

# DANIEL ORTEGA'S THIRD TERM OF OFFICE

## THE CONTROVERSIAL RE-ELECTION OF THE PRESIDENT OF NICARAGUA

*Kohar Peñalba*

During the run-up to the presidential and parliamentary elections held in Nicaragua on November 6, 2011, the main issue was less about what the results would be or what implications they might have, but rather about their degree of legitimacy. Along with the office of president, the 90 members of the National Assembly and 20 representatives to the Central American Parliament (PARLACEN) were up for election. The parties approved by the Supreme Electoral Council (CSE) to contest the election included the left-wing populist Sandinista National Liberation Front (Frente Sandinista de Liberación Nacional, FSLN), the Independent Liberal Party (Partido Liberal Independiente, PLI), the Constitutionalist Liberal Party (Partido Liberal Constitucionalista, PLC) and two other smaller parties. Shortly before the election, there seemed little doubt that the incumbent president, Daniel Ortega (FSLN), would be re-elected. The election process was beset with serious irregularities and problems from the very beginning – starting with Ortega's candidacy itself.

After the fall of the Somoza dictatorship, Daniel Ortega effectively ruled as head of state from 1979 to 1984 in his capacity as Chairman of the Revolutionary Command Council, before being elected President in 1984, a position he kept until 1990. He was defeated by his opponents in subsequent elections in 1990 (by Violetta Chamorro), 1996 (by Arnoldo Alemán) and 2001 (by Enrique Bolaños). In 2006, at the fourth attempt, he was finally elected to his second term as President. So in 2011, as the incumbent President, he was actually contesting free presidential elections for the sixth time. Article 147 of the Nicaraguan



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constitution, forbids both the direct re-election of a president and also a third term of office. However, the Supreme Court, which is made up of a majority of Sandinista judges, made a controversial decision in October 2011 to allow Ortega to stand again.<sup>1</sup>

From the start, the unconstitutional nature of Ortega's new candidacy was the main topic of political debate. As the ruling FSLN party did not have the necessary majority in the National Assembly to change the constitution, they had to rely on a decision by the Supreme Court. The constitutional review chamber, which is made up entirely of judges from the FSLN, decided that Article 147 was "not applicable", as it disregarded the principle of equality before the law and was therefore guilty of violating human rights. At the same time, Ortega extended by decree the seats of the majority Sandinistas on the Supreme Electoral Council.

In contrast to the events in Guatemala, where First Lady Sandra Torres wanted to stand for the presidency, but where the Supreme Electoral Tribunal, the Constitutional

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Court and the country's Supreme Court declared this intention unconstitutional, it has once again become obvious that, in Nicaragua, the state institutions are under party control and have no real autonomy. They constantly have to toe the party line set by Ortega's FSLN, and as a result the credibility of Nicaragua is being seriously undermined.

## **TENSIONS IN THE RUN-UP TO THE ELECTIONS**

Opinion polls in the run-up to the elections confirmed that the incumbent, Daniel Ortega, was the clear front-runner, with more than 50 per cent support, while the candidate in second place, media mogul Fabio Gadea from the opposition PLI, never exceeded 30 per cent in the polls, even when his popularity started to grow significantly in the last few

1 | Under the pretext of maintaining stability in the country, Daniel Ortega, as General Secretary of the FSLN, made a political pact in 1977 with Arnoldo Alemán, Chairman of the PLC, to allocate public office positions on the basis of proportional representation. This was passed into law as part of constitutional reforms in the year 2000. As a result, the increasingly strong Sandinistas began to dominate state institutions.

months before the election. In spite of Ortega's lead, right up to the eve of the elections there were still doubts about the impact of the hidden vote (*votos ocultos*), as well as about the reliability of the opinion polls against a background of intimidation by state institutions controlled by the ruling FSLN.

Added to this was the fact that the terms of office of all the judges on the Supreme Electoral Council, whose job was to rule on the legitimacy and validity of the election results, had actually expired a long time previously. The whole organisation of the Supreme Electoral Council, right down to the officials at the polling booths, is controlled by the ruling party. In the last municipal elections held in 2008, it was accused of fraud – there were apparently irregularities in 40 of the 153 municipalities. The Supreme Electoral Council also made sure that recognized national election monitoring organisations such as IPADE (Instituto para el Desarrollo y la Democracia), Etica y Transparencia and Hagamos Democracia were refused accreditation. These organisations had previously uncovered interference by the ruling party in the issuing of personal ID cards, without which people are not allowed to vote. Ten thousand people were affected. The Supreme Electoral Council did not accept a single complaint about the misuse of public money and public institutions for election purposes.

