaring that he was the real president, and refused to accept the legislative seat granted to the presidential runner-up on the grounds that the real results were unknown.

The PLI's pollwatchers were present in roughly 80% of the voting places during the day, and at least 70% during the count. Nonetheless, they filed just 18 challenges (*impugnaciones*) in the JRVs. (The law requires complaints to be filed on the tally sheets of the JRV the night of the election.)

Diverse sources told The Carter Center that the PLI pollwatchers had collected tally sheets for roughly 60% of the JRVs, but some of these were thought to have been altered or were illegible. Partial results could be shown by combining tally sheets collected by the PLI and PLC, as well as the data held by domestic observers who recorded some of the results posted on the doors of the voting centers. However, the CSE's failure to publish the results for individual JRVs left parties with no official statistics to which they could compare their copies of the tally sheets.

Even if the CSE had published the JRV-by-JRV count, the PLI may not have had sufficient legible tally sheet copies to sustain an accusation of extensive fraud that could have forced a new election to be held. Absent the JRV-by-JRV publication of results, parties scrambled to determine whether tampering had occurred. In Jinotega and Chontales, two departments which are opposition strongholds, local PLI-UNE leaders reportedly were able to amass 94% and 97% respectively of all tally sheets and compared them with the CSE's departmental totals. On this basis they were able to make an argument that enough votes had been shifted to throw a second deputy in each department to the FSLN (each of these areas elects three representatives to the Assembly).

For reasons that go beyond the scope of this report, and absent incontrovertible evidence of vote tampering, the international community did not take a strong stand on the question of fabrication of results. The CSE quickly dismissed all formal appeals as baseless.

PLI deputies agreed to take their seats in the National Assembly, which they had won legitimately despite difficult electoral conditions, but this did not signal an overall endorsement of the electoral exercise. The PLI was aware that the government was in a position to apply heavy pressure to induce its participation. Following normal practice in Nicaragua, the PLI had borrowed \$2.2 million for its campaign from a local bank, backed by the expectation that these funds would be repaid out of electoral reimbursements that the government provides to parties that win at least 4% of the vote. PLI leaders feared



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

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

Convinced that legal remedy could not be obtained in a biased judicial system, the civil society group Hagamos Democracia filed a case before the Inter-American Commission for Human Rights challenging the electoral process, and specifically the legitimacy of Daniel Ortega's candidacy. Nevertheless, we note that the opposition decided to compete in the presidential election despite the Supreme Court ruling in favor of Ortega's candidacy, and no complaint had been filed to the Inter-American Commission prior to the elections.

OAS Reaction

In a departure from normal practice, the OAS mission chief left the country without giving a press conference about its preliminary assessment of the electoral process. Instead, the OAS secretariat issued a press statement noting the Secretary General's call to President Ortega the night of the election and congratulating Nicaragua for its peaceful elections, as well as noting the mission chief's complaints on election day of impediments to its observers and methodology.²

The OAS election observation mission report discussed by the Permanent Council on November 15 enumerated irregularities in the election process and noted the obstacles faced by the mission due to the CSE's non-compliance with their MOU. The Nicaraguan ambassador first congratulated the mission on its report, and then several days later rejected elements of the mission's report as false, calling for them to be purged from the report. The CSE wrote a rebuttal including a claim that the OAS election observers had arrived late to the polling sites in the morning, rather than being blocked from entering or expelled. Member states for the most part declined to question the process and instead congratulated Nicaragua on its elections. The exceptions were the U.S., Canada, and

² Insulza later clarified that his statement included in that Nov 7 press release to the effect that "democracy and peace had taken a step forward" as a result of the elections, was an error and should not have been included.



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

EU Reaction

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

US Reaction

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

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

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



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Development Association (IDA) monies from the World Bank, but the IDB is Nicaragua's most important source of multilateral funding.

SHIFTING POLITICAL DYNAMICS

The 2011 election brought about a realignment of political forces. The post-revolutionary divide between Sandinistas and anti-Sandinistas, and the primacy of Liberals over Conservatives in the latter group, remained as the central fault line of politics. However, it was clear that many independent voters had for the first time cast their ballots for the FSLN. The obvious beneficiaries of this election process were therefore the FSLN and Daniel Ortega, who will continue to govern and can now do so unilaterally. Among opposition parties, the PLI was not necessarily the most damaged actor. Though partisan election preparations and an opaque vote count may have artificially weakened its legislative position, the PLI exceeded the percentage of the vote that Eduardo Montealegre had garnered in the past via a different political alliance, and in 2011 it emerged as the leading opposition force. The other faction of the Liberals – the PLC and former president Arnoldo Alemán -- suffered far more serious losses, and the elections also illustrated the shrinking influence of the Catholic Church, certain elements of civil society and the OAS, as discussed below.

