

Democracy Adrift: Caudillo Politics in Nicaragua

INTRODUCTION

On April 13, 2004, Nicaraguan president Enrique Bolaños suddenly appeared in public to alert his countrymen that he was in danger of being overthrown. A person not given to grandiose gestures, the president warned the nation that he would only leave the office to which he had been democratically elected as a cadaver. Bolaños did not name those plotting his ouster but he did not need to—any reasonably informed Nicaraguan knew by instinct that he was referring to Arnaldo Alemán and Daniel Ortega, and apparently not without cause.

According to an intense wave of rumor sweeping the capital, Managua, the two caudillos of Nicaraguan politics were seriously discussing the possibility of effecting a constitutional coup against the elected president. The discussions came to naught, but not before sending shock waves through the government, the donor community and the media. Ortega and Alemán would have used charges of “electoral crimes” revolving around the presence of stolen money allegedly found in Bolaños’s 2001 campaign coffers as a pretext to impeach Nicaragua’s elected leader. What would have come afterward is murkier but may have included the calling of a constituent assembly to make radical changes to the power setup of the country.

Had this eventuality come to pass, Nicaragua would have been the sixth Latin American country in recent years to have witnessed the exit of an elected president from office before the ex-

piry of his term. However, Nicaragua would have been a very different case from other recent overthrows. Whereas governments in other places have been felled by mobs of enraged citizens (Ecuador, Peru, Argentina, Bolivia) or at least of opportunistic former soldiers (Haiti), in Nicaragua the force propelling events would have been a political conspiracy by two ex-presidents of the country and mortal enemies of one another. An additional curiosity of the moment was that Alemán found himself in prison and negotiating with one hand tied behind his back. Even more arcane were the fluctuating conditions of his confinement, which derived from Ortega’s ability to manipulate Nicaragua’s judicial system at his whim.

The mini-crisis of early 2004 came at a distinct moment in Nicaragua’s recent political evolution. During the preceding six months, as the two caudillos locked horns over the fate of convicted ex-president Alemán, the chronic dysfunction in the country’s political institutions grew acute. In the capital, Managua, the National Assembly, bogged down in political wrangling, failed to pass more than a handful of ordinary legislative bills. The Supreme Court of Justice conducted its annual election of officers in March, but only after a three-month impasse in which the high court did not sit. Meanwhile, the supposedly autonomous South Atlantic region continued a two-year stint without any consensually accepted government while drug traffickers ran rampant through its territory.

WHAT HAPPENED TO THE TRANSITION?

If the events of the previous eight years had not been sufficiently convincing, these episodes and the trends behind them rammed home an obvious conclusion. Fourteen years after the end of the Sandinista revolution and well after the “third wave” of world political change has crested, the consolidation of democratic institutions in Nicaragua is not occurring. Although it is now fashionable to dismiss such naïve notions, in the early 1990s “consolidation” was the expected long-run outcome of the wave of transitions from authoritarian rule that had recently sprouted in Southern Europe, Eastern Europe, Latin America and other parts of the world. And in the mid-1990s, Nicaragua briefly appeared to be making progress in roughly the right direction.

By this date, however, it is increasingly recognized in academic and policy circles that most of the more than 100 countries that embarked on democratization starting in the 1980s are not consolidating their “transition” to democracy.¹ Indeed, serious question has been raised about the whole analytical framework of “transition studies” and its adequacy as a guide for policy to assist democratic development. In this revision, many Latin American countries are coming to be seen as what Thomas Carothers of the Carnegie Endowment calls cases of “feckless pluralism,” a term which roughly denotes a stable state of unconsolidated democracy in which parties routinely alternate in enjoying the spoils of office without improving anything.²

Although feckless pluralism is one outcome, this report will argue it has not been Nicaragua’s outcome. Its fate is more disturbing, for it is caught in a competition between authoritarianisms desirous of moving the country back toward rightwing or leftwing hegemony. Since 1990, these authoritarianisms have been personified by two individuals: Arnaldo Alemán and Daniel Ortega, maximum leaders of the

country’s dominant political machines. In office from 1997-2002, Arnaldo Alemán showed a strong tendency to regress to the “dominant power” system of traditional Liberal clientelism, and in all probability still wants to do so even though he is now a prisoner. While striving for political and personal vindication, the eternal leader of the opposition, Daniel Ortega, espouses radical-democratic notions of politics that prefigure a drive to reassert Sandinista hegemony in an outwardly democratic framework if he regains power.

Democracy, and president Enrique Bolaños Geyer, seem hopelessly and helplessly caught in the middle of this gigantic tussle. At the very beginning of his administration, president Bolaños outlined ambitious goals for the reform of Nicaragua’s institutions and of the archaic political culture that underlies them. After nearly three years in office, he has been able to realize none of those objectives. His tangle has reached the point where, in the face of a possible overthrow of the country’s democratically elected leader in April 2004, Nicaraguan society barely reacted—indeed, it did little more than yawn.

If it is relatively easy to demonstrate that democratic development in Nicaragua is not occurring, it is difficult to pin down exactly why not. The traditional political science of developed countries harps on structural themes such as high levels of poverty and inequality, backward political cultures, and the presence or absence of specific historical sequences of political and state development in “explaining” why some countries make it to developed democracy while others do not. The United Nations Development Program (UNDP) has recently published an analysis that would supplant these genres of explanation with other structural variables, namely the loss of state capacity vis-à-vis the market and the infringement of the effective sovereignty of the Latin American countries by the forces of neoliberalism and globalization.

Alone, none of these approaches has proved to be compelling, leaving a cloud of explanatory uncertainty. The only reasonably certain thing to be said is that absolutely all of the forces hindering democratic consolidation apply to the Nicaraguan case, most of them powerfully. In an apt summation, Argentine scholar Guillermo O'Donnell, a leading political scientist for decades, concludes that a series of countries in Latin America that include Nicaragua "function in ways that current democratic theory has ill prepared us to understand."³

The consequences of this consolidation-not-occurring have likewise long been blurred. While "feckless pluralist" politics as conceived by Carouthers can go pattering on without endangering a society's viability, the destructive competition between Nicaragua's paired caudillos appears to be growing more dangerous. Not only is it threatening to strangle such economic and social progress as Nicaragua has been able to make over the last decade, but it may portend a serious threat to the nation's safety and integration in the long term.

It is even more difficult to gain a grip on what to do about it. A multi-cornered entity known as the "international donor community" has been trying to assist the development of Western-style democracy in post-revolutionary Nicaragua for nearly 15 years. While such assistance has done some good, it is not clearly turning the tide. In this respect, Nicaragua is not an exception to world experience. After reviewing tons of evidence, the World Bank's governance unit has recently cast serious doubt on whether most of

the work done to improve governance in developing countries has helped much.⁴

However, the question emerging at present goes beyond this frame of inquiry. If democracy in Nicaragua is not consolidating, then where in fact is the country heading? On the path to a possible answer to this query, one question that needs to be addressed is "what is Nicaragua?" With a modicum of sociological scrutiny, buttressed by some historical reflection, Nicaragua emerges as one of the world's most singular countries, and also as one of the more fragile.

This report thus begins by profiling Nicaragua's "national problem." After that, it offers its readers a review of Nicaragua's political evolution since 1990 and briefly details the essentials of its fledgling democratic system. It goes on to portray the government in power, assessing its achievements and shortcomings, and then profiles the government's opponents. In its latter sections, the document deals with the way in which key institutions have functioned in recent years and chronicles the Bolaños administration's efforts to restart the democratic transition in Nicaragua by reforming them, analyzing why these efforts have had little impact.

All this is a prelude to a final commentary on where Nicaragua may be heading. Is the country rambling eternally through an endless transition, approaching a threshold over which democracy will begin to consolidate anew, or heading toward crisis and possible state failure? In this divided and highly unpredictable country, all three of these futures would seem to be potential outcomes. Could there be others?

NICARAGUA'S NATIONAL PROBLEM

The foregoing introduction suggests that fourteen years after the collapse of the Sandinista revolution, when the country began to navigate the “third wave” of change in world politics, Nicaragua has witnessed little progress in the consolidation of its recently installed democracy. Although it may be less obvious, Nicaragua also faces problems as a country that threaten in the medium term to produce serious difficulties for internal public order. In the longer run, these same problems could conceivably put its territorial integrity and even its cohesion as a nation at risk.

Despite a chronic lack of consensus and occasional fits of ungovernability, Nicaragua is not currently a country in imminent danger of collapse or of sinking to the level of a “failed state.” This however does not rule out that serious problems may loom on the horizon of a somewhat more distant future. The dangers that cloud the country’s coming years are derived from a set of national dilemmas made up of four essential elements.

A POLITICALLY FRACTURED SOCIETY

Nicaraguan society suffers from a political fracture, the pattern of which is unique in the world. It began with the 1979 revolution and has yet to heal. This fracture has led a large part of its political class to display destructive behavior that is rooted in an anachronistic pattern of political struggle anchored in past epochs of the nation’s history.

Following the overthrow of the Somoza dictatorship in 1979 and the electoral defeat suffered by the Sandinista National Liberation Front (FSLN) in 1990, Nicaraguan society has yet to come to a basic consensus regarding the country’s “constitution” in the most elementary sense of the word. In a country in which three antagonistic political projects compete with one another

to prevail, the basic political actors do not agree on fundamental values, on the appropriate frontiers between the state and the market, or even on who legitimately owns what. Pious rhetoric aside, neither of the two main political parties accepts the rules of modern liberal democracy, and both in essence would like to turn the clock back to a glorious past long since relegated to the history books.

While it is true that after fourteen years the former combatants in a fratricidal war have learned to coexist peacefully, the wounds opened by the revolutionary experience have not yet sufficiently healed. Society and the electorate continue to be politically divided, with anti-Sandinista forces regularly winning national elections by about fourteen points. The state meanwhile remains not only institutionally fragmented but also “invertebrate,” as the forces of order—whether for better or worse is not clear—are still not under the real control of the executive branch.

Intertwined with and supported by a political culture marked by the historical continuity of the strongman phenomenon (*caudillismo*), this lack of fundamental agreement allows for and indeed generates highly anti-democratic conduct. The most serious example of this behavior in recent years was the pact reached between the Liberal and Sandinista caudillos in 2000, which has precipitated the clientelistic colonization of certain institutional spaces within the state, distorting their functioning while the conflict between the pact-makers not only goes on unresolved but is becoming more destructive.

In the context of a fragmented state, the political struggle between these two forces has hindered creation of the necessary premises for the proper functioning of a market economy. It does not allow for the consolidation of the most ba-

sic institutional practices—the rule of law, respect for contracts and the impartiality of legal decisions—that are essential for the economy to function smoothly and propel vigorous growth. The rivalry has also hampered correction of the faulty design of the political regime inherited from the revolutionary period, which will inevitably form the foundation for the desired democratic order of the future.

DEFICITS OF DEVELOPMENT AND SECURITY

There is a worrying gap between a slow rate of economic growth and concomitant social development in Nicaragua and the accelerated pace of change in the international system (linked to the diverse facets of globalization), as well as in nature and the environment. This gap poses the prospect that it may be impossible for the country to emerge from the “poverty trap” on time, i.e., before the negative forces of globalization, which include transnational organized crime, draw Nicaragua into a vortex of violence.

The United Nations does not classify Nicaragua as a “least developed country” (LDC). However, the country shares most of the features used to define this select group of nations.⁵ Its economy is in large measure anchored to the export of raw materials to markets that are not particularly dynamic, although a certain diversification has taken place into non-traditional agricultural products, export processing zones and tourism. Per capita GDP, recently re-estimated at US\$750 per year, makes Nicaragua the hemisphere’s second-poorest country after Haiti.⁶ This view is reinforced by data on agricultural yields and average levels of labor productivity, which are possibly the lowest in Latin America.⁷ Taken as a whole, these figures define a vicious circle known as the “poverty trap,” in which a country is structurally incapable of generating the public and private investment resources necessary to overcome its problems and therefore depends massively upon injections of foreign aid, capital and remittances.⁸

Between 1984 and 1993, as the result both of an unviable model of revolutionary change in its economic and social structures and a bloody civil war, Nicaragua saw its per capita national income decline for ten consecutive years, a record equaled by few other nations. Amidst this prostration a process of reverse change began that propelled the country on a forced march down the path to a market economy. Together these two processes—a socializing revolution (1979-1990) and an abrupt return to capitalism after 1990—subjected Nicaragua to a rate of economic and social change experienced by few other countries in the world in the short time span of 25 years. A striking result of these vicissitudes is that today some 69% of the population views their country as in worse shape than it was when they were children.⁹

During the past nine years (1995-2003), Nicaragua has returned to a path of slow and mediocre economic growth. The real GDP growth rate has been 4.2% annually; insufficient to more than dent the chronic underemployment that afflicts nearly half the work force.¹⁰ This sluggishness can be attributed in part to the structural weakness of the private sector, which does not invest enough to promote faster growth, and to economic policies that are poorly adapted to the local setting. At heart, however, these weaknesses have powerful roots in the lack of certain basic institutional premises needed to propel a more vigorous investment process. The revolution undermined the already weak legal, judicial and property regimes inherited from the Somoza era without putting anything stable in their place. The efforts made in recent years to create this institutional web anew have fallen short of their goals. Partly for this reason, the attraction of foreign capital has been insufficient to bridge the gap left by weak national investment.

As the economy has grown, measurements sponsored by the World Bank between 1993 and 2001 demonstrate that the country has moved

slowly, albeit not in a clearly sustainable fashion, to overcome its very high levels of poverty. That these encompass most of the population identifies Nicaragua as a country in which poverty is generalized and in which the absolute number of poor people continues to grow. According to the latest standard of living survey carried out by the Nicaraguan Statistics and Census Bureau (INEC), relative poverty as defined in terms of unsatisfied basic needs dropped from 76.7% in 1998 to 74.8% in 2001.¹¹

These achievements are due in part to national efforts, but are also attributable to the copious remittances sent by Nicaraguans living abroad and to generous flows of foreign aid, which make possible high rates of public spending on investment. According to some estimates, aid and remittances sum to \$1,300m yearly, equal to nearly a third of GDP. The downward tendency of the poverty index notwithstanding, certain key social development indicators display a dangerous stagnation. According to the World Bank, illiteracy and access to electricity have been virtually unchanged since 1993, while sanitation and access to drinking water have improved only marginally.¹² According to numerous experts on the matter, the likelihood of Nicaragua reaching many of the Millennium Development Goals is therefore questionable.¹³

The challenges lying in wait. In sum, the figures cited above indicate that even with very large volumes of external resources *to which most of the countries poorer than Nicaragua do not have access*, the country is not clearly emerging from the poverty trap as defined by the United Nations Conference on Trade and Development (UNCTAD).¹⁴ This reality posits the need to swiftly reach much higher rates of economic growth and implement more effective social policies if employment and other deficits are to be overcome.

At the same time, Nicaragua as a society faces growing challenges and pressures emanating from

diverse quarters. A globalized system demands its inclusion in the international regime of free trade, of which the recently concluded US-Central America Free Trade Agreement (CAFTA) is an extension. Although they offer opportunities, such agreements also demand speedy adaptations difficult to achieve in countries whose productive structures are as obsolete and underdeveloped as those in Nicaragua, particularly if rapid change has to occur amidst rules of the game that fluctuate with the ups and downs of domestic politics.

The globalized system of production and distribution has favored the development of certain large nations of the former “third world”, while creating new obstacles to the development of countries, whose productive characteristics resemble Nicaragua’s. Over the past twenty years, these countries have seen the national processing of their raw materials drop, accompanied by the concomitant loss of value added in their economies.¹⁵ Meanwhile, the ways in which the supply networks of world-scale traders operate make it more difficult for an economy such as Nicaragua’s to gain access to external markets at higher points on the value chain.¹⁶

As UNCTAD underscores, such situations require new and stronger responses than ever before on the part of government and the national private sector. In particular, they require the formulation of a long-term national development strategy that propitiates high growth rates and serves as a reference frame for social and sectoral development efforts such as the policies normally included in poverty reduction (“PRSP”) packages.¹⁷ As will be seen further on, the Bolaños administration has put forth a strategy by which to do precisely that, without yet achieving consensus in the society at large about the validity of its proposal.

Meanwhile, the forces of global disorder—international trafficking in drugs, arms and people, and the money laundering generated by

these activities—have penetrated Nicaragua's borders and institutions without a convincing strategy having been put in place to combat them. For over ten years, Nicaragua has served as a transit route for a majority of the drugs arriving in the United States from South America.¹⁸ The internal consumption of cocaine and crack is growing rapidly, alongside the social phenomenon of youth gangs. The resources available for fighting these scourges are extremely scarce, and the police force has but one officer per 700 inhabitants, half that of other countries in Central America.¹⁹

THE ETHNIC-REGIONAL PROBLEM

The Nicaraguan state faces a pressing problem of an ethnic and regional nature. Its most worrisome expression is the tendency toward "failed government" on the Atlantic Coast, government incapable of responding even minimally to the demands of its citizens for services and security, and which may be in danger of gradually developing into a narco-government.

In 1987, the Nicaraguan government formally granted autonomy to large territories inhabited by a significant population of indigenous groups and other ethnic minorities. In the Latin American area, Nicaragua may be the country in which the autonomous territories encompass the largest percentage of the nation's physical space, but is simultaneously the country in which the divorce between a theoretical grant of autonomy and the policies necessary to put it into practice is most severe.

The stagnation in the development of Coast autonomy is rooted in material premises—an unviable regional economy and an acute budgetary dependence upon the central government in Managua. Together these lead to a poverty trap even harsher than on the Pacific side of the country. Lacking the necessary resources to offer even minimal services to the population, the regional governments (and the central government by association) have fallen into discredit in the eyes

of the population, despite efforts made by foreign cooperation to strengthen them.

Over a period of seventeen years, autonomous regional governments have not only failed to sink firm roots in society, but have become a tangle of disparate interests which passively presides over the undermining of the Coast territories and indeed the entire country by the forces of organized crime. The national political parties—the PLC and the FSLN—dominate regional politics, subordinating or marginalizing the Coast's autochthonous parties to the dictates of leaders in Managua. On more than one occasion, the rivalries between or within the two major parties have left one or the other of the two autonomous regions (North or South) without a functioning regional council for years at a time.²⁰ Much as is the case at the national level, acute problems of corruption underlie these power struggles.

Although a law on the subject finally passed the Assembly in December 2002, the demarcation of indigenous landholdings on the Coast has yet to begin, and uncertainty regarding property rights is even more pronounced than in the remainder of the country. When added to the silent invasion of mestizo colonists from the Pacific who move in and claim the physical control of land and forests, this impasse is nourishing the gradual development of separatist sentiment in the North Atlantic Autonomous Region (RAAN).²¹

Most dramatic at the moment, however, is government's evident incapacity at all levels—central, regional and local—to deal with the emerging problem of drug trafficking. While drugs make their way to the most isolated communities, undermining the integrity of local culture, those who traffic in the substances have subjected the legal system to their designs and are in the process of corrupting the police institution as well.²² Tentacles emanating from these processes have already branched out to other

parts of the country, leading to an emerging crisis in citizen safety.

THE DECLINE OF SOVEREIGNTY

Nicaragua has lost sovereignty, conceived as control over its own fate, due in part to objective economic dependency and a concomitant political vulnerability, but also because the country seems incapable of forging the minimum political will necessary to solve its problems.