A final act was designed to create uncertainty in the opposition camp before the elections. The electoral authorities threatened that, after the elections, they would retrospectively revoke recognition of the candidacies and any potential seats won by 50 candidates fielded

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by the opposition PLI, who at the time were in second place according to the opinion polls. The background to this was that some former members of the PLI had complained that none of the candidates could prove they had been long-term members of the PLI. This was impossible anyway, because the alliance had only been in existence for a short period of time. As a result, while the electoral authorities did in fact allow these candidates to stand, the voters could not know with any certainty whether their candidacy would be subsequently recognised as valid or

not. This created a certain amount of uncertainty amongst opposition voters, especially as revoking the seats would benefit the government candidates as alternates.

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The opposition, made up of political parties and civil society organisations, declared that they would take part in the elections, but only "under protest". They had to face the fact that if they boycotted the elections the ruling FSLN party would win all the seats. The opposition was aware of what had happened in Venezuela in 2005 when Hugo Chávez and his party had gained total control of Congress following the withdrawal of the opposition parties from the election, with the result that the opposition could no longer use Congress as a political platform.

A few days before the presidential elections, there were violent protests in various regions of Nicaragua against irregularities in the issuing of ID cards. At least 15 people were injured in Matagalpa on the Saturday before the elections in confrontations with the security forces. The police used tear gas and batons against farmers who wanted to occupy a local election centre in order to get hold of their voting cards. At the same time, there was growing anger towards the Supreme Electoral Council, which was not only unwilling to allow independent observers to monitor the elections, but which, just three days before the elections were due to be held, had still not completed the accreditation of opposition representatives on the electoral boards at polling stations.

Given these circumstances, Ortega's re-election was virtually guaranteed. Under the current electoral rules, he would only need 38 per cent of the vote to be elected in the first round of voting – so not an absolute majority – or only 35 per cent if he was more than five per cent ahead of the candidate in second place. This was another rule that had been introduced by the Sandinistas before the last election as part of the 2005 constitutional reforms.

**PROPPING UP THE SANDINISTA REGIME**

Until this time, Ortega had always counted on the support of his traditional political base amongst the people, which

would safely guarantee him 35 to 38 per cent of the vote. These were supporters of a government model that the FSLN described as “socialist, Christian and based on solidarity”. This model brings together three keyfactors: it is authoritarian in the political sphere; it promotes private business in the economic sphere; and it is populist in the social sphere. This is all shrouded in revolutionary and quasi-religious rhetoric in order to promote the cult of personality of Daniel Ortega and his wife Rosario. In contrast to President Chávez in Venezuela, who cultivates a similar cult of personality, Ortega attaches great importance to maintaining a pragmatic line when it comes to economic issues (he allows free trade zones, for example) and to working in cooperation with the International Monetary Fund. His obvious good relations with big business remind of Anastasio Somoza, the dictator who ruled the country from 1937 to 1947 and from 1950 to 1956, who used to say to businesses: “You make the money and I’ll look after the politics!” Ironically, the Somoza dictatorship was toppled by a nationalist movement led by the FSLN, spurred on by government reprisals and the lack of democratic freedoms.

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The decisive factor behind the growth of the Sandinistas’ political base is the economic cooperation Nicaragua enjoys with Venezuela. This sector of the economy has been fully privatised under Daniel Ortega’s presidency and is not subject to any public accountability. It generates income of around 500 million U.S. dollars per year, which is the equivalent of seven per cent of the country’s GDP, used by the FSLN for private dealings and party campaigns. However, the money is used not only by the government and party propaganda machines and for the mobilisation of sympathetic civil society groups, but also for funding politically-motivated welfare programmes and aid schemes.

It is these types of programmes, such as the distribution of roofing slabs, social housing and subsidies for local public transport, that exert a political influence on non-Sandinista voters. Ortega has allocated twice as much external funding to such projects compared to previous governments. This has proved to be highly effective politically, in spite of a lack of transparency and scandalous incidents of public

corruption that have been denounced in the independent media. There has been a certain amount of progress as a result of these programmes, including free schooling and healthcare, the introduction of a solidarity fund for the socially disadvantaged and investment in the road network.

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However, the authoritarian nature of Ortega's government has meant that there has been little progress in establishing the proper rule of law. The ruling party has been able to ensure the state institutions toe their party line, something that is only possible when there is a lack of effective opposition or of a civil society that is inclined to voice criticisms. When this opposition began to organise itself and make itself heard in 2007, the ruling party responded by resorting to violence and intimidation.