The PLC and Arnoldo Alemán

The PLC had dominated politics in Nicaragua for a decade, first winning the presidency in 1996 under its leader Arnoldo Alemán. In January 2000, Alemán had struck a political pact with Daniel Ortega that reformed the electoral law to functionally exclude small parties, and also divided up appointments to the Supreme Court and Supreme Electoral Council such that no matter which of the pacting parties won elections, the second place finisher would retain an equal share of power in those bodies. Although former President Alemán was convicted on corruption charges and briefly jailed, he eventually obtained a pardon from the Supreme Court in January 2009 so that he could seek a second term in 2011. However, the pre-election polls accurately predicted that Alemán would be soundly defeated. Moreover, his PLC party was nearly eliminated from the legislature, reduced to just two seats. The PLC rejected the election but gave its deputies the choice of whether to take their seats, though it was made clear they would not be speaking for the PLC.

The Catholic Church

The Catholic Church had been among the most vocal critics of democratic erosion in Nicaragua. Acting in his personal capacity, retired Cardinal Obando y Bravo supported Daniel Ortega beginning with the 2006 elections, when Ortega reversed his position and opposed abortion even to save the life of the mother. However the active Church hierarchy had consistently criticized the Ortega government's democratic backsliding, particularly in the wake of the 2008 municipal fraud. The government had in turn given



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the bishops a cold shoulder, declining to dialogue with them, and privately dismissing them as irrelevant given the falling percentage of practicing Catholics.

In 2011, Cardinal Obando y Bravo again overtly favored Ortega's re-election, but the bishops opposed his candidacy as illegitimate. They admonished Catholics to vote in accordance with ethical principles, while refraining from specifying their own preference. Generally, however, the Church was broadly perceived as skeptical of Ortega's conveniently timed renewal of his Catholic faith prior to his 2006 victory.

The electoral outcome will likely enhance the position of the Cardinal and his small coterie of allied priests relative to the bulk of the Catholic clergy. This has not kept the Nicaraguan Episcopal Conference from issuing a strongly worded statement questioning the integrity of the election process and the capacity of the CSE.

Elements of Civil Society

Some civil society groups emerged from the election process in a weaker position. These include groups that were once Sandinista supporters but parted ways with the FSLN, especially those which had aligned themselves with the MRS splinter party, which won just two seats as part of the PLI alliance. Independent journalists and non-Sandinista women's groups and human rights defenders are among those which had been harassed by the Sandinista government through alleged punitive tax audits and other means, and they are now more vulnerable.

While allowing international observers, the CSE refused to credential IPADE and Hagamos Democracia, and thus set a precedent of a double standard against its own citizens. Although these groups and ET monitored as far as possible without that access, their qualitative assessment of procedures inside the voting stations was blocked and their collection of results came in large part from partisan sources. These domestic observers were not in a position to demonstrate whether the results were valid, and they appeared less effective in stopping the erosion of the electoral process than their donors and activists may have hoped.

International Election Observation and the OAS

International election observation generally and the OAS in particular also can be counted among those damaged in this process. The Nicaraguan government set a precedent of requiring interested observer groups to negotiate acceptable monitoring conditions prior to each election, and on the government's timetable (which was overall very late).

The EU emerged as the organization of record for an election in the Western Hemisphere, and that alone reflects poorly on the OAS. The Association Agreement between the EU and Central America, a combined trade and cooperation agreement, is formally premised on the observance of liberal democratic principles but is expected to be signed in early



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2012 despite Nicaragua's overt backsliding. The OAS has offered technical assistance to improve future voting processes, but the Permanent Council refrained from criticizing the elections.