When Violeta Barrios de Chamorro took over the government on April 25, 1990, after her clear-cut electoral victory two months earlier, Nicaragua was economically prostrate and on the verge of collapse as a state. At that point, a veritable flock of international actors went quickly into motion. Since that date, part of a remote past for the majority of the population, this many-sided entity has made enormous efforts, not always coordinated and at times ill-conceived, to help rebuild a country whose foundations had been severely fractured. Fourteen years later, attempts to introduce a market economy and a liberal democracy cannot be considered entirely successful. Although this is not in itself a serious problem, it is worrisome that these efforts may dissipate over the medium term without the pieces of the country having finally put back together in one way or another.

In the meantime, Nicaragua, a country extremely dependent upon foreign aid, has become the prime example of a general Latin American trend toward loss of sovereign decision-making power over its own fate.²³ In transit between a semi-centralized economy (misleadingly called a “mixed economy”) under the Sandinistas to a rigorous market economy, the borders between the state and the market have been redrawn in what is perhaps the most abrupt and radical manner in the entire region. Likewise, as the recent UNDP Report on Democracy in Latin America points out, the political agenda of the fledgling democracy has been subtly restricted while the implementation of Enhanced Structural Adjust-

ment Facilities (ESAFs) and the Poverty Reduction Strategy Papers (PRSPs) is carried out.

In contradistinction to the analytical scheme put forth by the UNDP, this report argues that lamentable though it may be, this situation is not the key variable explaining Nicaragua’s national problem. Instead, Nicaragua’s dilemmas are firmly anchored in the domestic political sphere and in specific problems, which will be treated in the later sections of this report. It is in the political sphere that an answer to a question that should be urgent for Nicaraguans must be found: how can this sovereignty be recovered?

In Nicaragua’s case such recovery faces a formidable additional barrier—the regional power of the United States, expressed since the end of the war in 1990 as the exercise of an episodic tutelage over the political development of the country that has sought, above all else, to avoid the return to power of the FSLN and its strongman Daniel Ortega. This geopolitical behavior is another element that shapes Nicaragua’s problems, and one that threatens to become more conflictive in the future but simultaneously less effective.

Portents. At this point in history, amidst abrupt economic changes and the sharp vicissitudes of politics, the daily life of the average Nicaraguan has become fragile in the extreme. The economic data that most eloquently support this statement are wages—the US\$75 a month made by a primary schoolteacher and the US\$100 earned by a recently graduated medical doctor working in a public hospital or the young woman who expends her energy in the exhausting work of a *maquila* garment factory. These figures are far lower than in any of the neighbouring countries and place Nicaragua squarely in the world of severe underdevelopment.

Similarly troubling information, derived from creditworthy sources, is available regarding the state of the spirit this fragility engenders. According to the latest UNDP Human Develop-

ment Report on Nicaragua (2002), almost two thirds of Nicaraguans (64%) feel that the setting in which they live their lives is basically unpredictable. Three-quarters (76%) mention that it is sheer luck, rather than their own efforts, that determines success or failure in life.²⁴ In the opinion of analysts, these perceptions hinder many people from adequately planning their futures or assuming a greater share of control over their lives. Such data also suggest a high level of personal precariousness, typical of countries in which the social fabric has been badly rent, that casts doubt upon the officially accepted figure of 45.8% as the most appropriate indicator of the percentage of people living in poverty in Nicaragua.²⁵

This precariousness is also evident in the situation of Nicaragua's young people, for whom the need to create opportunities is extremely urgent. According to the most recent World Bank poverty analysis, *a full 25% of Nicaraguan youth between the ages of 15 and 24 years living in urban areas neither work nor study.*²⁶ Taking into account that population growth continues at approximately 2.4% annually (which again places Nicaragua close to the LDC average), the country will clearly be harboring for a long time to come a large "youth bulge," whose despair will only serve to increase the drug consumption and juvenile delinquency that have flourished of late.²⁷ Indeed, unofficial information on the growth of juvenile and organized crime suggest that in the medium and long term (five to ten years), Nicaragua may face serious problems of public order if its rate of economic change and social development fails to accelerate.²⁸

However, the most disturbing fact of all is that according to a survey held by the Central American University (UCA), *57% of Nicaraguans said that they would have preferred to be born in a country other than Nicaragua.*²⁹ This pathetic figure reveals a dangerous weakening if not of a sense of national belonging, at least of a sense of re-

sponsibility toward their country, a cultural deterioration that it may be supposed is derived from the violent vicissitudes of the past few decades of its history. It must be stressed that this survey took place among Nicaraguans living in the country, and therefore does not include the hundreds of thousands of citizens who have emigrated to the United States, Costa Rica and elsewhere.

The chilling sum of these weaknesses has a profound political implication—the exercise of full democratic citizenship is a concept foreign to most Nicaraguans. The aftermath of the vicissitudes just mentioned is a society of "spectator citizens" who attentively but impotently watch the course taken by ever more frightful social and political developments. Obviously, this behavior does not exempt them from responsibility, as every few years a large majority votes in favor of the two sterile political alternatives that are responsible for the way things now stand.

IN SUMMATION

The end of the Nicaraguan revolution came shortly after the fall of the Berlin wall and coincided in time—the year 1990—with the upswing of the modern era of globalization. From that moment onward, the country has tried to come to grips with the challenges that the globalization process poses. It does so, however, dangerously lacking a true national state capable of managing both the "neo-liberal" economic policies and the modern liberal democracy demanded by the international system. During these past fourteen years, a fatal lack of political consensus has hampered and continues to hamper the efforts underway to create such a state, to such an extreme that outbursts of behavior have occurred that verge on the depredation characteristic of failed states. The most lasting results have been sickly economic progress, chronic social crisis, and now the spectre of a wave of citizen insecurity, which accompanies the drug-traffickers'

march across the national territory from the Atlantic.

In an effort to summarize the outcome of these different processes, former vice-president Virgilio Godoy once coined a mordant and lapidary phrase, stating that “Nicaragua is becoming just a place.” His words incisively sum up how fragile the unity of a nation has become that has failed to organize and confront the globalization that envelops it. Although this situa-

tion is not fundamentally different from that facing many other countries, what is different in Nicaragua is the danger a returning to a clash of systems in which a weak social fabric, rewoven after the disasters of the past, may again be rent asunder.

To understand how this might be possible requires a brief review of recent history, which will help to understand how Nicaragua has reached its present political impasse.

A TOUR OF THE TRANSITION

The 25th anniversary of the Sandinista Popular Revolution passed recently, offering a time to reflect on its legacy and in particular its contribution to the development of democracy. The FSLN’s claim to have fathered this form of government by voluntarily relinquishing power after the 1990 election has always rung hollow. But the revolutionary experience did bequeath a better-educated populace more conscious of its rights, a competent and professional electoral body, and an adaptable constitution whose philosophical underpinnings were essentially liberal rather than socialist. After February 25, 1990, when the Sandinistas unexpectedly found they had been defeated by Violeta Chamorro, these slender threads were strong enough to help effect a peaceful turnover of governmental power.³⁰

Since then, however, Nicaragua’s unique political vicissitudes have confounded hopes that the peaceful, electoral end of a socializing revolution would initiate a long-term consolidation of the multiple facets of democratic rule. Though Nicaragua has since held two presidential elections, it is abundantly clear that much of the remaining agenda of full democratization is now at best stagnant and at worst in retreat.

At a superficial level, why democratic consolidation has made relatively little progress in Nicaragua is simply explained. As successive elections have shown, the basic divide in Nicaraguan politics is not that between democrats and authoritarians. The post-revolutionary era’s enduring cleavage has instead been between Sandinistas and anti-Sandinistas, forces that long ago congealed into competing authoritarian projects led by caudillos who wish to turn the clock of history backward, albeit to different epochs. In the middle, those sincerely pushing to consolidate democratic institutions and forge a political culture appropriate to supporting them have been few and have so far proven incapable of organizing popular support for their efforts.

Why this has occurred goes to the heart of what makes Nicaragua different from the rest of the world and gives the country the capacity to surprise others with the unexpected twists and turns of its politics. As the histories of Mexico and Bolivia in the 20th century attest, social revolutions in Latin America have not helped to spawn liberal democracies (except perhaps in extremely long time frames). The 11-year Sandinista revolution (1979-1990) in Nicaragua, a genuine social and economic convulsion which

had to fight against a US-financed counterrevolutionary war, is not an exception to the pattern. It was peculiar, however, in the manner of its conclusion, or rather its lack of a firm conclusion.

A TRUNCATED REVOLUTION

The United States having proved unable to push them out of power using a proxy militarily force, Daniel Ortega and a part of the still youthful Sandinista leadership refused to believe that their revolution was over and done with. For nearly 15 years, Ortega has quietly nurtured a belief that the revolution can come back the same way it went out, i.e., through an election. Viewed comparatively, this would seem a vain striving—in Eastern Europe, no former Communist president has made a comeback through the ballot box. But the FSLN's ability to secure 40% of the vote in each new election since 1990—without changing its name, leader or ideological fundamentals—suggests that the Sandinistas might be an exception to world rules. Seen in this light, Violeta Chamorro's rout of the FSLN may not have been the decisive historical event that some people thought.

In the early 1990s, Ortega nurtured his belief in a possible revolutionary resurgence in a de facto situation of dual power, something that also distinguished the aftermath of socialism in Nicaragua from that in Eastern Europe.³¹ Not only did the FSLN briefly retain control over the forces of order—a revolutionary army and police which have since become icons of the Sandinista legacy—but exercised blocking power in the National Assembly (legislature) and enjoyed major influence in the court system, the unions and media. Amidst the battles of the early post-revolution years, these power resources permitted Daniel Ortega to exert pressure (even “govern,” he once insisted) from below and negotiate with the Chamorro government above, blunting the thrust of the counterrevolution,

which inevitably waits in the wings of every revolution that fails.

The new government succeeded in pushing a return to a market economy, beginning a “structural adjustment” that has since seemed to go on interminably. But using pressure in the streets, Ortega forced it to compromise on the issue of returning confiscated properties, which was handled through a series of “concertations” assisted by high-level negotiations behind the scenes (*arreglos cupulares*). De facto, these dealings left many properties in the hands of Ortega's supporters in the party though they made little headway in sorting out the legality of the titles they possessed.

Such backroom bargaining, though undemocratic and sorely lacking in transparency became one of several keys to Nicaragua's fragile post-war stability. Another was US pressure on the Chamorro government to curb Sandinista party control of the army and police; by 1995, such pressure had helped oust the chiefs of both institutions, eroding the situation of dual power and stabilizing Mrs. Chamorro's position.³² This helped to provide a minimum of order for capitalism to function anew, but spelled tactical defeat for Ortega, depriving him of key power resources for which he would later seek compensation in other arenas.

The democratically-elected government nevertheless spent its first three years balanced on the knife edge of failure, facing opposition both from the Sandinistas and from two forces unhappy with Mrs. Chamorro's compromising with Ortega—politicians of the 14-party United Nicaraguan Opposition (UNO) coalition that had brought her to office, and rearmed peasants (“recontras”) of the Nicaraguan Resistance. An assist from rearmed Sandinistas (called “recompas”) helped Mrs. Chamorro fight off the latter's periodic rebellions.³³ But in retrospect, it is clear that the Chamorro government's forced transactions sparked general popular dissatisfac-

tion. Using unabashedly anti-Sandinista rhetoric, Managua's Liberal mayor Arnoldo Alemán adroitly captured this sentiment and turned it to his advantage. By 1994, when the Liberal Constitutionalist Party triumphed in Atlantic Coast regional elections, Alemán was the rising star of Nicaraguan politics.

THE TRANSITION

Despite this inauspicious beginning, liberal democracy managed to make some progress under Mrs. Chamorro's maternal gaze, if not always with her blessing. The progress accelerated after serial crises in 1993, which included mutual kidnappings of FSLN and UNO party leaders and brought the country to the brink of serious disorder. The "democratic transition" then arrived to resolve the country's impasse. In late 1993, the major legislative camps (UNO and FSLN) each underwent a split, leading to the emergence of a moderate cross-party majority favoring reform of the 1987 Sandinista constitution as the way of bringing political peace.³⁴ When their efforts finally bore fruit in constitutional changes approved in 1995, the regime change some observers thought they had discerned in 1990 finally took place.

The important changes included a rebalancing of the powers of state, which served to curb the prerogatives of an overweening presidency. The National Assembly not only gained the rights to approve tax legislation and international economic agreements, but also to suggest and vote on choices for magistrates of the Supreme Court and other bodies of state, theoretically bolstering their independence. Complementing this overhaul was a prohibition on immediate re-election of the president and separation of the municipal elections from national voting. Finally, the army, already separated *de facto* from the FSLN, was suitably nationalized, becoming simply the "Army of Nicaragua."

The reformers' final salvo was a set of changes, some of them unfortunate, to the elections law in January 1996.³⁵ With this reform, the scaffolding of liberal democracy bequeathed by the revolutionary constitution had been put on a sounder footing. No sooner did this occur, however, than the coalition of wills powering reform dispersed in the face of each player's need to seek relegitimation in the 1996 elections, and the transition came to an unnoticed close. The changes nevertheless furnished Nicaragua with an increment of political stability and nourished hopes, soon to prove illusory, that the consolidation of democratic institutions would ensue as a natural consequence.

Regress Sets In. Unfortunately for this scenario, Arnoldo Alemán (with 51% of the vote) and Daniel Ortega (with 38%) dominated the 1996 elections, crowding the reformers, who had splintered into a myriad of small parties, off the political stage. At six years from an inconclusive revolution, a majority of Nicaraguan voters embraced Alemán's truculent ranting against the still-powerful Sandinistas, confirming that the cleavage that had expressed itself in the 1990 balloting was still very deep. Their decision left the ongoing fate of democracy squarely in the hands of two people without any fundamental commitment to that form of government.

Once installed in power, Arnoldo Alemán, already stained by corruption accusations during his stint as mayor, allowed his authoritarian instincts free reign. A master at clientelistic politics, Alemán exercised iron control both of his Liberal Constitutionalist Party and of the national government, brooking no internal opposition to his dictates in either arena.³⁶ As time went by, his methods of governing ran up against the limits of what could be considered tolerable in a democracy—Alemán threatened the press, extracted tithes from public employees, and brought businessmen to heel with arbitrary tax

audits.³⁷ He also began the quest for personal enrichment and economic empire that has led him to be catalogued as one of the ten most corrupt world leaders of recent times.³⁸

Midway into his five-year reign (1997-2002), Alemán's behavior had begun to call up uncomfortable comparisons to the Somozas and spark questions about where the "transition" was leading. While Alemán blithely ignored the multitude of corruption accusations flung by Comptroller General Agustín Jarquín, a docile court system declined to take action against him. Matching the Liberal president's caudillistic style was his striving for long-term hegemony—he averred that his PLC would rule for the next forty years. What democracy would look like at the end of that reign no one could quite imagine.

Alemán's hair-raising aspiration posed a serious problem above all for Daniel Ortega. Facing an aggressive adversary, Ortega initially did what he had done to Violeta, challenging Alemán in April 1997 to a duel in the form of a widespread rural protest that was inconspicuously armed. Though the military pledged its loyalty, the Liberal president was unwilling to risk quelling the revolt by force and capitulated. His acceptance of defeat meant abandoning the pretension to take back the Sandinistas' illicitly acquired properties and opened the door to new negotiations that left the status quo, including the legal limbo in which many properties stood, intact.

TOWARD THE 2000 PACT

Along with this re-equilibration of forces, Alemán's excesses paved the way for the next unexpected twist in Nicaragua's tortuous political course. As the leader eyed the eventual end of his five-year term, he recognized a need to provide himself impunity for his misdeeds. This lent him incentive to extend his clientelistic tentacles into other branches of state, where placing party stalwarts in key positions could pro-

tect him from pesky accusations of wrongdoing. His need of Ortega's collaboration to do this gave the Sandinista leader an opportunity to fortify his own base of power, which was then in decline

A shared interest in impunity between the maximum leaders of Nicaraguan politics became the driving force behind a momentous event known as the Liberal-Sandinista pact (called simply "el pacto" by most Nicaraguans), which was sealed in January 2000 through a series of reforms to the constitution and other laws. After expanding the Supreme Court of Justice (CSJ), the Supreme Electoral Council (CSE) and the office of the Comptroller General of the Republic (CGR), the pacting caudillos proceeded to divide up the key positions in each arena according to their respective political weights. As this report will later detail, this deal created a corrupt "bipartisan" administration which dominated each of these institutions and denatured its role—from the very outset the five new Comptrollers proved their worth by covering for Alemán cronies, and when that was not enough the politicized court system let them off the hook.³⁹

In addition to jointly colonizing institutions, the two leaders decidedly to radically truncate the framework for political competition, creating Law 331, the most restrictive election law in Latin America. This law introduced draconian requirements for party registration and maintenance and politicized the operation of the Supreme Electoral Council at all levels. While Alemán bet these arrangements would guarantee his supremacy indefinitely, Ortega believed the new rules would force fractious small parties to fuse into a single bloc and split the anti-Sandinista vote, helping the FSLN to triumph with a minority 40% vote share.

By the end of Alemán's term, democracy's horizon appeared ever more clouded. With corruption rampant, foreign donors dismayed by

the pact largely withdrew their assistance from the pacted institutions, preferring to invest in the development of municipal government where hopes for democratic progress could be kept alive. Municipal elections in November 2000, the first to be held independently, offered some encouragement as the Conservative Party emerged with 13% of the vote, briefly breaking the Liberal-Sandinista stranglehold over the electorate.

Who will Control the Pact? The pact met with overwhelming public disapproval and was quickly judged as a threat to democracy. At the beginning, however, no one seems to have anticipated how conflictive the pacters' administration of their agreement would become.

Early evidence that the pact was not an easy division of spoils between two *mafiosos* came in August 2000. In that month, Alemán deliberately touched off a run against the Sandinista-controlled Interbank, and in November Ortega replied torpedoing the Banco Nicaragüense, in which Alemán cronies held a large stake. Both banks eventually failed, an outcome that left the contending leaders apparently unfazed.⁴⁰ The 2001 election became a second occasion for conflict when pact representatives—vested as magistrates of the Supreme Electoral Council (CSE)—fought indecorously over control of the apparatus and barely brought the voting to a peaceful conclusion on November 4th.⁴¹ These episodes suggested that the marriage of convenience between the Liberal and Sandinista leaders might not be lasting.

Instability notwithstanding, Alemán initially appeared to be turning the pact to his advantage. Once his term had concluded, having elected a handpicked successor and reinvented himself as president of the National Assembly, the Liberal caudillo was riding high. By contrast, Ortega's ambition to see a third force divide the anti-Sandinista vote to his benefit had been bitterly frustrated. Then, in an irony of history,

Alemán's miscalculation in the choice of Enrique Bolaños as his successor gave the Sandinista leader a chance to turn the tables.

The anti-Sandinista majority in the electorate asserted itself with undiminished vigor in November 2001, when the Liberal party candidate won an easy 56-42% victory over Ortega. Once in office, however, a supposedly docile president Bolaños showed unexpected mettle and began to pursue his benefactor on corruption charges in order to gain space with which to govern. His legal offensive against Alemán gave Ortega an opportunity to wield his party's influence in the court system to gain leverage over both his archrival and the new president. By September, 2002, judge Juana Méndez, one of the FSLN's judicial handmaidens, had levied indictments against Alemán for fraud and money laundering, and concocted a potential accusation against Bolaños for "election crimes" related to the financing of his 2001 campaign.

As this report later describes, the succeeding two years have witnessed Ortega relentlessly expand his quotas of power in Nicaragua's disjointed institutions, bringing other figures of Nicaraguan politics under his sway. The engineering of Alemán's deposition as National Assembly head in September 2002 became the starting point for a process of power accumulation that quickly encompassed the Supreme Court and the Supreme Electoral Council, eventually creating working majorities in both arenas for the FSLN. Success in these quests furthermore assisted Ortega in forging an accommodation with the Catholic Church, a once-bitter enemy which the Sandinista leader is keen to neutralize before the next election.