### **UNSURPRISING ELECTION RESULTS**

It was against the background of this political panorama that the elections took place on November 6, 2011. Approximately 3.4 million Nicaraguans were eligible to vote. Ortega's strongest rival, the media mogul Gadea, portrayed himself as an independent candidate with a programme aimed at reinstating the proper rule of law. He was supported by the centre-right PLI. As an avowed enemy of the Sandinistas, he had been a supporter of the Contras in the 1980s and 1990s, the guerrilla movement opposed to Sandinista rule. One of his main promises during the election campaign was annual economic growth of between seven and eight per cent, though he never really clarified how this was to be achieved.

On election day, it was clear from early on that Gadea was going to lose the election. The Supreme Electoral Council confirmed Ortega's victory later in the evening. After more than 85 per cent of the votes had been counted, it announced that Ortega was the winner with over 62 per cent. Gadea was second with 31 per cent. The liberal candidate and former president Arnoldo Alemán (PLC) trailed in a distant third with six per cent of the vote. Ortega had achieved the best result ever in the history of Nicaraguan elections. In the parliamentary elections, the ruling party achieved a comfortable two-thirds majority with 63 seats,

while the opposition PLI won 25 seats and the PLC two. In accordance with electoral law, the 91<sup>st</sup> seat went to the losing presidential candidate Gadea. In the Central American Parliament, Nicaragua will be represented by 13 Sandinistas, six representatives from the PLI and one from the PLC.<sup>2</sup> The other parties and candidates had no influence.

International election observers described the election process as generally peaceful but complained of irregularities and intimidation of their staff, who were often refused entry to polling stations. Even the head of the European Union Election Observation Mission, Luis Yáñez, was refused admission to some polling stations. Election observers from the Organization of American States (OAS) were able to find out for themselves what was going on in only 42 of 52 polling stations. The Supreme Electoral Council later declared, however, that it “totally and absolutely supported the election results”. They claimed that it is “the people who decide the legitimacy to the elections, and not one of these organisations”.

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Meanwhile, EU election observer Yáñez confirmed that the elections had been properly run without further incidents and that President Ortega was the clear winner. The EU observers considered the election process in all the polling stations they observed to be “satisfactory and in line with the parameters established by the EU” and they also suggested that the presence of election observers had made a significant contribution to ensuring the transparency of the whole process. They considered the actions of the Supreme Electoral Council to have been “independent and well prepared”. During a press conference on the day after the elections, Yáñez responded to the insistent questions of journalists as to whether there had been any electoral fraud by saying: “In politics, fraud means declaring someone to be the winner when he has lost and announcing that the person who won was in fact the loser. In this case there can be absolutely no doubt that the FSLN and Mr Ortega won these elections.”

2 | See *La Jornada* of December 13, 2011. The Supreme Electoral Council (CSE) website does not show the breakdown of seats.

Meanwhile, Juan Daniel Alemán, General Secretary of the Central American Integration System SICA, was full of praise for the Nicaraguan people, the government, the Nicaraguan electoral authorities, the political parties and the nominated candidates. He said they had all contributed to the elections being run in a peaceful and civilised way, something that suggested real political maturity. The presidents of El Salvador, Bolivia and Peru voiced similar opinions.

On the other hand, representatives from Nicaraguan NGOs such as Etica y Transparencia felt there had been more of less clear "signs of fraud". They felt the electoral process had been "neither fair nor honest and had not been credible at all". The defeated presidential candidates Gadea and Alemán also criticised the electoral process. They demanded that the results be declared null and void and that the elections be re-run, a call repeated by the American Chamber of Commerce. Gadea and the opposition politician

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Edmundo Jarquín announced that they would not accept the results of an election in which 30 per cent of the polling stations had not allowed access to opposition members of the electoral committee. The United States were also critical. "We are very concerned about the irregularities evident during the Nicaraguan elections. These elections were far from transparent", stated Mark Toner, spokesman at the State Department.

Following the elections, there were almost daily peaceful protest rallies at various points around Managua, which attracted hundreds of participants. The police used tear gas against the protesters, more than 50 policemen were injured and demonstrators were brutally beaten by security forces. In the days immediately after the elections there were several deaths reported, including that of a Sandinista leader. As a result of the protests going on throughout the country, the PLI electoral committees decided to join forces at a national level to protest against the intimidation and threats being carried out by the Sandinistas and to present evidence of electoral fraud in every individual polling station. Since then they have been gathering together all the individual documents needed as evidence from each of the polling stations, with a view to publishing

them at a later date and demanding that the elections be declared null and void as a result. The Catholic Church, business associations such as COSEP (Consejo Superior de la Empresa Privada en Nicaragua) and AMCHAM (American Chamber of Commerce Abroad) as well as various national and international organisations have come out in support and have also called for the removal of the current members of the Supreme Electoral Council. They believe this is the only way of guaranteeing transparency for future elections and democracy for the country as a whole.