PROSPECTS FOR THE FUTURE

The flawed elections and deepened political dominance of the FSLN introduced uncertainty about political rules of the game. In the month following the election, the government stonewalled a growing clamor for replacement of the CSE and a thorough reform of the electoral system. Although international pressure in favor of such reforms may grow, it remains doubtful that the government will accede to them. Instead, the next few years could bring changes that would alter the current liberal democratic constitutional model in Nicaragua. Possible developments include constitutional restructuring toward a new participatory or neo-corporatist model, reduction in the prerogatives allocated to the second political party under the 2000 pact, and disintegration of the opposition PLI alliance and consolidation of one-party dominant rule. Whether Nicaragua's traditional patrimonial politics will deepen, with associated corruption and unfair competition in the economy, is another question.

Constitutional Restructuring

It is clear that the FSLN wants to undo some of the constitutional reforms made in 1995. Those reforms transferred budgetary powers from the executive to the legislative branch, limited the president to two terms with no immediate re-election, and banned the president's relatives from presenting their own candidacies for the presidency (an ambition Nicaragua's first lady Rosario Murillo is said to have held), among other reforms that may now come undone.

However, the Carter Center's inquiries unearthed portents of a far more sweeping reform of the state. Some leaders within the FSLN consider Montesquieu's classic model of democracy, in which separation of powers provides checks and balances, to be outdated. Modern constitutions feature not branches of state (*poderes de Estado*) but organs of state (*órganos de Estado*), they argue, advocating what might be a new version of a neo-corporatist model. It is possible that the government will renew efforts made a few years ago (and blocked by the legislature in which the FSLN was then a minority party) to grant the Citizen Power Councils (CPCs) the status of an *órgano del Estado*, bringing these party-based community organizations into the formal state structure, echoing the participatory democracy experiment that the Sandinistas attempted in the 1980s.

In practice, the judicial and electoral authorities, while independent branches of government, have always held a lesser status than the legislative and executive branches, and in recent years have fallen under the control of the governing party such that for practical purposes they already function much as they might in a neo-corporatist state. In

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

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

End of the 2000 Pact

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

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

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

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

Breakup of the PLI

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

Increased Patrimonialism

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

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

The business community also expressed concern about a reduction in competition within the economy as FSLN-connected businesses begin to displace rivals within some industries, crowding out competitors through unfair business practices. Critics contend that patrimonialism already permeates the government, which reportedly offers lucrative opportunities and priority in customs processing and other transactions to Sandinista adherents. Granted, business has boomed in 2010-2011, and the private sector is not concerned about nationalization of property as seen in Venezuela. However, the new dominance of the FSLN in the legislature makes the legal framework uncertain as it is subject to revision at any time via a unilateral vote of the Sandinista bloc.

The opposition media feel similarly nervous. Already the government and Ortega family have established new television channels and bought up established ones to crowd out the old elite media families, and have hired away their most valued reporters, editors, producers and television announcers. There is growing concern that the new Assembly



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will reform the telecommunications law in ways that will further restrain opposition media, some of which are already self-censoring.

How far Nicaragua walks down each of these paths will depend a great deal on the external environment. Currently, commodity prices and Venezuelan aid are sustaining the Nicaraguan economy to such a degree that President Ortega appears to be willing to forego US and European assistance that is conditioned on democratic performance. Another downturn in the global economy combined with a decrease in Venezuelan assistance and increased diplomatic pressure could eventually encourage the government to reassess its position. In the short run, however, President Ortega has prepared for this eventuality by reserving unspent Venezuelan monies sufficient to retain social programs for several years even with much decreased fresh capital.

CONCLUSION

The 2011 elections have realigned Nicaraguan politics, giving the FSLN a commanding position in politics for the first time since the 1980s. The election outcome could usher in a period of shrinking political space for opposition parties and civil society, not to mention the media. As one constitutional scholar put it, Nicaragua is now in the twilight. Democracy may be receding into authoritarianism as the institutions that provide accountability decrease in effectiveness.

The erosion of accountability is not new. After 1999, pacting between the two largest political parties in the legislature and partisan appointment of electoral and judicial institutions undercut checks and balances, but vertical accountability through the media and elections continued to function despite some weakness. Then in 2008, poor quality municipal elections called into question the electoral system's ability to hold politicians accountable at the polls, and the unverifiable 2011 general elections have deepened that erosion.