By mid-2004, Ortega's power-mongering had reversed the balance of forces in a pact in which the FSLN was originally the junior partner. Powerfully assisting this achievement has been Ortega's manhandling of the judicial case against Alemán, which since his arrest in December 2002

has seen the conditions of the former president's confinement wax and wane to pressure or induce him to negotiate. Both in the institutional arenas affected by the pact and others like the National Assembly, Ortega's complex maneuvering and Alemán's reactions to it have engendered further instability. But they have left the Sandinista leader poised to make his most serious bid since 1990 to recover power.

IS THE TRANSITION DEAD?

As the discussion above argues, Nicaragua's democratic transition was brief—an interlude of less than three years in which a temporary coalition of political wills without strong roots in society came together to propel positive political change. Once that coalition broke up, and the dominant forces reasserted themselves in legitimate elections, a regression set in whose effects have slowly become more pronounced and pernicious.

As is now patently obvious, Nicaragua's political institutions do not function as democratic theory suggests they should, and at times threaten

not to function at all. While a politicized judicial system hands down rulings that are ever more inexplicable, and a frustrated president ponders emergency measures to reverse their effects, the two caudillos dicker behind the scenes over the continuing division of the spoils in a corrupted system and even over whether they will let the president go on governing. While all this occurs "above", Nicaraguan society unfortunately looks on from below largely as a passive spectator.

This does not mean that all is lost. Democratic practices are gradually taking root at the local level, exerting pressure on the system above, and a weak civil society is slowly gathering strength. But at the national level, a strange pattern of accommodation and deadly wrangling between opposing strongmen has brought democratic consolidation to a halt. For it to start up again, the impasses they have created for themselves and for the country will somehow have to be overcome. To begin to understand how this might happen, some essential points about how Nicaragua's political system functions in the post-revolutionary era need to be taken into account.

SYSTEMSNAPSHOT

E lectoral democracy has now survived in Nicaragua for fourteen years or for twenty if one counts Daniel Ortega's election in 1984. In a hemisphere suffering a crisis of representation in which political parties are seen as largely discredited, Nicaragua moreover sports a stable party system, although one whose bipartisanship is artificial and often painful. Despite occasional harassment, freedom of the press and media also prevails.

With these features entrenched, the popular election of officeholders seems likely to continue in some fashion. But a consolidated liberal de-

mocracy requires that three other things develop alongside elections. The first is institutional limitation of the exercise of power, operating through the classic system of checks and balances as well as internal controls over the actions of officeholders. The second is subordination of all actors' behavior to a set of universalistic legal rules (the "rule of law"), protecting the rights of the citizenry from abuse. The third is citizen participation in the making of policy, through either individual petition or group pressure and lobbying. As this report will detail, at least certain checks and balances have begun to

run amok, potentially hindering effective government, while the rule of law often appears to be in chaos. Though it shows some promise, popular participation in policy-making is as yet weakly developed.

As in many third-wave countries, a bevy of international democracy promoters has tried mightily to fill in Nicaragua's institutional lacunae and help civil society learn to exert pressure and lobby. Soon after 1990, in fact, the country became a major world site for "institutional modeling." This process assumes that once pre-existing institutions are rearranged to fit a standard mold, their ongoing operation will habituate those working within them to democratic norms and practices, producing a political culture to support democracy in case one did not already exist.⁴²

In effect, the "transition paradigm" assumed that political elites would learn democracy by practicing it. This can only occur, however, if elites are interested in the apprenticeship. The Chamorro administration contained some sincere democrats (notable the president herself), but they were outweighed by opportunistic jobseekers and confiscated property owners demanding redress of grievances. Daniel Ortega Saavedra, leader of the FSLN, has consistently told the world that he is not a liberal democrat and means what he says. For his part, Arnaldo Alemán aspires to lifelong tropical satrapy, a way of managing public affairs that has had disastrous consequences for democracy all over the world.

In addition to the drives of the principal actors, the actual functioning of democracy in Nicaragua reflects the underlying political culture and the extant institutional rules. A brief examination of these topics sheds light on how caudillistic politicians exert their power in Nicaraguan politics, but also reveals certain counterweights to their power as well as the emergence of promising countervailing tendencies.

POLITICAL CULTURE

Nicaraguan political culture on balance supports but accords declining legitimacy to the clientelistic exercise of power by elites, whose political attitudes may differ significantly from those of the mass of the population.

Political culture in Nicaragua was shaped first by the typical Latin American colonial experience, whose innate patrimonialism left behind disrespect for the law and a penchant for treating public office like private property.⁴³ An independent history marked by civil strife and periodic foreign intervention reinforced a tendency to strongman rule (*caudillismo*), which found expression in long periods of Liberal dictatorship, first under José Santos Zelaya (1893-1909) and then the Somozas (1936-1979).⁴⁴ An exception to this pattern was the Conservative Republic (1858-1893), a period of stable oligarchic democracy that stands out as an oasis of peace and considerable material progress.⁴⁵

Given this history, traditional readings of political culture tend to characterize Nicaraguan elites as authoritarian (caudillistic) and personalist-clientelist, with behavior strongly rooted in a familistic matrix of values.⁴⁶ Caudillistic rulers exert iron control over their respective forces, rewarding the unconditional loyalty of subaltern leaders by allowing them to breach the law to their own benefit. Along with this basic pattern, it is argued, goes scant respect in the dominant elites for democratic norms, a zero-sum view of politics and permissive attitude toward the use of violence to achieve political ends. Such political proclivities in the elites help little to consolidate democracy and do a great deal to foment corruption.

Analysts who have examined post-1990 patterns argue, however, that mass political culture differs from the elite pattern. The ordinary citizen thus displays overall support for democratic rules, shows a basic tolerance for the rights of others, and disapproves of violence as a means

to influence political outcomes.⁴⁷ Nicaraguans' strong support of democracy-in-the-abstract obviously reflects the experience of having lived sequentially under two systems that contradicted this norm in different ways. Mass political culture has also probably ceased to be a culture in which clientelism and corruption are generally accepted as norms, although in practice there is a great deal of acquiescence to both. The gradual impact of urbanization and secularization, it is argued, helps explain this change away from traditional patterns.⁴⁸

The latter findings, though encouraging, are qualified by Nicaraguans' low feelings of political efficacy. Ordinary people strongly disapprove of the way in which most political institutions function but feel they can do little to correct things. Nicaraguans exhibit one of the highest rates of voter turnout in Latin America, but their non-electoral participation in politics is quite low and limited mostly to local-level petitioning and assemblies.⁴⁹ Still sizable illiteracy, an extremely high level of interpersonal distrust, and a strong post-revolutionary disillusionment with politics all contribute to this passivity. People once famous for their political combativity, Nicaraguans today are inordinately difficult to mobilize for purposes of political protest.

INSTITUTIONAL FLAWS

In the absence of strong commitment to democratic norms among elites, the best-designed system of institutions cannot guarantee the functioning of democracy. In Nicaragua, political-cultural proclivities interact with key institutional arrangements to perpetuate the clientelistic exercise of power by the dominant power-holders. Other arrangements, however, place some bounds on arbitrary power-wielding by the same actors, assuring a minimum of stability. A third set inhibits, but does not altogether prevent, the growth of popular participation at sites where that participation is vital to consolidating a democratic political culture.

Poor Representation for the Voters. The most serious institutional failing of Nicaraguan democracy is the use of a restrictive variety of proportional representation in the election of legislative deputies. In a system that has been in place since the days of Zelaya, Nicaraguans vote in the departments where they reside not for individual lawmakers but for closed lists of deputies who have been chosen by party leaders and not by the populace.⁵⁰ Such legislators are and feel beholden to the party caudillos rather than to the voters, with whom they cultivate only sporadic ties. Although this setup produces exemplary party discipline in the Assembly, where the deputies mostly do their leaders' bidding, it generates only the most rudimentary sort of accountability to the public.⁵¹ National political leaders also choose most local mayoral candidates undemocratically, though a countertrend to this practice has begun to make itself felt.

Law 331, the Electoral Law as reformed by the pact, limited the prospects for effective representation even further. The reform imposed draconian requirements for the registration of political parties and candidates as well as the formation of alliances in elections. Though some of its provisions were struck down in November 2002 by the Supreme Court, most are still on the books, impeding the creation of new groupings and easing the way for the Council to disband those that fail to win a 4% vote share at each election. In addition, the reform outlawed independent, non-partisan ("popular subscription") candidacies for mayor, a device which had briefly offered an alternative to big-party dominance of local politics.

Clientelistic Colonizing of the Powers. The 1995 constitutional amendments divided power among the principal branches of government in Nicaragua in reasonably balanced fashion. To ensure adequate equilibrium, the reforms granted the National Assembly the right to propose the top-level personnel of state bodies such the Su-

preme Electoral Council, the Supreme Court of Justice, and the Comptroller General, although this power is shared with the president and civil society is to be consulted. Those promoting the reforms took advantage of the opening to place supporters in these institutions in 1995 and 1996, with a mixture of positive and negative results. But when the Liberal-Sandinista pact materialized in 2000, the new constitutional rules permitted leaders of the PLC and FSLN to place party stalwarts willing to do their bidding in these same settings. In this way, the pact colonized and further politicized the three institutions mentioned above, later affecting the Public Ministry (attorney general) and the Office of the Human Rights Procurator (ombudsman) as well.

In addition to vitiating the institutions themselves, the operation of the pact has more recently begun to alter the boundaries between them in disturbing ways. One tendency is for the legislative branch to cannibalize the executive, transferring parts of the central government to the “pacted” sector. In June 2004, the PLC and FSLN thus announced they would fuse Nicaragua’s public utilities regulatory agencies into an omnibus superintendency whose directors would be named by the National Assembly rather than by the president.⁵² They were soon signaling that they would strip control of the social security administration from the executive as well. A second tendency has seen the judicial branch invade the sphere of the legislature. In a move denounced by some as “judicial dictatorship,” the Supreme Court ruled in May 2004 that parties may seek injunctions (*amparos*) against draft laws that are in the process of formation in the Assembly. As the court typically takes months or even years to process one *amparo*, this invitation to obstruction could potentially paralyze the legislative process.⁵³

Independent Forces of Order. In contrast to other institutions, Nicaragua’s military and police forces, both products of the revolutionary

era, have resisted co-optation by either of the two caudillos, but control by the central government as well. Under Gen. Humberto Ortega, the Sandinista Army began to evolve away from party control even before the revolution’s end, and the process was complete by the time Gen. Joaquín Cuadra took over the reigns in 1995.⁵⁴ When Alemán attempted to float his own candidate as Cuadra’s successor in 2000, the institution sharply rebuffed his interference.⁵⁵ The legal underpinning for this independence, a Military Code passed in 1994, requires that civilian presidents name successive army commanders from a list of candidates proposed by a 52-member assemblage of top-ranking officers known as the Military Council.

In light of how Ortega and Alemán have ruled in the past, and might rule again, many Nicaraguans regard the military’s independence from civilian control as a necessary evil at the current stage in the country’s incipient democracy.⁵⁶ The last two army leaders have hewn closely to this sentiment, posing as guarantors of the constitution while steadfastly refusing to be drawn into the squabbles of the politicians. A drawback to this state of affairs is that the army largely runs the country’s foreign military policy on its own. Not only has this allegedly fomented corruption, but also the civilian government has proven powerless to intervene in cases such as a bogus arms deal to Panama in 2002 in which the military was under suspicion for participating in illicit trafficking.⁵⁷

The National Police enjoys less solid legal backing for its de facto autonomy, and Alemán successfully placed current police chief Edwin Cordero in his post in 2001. Though more effective than other Central American police forces in controlling ordinary crime, the institution has clung to a self-image as a non-repressive revolutionary force as a way of resisting executive demands to impose order over violent protests such as the perennial “battle of the 6%.”⁵⁸ The

Bolaños government's unwillingness to test the limits of this resistance has undermined its authority and has inhibited reforms that are urgently needed to clamp down on what is believed to be significant police complicity in drug trafficking.

Excessive Centralization. Nicaragua's constitution and laws provide autonomy both for the municipalities and the regions of the Atlantic Coast. In principle, these dispositions open space for local-level participation in politics, a trend which foreign donors have been keen to encourage as a counterweight to the power of the caudillos. However, under the last four presidential administrations (including that of Daniel Ortega from 1984-1990), effective autonomy has been held back by the unwillingness of the central government to provide financially strapped subnational governments with needed resources.

Approved in 1987, an Autonomy Statute allows the Atlantic Coast, which contains about 12% of the country's population, wide discretion in the management of its own affairs. But as the governments in Managua have been silently hostile to this autonomy, they have typically used central budget support as a lever to exert *de facto* control over the regional authorities while dragging their feet on proposals to draft specifying regulations for the Statute. Numerous gray areas in which the division of powers and responsibilities between the central and regional governments, and between the latter and the Coast municipalities, long remained unclear have seriously hindered the development of Coast institutions.⁵⁹ Regulations for the Statute finally passed the National Assembly in July 2003, but only because the dominant parties wished to embarrass the Bolaños government, which was unable to block them and which has since let them lie.

Passed in 1988, a basic municipalities law (Law 40) similarly furnished the central government with *de facto* powers to curb municipal-level

spending. The 1995 amendments to the constitution removed these shackles and mandated the direct election of mayors, who had previously been selected by the municipal councils.⁶⁰ But it was only in the late 1990s that local governments began to receive meager dispensations from the national budget. And it was only in 2003 that the Bolaños administration finally promoted a law providing for a staggered transfer of up to 10% of the national budget to the municipalities.

Despite this obstruction, regional and municipal government in Nicaragua is undergoing a number of positive changes. Intent on forging decentralization, foreign cooperation has slowly helped to strengthen subnational units by building local planning and management capacities, fomenting greater transparency, and involving communities in the identification of investment priorities.⁶¹ These gains will likely intensify with the coming decentralization of budgetary resources and responsibilities, coupled with efforts to spur greater citizen participation. In addition, the holding of separate municipal elections beginning in 2000 has set in motion a positive dynamic that promotes a certain degree of independence from national party dictates on the part of local political actors, who must recruit notable candidates to run in elections without benefit of their leaders' coattails.⁶²

SYSTEM PERFORMANCE IN NUMBERS

The foregoing suggests that Nicaraguan democracy suffers from restrictive electoral rules, the clientelistic distortion of institutional checks and balances, insufficient control over the forces of order, and an excessive centralism that constrains the development of popular participation. It is useful to ask how the performance of this system stacks up in comparison with other countries in Latin America and other world areas.

Among the international institutions, the World Bank has argued most forcefully that "gov-

ernance matters” for the economic development of nations.⁶³ The Bank has marshaled evidence to suggest that positive increments on the six governance dimensions listed in the table below produce massive rewards in terms of sustained economic progress. To generate its data, it has developed an elaborate method for surveying governance and applied it to 175 countries, including Nicaragua.

Nicaragua does not come out well in the comparison. Measured over the period 1996-2002, which spanned three presidential administrations, its ratings on all dimensions except stability fell well below Latin American and Caribbean averages, to say nothing of developed country standards. More worrisome, on key variables such as governmental effectiveness, the rule of law and corruption control, it mimicked the values scored by the countries of Sub-Saharan Africa. It is noteworthy that ratings for the rule of law and corruption control both fell significantly during the Alemán years (1998 and 2000), then rebounded under Bolaños (2002). More significantly, even after this rebound Nicaragua has a long way to go in key areas to match the not very robust averages of a region, Latin America, whose deficits in democratic performance in comparison with more developed world areas are well known.

System Support as Measured in Surveys. If after fourteen years the democratic system functions this badly, how much support do Nicaraguans accord it? The most recent *Latinobarómetro* survey found opinions on this score to be virtually schizophrenic.⁶⁵ Asked in mid-2004 to respond to the assertion “democracy may have its faults, but is better than any other system,” 70%

	1996	1998	2000	2002	LA Avege.	African Avege
Voice and accountability	43.5	54.5	48.2	52.0	60.5	33.0
Political stability	23.2	40.0	52.7	47.6	51.3	38.8
Effective government	34.1	27.3	25.0	17.5	49.8	31.5
Regulatory quality	36.5	64.1	61.1	39.7	60.0	32.8
Rule of law	25.9	20.0	15.7	32.0	50.3	32.5
Corruption control	52.7	25.7	17.4	39.7	50.8	32.5

of Nicaraguans polled replied in the affirmative. However, over the years the same survey has also asked whether Nicaraguans agree that “democracy is preferable to any another form of government,” obtaining the following fluctuating percentages in their answers:

1996	1997	1998	2000	2001	2002	2003	2004
59	68	72	64	43	63	51	39

The table indicates strongly that Nicaraguans’ faith in democracy is at some level significantly influenced by the immediate vicissitudes of politics. This is not surprising in a fledgling democracy. But the sharp downward trend—59% to 39% in eight years, registered across sizable fluctuations—is highly disturbing, and is the largest such percentage change found in the 18 countries surveyed. When pollsters ask about military or authoritarian alternatives to democracy, responses are similarly incongruous. In another common finding, 70% of Nicaraguans staunchly insist they would never support a military government. But the very same percentage, 70%, indicates that they would acquiesce to such a regime if it managed to resolve their economic problems.

All in all, these findings suggest that support for the democratic system in Nicaragua is significantly more precarious than it at first appears. Democracy doubtless has a reserve of support rooted in historical memories of privation and

abuse under prior regimes. But social and economic vulnerabilities, experienced by a large majority of the people, appear to be attenuating system support.⁶⁶

Confidence in Particular Institutions. Pollsters have long queried Nicaraguans as well about their faith in an array of institutions. A recent and typical ranking is that in the table below. It shows that Nicaraguans express highest confidence in their churches, a noteworthy fact in view of the distinct politicization of the Catholic hierarchy in recent decades. The news media have likewise earned strong backing for their role in denouncing corruption as well as in exposing social and human rights abuses. Though more tepid, confidence in the military is basically positive and probably owes to the army leadership's capacity to avoid the appearance of overt interference in the political affairs of the country.

	None	Little	Some	A lot
Church	16.0	10.3	22.6	51.1
Media	18.1	12.8	31.7	37.5
Army	33.8	15.8	31.8	18.6
Mayor	41.5	17.9	29.1	11.5
CSE	47.9	18.0	29.1	5.0
Judiciary	54.7	17.2	23.3	4.8
Central govt	56.5	17.3	22.7	3.4
Parties	70.4	12.6	13.7	3.3
Assembly	63.4	15.2	18.9	2.5

The most telling result of the survey, as in others done in recent years, is the very low confidence expressed in institutions targeted by the Liberal-Sandinista pact, in particular the judiciary and the elections council. Faring even worse are the political parties and the National Assembly, for which popular opprobrium is by now almost universal. Although a solid basis of statistical comparison is lacking, the operation of the pact has arguably undermined public confidence in

the very actors that promoted it and the institutions it has distorted.

IS DEMOCRACY FLOUNDERING?

The preceding review indicates that democracy in Nicaragua has relatively weak roots and foundations. In addition to the motivating force of entrenched poverty and its concomitant—public office seeking for purposes of personal enrichment—the cultural base of a traditional Latin American society still provides significant support for old-fashioned political clientele-building. Flaws in the way the system is designed help clientelistic power seeking to spread, albeit not without limit. Add in the inherited fragmentation in institutions and the system both functions badly in promoting economic progress, social justice and human rights, and seen to function badly by the citizenry.