Many Nicaraguan people talk of “unprecedented electoral fraud”, though this is not a view held by everybody. Nicaragua is in fact split into two factions, those who are convinced that Ortega won fairly and are happy about it, and those who support his defeated opponent Gadea.

### **VOTING IRREGULARITIES**

Most of the members of the opposition PLI party’s election board agreed that the government had exercised improper influence on both the voting process and the vote counting. Once the polling stations closed, the “polling station coordinators” – a position that had been introduced before the election and that exclusively comprised people with close ties to the government – allowed only “heads and board members of the Electoral Commission” to accompany the ballot papers to the election centre that had been set up in Managua’s central stadium. No PLI observers were allowed to accompany the ballot papers, though some managed to follow the bus that was transporting them. Afterwards they reported how they saw individual ballot papers and files showing each polling station’s total count being replaced before being unloaded at the stadium. There were also reports of voter transfers and false names being added to the electoral register, so that one person could cast two or three votes in favour of the governing party.

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This year the electoral fraud was different to that carried out during the municipal elections of 2008. Then the fraud was carried out in the computer centres, whereas this time it was made up of the following elements:

1. Ballot papers bearing the Supreme Electoral Council's security code, so that the Council could quite simply copy as many of them as it wanted.
2. "Pre-filled" ballot boxes – in most polling stations, observers were prevented from checking the ballot boxes when the polling stations opened.
3. Ballot papers and ink: duplicates of the ballot papers were made so that they could be filled in at the computer centres. In addition, two types of ink were used – one indelible and one that could be easily wiped off, so that people could vote up to three times.
4. Blank electoral registers attached to the list of voters: these were provided by the Supreme Electoral Council to allow people to vote who ostensibly had no voter ID card. The opposition's observers pointed out the danger that this would allow voters to vote at more than one polling station by simply adding their names to the lists.
5. Parallel vote tabulation: after the ballot papers had already been manipulated in the individual polling stations, it was no longer possible to use parallel vote tabulation to check the accuracy of the official results. For example, the PLI's election boards protested that the results displayed on the walls of the polling stations were totally different from the results announced by the Supreme Electoral Council.

After the initial results were announced, the European Union also became more vocal in its criticism of the elections. It claimed that the recommendations made by its observers after the 2006 elections had gone unheeded and

warned that its final report, due in January 2012, will call for drastic reforms to electoral law and for the political influence of the Supreme Electoral Council to be limited. The EU also criticised the threat to deprive 50

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## NECESSARY REFORMS TO ELECTORAL LAW

In the legislative area, reform of electoral law comes high on the agenda, and in particular the appointment of new magistrates to the Supreme Electoral Council and a total overhaul of its structure. In this respect, the board of the business association COSEP made it one of its main goals for 2012 to draw up an electoral reform project with the objective of providing Nicaragua with a new Supreme Electoral Council in time for the next elections. This plan is supported by most of Nicaragua's non-governmental organisations.

It is already being urged that any reforms to electoral law should take into account the needs and demands of the people rather than those of a particular political party, as has been the case in the past. "If we seek reforms that favour a particular political party, then we don't need to make much in the way of changes to existing electoral law, as at the moment it is perfectly tailored to help one political party stay in power in the country forever", stated Dionisio Palacios, an expert in electoral law. He stresses that if electoral law is to be reformed, then first of all the National Congress has to push through constitutional reforms because electoral law is part of the constitution.

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## OUTLOOK

Indeed we can expect that Ortega will seek to push through constitutional reforms – but with another outcome in mind. He is likely to be more interested in changes that make it possible to re-elect presidents and institutionalise the "Citizens' Power Councils" (CPC) under the leadership of his wife, Rosario Murillo. In practice, the CPC ignore constitutional provisions such as local autonomy and provide the chain of command throughout the ruling party. Calls for more direct democracy are actually hiding a renewed centralisation of state power.

If the Sandanista's model of government is to survive, it will need the continued economic support of the Chávez regime. But this is now less than certain, partly because of

Chávez's health problems, but even more because of the growing strength of the opposition parties in Venezuela, which, for the first time ever, will join together to stand in the October 2012 elections and actually have a realistic chance of winning.

Another significant factor are the close political and economic ties of the army and the police. These institutions are recognised both domestically and internationally as neutral, professional law-enforcement institutions, but, as in the past, they run the risk of once again being used as instruments to uphold the power of the Sandinistas.

After his victory in the elections, it seems probable that Ortega will continue more strongly than ever with his strategy of centralising political power and controlling state institutions. In view of these election results and the way the elections were run, it is now more likely than ever that Nicaragua will have to face yet more setbacks on its path to democracy.