The credibility of Nicaragua's electoral institutions is now seriously damaged, and although electoral reform may help, that process will need to be inclusive and thoroughgoing, at all levels of the election administration, if the changes are to restore transparency and public confidence in election processes rather than solidify one-party hegemony. In the past, election controls have been predicated on mutual party oversight rather than nonpartisan administration of the election, but in practice this conditions citizens' rights on the strength of their political parties, an untenable basis given the weakness of Nicaraguan political parties, even if the party system were balanced.

The Ortega government has sought to reassure Nicaraguans and others in the Western Hemisphere that it intends to govern democratically and will favor inclusion and consultation with other social forces even though its political position is now strong enough to sideline them. If the government is serious in its overtures of conciliation, it



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

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

APPENDIX A:

IRREGULARITIES IN THE 2011 ELECTION PROCESS

The Carter Center did not conduct election monitoring in 2011 and therefore did not collect systematic data on problems in the election process. However, numerous problems were reported to the study team in interviews, and in the news, as well as in the reports of international and domestic election observation groups. Although it was not the Center's role to investigate these claims, information gathered directly or from credible sources is summarized below as the quantity and nature of the concerns are themselves evidence of the erosion of the electoral system and public confidence in it.

Voters List: The voters list initially formed in 1989 has not been systematically updated to remove the names of the dead or citizens who, based on date of birth or their failure to retrieve their identity card, are thought to have died or left the country. This meant that by 2011 the number of voters on the list was highly inflated, which made it impossible to accurately estimate voter turnout. The voters list had roughly 4,200,000 names, but the CSE's own estimate of the real 2011 election roll was 3,360,000 people. With a little more than 2,512,000 reportedly having voted, the turnout rate on this assumption would have been 75%, respectable in international terms but lower than estimates for previous Nicaraguan contests.

Past audits by civil society groups had suggested a substantial number and variety of errors in the data. Although a verification process was held in July so that voters could confirm their names and voting locations, it was not advertised and was under attended. Domestic observers told Carter Center team members that FSLN party militants gathered at some verification sites, intimidating opposition members from verifying. One PLI leader told The Carter Center that party pollwatchers had been denied the opportunity to conduct oversight on the verification process, in contradiction to the law. In contravention of the electoral calendar, parties were given only 20 days in which to audit the list.

Identity Cards: The voter identity document, or *cédula*, is in effect a national identity card used for all official transactions, to open a bank account, take out a loan and obtain employment, among other things. Many *cédulas* were due to expire in 2010-2011, and although a decision was made to accept expired ones for the purpose of voting, citizens who had applied for but not received their new *cédula* protested at various locations across the country. A central concern was partisan expediting of *cédula* manufacture and distribution of the documents. Citizens, civil society groups and opposition parties all told Carter Center representatives that the issuance of voter i.d. cards had been partisan. The FSLN and PLC, two of the parties with members on the municipal electoral councils (CEMs), were assisting their adherents to apply for and obtain new documents, whereas



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

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

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

It is worth noting that the CSE provided almost no information to the public concerning election procedures, and did not publish the guidebook to election procedures that had traditionally been used for training poll workers and party pollwatchers. Instead, a much abbreviated document was issued which did not specify procedures well, leaving an abnormally high degree of discretionary power on how to run the polling stations in the hands of the president of the JRV, usually a member of the governing party.

Elimination of Fraud Checks

Without explanation, the CSE did away with the most basic guarantees for the integrity of the voting process. In a break with past tradition, opposition pollwatchers were not allowed to be present for the packing of election materials. Where party pollwatchers had difficulty entering the polling station, materials were unpacked and ballot boxes assembled without their oversight. According to opposition parties, a large percentage of their pollwatchers hence could not verify whether the boxes were empty before the voting began. JRV presidents were instructed not to count the ballots or record the number of ballots used and unused, a normal control procedure. Ballots also came from the CSE with pre-marked security codes instead of being given an adhoc code drawn up by vote-board officials. All these changes could have facilitated ballot box stuffing.



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In addition, indelible ink applied to the voters' fingers to prevent double voting easily washed off. Opposition parties were not permitted to test the ink as they had done in elections since 1996. Some parties were concerned that, together with the existence of thousands of manufactured voter i.d.s that have not been distributed and are thus currently held by the CSE, the poor quality ink could result in double voting. However, this is of less concern in that the *cédula* does carry a photograph and the JRVs are localized with a maximum of 400 voters who are known by their neighbors, making it difficult to impersonate a voter.