In a system in gestation for only a little more than two decades, these facts are not surprising. What is worrisome is the trend—which has been for both system support and democratic tolerance to erode since the advent of the 2000 Liberal-Sandinista pact.⁶⁸ The political attitudes of the 1990s youth generation reinforce this concern.⁶⁹ In principle, young people espouse support for the democratic system and values, and are politically aware but non-participant. Socially conservative and committed to traditional religious values, they are strongly concerned with their own material welfare and yearn for political and social order but find none. As a result, they reject existing political leadership as corrupt, and believe democracy in Nicaragua does not work.

The government currently in office in Nicaragua has wanted to change such attitudes by promoting reform and demonstrating that democracy does work. Why it has so far been unable to do so stems mostly from political roadblocks mounted by the caudillos, but in part also from its own limitations.

THE BOLAÑOS GOVERNMENT

In his first message to the nation after winning election in November 2001, Enrique Bolaños essayed his designs on Nicaragua's political institutions and culture. "I am firmly committed," he stated, "to promoting a profound modernization of the judicial power, the electoral branch and the Comptrollers to make them more democratic, more participatory and more professional, as part of this new era."⁷⁰ Although his slogan during the campaign had been "employment and more employment," Bolaños revealed a conviction that institutional reform was a vital prerequisite to Nicaragua's development and an ambition, theretofore muted, to be a political reformer.

In his three years in office he has demonstrated the sincerity of his commitment to this transformation in the midst of making important contributions to the future economic development of the country. Progress in achieving the political reform agenda has nevertheless been disappointingly slight. For the most part, as will be detailed later, this has been due to powerful objective constraints. However, Bolaños's weaknesses as a political leader have prevented him from building a broad base of public support for the reforms he wishes to effect, leaving him a prisoner to the caudillos' machinations.

As events in 2004 attest, this weakness has reached the point of imperiling his presidency and the executive branch of government. It has furthermore produced such frustration that the president has at times found himself tempted to take authoritarian measures to escape from his impasses. Equally significant, it has hindered the development of a political party alternative necessary to provide continuity for the administration's achievements after it leaves office in early 2007. None of this bodes well for Nicaragua's future.

Understanding the achievements and shortcomings of the Bolaños administration is an important prelude to examining how the politics of reform have played out since the beginning of 2002. Both depend in significant measure on the character of Nicaragua's president.

Who is Enrique Bolaños? In pre-1979 Nicaragua, Enrique Bolaños Geyer was a prominent business figure, owner of an agroindustrial complex, which produced, processed and marketed cotton. As president of the Higher Council of Private Enterprise (COSEP) during much of the 1980s, Bolaños gained international media fame as the Sandinista revolution's most sulphuric private sector adversary.⁷¹ When they needed land to pacify peasants in his home department of Masaya, the Sandinistas confiscated Bolaños's holdings in 1985 but did not dent his opposition to their regime. In 1989, an opportunity to vie for power in elections presented itself and Bolaños put his name forward as a pre-candidate of the National Opposition Union (UNO) for president, only to see that aspiration thwarted when the US threw its support to Violeta Barrios de Chamorro.

Bereft of properties and position, Bolaños sat out the Chamorro administration politically, limiting himself to partially successful efforts to obtain compensation for his lost patrimony, which he valued at some \$10m. Though others in his family played politics on the Conservative team, Bolaños joined forces with Arnaldo Alemán as vice-presidential candidate of the Liberal Alliance in 1996. In office, he regularly defended his chief's probity but remained personally aloof from the corruption that permeated the administration. In addition to overseeing a tame National Integrity Commission, Bolaños worked on initiatives to modernize the public administration, promote science and technology

policy, and develop wider citizen participation in government.

His nomination as the PLC's presidential candidate in the 2001 national race owed everything to his not being a Liberal by birthright. Barred from succeeding himself, Arnaldo Alemán needed a seat warmer in his office in Casa Presidencial until he could reclaim the throne in 2006. After certain business backers vetoed his first choice, he turned to Enrique Bolaños as what he thought would be a potable yet pliant substitute. Bolaños's advantage in the selection was his complete lack of a Liberal political base, which meant that as president he would be unable to challenge the caudillo for control of the party.⁷² Alemán then engineered a victory for Bolaños in the PLC's 2001 nominating convention over rival aspirant Eduardo Montealegre.

TO BE OR NOT TO BE PRESIDENT

A year later, just after Bolaños had installed himself in his purple-trimmed oval office in January 2002, Alemán engineered another election, elevating himself to the post of president of the National Assembly. Enjoying unconditional back from an initial cohort of 53 PLC lawmakers, Alemán clearly betrayed an intention to go on being both kingmaker and king. Noting that he had kept silent over the many troubling accusations of wrongdoing lodged against Alemán while in power, many predicted that Bolaños would not have the resolve to stand up to the hard-driving, ebullient and ruthless former president and actually be the leader of the country.

Their mistake was in large part a misreading of Bolaños's character, whose antinomies have for better and for worse shaped the course of his administration. Austere and responsible where Alemán was wasteful and slipshod, Bolaños has unexpectedly proved a painfully slow decision-maker and has exhibited difficulty in efficiently managing his executive team. Politically inexperienced himself, he has recruited a

shifting coterie of political advisors whom outside observers regard a hopelessly inept and who have led their president from mistake to mistake. But he has fulfilled the expectations of those who knew him as an entrepreneurial opponent of revolution by stubbornly insisting on his right to govern.

This stubbornness has an uncomfortable corollary. A rigidly principled individual, Enrique Bolaños has staked out an uncompromising opposition to traditional caudillism but has yet to develop an alternative style of effective leadership. He is famously loath to engage in the lobbying that normally accompanies the exercise of presidential power in a democracy, and often gives the impression it is enough simply to point the right way forward to get other people to follow it. Now in his mid-70s, and without further political ambitions in life, neither is he the man to call on Nicaraguans to do battle with the caudillos in the streets.

In sum, many Nicaraguans think Don Enrique, as he is called, is simply not a political leader, and some already view him as a caretaker halfway through his administration. The Bolaños government nevertheless has substantial achievements to its credit, particularly in the realm of economic policy. In 2002, it stabilized the nation's finances, gutted during Alemán's final year, and successfully negotiated support from the IMF for a new three-year Poverty Reduction and Growth Facility (PRGF). Over the course of 2003, it put in place the remaining preconditions for a massive pardon of Nicaragua's \$6.4bn foreign debt under the Highly Indebted Poor Country (HIPC) initiative, and renegotiated a large volume of domestic government debt. Together, these measures freed up resources for greater public investment to promote growth and reduce poverty. In tandem with increased governmental probity, they have also persuaded foreign donors to begin channeling a portion of their assistance directly to the central government as budget support.

In longer-term perspective, the most important achievement of the Bolaños administration may well turn out to be the formulation of a National Development Plan (PND) designed to provide an overarching framework for Nicaragua's development as a country. In conjunction with negotiation of the US-Central America Free Trade Agreement (CAFTA), completed in late 2003, the PND aims to foster the external competitiveness of the Nicaraguan economy by promoting synergies among the actors involved in "clusters" of economic activity, including both national and foreign investors. Whether any Nicaraguan government can make this approach work has been hotly debated among economists.⁷³ But the exercise of formulating it is a positive first step in preparing the country to compete more effectively in world markets, and is a welcome move in the direction of national policy ownership and the recovery of decision-making power over the country's future course.

Shortcomings in certain areas, such as mismanagement of the planned introduction of private pension funds and of Nicaragua's public utilities regulatory agencies, balance these achievements. Nonetheless, by 2004, effective and responsible economic management had helped GDP growth to recover to the 4% trend line. Halfway into his term, Bolaños confidently assured Nicaraguans that during the second half they would experience the benefits of programs and policies his government has put in place. Given that the recovery has not yet paid off in job creation, however, the broad public is still unconvinced and as shown below has given the government indifferent marks for its performance since the beginning of 2003:

The successes attained in the economic policy realm during 2002-2003 are noteworthy in view of the government's lack of stable political support in the Assembly. With the PLC declaring itself in opposition in March 2003, the Bolaños team more often than not had to negotiate backing for its measures from the other opposition, i.e., the FSLN. That this process worked owed much to the desire of Nicaragua's majority parties not to be seen as hindering progress toward "HIPC completion," even when that progress included painful tax increases. Since the January 2004 attainment of the HIPC pardon, however, the stance of the parties in the Assembly to the government's ongoing agenda has become decidedly obstructionist, putting policy continuity in the coming years in jeopardy.

POLITICAL MANAGEMENT OF GOVERNMENT

In addition to his own instincts and conscience, president Bolaños draws political and economic advice from at least four known sources. One is a close-in set of political advisors who inhabit Casa Presidencial along with their leader.⁷⁵ The second is an informal "kitchen cabinet" composed mostly of friends among Don Enrique's generation of business executives.⁷⁶ A third, a more structured "opinion council" which meets weekly on Wednesday nights, is an eclectic group of roughly 15 people many of whom in the 1980s held Enrique Bolaños in low regard. The fourth advisory ring or circle is the National Council for Social and Economic Planning, a constitutionally-mandated consultative body which has gone well beyond its mandate to offer advice on issues of political and institutional reform.

Management of government⁷⁴							
Balance of positive and negative judgments							
Apr02	Aug02	Nov02	Mar03	Jul03	Nov03	Mar04	Jul04
39	46	26	-4	-1	-8	0	-3

With these diverse sources at his disposal, Bolaños cannot possibly be lacking input into his private decision-making process. To what extent he pays this advice any heed is often unclear to participants in several of the concentric rings. Whatever the case, informed opinion holds that Bolaños has adopted stances in a number of matters that have probably damaged his standing with the public and impacted the survey numbers just mentioned:

- The president has shown excessive loyalty to certain subordinates, ministers whom members of his innermost circle have urged him to fire in order to improve the overall effectiveness of his administration. This has fed a widespread impression that his government lacks executive capacity.
- While launching his crusade against corruption, Bolaños has vigorously defended his right to draw two government salaries (the other being his pension as former vice-president), a practice many Nicaraguans view as unethical though it is not forbidden by law.⁷⁷
- The president and his advisors do not appear to have dealt adequately with the accusation, whose motivation is unmistakably political, that they did not report all of the sources funding his 2001 presidential campaign to the Supreme Electoral Council as is required by law.
- Under Bolaños, Nicaragua has lent unquestioning support to United States foreign policy in particular by sending a 115-person contingent of the Nicaraguan army to Iraq on a non-combat, humanitarian mission. Whatever the wisdom of this policy decision, it was clearly not supported by a majority of Nicaraguans and cannot have bolstered the president's standing at home.

Relations with the Catholic Church. The political acumen of Bolaños's advisor team has been particularly questioned in matters having

to do with Nicaragua's politically powerful Catholic Church. The involvement of Cardenal Miguel Obando y Bravo in Nicaraguan politics now spans three decades, to the point where he is sometimes referred to as "the third caudillo." Bestowing all manner of favors on Church personnel at various levels, the previous Alemán administration had forged closed ties with the Cardenal, to the point where ordinary citizens increasingly identified Obando as Liberal-inclined. Sensing they were sources of corruption, the Bolaños administration initially curtailed some of the church's privileges, but retreated when the hierarchy complained it was being mistreated.

In June 2004, signs surfaced that the government was attempting to lobby the Vatican to have Pope John Paul II accept the pro forma resignation which Obando submitted two years earlier on reaching the Church's official retirement age of 75.⁷⁸ Interpretations emerging from the shadows suggested that the president, in consort with powerful actors in the private sector, wished to replace the Cardenal with a prelate close to a local facsimile of Opus Dei. According to some indications, the government may even have considered proposing the revision of a Concordat with the Vatican, which dates from 1861 and is still on the books despite lacking any current-day relevance. Whatever the case, a clumsy piece of international diplomacy bore absolutely no fruit and served only to alienate the Church further. One of the repercussions of that alienation has been to propitiate an extraordinary rapprochement between Obando y Bravo and the FSLN.

Policy Vacuum Toward the Atlantic Coast. Like its predecessors, the Bolaños administration has also failed to develop a serious policy to deal with the problems of the neglected Atlantic Coast. Although it has generally respected the right of the regional councils to be heard in de-

cisions involving natural resource exploitation, the government has not worked proactively to help foment effective autonomy, and is paying the price as increasing discontent spills over into open protest.⁷⁹ After the authorities put the brakes on the machinery set up to demarcate indigenous landholdings, the Miskito cacique Brooklyn Rivera urged Coast communities in June 2004 to take matters into their own hands and engage in “self-demarcation.”⁸⁰ Then, in September, the government’s slowness to repair the rotting wharf in Bilwi (Puerto Cabezas), the North Atlantic capital, became a pretext for widespread demonstrations against the central government.⁸¹ After denouncing these (perhaps with reason) as political, the authorities pledged to meet all the Coast’s demands but lost face with the local population.⁸²

PARTICIPATION AND POLICY-MAKING

The lack of public reaction to the caudillos’ plotting in April 2004 exposed an uncomfortable fact: the Bolaños administration not only lacks a solid party base, but is sadly lacking in any kind of organized popular support. By this point in his term, aside from an upper layer of bankers, even domestic business has grown lukewarm or indifferent to a president who has raised taxes and compromised with the Sandinistas to obtain legislative backing. At the other end of the spectrum, a “civil society” composed of NGOs many of whose leaders were formed in the revolutionary period before 1990 has become increasingly critical of and at times hostile to the administration after an initial period of rapprochement and collaboration.⁸³

The Bolaños administration has nonetheless grappled after a fashion with the conundrum of how citizen participation in policy-making might be made compatible with governing a dependent country. Governments in countries such as Nicaragua labor under the imperative to formulate and execute certain policies and negotiate legis-

lation in order to fulfill commitments to donors in determinate time frames whether widespread consensus can be forged around them or not. The Bolaños government nonetheless bet in effect that a restricted policy making agenda still left room for some kind and degree of popular input, and that some policy and political benefit could be reaped from organizing it.

CONPES. One of Bolaños’s first decisions was to rehabilitate the National Council of Social and Economic Planning (CONPES), a consultative organ created during the Alemán years, as a privileged site for society to have a voice in policy. A presidential decree expanding the size of the body indicated the importance ascribed to its input and even signaled to the dominant political parties that the president might attempt to play off CONPES and civil society against them, to which pretension they soon protested.⁸⁴

During the last two and a half years, CONPES has regularly produced analyses and recommendations of some quality on policy topics ranging from the national budget to poverty fighting and the PND.⁸⁵ In response to the Bolaños agenda of political reform, it has gone beyond its mandate to develop proposals for institutional change as well,⁸⁶ and its executive secretary has at times incurred the wrath of ordinary members for issuing communiques in direct political support of the president without the Council’s authorization. Yet the body has not consolidated itself in the role some expected of it, for reasons that have to do with the president’s style, the constraints faced by government, and the divisions in and organizational weakness of Nicaraguan society.

Over the course of 2002, virtually the entire array of CONPES organizations supported Bolaños in the struggle to unseat Arnaldo Alemán as Assembly president and bring him up on charges. However, tension gradually accumulated between the government and a vocal sector of NGOs, led by the Coordinadora Civil,

which took up positions and made recommendations that the government found uncomfortable. Complicating the relationship was a perception in government circles that the leadership of “NGO civil society” was ossified, unrepresentative and not entirely transparent. In significant part, ideological differences between a conservative, business-oriented government and progressive NGOs critical of neoliberal economic policies underlay the divide between the two sets of actors.

By 2003, government responded on one hand by withdrawing—ministers who had never liked attending CONPES meetings to explain policy no longer had to—while altering the composition of the body raising the percentage of seats occupied by businesspeople and notables close to the government.⁸⁷ At the same time, the authorities sought other vehicles for consultative input into big questions of public policy whose airing in CONPES might have proven troublesome. During the months of 2003 when tax reform was being debated, Bolaños refrained from convening CONPES altogether, recruiting an ad hoc team of national economists who conducted an ill-attended consultation on tax matters with various sectors. Members of the team expressed contrasting views concerning the openness of the process and their influence over the outcome, which was at best limited.⁸⁸

In a more positive vein, during the year-long negotiation of the CAFTA trade accord, the Nicaraguan government, alone among the Central American countries, offered both the national private sector and civil society significant access to the talks in progress, providing a “side room” where their representatives could meet with the negotiators. Members of both sectors expressed a high degree of satisfaction with the arrangement, and praised the government for the open way in which they had been treated.⁸⁹

When an internal diagnostic was done in CONPES in early 2004, it concluded *inter alia*

that what president Bolaños wanted to do with the body was unclear and that satisfaction with it as a vehicle for influencing public policy was very uneven, with business expressing high approbation and the NGOs serious discontent.⁹⁰ Curiously, the level of satisfaction appeared to be inversely proportional to real participation, as according to delegates the business representatives attended only spottily. By this point, in any case, the government was moving toward a major reformulation of the role that CONPES would henceforth play.

Broadening Citizen Participation? As vice-president under Alemán, Bolaños quietly encouraged the efforts of a diverse set of organizations to draft a framework law for citizen participation in policy and lawmaking.⁹¹ After he assumed the presidency these efforts were renewed, and despite some hostility from the dominant parties the Law on Citizen Participation managed to pass the Assembly in December 2003. The legislation incorporates CONPES as a national level site for citizen input into policy, but supplements it with consultative bodies at other levels, notably departmental development councils and municipal development committees.

The manner in which members of these bodies are to be chosen is not closely specified, nor is it entirely clear how the various levels of an embryonic system of participation are to be tied together. The Citizen Participation Law nevertheless embodies a search by the Bolaños government for a local civil society that it believes is not adequately represented in CONPES, and an apparently genuine commitment to construct channels through which it may have a voice.⁹² Assisting the latter objective, a decentralization bill mandating the eventual transfer of 10% of the national budget to municipal governments passed the Assembly in July 2003.

In effect, the future prospect is for municipal governments to manage much larger budgets in order to fulfill a wider set of responsibilities

(which remain to be defined) within a framework of citizen input into local policymaking and social auditing. This design builds on an existing infrastructure of local organization which, though weakly developed at present—municipal development committees effectively exist in perhaps 30 of Nicaragua's 153 municipalities, advising the elected municipal councils on local projects—is likely to grow in importance and sophistication as both government and donor money flows downward from the central to the local level.⁹³

This scheme has implications for CONPES. According to the latest indications, the government is debating a wholesale revamping of this body, altering its composition and narrowing the scope of its activities. Though several reform proposals compete for the president's favor, the one likely to emerge victorious will expel the existing sectoral representation (including business and the NGOs) from CONPES, replacing it with delegates from the territorial bodies consecrated in the participation law along with representatives of "sectoral commissions" that are supposed to function as advisory adjuncts to the central ministries.

Insofar as territorial representation is still incipient and the ministerial commissions have proven largely dysfunctional, the advantages of the proposed alternative are not immediately clear. Although the existing CONPES formula has worked to no one's complete satisfaction, there is undeniable value in having a consultative body capable of focusing on policy questions from a truly national perspective, something that the alternative does not appear to guar-

antee. Whatever the formula chosen, the Bolaños administration has at least grappled seriously with these questions, in marked contrast to the other governments since 1990.

The need for continuity. The foregoing discussion has argued that despite its lack of majority party support, the Bolaños administration has scored significant policy achievements during its term to date. These may be seen in the conduct of economic policy, the formulation of a roadmap for Nicaragua's future, and the erection of scaffolding for decentralization and citizen participation in politics. Complemented by a marked increment in governmental probity, these successes virtually ensure that the government will finish its five-year term having racked up a basically positive record.

However, the urgency of Nicaragua's problems requires further development of and adjustment in these initiatives, and above all continuity in the achievements made to date in future governments. Given its weak political base, these are things that the Bolaños administration cannot guarantee. With the emergence in October 2004 of a ruling by the Comptrollers General asking the Assembly to depose the president, the government cannot fully rely even on finishing its term. The president's inability to call forth mass public support against this politically inspired accusation, and the unwillingness of the diverse components of civil society to defend Bolaños against it, reinforce this uncertainty.

This deficit in collective political will makes it easier for the caudillos to go on their merry way preparing the next round in their fierce political combat.

THE CAUDILLOS CLASH

The durability of political leadership in Nicaragua is striking. While Daniel Ortega has been the predominant political personality in the country for a quarter of a century, the career of Arnaldo Alemán now spans nearly 15 years. Their political parties share the common trait of having been created largely from power rather than having gestated slowly in the womb of society. Viewed from the rest of the world, both appear highly anachronistic—historical museum pieces, which have outlived the epochs that gave them meaning. A throwback to the 1970s era of the Somozas, the Liberal Constitutionalist Party (PLC) is a complete clientelistic apparatus without serious ideological trappings, dominated by a traditional caudillo. The Sandinista National Liberation Front (FSLN) is a more complicated phenomenon in which left-socialist ideology and invocation of the symbols of a failed revolution combine with traditional political culture traits to support the personal ambition of a no less ruthless leader.

Despite their penchant for pactmaking, Daniel Ortega and Arnaldo Alemán are rivals for power. Pacting is a framework within which this rivalry plays itself out, ratifying periodic shifts in the correlation of forces between the two caudillos in various institutions. Over the last two years, Ortega has succeeded in turning periodic pact revisions to his advantage, re-equilibrating the arrangements negotiated in 2000 to give his party greater shares of power. His success in this endeavor has worked diametrically at odds with president Bolaños's attempts to promote institutional reform.

It has also posed a quandary for the government of the United States, which remains insistent on torpedoing the Sandinista leader's resurgence. Since 2002, the US has appeared to be genuinely disgusted with Arnaldo Alemán. But

it has not found a way to dislodge him from control of his party, nor is a party vehicle for launching a more palatable figure readily available. Though he is very much on the defensive and has seen his power quotas shrink, Alemán appears to take comfort in the conviction that he and his party will ultimately prove their indispensability to the Americans' cause.

DANIEL ORTEGA: THE QUEST TO RETURN

Daniel Ortega's quest is not simply for power but for historical vindication. As he told a Spanish newspaper in July 2004, if he had wanted to become president of Nicaragua at any price, he could have dropped his ingrained anti-imperialism and won re-election long ago.⁹⁴ His posture all of these years is that the Sandinista revolution, which he headed from 1979-1990, did not fail but was pushed out of power by the overwhelming might of the United States. Although he admits to some errors, Ortega is largely unrepentant about that revolution and has continued to staunchly defend diverse Third World figures—Fidel Castro, Sadam Hussein, Muammar Khaddafi and now Hugo Chávez—who have either posed as or been revolutionaries and, equally important, have stood firm against the "gringos" in the face of impossible odds.⁹⁵

During the first five years of the Sandinista revolution, Ortega was *primus inter pares* among nine original *comandantes* in the FSLN. In 1984, however, he was elected president of Nicaragua in a political system then evolving toward more conventional forms of organization. Ortega subsequently exploited the powers and visibility conferred by the office of the presidency to make himself the pre-eminent leader both in fact and in the eyes of the Sandinista masses. After the FSLN's defeat in 1990, alone among the party's

disconcerted leaders Ortega kept his bearings, and in a display of ceaseless political activism spearheaded the party's struggles to defend what could be preserved of the revolution's redistributive legacy. The exercise reinforced in the faithful a sense of his indispensability as their leader.

Two more electoral defeats have not diminished his drive to regain the presidential chair and resume his country's redemption. His quandary is nevertheless serious: how might he triumph in an electorate much of which views him as a virtual pariah (sexual abuse accusations lodged against him in 1998 by his stepdaughter have fed this perception), and in addition overcome the implacable US veto of his perennial candidacy? The elections in 1996 and 2001 demonstrated that image makeovers alone will not succeed in raising his 40% vote total to the point where he could win a straight-up contest with the PLC. By changing the election rules, the 2000 pact allows a candidate to win a multiparty race with 40% of the vote (and even less in certain circumstances), but this requires the presence of a third force sufficiently strong to split the anti-Sandinista majority.

Judging from indications, Ortega has evolved a strategy for his return. It is not aimed at recovering power in one fell swoop, but rather starts from the gradual accumulation of positions in the institutions of state, passes through subsequent legal and constitutional reforms, and culminates in a triumphant election. It is hence a strategy with a fallback position—if he loses another election he still retains important quotas of power with which to go on being the opposition's major player. A person who rose to power through guerrilla struggle and has not abandoned the corresponding siege mentality, Ortega gives the impression that he is waging a war of position in the trenches of the political system "accumulating forces in silence" until the final assault on power begins in earnest.

Keeping Control. Ortega's bid to retake power first of all requires maintaining an iron grip over his party. The Sandinista leader suffered severely from losing control of his legislative bench in 1993, during which a split began in the FSLN which eventually saw the "Sandinista Renovators" led by former vice-president Sergio Ramírez go their own way. That was the last major dissidence, however, and Ortega has since taken pains to see to it that all FSLN candidates for deputy are under his firm selection and control. Four deputies who opposed the 2000 pact were unceremoniously denied their re-election chances in 2001. During the current legislative period starting January 2002, barely a whisper of dissent has been heard in the 38-member FSLN bench of Assembly deputies.

Ortega has furthermore refashioned the party leadership structure, replacing the historic National Directorate with a national party council at the top of which sits a seven-member Political Commission.⁹⁶ He even sidelined his brother Humberto, who does not share the dream of a revolutionary return, after the former Sandinista army chief openly opposed the caudillo's last election bid.⁹⁷ In recent years he has also used former state security chief Lenín Cerna as his agent for riding herd over internal party structures; according to informed sources, Cerna is increasingly powerful in the party apparatus where he is consolidating a base of loyalty to himself while outwardly swearing fealty to his chief. In 2001, Cerna oversaw the FSLN's "electoral commandos," some of them old security cadres like himself, in the defense of the FSLN's vote. Other former military figures play additional high-level roles in the party.⁹⁸

Despite the revolutionary and socialist overtones in his speeches, Ortega's methods of rule inside the FSLN involve a very traditional kind of political clientelism in which subaltern leaders are permitted to feather their nests as long as

they loyally support their *jefe máximo*. Among these are union leaders who took control of former state enterprises “privatized to the workers” in agreements signed with the Chamorro government in the early 1990s.⁹⁹ A more recent instance of this phenomenon was exposed in September 2003, when a majority of the board members of the Augusto César Sandino Foundation (FACS), an NGO linked to the FSLN, charged executive director Edwin Zablah with misuse of funds; Ortega defended Zablah to the hilt, and his accusers were twice convicted on apparently spurious charges in courts presided over by Sandinista judges.¹⁰⁰

Capping these methods, Ortega allows a not entirely convincing exercise of internal democracy in which candidates for election are formally chosen in “consultations” or, as in 2004, in a combination of these with primary elections. Despite evidence over the years that the results of these exercises have been doctored, at least two rival leaders, former planning and budget minister Alejandro Martínez Cuenca and current Managua mayor Herty Lewites, harbor aspirations to supplant Ortega as the FSLN’s presidential candidate in 2006. In May, a public letter from Ortega’s wife, poetess Rosario Murillo, criticizing Lewites as a political chameleon caused the mayor to pause from his bid.¹⁰¹ However, there have been dissidents who refused to be controlled or silenced.¹⁰²

As the current municipal election campaign has shown, Ortega’s control of his party’s affairs is not seamless, and he has expressed discontent with what he decries as self-seeking behavior on the part of many FSLN mayoral candidates, even challenging them to relinquish half of the salaries they will receive if elected. These reactions likely express fear on Ortega’s part that the development of autonomous municipal politics will weaken his hold over local party bodies, to which prospect he has recently appeared to respond with a radical alternative to reassert his dominion.

Expanding Power. Discipline in the ranks of his party has been one essential basis for Ortega’s strategy for accumulating power. A second precondition is the series of institutional footholds achieved by the 2000 pact. With these as his launch platform, the Sandinista leader has relentlessly pursued ever larger spaces in Nicaragua’s institutions, passing through the following series of landmark events:

- In August 2002, the judicial system lodged the government’s corruption accusations against Arnoldo Alemán in a Managua district court presided over by a Sandinista loyalist, judge Juana Méndez. Controlling the venue gave the FSLN forces control over the subsequent trial of the former president, furnishing an instrument to pressure him to concede quotas of power.
- In September 2002, after Alemán’s ouster from the legislative leadership, the FSLN joined with the Blue and White bench to strip the PLC of its control over the governing board of the National Assembly. The two forces went on to elect deputy Jaime Cuadra as legislative president at the head of a new majority, which, as will be seen below, proved to be transitory.
- In October 2002, the election of magistrate Alba Luz Ramos as president of the Supreme Court gave the FSLN greater influence in the judicial branch at various levels. An immediate effect of this event was a high court ruling in November of the same year that overturned portions of the 2000 elections law, after which a welter of small political parties regained their legal standing.¹⁰³ This deliberate resuscitation of the minor players aimed at pulverizing the anti-Sandinista vote in future elections.
- Also in October 2002, the FSLN unexpectedly supported the re-election of Roberto Rivas Reyes as president of the Supreme Electoral Council (CSE) in exchange for expanded quotas of power in various departments of the institution.¹⁰⁴ In a prologue to this event,

the Sandinista leader used his party's influence in the Office of the Comptrollers General (CGR) to quash accusations against Rivas for corruption. The two actions induced the CSE president, formerly an ally of the Liberals, to switch political sides. As Rivas is the son of Cardinal Obando's personal secretary, the two actions further served to place the Catholic Church in the FSLN's debt.

- In the crowning events in the series, Ortega negotiated the replacement of nine justices to the Supreme Court in June 2003, achieving parity on the body with the PLC, and the election of another Sandinista as Court president in March 2004. The latter development for the first time provided the FSLN a working majority at the highest judicial level.

Parrying Threats. Ortega's success in enlarging his power bases produced a predictable reaction. At some point, it set off alarm bells in the US State Department, which has consistently intervened in Nicaragua's politics and electoral processes to ensure that the Sandinista caudillo remains leader of the opposition. Since 2003, US diplomatic representatives have worked both openly and surreptitiously to thwart the possibility that a split in Liberal ranks could provide Ortega with his comeback chance. A high water mark in this campaign was the November 2003 visit of US Secretary of State Colin Powell, who went so far as to declare—prematurely as it turned out—that Ortega (along with Arnaldo Alemán) was a figure of the past.¹⁰⁵ The US combined public statements by the Secretary and other high officials with pressures to keep the Liberals politically united.

It also attempted a frontal assault on one of Ortega's bastions of power. In tandem with Powell's visit, US officials quietly promoted the drafting of a legal instrument intended to secure the political independence of judges in a way that would have expelled many of the

Sandinista personnel now working in the judicial system. The fierce struggle that ensued to control this "law of the judicial career" dominated Nicaraguan politics from November 2003 to April 2004. Responding to what he judged as a mortal threat to his position, Ortega made two attempts during this period to protect (and even enhance) his political strongholds through an offer of new negotiations to Alemán. In these negotiations, the stability of the Bolaños government appeared to hang in the balance.

During the first parley, which spanned late November and early December 2003, Ortega reportedly offered Alemán his eventual freedom in exchange for a new political pact which in his own words "could change everything" in Nicaragua. The grist for the bargaining included items such as the aforementioned judicial career law, the election of a president for the Supreme Court and officers for the National Assembly, as well as postponement of the 2004 municipal elections and their reunification with the national voting for president.¹⁰⁶ More portentous was an additional scenario involving possible changes to the constitutional system that could have shortened Enrique Bolaños's term of office. While proposing these terms to Alemán, Ortega privately threatened to organize a Bolivian-style popular uprising if the president continued to work with the Americans against him.

After another round of combat over control of the judiciary had crested less than six months later, some of the same themes re-emerged in a second negotiation in April 2004 which more clearly threatened Bolaños's hold on his office. Rumors that the caudillos were discussing stripping the president of his immunity so that he could be tried for election offenses kept the country in suspense for ten days, during which interval Bolaños conferred with army chief Xavier Carrión and international donors sounded an alarm about what they saw approaching.¹⁰⁷ Why the bargaining between Ortega and Alemán failed

in the end to produce any result again remains unclear. But the episode demonstrated that Ortega was willing to go to virtually any length to protect his power bases, not excluding precipitating an elected president's downfall. It also confirmed his ability to dominate events; when the crisis dissipated, the Bolaños government and the PLC had agreed to put the judicial career law to negotiations.

ARNOLDO ALEMÁN: SURVIVING TOUGH TIMES

Having heartily enjoyed the fruits of power from 1997-2002, Arnaldo Alemán also strives to regain the presidency of Nicaragua. At the beginning of 2002, he apparently believed that the path of his eventual return would be virtually free of obstacles; from his post as president of the Assembly, he would whip his legislators constantly into line, keep Enrique Bolaños bottled up and at bay, and five years later would be invulnerable in another election contest with Ortega. His imprisonment at the end of 2002 on charges of fraud and money laundering rudely upset this calculation.

Still a prisoner nearly two years later, Alemán is battling tenaciously to preserve his party's quotas of power in Nicaragua's pact-ridden institutions while trying to fashion a strategy to free himself from Ortega's grasp. In this pursuit, against all predictions, he has maintained an extraordinarily steadfast loyalty from most of his handpicked legislative deputies, who have arguably subordinated the best interests of their party and unquestionably those of Nicaragua to a quest to free their supreme leader.

Precedents. Elected mayor of Managua in 1990, Arnaldo Alemán took control of the tiny Liberal Constitutionalist Party (PLC) and with the help of a small group of friends quietly built it into Nicaragua's dominant political machine. An offshoot of dissidence in the party of the Somozas in the 1970s, the PLC mainly attracted

two kinds of people: those who longed for office so as to reap the rewards for their own patrimony, and fanatical but personally honest anti-Sandinistas who would back anyone capable of blocking the FSLN's return to power. The former contingent, the clientele of Arnaldo Alemán, formed the backbone of the party from the beginning and still do so. The latter group has mostly abandoned Alemán and has supported the government of Enrique Bolaños.

Although the PLC is a member of the Liberal International, it is liberal in name only, and it is difficult to detect any evidence of ideological principles at work in its doings. During his years in power, Alemán used the party to maintain support while he systematically plundered the public administration, sharing the spoils with certain of his minions.¹⁰⁸ By rotating them among government posts, he systematically played off the aspirations of the subaltern PLC leaders, including several who sought to be his successor, against one another. Although a few of his deputies in the Assembly went their own ways, Alemán's ruthless insistence on controlling the details of party affairs almost always prevailed—all the way down to the most remote local level.

Sins of Overconfidence. In electing himself Assembly leader, Alemán ignored entreaties from Bolaños and the counsel of Jaime Morales Carazo, previously his closest advisor and family godfather, who warned the caudillo that he could not possibly sustain his overweening ambition to control an elected president (and one enjoying US support) from the legislature. A first indication of the problems Alemán would face came when a departmental party leader, deputy Jaime Cuadra, posed himself as a rival candidate, winning the votes of four lawmakers who became the nucleus of the small "Blue and White" pro-Bolaños bench in the legislature. As corruption charges spewed forth from the new administration, Alemán's paramount problem became staunching further desertions from his

ranks that could lead to the loss of his legislative immunity from prosecution.

This problem became thornier after mid-2002, when US officials intensified pressure on the Liberals by threatening to lift their visas to the United States. But neither indications that he had lost US favor nor the inducement, extended several times, of a gilded exile abroad proved enough to get Alemán to relax his hold on his considerable quotas of power. In this stubborn posture the caudillo overreached himself and clearly underestimated the threat to his position. As will be narrated in the next section, this overconfidence cost him the presidency of the National Assembly and then his immunity as a legislative deputy from prosecution. Although the desertions from his legislative ranks have been few, they were just enough to deprive him of his freedom. Since December 2002, Alemán has therefore had to maintain his unstinting control over his party's lower-ranking leaders from jail.

This has proved a vexing although not insurmountable problem. With fluctuating restrictions placed on communications with his subordinates, Alemán's ability to exercise his accustomed dominion over party affairs declined, generating suspicions in his mind about the loyalty of certain subordinates who he knew were receiving blandishments from various sides. Physically off the scene, another problem for the maximum leader was whom to use as his mouthpiece of the moment.

His first move was to place his wife, María Fernanda Flores, in charge of a "human rights defense campaign" which has consistently argued that his detention and later conviction have been arbitrary and illegal.¹⁰⁹ María Fernanda quickly became a privileged channel for communication with the caudillo, to the point where she participated in meetings of the PLC's National Executive Committee (CEN). With Alemán's two daughters also playing political roles of sorts, ribald commentary about the growing domina-

tion of the PLC by the "three Mariás" soon surfaced, undoubtedly increasing the anxiety levels in certain other cadre.¹¹⁰

When it became clear that the Bolaños administration would not back off from its drive to see Alemán punished, the caudillo decided in March 2003 to have his party go into formal legislative opposition to the government. Within the party, he appears to have gone on playing off subaltern leaders against one another to prevent any combination against or disloyalty toward his person. This game was no longer entirely efficacious, however, and had the disturbing side effect of confusing the society about who really spoke authoritatively for the PLC. By mid-2003, a faction had arisen complaining that no one did—in fact, that a "collegial" leadership structure was in shambles and the party itself adrift.¹¹¹

Led by Alemán's former private secretary René Herrera, this group demanded clear lines of authority and took the position that the PLC could not afford to subordinate all its actions in national politics to the goal of securing its leader's release.¹¹² Within the closed party structure, the faction closer to Alemán insinuated that Herrera was engaged in a conspiracy to wrest control of the PLC from Alemán and place it in other hands.¹¹³ Illustrative of the tenor of the infighting, at least one PLC leader even alleged that Herrera was working for the CIA. As some in the party saw it, the ultimate beneficiary of the leadership renewal in the PLC was to have been Eduardo Montealegre, finance minister in the Bolaños government, a Liberal presidential aspirant who has tried to straddle the fence between loyalty to government and party.¹¹⁴

In retaliation, Alemán called suddenly in September for an extraordinary convention to be held to select a new party executive. Before the caudillo could inflict punishment on them, four members of the dissenting group resigned their seats on the CEN; when the snap convention was held October 26th, a new leadership struc-

ture emerged without them, demonstrating that Alemán remained in firm control.¹¹⁵

Freedom above All Else. Alemán’s henchmen might have been forgiven for thinking they had spotted the hand of US diplomacy plotting against their chief. In effect, Colin Powell’s November visit confirmed that the US authorities sought a united Liberal party without Alemán at the helm. When this search failed, the US’s overriding drive to breach Daniel Ortega’s judicial fortress gave Alemán new leverage to press for his freedom—the law of the judicial career the Americans wanted could not pass the Assembly without his support, and moreover he could hold it over Ortega’s head as a club. As the Sandinista leader held the key to his release, he plunged into the negotiation with Ortega described above to see what he could extract. Whether the dickering came to naught due to Ortega’s refusal to free him immediately or because Alemán decided to seek another route toward his liberation cannot presently be determined.

The Liberal caudillo’s next move in his continuing quest for freedom was to strike a deal with president Bolaños, who had become resentful over Ortega’s machinations against him. In an arrangement mediated by US ambassador Barbara Moore, moderate Liberal deputy Carlos Noguera was elected president of the National Assembly in January 2004 with the votes of the PLC and a portion of the Blue and White lawmakers.¹¹⁶ In the bargain, it was assumed that the PLC would return to its natural role as government party, supporting the president’s legislative agenda without attaching any strings. Once the legislative leadership was duly rearranged, however, the PLC deputies reneged on the deal and proceeded to bog down the Assembly’s business with legal maneuvers designed to free their caudillo from prison.¹¹⁷ The pro-Bolaños deputies refused to back these ploys,

however, and the PLC did not have enough votes to bring them off by itself.