Changes in the Ballot: Without much warning and without civic education to prepare voters, the CSE opted to record the votes for president, national and departmental deputies, and the PARLACEN all on one ballot rather than on separate ballots as had always been done before. Since the number of spoiled and blank ballots was never published, it is impossible to know whether this resulted in a higher proportion of error, but if so it likely worked to the advantage of the governing party, which knew the change was coming and used a vote simulation exercise to train its party cadre in the use of the ballots.

Voting Center Coordinators: The JRVs were sometimes grouped into Voting Centers for ease of distribution and collection of materials. Late in the preparatory process, the CSE announced the creation of a Coordinator post to oversee each voting center. These individuals are not mentioned in the election law and there are no regulations governing their selection. They appear to have been drawn from the ranks of the Sandinista party and the Citizen Power Councils (CPCs), introducing another element of partisan bias into election administration. Opposition parties expressed concern that these individuals might have been assigned to intimidate opposition party agents and quash complaints, or to enforce party discipline among Sandinistas. Civil society groups speculated that the coordinators' main role was probably to convey the election results quickly to the CSE so that it could conduct a fast parallel vote tabulation with which to learn something about the governing party's position prior to the official summation of votes.

Party Oversight: The PLI party reported that roughly 20% of its pollwatchers were unable to enter the polling stations to conduct oversight on the election, and additional pollwatchers were expelled prior to the count so that in all 30% were blocked from collecting a copy of the tally sheet due under law. Different from past years, the CSE centralized the issuance of credentials in Managua, and personalized each document rather than issuing credentials in blank and allowing the parties to fill them out. They issued a substantial number of PLI credentials with errors in the data (names, photographs, *cédula* number etc.) and when the party requested correction of the documents the promised corrections were either made very late or not made at all. The percentage of errors in PLI credentials was reportedly far higher than error rates for other parties and the PLI adamantly denied that its original requests were the source of the errors, though it has not produced evidence of this latter assertion. In another change

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affecting oversight, the CSE published a single credential for the principle party pollwatcher and his/her substitute, and also used this system for the oversight agents at other levels of the electoral system, reducing by half the number of party workers who could be active at any one time in restricted spaces such as the CEMs, CEDs and counting centers.

Credentialing of Domestic Observers: Civil society groups that applied for credentials to observe the election were issued credentials if the group was perceived to be friendly to the government but denied credentials if it was not. Thus the National Council of Universities (CNU) observers, who were thought to be composed mostly of Sandinista youth organized through the party's university affiliates, were able to receive credentials and later endorsed the election process. By contrast, IPADE, a deeply experienced and impartial group, simply never received a response from the CSE to its request for credentials.

Access for International Observers: The 2011 regulations for election monitoring allowed only "accompaniment" rather than "observation," which is the term used in the electoral law. They violated international principles for election observation by requiring that observers inform election authorities of their observation routes and seek consensus with authorities before issuing reports, among other problems. The new regulations edited out previous guarantees of access adequate for effective observation, focusing on the duties rather than rights of election observers. Of the two groups that negotiated MOUs in order to obtain guarantees of adequate access, the European Union had few problems but the OAS reported that 20% of its personnel were blocked from entering the polling stations on election morning. Four OAS observers were expelled prior to the vote count, which may have increased the margin of error on the only international quick count known to have been conducted. The regulations were issued late in the process so that international observers were unable to monitor many important elements of election preparation, including the formation of departmental electoral authorities (where opposition parties obtained little representation), registration of parties and candidates, verification of the voters list, and the first month of the campaign.

Absent Regulation for Challenges: The CSE did not publish regulations governing the submission of challenges to the vote (*impugnaciones*). In the past, it had published such a regulation, and explained how to file challenges in its training manual for poll workers, which also was used by parties to train their pollwatchers. The absence of clear regulations and procedures made it difficult to train party pollwatchers adequately and may have impeded the filing of challenges.

Irregular Publication of Results

The CSE did not publish results for each JRV separately, so parties were not in a position to compare their copies of the tally sheets to the results officially recorded and entered into the summation to determine who had won. In the past, the results for each JRV had



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

THE
CARTER CENTER



THE CARTER CENTER

ONE COPENHILL
453 FREEDOM PARKWAY
ATLANTA, GA 30307
(404) 420-5100 ♦ FAX (404) 420-5145

WWW.CARTERCENTER.ORG