From all indications, Alemán became more desperate over time as the various stratagems used to find a way out of his dilemma failed. The second negotiation with Ortega in April 2004 also took place amid signs of severe dissension among the PLC’s subaltern leaders, several of whom openly opposed any concessions to the Sandinistas.¹¹⁸ Though this episode tested Alemán’s ability to maintain discipline, the dissenters did not break ranks and the collapse of the talks left the party outwardly united. Subsequent events have confirmed that Alemán’s grip over his party’s affairs remains very strong. In June, 2004, as the PLC’s annual convention approached Alemán’s minions crudely stripped Eduardo Montealegre of his status as a delegate, signaling that the caudillo would not tolerate further indecision about whose side Montealegre was on.¹¹⁹ At the same time, he characteristically rode roughshod over his party’s local branches, designating his own choices for the mayoral candidates in the upcoming municipal balloting in key cities and towns.

The Next Round. The preceding narrative suggests that Daniel Ortega has scored more points in the recent rounds of political combat with his opponent, increasing the quotas of power he enjoys in key institutional settings while fending off threats to his position both from within and without. At the same time, despite being a privileged species of prisoner, Arnoldo Alemán has showed surprising strength in resisting the former’s onslaught. As the following table shows, since his arrest in late 2002 Alemán has even

	Nov02	Mar03	Jul03	Nov03	Mar04	Jul04
Bolañista	58	35	29	25	27	23
Alemanista	20	27	34	35	38	39

recovered ground vis-à-vis Bolaños among Nicaraguans who identify themselves as politically Liberal.

Since the ebbing of the April crisis, the unfolding of events in Nicaragua indicates that the two caudillos have gone on to a further stage in their game that will culminate in early 2005. By March of that year, they must by law renew the 2000 pact replacing or reconfirming the occupants of 16 top-level positions in the Supreme Court, the Supreme Electoral Council and the office of the Comptrollers General whose terms will have expired. Bargaining over these positions quietly began at mid-year. Current scuttlebutt holds moreover that the new pact will undergo a startling expansion in which the pacting parties will cannibalize a whole series of entities belonging to the central government, placing the naming of their authorities in the hands of the legislature, and ultimately in their own hands. Though negotiation of this “megapact” will obviously be more complicated than its predecessor, it is very likely to ratify the overall predominance of the FSLN in the institutions affected.

ANTI-CAUDILLOS

By May 2004, as the FSLN and PLC geared up to contest municipal elections, their machinations had nonetheless called forth a serious response from other parts of Nicaragua’s political class. The response took the form of an anti-caudillist coalition, the Alliance for the Republic (APRE), whose stated *raison d’être* is to provide voters with a modern and positive alternative to the dominant party leaders. APRE is the latest of a series of attempts spanning eight years to forge a “third way” (*tercera vía*) in Nicaraguan politics, and has gotten farther along than any of the previous endeavors.

The gestation of the new alliance has been slow and fraught with difficulty. The seed from which the APRE trunk sprouted was planted in June 2002, when a near majority of the then PLC

national convention delegates suddenly decided to depose the existing party executive committee (CEN) and elect a new one ostensibly loyal to the Bolaños government and headed by Alejandro Fiallos.¹²¹ The Supreme Electoral Council, then dominated by the PLC, refused to sanction the election, however, and Arnaldo Alemán quickly removed the offending delegates from their posts. Only after the PLC’s formal rupture with Bolaños in the Assembly in March 2003 did the pro-Bolaños Liberal forces take the decision to launch a separate Liberal party, which took the name Gran Unión Liberal (Grand Liberal Union, GUL).

The leadership nucleus for the GUL sprang from the eight-member Blue and White bench in the Assembly, led by deputy Miguel López Baldizón, as well as from former PLC politicians who were then Bolaños administration officials.¹²² The group’s debut in May 2003 was nevertheless inauspicious, as major Liberal figures aligned with the administration—vice-president José Rizo Castellón, finance minister Eduardo Monetealegre and Assembly president Jaime Cuadra—refused to back it, preferring to preserve their option to return to the PLC at the appropriate moment.

Though GUL leaders quietly set about organizing the party, they found their progress limited by Alemán’s stern control over the PLC bases. By early 2004, with local elections in the offing, the Gran Unión Liberal had been unable to muster the strength necessary to register as a legal entity under the restrictive terms of Law 331, whereupon it chose to fuse with an existing splinter party (the “1913 Liberal Party”) that already enjoyed official recognition.¹²³ By this point, as well, negotiations were underway to create a broader alliance with which to challenge the hegemony of the caudillos.

The Alliance for the Republic—APRE for short—inaugurated with Enrique Bolaños’s blessing in May 2004, encompasses the pro-

Bolaños Liberals (PL1913), the Conservative Party (PC), the National Unity Movement (MUN), the Nicaraguan Democratic Movement (MDN) and a fraction of the traditional Social Christian Party (PSC).¹²⁴ In a tactic designed to maximize their chances to survive as parties after the municipal voting, only the first two forces are official alliance members. Even so, the registration of the new alliance required a helping hand in the Supreme Electoral Council, where three Liberal magistrates sought strenuously to block the emergence of a potentially dangerous rival. To this end, the Liberal members broke quorum and tried to create disruption in the Council but failed.¹²⁵ To the group's advantage, CSE president Roberto Rivas had by this point thrown in his lot with the FSLN, and APRE received official recognition as an election alliance on May 24th.¹²⁶

The Third Way? Although other parties are contesting the municipal elections, APRE is the leading prospect for developing into the third force of the future in Nicaraguan politics. Led by Miguel López Baldizón and Conservative Party president Mario Rappaccioli, the alliance poses itself squarely as a modern, non-caudillist alternative to fed-up voters looking for change.¹²⁷ Just by staying together it has already gone much farther than similar alliance attempts in the past, all of which broke up over the issue of who would occupy the limelight. The lack of any single dominant leader among the participants has helped to keep the coalition glued tight.

Alejandro Fiallos, APRE's mayoral candidate in Managua, got off to a rocky start when a local judge ordered him arrested in August 2004 for alleged malfeasance in his former post as head of Nicaragua's Municipal Development Institute (INIFOM).¹²⁸ According to several interpretations, the judge was acting on behalf of the PLC, which desired to remove a rival who strove to take votes from Liberal candidate Pedro Joaquín Chamorro.¹²⁹ If this version is correct, the move

backfired, as a September opinion poll showed Fiallos gaining ground at Chamorro's obvious expense.

Despite reasonable progress in its Managua campaign, APRE's prospects for surviving the municipal elections and go on to be a major force in Nicaraguan politics are guarded. Not only must it make a significant showing in November, but APRE must attract a strong presidential candidate and develop a program that goes beyond anti-caudillism and support for the integrity of institutions. Assuming it survives, the five participating forces contemplate fusing themselves ultimately into a single party. Enrique Bolaños meanwhile appears to hope that APRE will eventually become the trampoline to the presidency for the dauphin of his administration, Eduardo Montealegre, for whom APRE's current leaders have indicated they are willing to make way. If Montealegre succeeds in his preferred option, which is to obtain the nomination of the PLC, an alliance in 2006 between that party and APRE is a probable alternative step.¹³⁰

Symbiosis Supreme. At this point neither of these scenarios can safely be predicted. What one can be sure of is that Daniel Ortega fervently hopes that APRE develops into a viable contender able to drive a wedge in the anti-Sandinista vote camp once the next national election rolls around. To this end, current speculation holds that the 2005 "re-pact" will be the prelude to, if not the moment for, the freeing of Arnoldo Alemán from prison. The assumption behind this theory is that giving the discredited Liberal caudillo his freedom will maximize Ortega's chances of provoking an enduring Liberal split.

If it occurs, that act will be the ultimate demonstration that for all their rivalry, the pacting caudillos need one another in order to stay on top in their respective machines. To date, this strange symbiosis between the two leaders has shown itself to be more than a match for other

interested actors, notably the United States, whose recent interventions in Nicaraguan politics have largely fallen flat. As the next sections of this report detail, the power of the caudillos has also

been sufficient to block the Bolaños government's attempts to prosecute former government officials for corruption as well as its plans for political reform.

FIGHTING CORRUPTION

The fight against corruption in Nicaragua has been Enrique Bolaños's flagship undertaking. It has won him plaudits from bodies such as Transparency International and made his administration respected in the halls of governments around the world. As most international donors see it, the Bolaños administration has set an unprecedented standard for probity in the management of Nicaragua's governmental affairs, and they have duly rewarded it with concrete dividends in the form of expanded access to aid and greater flexibility in utilizing their resources.

Not all Nicaraguans agree with this appraisal, however, and the successes and failures of the anti-corruption fight must be evaluated soberly. On one hand, for the first time in Nicaraguan history, a couple of really big fish have been accused, convicted and jailed. These events briefly rocketed Bolaños to heights of popularity never before recorded by pollsters. However, victories over corruption in court have been few, fragile and in all probability will turn out to be temporary. They have not yet set a precedent for the successful ongoing prosecution of other officials of the Alemán administration or any other government past or present.

The political weakness of the Bolaños administration weighs heavily in the balance of this appraisal. Lacking the will and ability to mobilize mass public support for its campaign, the government's efforts to prosecute former officials have fallen prey to manipulation in the en-

trails of the pacted institutions, where a multitude of different actors impinge on and potentially divert the processing of a given accusation. The administration has thus often watched powerless from the sidelines while politically inspired judicial maneuvers combine with action or deliberate inaction on the part of bodies such as the Public Ministry and Comptrollers-General to thwart its efforts.

In addition to the president's unresponsiveness to questions about certain things in his own past, this obstruction has diminished the domestic political benefit initially gained from the anti-corruption initiative. Despite this trend, both national business and foreign donors give the Bolaños government credit for working to clean up the ordinary day-to-day corruption that permeated the previous administration. Although the president has lagged in formulating a coherent national anti-corruption strategy, such a formulation is at least underway. The query remaining is much of what he manages to achieve in the way of probity and transparency will survive under Nicaragua's next government.

ON THE OFFENSIVE

At the close of his 2001 campaign, candidate Enrique Bolaños swore to "investigate and clear up all cases in which officials past and present have been accused of abusing their posts for personal gain."¹³¹ Immediately after Bolaños's election, few people took this possibility seriously. A legal reform in 2000 separating the office of the

national prosecuting attorney (*Fiscalía General*, also known as the Public Ministry) from that of the government (or state) attorney (called the *Procuraduría General*) loomed as a gigantic obstacle, as the caudillos had placed their agents in the outwardly independent *Fiscalía*, whose authorities are chosen by the legislature. Although the president had the right to name the *Procurador*, the powers of this office were limited. As things turned out, the state attorney, whose charge is to watch over the entire public patrimony, became a key actor in the fight against corruption, taking cases directly to court when the attorney general declined to act.¹³²

Over the course of 2002, three judicial indictments for corruption against officials of the previous administration, including former president Alemán, altered the political landscape.¹³³ The action started in February 2002 with an internal investigation into the accounts of Channel 6, the state-owned television network. The inquiry discovered that high-ranking Alemán officials had instructed a series of other state entities, including the telephone company, the tourism ministry, and the airport administration to divert a total of \$1.3m to the station ostensibly to help with its modernization. The money was in fact funneled out of the country into the accounts of dummy corporations created for the purpose, a scheme in which a former Mexican ambassador to Nicaragua and a Mexican consultant to Enitel were implicated.¹³⁴ When the heads of the institutions were detained, it sent a signal across the breadth of the country that the corrupt might be vulnerable. In an equally startling development, judge Gertrudis Arias took a deposition from Arnaldo Alemán in the case.

An even stronger signal was broadcast on April 22nd, when Nicaraguan police arrested Byron Jerez, former head of the national tax administration (*Dirección General de Ingresos*, DGI) and Alemán's principal accomplice in wrongdoing.¹³⁵ Thus began the first of what will

supposedly be eight separate trials of the accused official on a variety of charges. The most publicized accusations against Jerez derive from the misuse of tax credit checks issued by the DGI in irregular transactions (which earned nicknames like the *becazos* and *camionetas*) through which public money was either used to Jerez's private benefit or funneled out of Nicaragua. The detention of Jerez, the second most powerful figure in Alemán's government, deeply impressed the public, which had never seen such a personage put under pressure. The jailing also impacted other potential accused—a bevy of Alemán officials began to flee the country to avoid prosecution on one or another charge.¹³⁶

The crowning event in the series, on August 7th, 2002, was the public presentation by state attorney Francisco Fiallos of evidence that ex-president Alemán and thirteen other people had engaged in an elaborately orchestrated scheme to defraud the government and launder massive amounts of money through front corporations in Panamá. Dubbing the find the *huaca* (a term of Quechua origin meaning "buried treasure"), the government charged that a total of \$98m had effectively been squirreled away, although it sought an initial indictment concerning only a part of this sum.¹³⁷ In an address to the nation August 7th, president Bolaños upbraided his predecessor for having defrauded his countrymen and swore to continue the anti-corruption fight come what would.¹³⁸

By this point, on the strength of his legal successes, Bolaños's approval ratings for his handling of government had soared to above 80%. The next move on the anti-corruption battlefield was to depose Alemán as president of the National Assembly. In August, Bolaños quietly gave his nod to figures in civil society to organize a movement, called the "National Conscience" (*Conciencia Nacional*), that collected hundreds of thousands of citizen signatures on a petition and set about trying to organize a mass

public demonstration to impress the deputies with the strength of popular sentiment against Alemán. But Bolaños held back from personally leading the affair, and the march flopped.

The FSLN Takes Charge. Instead, Sandinista leader Daniel Ortega decided to join in the anti-corruption battle at this juncture putting himself at its head—the FSLN orchestrated a series of small demonstrations against Alemán and committed its 38 Assembly votes in favor of relieving the former president of his office. Miscalculating his strength, Alemán refused even to countenance creation of a legislative commission to hear the charges against him. When this resistance backfired, the Sandinistas and the pro-government Blue and Whites gained a key defection from the ranks of the PLC, creating a one-vote majority of 47 lawmakers to topple Alemán on September 19th.¹³⁹

On September 9th, judge Juana Méndez of Managua’s first district criminal court handed down indictments for fraud and money-laundering against those accused by the government in the *buaca*. Former president Arnoldo Alemán headed the list. However, Méndez unexpectedly added in charges against several officials of the previous government for “election crimes,” the grounds being that some of the money allegedly stolen and rerouted through the *buaca* network had found its way into the coffers of the PLC’s 2001 campaign. This was a first indication that the government’s drive against Alemán could turn into a boomerang, as a number of those named were now high Bolaños administration functionaries.¹⁴⁰

Although the legal basis on which Méndez devised these elections-related charges is far from diaphanous, her action brought rejoicing to the camp of the PLC, which chortled at the idea that Bolaños himself could theoretically be impeached in the affair, a prospect that potentially handed Alemán (as well as Daniel Ortega) a bar-

gaining card. The government did not respond adequately to the charges—Bolaños at first offered to relinquish his immunity to stand trial but then reversed himself, and has not subsequently clarified substantial questions concerning his campaign finance flows. However, he did not back off from his attack on the ex-president.

Once Alemán had been dethroned, the next step was to strip him of immunity as a legislator so that he could be forced to stand trial. At this point, the “47th deputy” from the previous September got cold feet, jeopardizing the outcome of a vote on the matter, and some adroit maneuvering was required to find a replacement. Another hero of the moment finally emerged, however, and on December 12th the new Assembly majority voted by a margin of single vote to make former president Arnoldo Alemán an ordinary citizen again. The same night, he was put under house arrest by police at El Chile, his estate south of Managua.¹⁴¹

A TANGLE OF INSTITUTIONS

The subsequent processing of the indictments against Alemán and an extended set of cronies has exposed glaring weaknesses and/or political biases in several institutions of state responsible for acting in concert to ensure governmental probity in Nicaragua. Together with the operation of the judicial system, dealt with in the next section, these problems illuminate the ways in which the 2000 political pact has distorted institutional functioning, furnishing powerful political actors with impunity for their misdeeds.

The PGR. When Nicaragua’s Public Ministry was created in 2000, a rump *Procuraduría General de la República* (PGR) was left behind to serve as the state’s attorney and guard the governmental patrimony. This body became the launching pad for the Bolaños administration’s anti-corruption drive in 2002. The initial accusations taken to court against Byron Jerez made special prosecu-

tor Alberto Novoa an instant public hero. They quickly won support as well from an ad hoc assemblage of European donors which in mid-2002 put together a special \$600,000 fund to assist the government's efforts, a good part of which went to the woefully understaffed PGR to pay the salaries of fourteen new prosecutors.

Lack of coordination between the presidency and the PGR soon created confusion in the public about the seriousness of the government's intentions. Bereft of political support, Bolaños could not afford to make political enemies indiscriminately by hurling corruption charges at every conceivable target in the country. Hence when Novoa decided in June 2002 to investigate allegations of irregular imports by the social action arm ("Coprosa") of the Catholic Church, Bolaños quickly removed him from his position. From a president who had by then staked out a moral posture on the corruption issue, this looked to some like backsliding.¹⁴²

After entering the *huaca* charges in August, *Procurador* Francisco Fiallos furthermore raised expectations that dozens of other high-level indictments would be sought. There was little follow-through, however, in part due to the PGR's very limited resources but also from indecision on the part of the president and his advisors about who should be the targets.¹⁴³ Paradoxically, by the end of 2002—just when the anti-corruption drive appeared to bear fruit in Alemán's arrest—the political mileage derived therefrom had begun to evaporate and Bolaños's poll ratings were nose-diving. Making things more difficult, a new code of criminal procedure went into effect just before Christmas that curbed the latitude the PGR had enjoyed to take "autonomous accusations" of corruption to court.

Returning to the fold as *Procurador* in chief in June 2004, Novoa complained that the new procedure code, which stipulates a laborious collaboration between the PGR and the Public Min-

istry to bring cases before the judiciary, has effectively hamstrung the former's ability to act independently.¹⁴⁴ Since the new code's advent, the PGR has brought several dozen cases each year, including new accusations against Alemán and company in a case called the *huaca 2*.⁷⁶ However, the prosecution side has won only a handful of convictions during a period when the courts have largely absolved high-ranking Alemán officials in more important cases. The PGR nevertheless continues to be an integral part of any anti-corruption effort, and in mid-2004 both US and European donors extended fresh assistance designed to buttress its capacity to successfully mount high-profile prosecutions.

The *Fiscalía* or Public Ministry. As indicated, the processing of major corruption accusations has pitted the PGR against a second major player, the Public Ministry (or *Fiscalía General*), which is headed by Liberal Julio Centeno Gómez, a political ally of Arnaldo Alemán. As is the case with other institutions, the Liberal-Sandinista pact divided top-level positions in the *Fiscalía* between the pacting parties. Thus Vice-*Fiscal* María Lourdes Bolaños is a Sandinista, and politicization is said to embrace both the central and departmental levels. According to informed sources, the political treatment of cases is not nearly as frequent in the *Fiscalía* as it is the Supreme Court. In high-profile cases, however, a notorious political bias has made itself felt.

When the *Procuraduría* launched charges against a raft of officials in the Channel 6 case, the Public Ministry lamely argued that all had acted on higher orders—effectively admitting "due obedience" as a defense—and then cast doubt on the evidence against the man at the top, Arnaldo Alemán.¹⁴⁶ Centeno took a different tack when the *huaca* accusations came along; though he voiced agreement with the PGR's findings on several counts, he rejected money-laundering charges against Alemán on the grounds that the legislation governing this crime limits

money-laundering indictments to cases where the illicit funds derive from drug trafficking, of which Alemán was not accused.¹⁴⁷

Thus began a pattern in which the Public Ministry has appeared—via acts of commission or omission in various degrees and kinds—to be operating in defense of the ex-president and his accused cronies. Despite numerous allegations of malfeasance on the part of Martín Aguado, head of the social security administration under Alemán, the *Fiscalía* has never sought an indictment against him.¹⁴⁸ In cases where it has acted, the institution has at times been suspiciously weak or tardy; in September 2004, the Managua Appeals Court overturned convictions against three former telephone company (Enitel) officials on the grounds that by the time the *Fiscalía* entered its charges against them in December 2003, the five-year statute of limitations concerning the offenses had just expired.¹⁴⁹ And when Alemán's conviction in the *buaca* case recently reached the same appeals tribunal, the Public Ministry undercut the PGR's case arguing that Alemán should never have been charged in the first place.¹⁵⁰

In contrast to this timidity in accusations against Alemán, the *Fiscalía* sprang promptly into action on the election crimes issue, which could be turned to the former president's advantage. Whereas Juana Méndez has refrained from directly implicating president Bolaños in her investigation of these irregularities, the Public Ministry formally accused both Bolaños and vice-president José Rizo of the offenses in November 2002, adding fraud charges to the mix. It furthermore expanded the list of suspects developed by Méndez to embrace a total of 34 people.¹⁵¹ Having entered its accusations, however, the institution (along with Méndez) has proceeded to sit on them for long periods and they have not gone to trial.

Given the political bias evident in this pattern of action and inaction, it is clear that little vigor

can be expected from the Public Ministry's upper layer as long as pact representatives are enthroned there. However, the reform creating a separate *Fiscalía* in 2000 was linked to the introduction of a modern code of penal procedure promoted by various donors. Foreign cooperation has therefore tried to strengthen the institution, in particular by developing selection and training procedures for the new *fiscales* (base-level prosecutors) needed to put the code into effect. Though greatly lacking in number, these officials have so far escaped the politicization that affects the upper reaches of the institution.

The Comptrollers-General. Like the Public Ministry, the office of the Comptrollers General (CGR) was politicized by the 2000 pact, which created a collegium of five top officials three of whom were chosen by the PLC and two by the FSLN. The body is regarded as politicized at least down to its second-echelon directors-general, who also are five in number. Unlike their homologues on the Supreme Court, the five Comptrollers have avoided public rows and their internal spats only infrequently come to light in the media.

In contrast to the two players just portrayed, the Comptrollers-General have no power to take corruption accusations to court, nor can they hold up a judicial process by their failure to investigate accusations of malfeasance if other actors want it to go forward. Conversely, if a presiding judge or prosecutor requests an investigation from the CGR, the case can bog down for an extended period, especially if either of those actors desires that very result. In addition, if the CGR launches an inquiry in any event, it may sequester documentation and sit on it for long periods hindering the performance of the PGR or *fiscales*.

The pattern of CGR rulings and actions in recent years has been inconsistent. The anti-corruption wave in 2002 galvanized it into action, leading to a doubling of the number of its reso-

lutions of responsibility against government personnel.¹⁵² It has found criminal responsibility against some Alemán-era officials, notably Byron Jerez, finance minister Esteban Duquestrada and Enitel head Jorge Solís, as well as several former directors of the state insurance company Iniser. However, it followed the Fiscalía's lead in arguing that there was no evidence against Alemán in the Channel 6 affair.¹⁵³ Since 2000, it has also ordered 846 public officials to repay the state C\$503.7m (about \$32m), although none of this money has actually been collected.¹⁵⁴

Giving the appearance of doing their sworn duty, the Comptrollers have consistently pestered the Bolaños government with investigations. They have queried the foreign minister about insurance policies for Nicaraguan officers sent to Iraq (only to be told it was a state secret), and conducted a supposed performance audit of former banking superintendent Noel Sacasa.¹⁵⁵ Their most publicized action vis-à-vis the executive, however, has been a series of questions put in writing to president Bolaños starting in early 2004 regarding issues including the aforementioned "election crimes," salary complements Bolaños allegedly received as vice-president, and money laundering through the so-called "Taiwán donation."¹⁵⁶ Former chief Comptroller Guillermo Argüello has consistently accused Bolaños of not responding fully to the questions, and in general of ignoring his institution.

At the same time, the CGR has notoriously failed to act on key cases involving the previous government. In July 2004, with rulings on some 60 Alemán-era cases still pending, Sandinista Comptroller Luis Angel Montenegro demanded that the five members of the CGR decide all outstanding matters before the expiry of their terms in March 2005.¹⁵⁷ Amidst serious infighting, his colleagues assented but were later unable to come to any agreement over the resolution of major cases.¹⁵⁸ These included accusations against former Central Bank president Noel

Ramírez for abuse of his official credit cards, former customs head Marco Aurelio Sánchez for contracting fraud, and PLC deputy Eduardo Mena for assorted malfeasance as head of the Rural Development Institute (IDR). In the latter case, it transpired that the Comptrollers had been sitting on an audit of the institution for a full three years.¹⁵⁹

As indicated by the national and international reaction to their recent call for Bolaños to be removed from office (see Conclusion), a perception of deep political bias in their actions has kept the credibility of the current crop of Comptrollers low. For the same reason, a number of foreign donors abandoned support for the institution after the 2000 pact, although a countertrend is underway motivated by a desire to see the CGR monitor the behavior of local governments.¹⁶⁰ According to experts, however, the institution's capabilities have advanced only modestly in recent years, and it currently lacks the capacity to handle such an assignment.

THE BROADER BATTLE

The foregoing portrayal of institutional politicization suggests cogent reasons why corruption convictions in Nicaragua have been infrequent. However, prosecution of high-ranking public officials is only the most visible part of combating corruption. That victories in court have so far been few does not mean that the battle has been entirely ineffective, as developments in the legal and administrative realms attest.

During the first half of 2002, before the *huaca* allegations were lodged, the National Assembly approved changes to legislation, which in principle strengthen the legal basis for the fight against corruption. In June 2002, a law partially reforming Nicaragua's antiquated penal code for the first time defined crimes such as bribery (including transnational bribery), peculation, illicit enrichment and influence peddling.¹⁶¹ A Probity Law for Public Servants passed in August of the same

year regulates conflicts of interest and provides rules for asset declarations (although the CGR regularly gathered declarations before this law, there was never any sanction for not complying).¹⁶² After the split between the government and the PLC opened, however, attempts at complementing these changes with other measures have bogged down; an access to information law developed by civil society and media groups with technical help from the Carter Center was submitted to the Assembly in November 2003 but is still awaiting action.¹⁶³

On the administrative side, the Bolaños government issued a decree in July 2002 creating the Office of Public Ethics (*Oficina de Ética Pública*, OEP), whose overriding purpose (among a vast number of official functions) is to formulate and inculcate norms of conduct for public officials. The OEP has conducted extensive training seminars for public employees, drawing the fire of the CGR for invading what the Comptrollers consider their sphere of competence. The OEP also tries to spot administrative procedures in the public sector that might facilitate corruption and recommends ways to correct them. Alongside these efforts, the government has implemented since late 2002 an IDB-financed “efficiency and transparency program” which carries out inspections of public contracting operations in seven agencies of government that account for 80% of public investment. The program, which has served to strengthen contracting procedures, will be taken over by the central government in 2005, testing its sustainability.

In broader compass, a presidential consultant recommended guidelines in mid-2003 for the drafting of a formal anti-corruption and governance policy for the Bolaños administration. The expert emphasized the importance of executive branch role modeling, systematic measurement of government performance, and the institutionalization of a nexus of cooperation between government and civil society.¹⁶⁴ Anti-corruption

policy formulation moved on to a new stage in early 2004 with the drafting of far-reaching proposals linking institutional strengthening for probity (in the PGR, OEP and municipal governments) with improvements in public service provision and regulation and other matters.¹⁶⁵ However, both an official decision on policy and the aforementioned nexus of civil society relationships have been unduly slow to materialize.

Nothing is forever. In shaping international evaluations of the Bolaños administration’s anti-corruption record, legal and administrative improvements, along with the overall strengthening of public sector financial management, have probably been more important than courtroom victories. They have also influenced the opinions of national business and other sectors whose appraisals are solicited by world bodies. Nicaragua has thus inched up from a score of 2.6 in 2002 to 2.7 in 2003 on Transparency International’s Corruption Perception Index.¹⁶⁶ In May 2003, largely on the strength of its anti-corruption achievements, Nicaragua was also declared eligible for assistance from the US-based Millennium Challenge Corporation (MCA). And in June, the G-8 countries included Nicaragua along with three other countries in a transparency pilot project, which is expected to bring additional financing.

Despite these gains, consultants working in this area stress that much of what has been attained recently is still fragile and could be undone by a less transparent government after the 2006 elections. As prospects for probity to decline under the next Nicaraguan government are very real, this record will bear watching. Equally worrisome, however, will be continuity in the pact arrangements that have shaped the performance of Nicaragua’s judiciary and control institutions over the last four years. Particularly dramatic is the case of the judicial system, whose flaws appear to be reaching the breaking point.

JUDICIAL MORASS

The preceding section indicates that the performance of the Public Ministry and Comptrollers General in combating corruption has been less than convincing. But the fecklessness of these bodies pales in comparison with that of Nicaragua's judicial system, whose behavior since the advent of the 2000 pact has become little short of scandalous. In the opinion of experts, not only have politicized judges at all levels shamelessly manipulated the law, allowing corruption to go unpunished, but the system has become permeated with an intense corruption all its own.¹⁶⁷ The result of this deterioration is that legal security in Nicaragua, never very solid, has plummeted to unsuspected depths and is regularly cited as one of the principal obstacles to the country's economic advancement.

The pacting caudillos and their parties have furthermore staunchly and successfully resisted the efforts of the Bolaños administration and civil society to reform the system and renew its personnel in the pursuit of transparency and political neutrality. Coming in the midst of harrowing incidents of judicial malfeasance, the failure of these attempts has been severely frustrating for the president and his allies. At the same time, a shift in the intra-judicial balance of forces has occurred in favor of the Sandinista Front and its leader, Daniel Ortega, for whom control over the judicial branch has become a crucial power resource to be protected from encroachment at any cost.

The upshot of these developments has led the judicial system to a severe loss of credibility in the eyes of Nicaraguans and to partially lose the backing of important foreign donors, which tried to strengthen it during the 1990s. All things considered, Nicaragua's judiciary today is the weakest link in a floundering process of democratic

consolidation and a major impediment to its success as a country.

HANDLING CORRUPTION CASES

Processing a corruption (or any) accusation in Nicaragua is a complicated affair, which starts in an entity called the Trials Distribution Office and may end in a full-fledged jury trial. Although several corruption trials have occurred, resulting mainly in acquittals, the defendants in such cases have more frequently been freed of the charges against them before things get that far.

The obscure Trials Distribution Office (*Oficina de Distribución de Causas*) is a crucial cog in the system's creaky functioning. Designed in the late 1990s as part of a judicial reform, the office's purpose is to randomly distribute case loads to different judgeships. This randomness was supposed to combat corruption, overcoming a traditional practice whereby litigants initiated court suits before judges of their choice and convenience. At key moments, however, the trials office has shown a mysterious ability to flout the laws of probability, notably putting all the early proceedings in the 2002 anti-corruption battle in courtrooms presided over by judges of Sandinista party background.

The most famous of these is Juana Méndez, a self-styled Sandinista militant and former security official whose behavior has become emblematic of the judiciary's severe politicization. Until her recent elevation to the Managua appellate court, Méndez presided over the trial of Arnaldo Alemán in the case of the *huaca* as well as notorious cases involving other high-level officials from his administration. Observers have regarded her management of these cases, and their ultimate resolution, as politically-inspired and directed.

After arresting Alemán in December 2002, Méndez took almost a year to bring the *buaca* indictment to trial, and capriciously altered the conditions of the ex-president's confinement both prior to and after her ruling. As most analysts see it, Alemán has enjoyed house arrest or, as at present, the comfort of a hospital room at moments in which Daniel Ortega has wished to facilitate negotiation with his rival. But at moments when the Sandinista leader has sought to apply pressure, the Liberal caudillo has been clapped into a police jail cell or languished in Nicaragua's central prison. When the historic moment finally came in December 2003 for Méndez to convict a former president of Nicaragua for corruption and sentence him to 20 years in prison, the denouement was almost anticlimactic, as it appeared blatantly timed to follow Ortega's late 2003 parley with Alemán and to punish the Liberal leader for his intransigence in the negotiation.¹⁶⁸

Alemán's chief crony, taxman Byron Jerez, has experienced similarly fluctuating treatment. Jerez has now completed five out of eight trials on sundry sets of charges, receiving one conviction with an accompanying eight-year jail sentence and four subsequent acquittals. The unexpected conviction, in June 2003, apparently led the tax official to conclude that his mentor had thrown him to the wolves, leading him to turn state's evidence and testify against Alemán in the *buaca*.¹⁶⁹ For this favor, judge Méndez absolved him of his own indictment in the case, a decision regarded by jurists as illegal.¹⁷⁰ When the taxman's most publicized indictment in the case known as the *camionetas* finally went to trial in October 2004, the jurors ignored the overwhelming evidence against Jerez and he was acquitted.¹⁷¹

Embarrassed by this decision, the president of the Supreme Court, Yadira Centeno, termed the verdict "a terrible thing." By contrast, more brazen colleagues blamed the jurors' decision on "weaknesses" in the government's case (consid-

ered irrefutable by other observers) or lamely ascribed it to archaic trial procedures.¹⁷² Jerez's acquittal in this landmark case capped a pattern which has seen most of the important corruption indictments lodged since April 2002 fall to pieces. Thus in June 2004, Méndez absolved former Enitel chief Jorge Solís of money laundering charges in the *buaca*, after which the fugitive official felt confident enough to return to Nicaragua despite other outstanding charges against him.¹⁷³ By mid-2003, most of the indictments in the Channel 6 case had moreover been dropped by the presiding judges (some with the government's acquiescence), leaving Arnoldo Alemán and his finance minister as the only defendants.

Although the inside workings in these instances are impossible to document, the pattern in the outcomes so far has been such as to suggest that the system has operated to concentrate political leverage against one man, Arnoldo Alemán, while undermining the credibility of the government's campaign to prosecute corrupt behavior.

SYSTEM POLITICIZATION AND CORRUPTION

Nicaraguans have never known a judicial system free from political interference and manipulation. Since the end of the Sandinista revolution, political sympathy, if not outright party affiliation, has consistently been important in the selection of Supreme Court and appeals court magistrates. Well before the 2000 pact, the justices of the Supreme Court had divided up the country into judicial fiefdoms in which one or two magistrates held sway over the appointment and dismissal of lower-level personnel. The absence of a judicial career and even of fixed terms made the political independence of district and local court judges virtually non-existent. Despite these realities, tepid reforms in the late 1990s managed to clean out some of the most incom-

petent and corrupt elements and put the whole system on a sounder legal footing.¹⁷⁴

Since 2000, however, politicization has reportedly become much more pervasive and pernicious. The Supreme Court now formally admits that political party “benches” exist in its midst just as they do in the National Assembly.¹⁷⁵ Whereas previously only a minority of judges was required to demonstrate political party loyalty, now at least 70% are counted as either Sandinistas or Liberals, with the former enjoying a significant numerical advantage. Moreover, the tendency for Supreme and appellate court magistrates to interfere in and direct the decisions of judges in specific cases has become widespread and flagrant, to the point recently of sparking a subdued protest from among the lower ranks (“they call you for anything at all,” one unnamed judge exclaimed).¹⁷⁶

Although this behavior mainly affects decisions in the capital, it can occur virtually anywhere in the country. Politicization is furthermore said to extend beyond court personnel *per se*, embracing adjunct bodies such as the property registers, which are administered by the Supreme Court, the aforementioned trials distribution office, and even the Institute for Legal (Forensic) Medicine.

More baneful than the spread of political party tentacles has been a mushrooming of judicial corruption. Local judges in Nicaragua have long accepted emoluments for court services despite warnings from the CSJ not to do so. Payments for rulings, as well as for judicial embargoes and evictions, are also standing practices of some frequency. However, according to the sources consulted for this report, judicial corruption has vaulted up to a new and more dangerous level since the 2000 pact. Payments to judges have become more extensive and the prices for rulings higher (sums in the \$10,000-20,000 range are regularly mentioned). Reflecting this trend, a recent study by Dunn & Bradstreet of legal security in

Latin America revealed that investors in Nicaragua assert they must pay for favorable rulings in order to do business.¹⁷⁷ More disturbing are reports that payments for decisions have developed into a system of extortion (literally termed by informants a “mafia”), in which money is required not only to generate action but to protect against adverse moves by other parties.

To a worrying extent, private businesspeople are not only said to pay such charges but increasingly to initiate court suits deliberately in order to harass commercial rivals. Fortunately, as in the matter of high-court interference in decisions, judicial system malfeasance has by this point become too pervasive to be kept hidden. Thus Supreme Court president Centeno, in an August 2004 newspaper interview, admitted the existence of the problem, if not its true extent or seriousness, accusing the country’s bankers among other parties of corrupting the system.¹⁷⁸

THE BALANCE OF POWER

In the midst of this disturbing evolution, the Sandinista camp in the judicial system has slowly extended the reach of its influence since the 2000 pact, and now predominates over the Liberals. This trend stems from a conscious strategy, begun in the early 1990s but pushed more insistently after Alemán’s advent in 1997, to prepare party cadre to become lawyers and later place them as judges. In this way Sandinista caudillo Ortega compensated for the dwindling of other power resources and gained leverage over decisions of vital importance to his followers’ patrimonies. In addition to filling judgeships, given enduring post-revolutionary uncertainty over property rights, the FSLN has particularly targeted, and largely controls, Nicaragua’s system of property registers.

By this point Sandinista-affiliated judges dominate the criminal courts in Managua and increasingly hold sway over the civil courts as well. The imposition of party orders over decisions, how-

ever, appears to be sporadic and also decentralized, involving multiple networks of loyalties, which may ultimately converge in the person of Daniel Ortega.¹⁷⁹ On the day-to-day level, this implies that arbitrary judicial rulings more often stem from simple payoffs, or from bargaining between higher-level magistrates, than from direct instructions by one or the other of the dominant party leaders.

After the 2000 pact went into effect, the lineup in the 16-member CSJ effectively became 7-6 in favor of the PLC with three independents.¹⁸⁰ In subsequent years, the periodic elections of Supreme Court justices held to replace others whose terms were expiring, and negotiations between the two caudillos and their judicial benches over the annual election of the Court president, have permitted Daniel Ortega to broaden and deepen his quotas of power in the system. These complex dealings have determined not only who will be the CSJ's head, but also how the four chambers (*salas*) of the Court are organized, the naming of justices at appellate and district levels, and the resolution of specific cases of interest to one or another party. They have produced prolonged impasses both in the CSJ and appellate courts which have hindered the proper functioning of the judicial institution.

During the first half of 2002, disagreement over the election of five new magistrates left the Court with only eleven of its 16 statutory members, a situation which would persist until June 2003. As six of the eleven were Sandinistas, Ortega successfully bid for a Sandinista to assume the Court presidency in October 2002, and after extensive bargaining the post went to magistrate Alba Luz Ramos although the FSLN ceded control of the principal chambers to the PLC.¹⁸¹ Ortega then stretched out the negotiation over new justices to mid-2003, when four more terms were to expire, in order to force a mega-election in which nine new justices were chosen in one fell swoop.¹⁸² This produced a

lineup of 7-7 with two independents (each of whom leaned toward one of the parties), but with the FSLN controlling several chambers as well as the Court's internal disciplinary commission.

The most serious impasse began when Ramos's one-year stint as Court president came to an end in October 2003. Despite the alleged existence of a gentleman's agreement to rotate the post, the Sandinistas insisted in keeping the presidency in the hands of their party, while the Liberals vetoed the re-election of Ramos.¹⁸³ The Supreme Court then became headless, and remained so for more than three months. In addition to internal wrangling over Ramos's candidacy, the bargaining became bound up with Arnaldo Aleman's December 2003 conviction and with the attempts of his Assembly bench to find a non-judicial avenue to win his freedom. After these ran aground, the Sandinistas secured the defection of Liberal magistrate Carlos Guerra, who voted with the FSLN to elect a slate headed by Sandinista Yadira Centeno as president and himself as vice-president.¹⁸⁴

As rulings in 2004 attest (see below), the last-mentioned development has cemented FSLN predominance in the system, something Ortega will strive to protect in the next round of bargaining with Alemán. In the meantime, the two caudillos have cooperated in thwarting the Bolaños administration's attempts to reform judicial institutions and purge the judiciary of corrupt elements.

REFORM EFFORTS FALL FLAT

The attempts began in February 2002, when Bolaños created a "Judicial Commission" headed by then Supreme Court president Iván Escobar Fornos to make recommendations for reform of the system.¹⁸⁵ The Commission did this out of whole cloth, ignoring a welter of suggestions drafted in prior years. Composed of more than 40 jurists, the Commission nevertheless prop-

erly identified politicization, corruption, tardiness in the administration of justice and a lack of public confidence as the system's chief problems.¹⁸⁶ Its recommendations furthermore spoke to the major areas of concern in any serious reform effort. The Commission proposed to choose the CSJ on a professional and merit basis; create a specialized chamber to hear *amparos* and constitutional appeals; institute a judicial career to provide lower-level justices with independence and stability; separate the daily administration of the court system from the work of the judges and magistrates, and strengthen the country's property registers and law faculties.

The recommendations met with hostile reactions from some of Escobar's colleagues on the Court, who regarded the Commission as subordinated to the will of the executive and hence as a threat to their positions.¹⁸⁷ With the terms of five CSJ magistrates reaching their expiration dates in July, Bolaños went searching for a slate of professional and non-partisan candidates to propose to the Assembly, consulting widely among law schools and lawyers associations, the private sector and civil society generally. The process generated an initial list of fifteen names. After the Court election was postponed, however, the Bolaños slate fell into oblivion as the pacting parties took charge of the process. As the nine-justice mega-election approached in mid-2003, the prospect of another politicized selection rang alarm bells in various quarters, leading to several expressions of protest. One of these, a "Letter of the 150" which emerged from the president's private Opinion Council, advocated judicial depoliticization and independence.¹⁸⁸ A second proposal, promoted unofficially by members of CONPES, was to put the election of the Supreme Court magistrates to a national plebiscite.¹⁸⁹ Neither proposal produced a significant impact.

Although Bolaños put forward a new list of twelve names, he did not undertake personally

to lobby for them and they were roundly ignored by the dominant parties, which calmly consummated their judicial pact in June 2003 to the dismay of the rest of the society.¹⁹⁰ Bolaños's rigid rejection of any negotiation with the pacting parties met with private criticism from certain of his advisors, who felt that an opportunity to drive at least a small wedge into the judicial pact had been missed. In the wake of this development, prospects for forging an overall judicial system reform faded.

Independence for Judges? The president's second foray at promoting judicial reform met with little more success than the first. Given the keen interest of foreign donors in the topic, with help from Spain the Supreme Court had prepared a draft version of the Law of the Judicial Career as early as June 2001. The Court proposed a merit-based system for hiring, promoting and firing justices that other international experts deemed potable. In accord with vested system interests, however, the draft kept management of the judicial career and its disciplinary procedures safely within the ambit of the Supreme Court itself, rather than entrusting it to a separate non-partisan body.¹⁹¹ Submitted to the Assembly in early 2003, the Court's initiative became the starting point for bargaining, which embraced other proposals and eventually resulted in a "majority report" of the Assembly's Justice Commission.

But in October 2003, just prior to the visit of US Secretary of State Colin Powell, the Liberal minority on this commission suddenly came forth with a radical alternative. Against the grain of the majority consensus, the Liberals proposed making the National Council of the Judicial Career a completely autonomous body "independent of all political interference," to be comprised by some CSJ magistrates but also by law school deans and other recognized jurists. Coupled with this positive suggestion went a proposal to make anyone who had ever belonged to a repressive state organ or committed human

rights violations under a previous government ineligible for the judicial career.¹⁹² In addition, the Liberals proposed to oblige all existing judges to revalidate their positions by winning competitive examinations after the new law took effect.

This proposal was enough to make Daniel Ortega see red, as it implied that a sizable number of lower-level judges of Sandinista affiliation, many of whom has served in the revolution's interior ministry or as members of the Anti-Somocista Popular Tribunals, would find their reconfirmations blocked and be ejected from the system. When, at the urging of the US, Bolaños threw his weight behind this idea, the stage was set for the confrontation that led to the events of November-December 2003 narrated above. Strife over the judicial career law continued into 2004, when an attempt to bring the Liberal proposal to a floor vote in the Assembly on March 25th led to fistfights between Liberal and Sandinista lawmakers.¹⁹³

Indicative of the alarm spreading through the Sandinista judicial camp, Nicaragua's association of local judges sought an injunction (*amparo*) from the Managua Appellate Court against the proposed legislation, this despite an express legal prohibition against *amparos* directed at laws in formation in the legislature. Threatened with loss of its control over the judicial career, the Supreme Court got round this obstacle by crassly striking down the aforementioned prohibition as unconstitutional in May 2004.¹⁹⁴ In addition, the Court has consistently maintained that separating any council created to administer the judicial career from the jurisdiction of the CSJ would violate the constitution.

With these actions, the Sandinista majority on the Court effectively created a legal lock hold over any reform that might threaten its recently acquired pre-eminence in the system. As noted above, after April 2004, the Sandinista and Liberal caudillos ceased to quarrel over the judicial career, and have since gone on to a new accom-

modation in their relationship. In this development, both the Bolaños administration and foreign cooperants lost any real leverage over the law's negotiation, which was assumed directly by the Supreme Court and the party benches in the legislature. When the Assembly finally approved the law in October 2004, the Court obtained what it had sought from the beginning—a judicial career firmly under its control that unfortunately threatens to go on reproducing much of the system's existing politicization.

On the positive side, the legislation establishes clear judicial ethics and offers judges job stability. However, the ideal of merit-based entry to the system was infringed by a decision of the lawmakers to permit one-fifth of the candidates for appeals court positions and two-fifths of those for district courts to be appointed directly by the CSJ without examination.¹⁹⁵ In addition, both the National Council of the Judicial Career and all other bodies created have an even number of members, an unusual device which suggests that decisions will in large measure be negotiated between the parties that have forged the law.¹⁹⁶ Both these dispositions indicate strongly that these parties have striven to create a scheme that will perpetuate political control of the judicial apparatus in a somewhat lighter and less flagrant form than at present.

LEGAL SECURITY IN JEOPARDY

Though implementing regulations remain to be drawn up, the argument that the new judicial career will help overcome existing system flaws has met with initial skepticism. The tenor of recent judicial actions and rulings has meanwhile reinforced the serious concern over legal security for business operations in Nicaragua, which was rated by Dunn & Bradstreet as the lowest in the Western hemisphere after Cuba. Three episodes in particular have fed the disquiet surrounding this topic.

In July 2003, Nicaragua's banking superintendent, Noel Sacasa, resigned his post, which the pacting parties have since left unfilled. As banking overseer during the years 2000 and 2001, Sacasa had presided over the liquidation of four private financial entities, which failed during the period due to varying combinations of corruption and mismanagement. In his resignation letter, Sacasa complained of a "lack of juridical security" in his post, and later revealed a fear of being persecuted by the Supreme Court, which was to rule on several suits against the superintendency brought by bankers whose entities had gone broke.¹⁹⁷ Although Bolaños and others staunchly defended a person whom they regarded as of unquestioned integrity, Sacasa felt vulnerable enough to leave the country with his family for the US.

At the same time that this affair transpired, the CSJ was processing a landmark case potentially affecting the country's financial system and domestic business. The case was a \$7m suit brought by a sugar mill company, Agroinsa, against the state-owned insurance company Iniser for the latter's refusal to honor a policy that supposedly covered damages from a disastrous fire. When the Court's civil chamber, dominated by Sandinistas, ruled in June 2003 in Agroinsa's favor, Nicaragua's principal business organ, the Higher Council of Private Enterprise (COSEP), along with much informed opinion, denounced the ruling as politically biased in favor of a company owned by Sandinista interests. Documentation in hand, both COSEP and Iniser insisted that the text of the insurance policy did not cover the damages incurred.¹⁹⁸

Judicial attempts to collect the disputed award brought a confrontation at Iniser's doorstep, where company officials refused a court-appointed interventor entry.¹⁹⁹ An irate Enrique Bolaños meanwhile vowed never to pay Agroinsa a cent. The Iniser matter became the first of several cases that the Bolaños administration, along

with business and diplomatic observers, have regarded as attempted judicial assaults against state or private property. Another clear example, brewing in the same period, involves a conflict between two Nicaraguan bankers that is still ongoing. In March 2001, failed bank owner Haroldo Montealegre lodged a suit alleging that a successful rival, Roberto Zamora, had reneged on an agreement to purchase his Banco Mercantil for \$6m before the entity went bust. Finding in Montealegre's favor in December 2003, the Sandinista judge hearing the case accepted an informal agreement written on a napkin in a Florida restaurant as legal evidence of a transaction that the other party asserted Montealegre had never honored.²⁰⁰

A bizarre attempt at collection of the award ensued in May 2004, when Montealegre's lawyer, accompanied by another judge, appeared at the doors of Bancentro (Zamora's bank), apparently believing they could simply take the \$6m from its vaults.²⁰¹ In response, Zamora publicly accused Supreme Court justice Rafael Solís, a Sandinista and relative of Montealegre, of orchestrating judicial acts against him.²⁰² Newly enraged, Bolaños came out in support of Zamora, warning the judicial authorities and their political sponsors not to endanger the health of the nation's financial system with their antics.

Outcries that these peculiar procedures amounted to judicial "monstrosities" failed to prevent a further complication of the case in June, when the Sandinista judge appointed Haroldo Montealegre as "interventor" in the Nicaraguan subsidiary of the ailing Italian milk company Parmalat.²⁰³ The purpose of this action, again denounced by jurists as illegal, was to find an indirect way to allow Montealegre to collect his \$6m, as the Italian company was paying off a large credit to Bancentro that could be diverted to Montealegre by court order. In addition to drawing a protest from the Italian government, this new abuse provoked another strong

reaction from Bolaños, who briefly appeared to be contemplating an executive order closing the Supreme Court.²⁰⁴

The Tangle Deepens. The ultimate resolution of the two conflicts just mentioned is still pending. But they are dramatic enough to demonstrate the capacity of a deeply politicized judiciary to generate abuses and endanger the conduct of legitimate business. In turn, this politicization stems directly from the competition between Nicaragua's caudillos for spaces in the system from which to protect vital interests, including their own impunity, as well as to prey on opponents. This competition has hindered and at times obstructed the system's functioning, and has clearly aggravated the chronic tardiness with which it administers justice to the citizenry.

Nicaragua's judicial system is not a hopeless cause. With help from a variety of donors, a

modern code of criminal procedure replacing laborious written proceedings with modern oral trials has made its debut, while a new penal code is slowly being processed. Capabilities to prosecute cases are also being augmented and public defenders are being trained to help citizens guard their rights. Despite its evident distortion, even the judicial career law approved in October could be a modest step forward in protecting judges from abuse by their superiors.

But neither the Bolaños administration nor foreign donors offering money in return for reform have succeeded in penetrating the phalanx of judicial defenses put up by the pact. Judicial politicization and corruption are now so severe that only wholesale change at the top can overcome them. And a revolution in political will may be required for such change to get onto the national agenda.

CONCLUSION

On October 12, 2004, Nicaragua's National Assembly received a unanimous request from the five Comptrollers General of the Republic to depose Enrique Bolaños Geyer as president for refusing to answer questions they had put to him regarding the origin of donations to his 2001 election campaign.²⁰⁵ In response, governments in Central America as well as the United States quickly voiced their support for Bolaños and expressed concern that the constitutional order in Nicaragua could be ruptured.²⁰⁶ Domestic business groups issued more timid but basically positive statements backing their president. While calling on Bolaños to clarify the matter of his campaign money, the news media and analysts of political affairs generally denounced the Comptrollers' action as political and as an outgrowth

of a looming re-edition of the 2000 pact. Most of the society, however, watched passively from afar while the powerful jostled.

The CGR's broadside, and the variegated responses it called forth, are illustrative of the current temper of Nicaraguan politics. While the question is important, whether or not the president has committed infractions of the election rules has become secondary given the widespread conviction in the political class and abroad that the charges against him are motivated not by respect for the law, but by a desire to use the law as a weapon, or as daily paper *La Prensa* phrased it, to subject Bolaños to "blackmail."²⁰⁷ Though Nicaraguan politics is never very predictable, the betting is that the caudillos assumed to be acting behind the Comptrollers will not actually remove Bolaños from office, but may wish to manufac-

ture a “crisis” in order to present their 2005 re-division of the political spoils as a contribution to “governability.”

As the events both in April and October indicate, the struggle for power between Nicaragua’s reigning caudillos may bring the country to the brink of crisis but it is unlikely to go over the edge, and much more likely to arrive at a new accommodation. The problem is not whether the constitutional order will hold, but what kind of democracy Nicaraguans will enjoy as long as this struggle goes on.

As the discussion in this report indicates, that democracy is likely to be of a distinctly low-intensity type. Competitive elections between at least two well-entrenched forces will doubtless continue to be held. However, the citizenry will only be obliquely represented by its elected leaders, who will serve the interests of dominant party caudillos in addition to their own ambitions. Although the effectiveness of government may grow, lasting improvements in public probity will be difficult to consolidate. The judicial system will meanwhile remain a swamp of corruption, and justice for ordinary Nicaraguans will be continue to be a chimera.

The Perils of Uniqueness. This report has stressed the unique pattern in Nicaraguan politics. In tandem with powerful external actors, the majority in Nicaragua’s politically fractured society lives in fear of the return of a failed revolutionary leader who refuses to forswear a commitment to radical change. Another caudillistic leader exploits that fear in an attempt to entrench the long-term hegemony of an outmoded clientelistic apparatus designed as a prop for his corrupt and personalistic rule. The struggle for power between these two leaders and their respective forces now spans more than a decade and shows no sign of abating, although a new stage in the contest is set to begin in 2005.

The peculiarity of this struggle is matched by the singular political pact, which is now in the

process of renewal and renegotiation. As this report has surveyed, operation of the pact has impeded consolidation of the fragile democratic institutions that have been in gestation in Nicaragua since the fall of the Somoza dictatorship in 1979. It has also hindered and partially vitiated the fight against corruption and even manipulated it against the Bolaños government. And it has stymied the attempts of that government to promote key institutional reforms needed to restart democratic progress.

Nicaragua’s problem is not only that democracy has failed to consolidate. As the examples of the court system and the Comptrollers office demonstrate, functioning at the upper levels of key institutions has deteriorated markedly despite foreign assistance in past years designed to buttress them. This decay has recently combined with tendencies toward institutional impasse and even threats of rupture against the government itself. The most worrisome aspect is the evidence that popular support for the democratic system and for individual institutions has eroded significantly since 2000 when the pact went into effect.

The implications of this regress for society are serious. Despite enormous amounts of foreign assistance, without solid legal institutions to underpin the working of the market, economic growth and social progress will continue to lag dangerously behind the mounting pressures for change and the threats to citizen security that emanate from the global environment. Fresh examples of these problems cropped up in May 2004, when a repetition of the 6% violence highlighted the political stasis hindering the improvement of Nicaragua’s education system, while killers in the probable pay of international drugtraffickers attacked the National Police headquarters in Bluefields and slew four officers.

The current government of Enrique Bolaños Geyer has made major contributions in search of ways to adapt Nicaragua to the dictates of globalization. It has mapped out a national di-

rection, set a standard for governmental honesty, and sought avenues for ordinary citizens to participate in policy-making. But it has not been able to overcome the institutional blockade created by the pacters, and despite the country's desperate need for continuity it does not yet possess an heir. On the contrary, it remains inordinately difficult for a third party alternative to establish itself and break the Liberal-Sandinista control of electoral politics.

The Next Chance for Change. In two years Nicaragua will hold national elections, which are once again likely to be dominated by the PLC and the FSLN. Engendered by the experience of the revolutionary decade and the political combat of the post-1990 period, stable loyalties have developed toward these parties, with Sandinistas and Liberals enjoying sympathy from segments of the population varying from 25-30% each.²⁰⁸ If the pattern of previous elections holds, most Nicaraguans lacking a party preference will vote against Daniel Ortega, and the PLC will triumph in this voting without much trouble.

But the next election may well be different from those since 1990. In that election, Ortega and the FSLN will have a significant chance to return to power, something they have not had during the intervening years. The Sandinista leader's rapprochement with the Catholic Church, which saw Cardinal Miguel Obando hold a mass for the victims of the 1980s war on July 19th 2004, could be key in swinging votes in his direction.²⁰⁹ More important is the serious potential for division in the anti-Sandinista vote bloc, dominated in the last two elections by the PLC. The disgraceful conduct of Arnoldo Alemán in office has split this camp, and a part of it may refuse in 2006 to accept the logic of the lesser evil. A multiparty vehicle expressing the rejection of the whole caudillo system has emerged in the formation of the APRE alliance. And in the expected adjunct to the 2005 "re-pact"—the freeing of Arnoldo Alemán from prison—Daniel

Ortega will be striving to make that logic all the more persuasive.

THREE SCENARIOS

President Daniel Ortega. The election of Daniel Ortega Saavedra in 2006 would produce short-term destabilizing responses by domestic business and the ex-Resistance, immediately testing Ortega's capacity to govern. Although these can be overcome, the advent to power of a leader hostile to neoliberal economic policies would very likely bring with it a populist management of policy and attempts to expand Nicaragua's sources of external aid to achieve degrees of freedom from existing policy constraints. The consolidation of power by Hugo Chávez in Venezuela indicates one of the directions in which Ortega would search for new assistance. This outcome would not only fail to provide continuity in current policies, but harbors a distinct potential to generate economic impasse and social decline, threatening the modest gains achieved in the past decade.

Given present indications, it may also portend a dangerous political restructuring of society. After years of vague rhetoric about shifting from a presidential to a "parliamentary" regime, Ortega has recently clarified the radical-democratic character of his thinking about Nicaragua's future political institutions. His proposal is to build an alternative democracy from the bottom up, creating a cascade of popular assemblies starting in the *municipios* and working upward to the national level.²¹⁰ At each level, the logic of the scheme is for "citizen power" to supersede the authority of Nicaragua's elected leaders, including the deputies of the National Assembly. This proposal is in character with the restricted pluralism that typified the Sandinista revolution of the 1980s, in which mass organizations directed by the FSLN kept political opposition at the margins of the system.

An Alemán delegate. Though the prospect cannot be entirely ruled out, Arnaldo Alemán, if freed, is not likely immediately to opt for another candidacy in 2006. Instead, the most probable outcome of the 2006 election is another victory of a PLC candidate chosen by Alemán over Daniel Ortega. Alemán will be careful this time to find someone more pliant than Enrique Bolaños. But given his surprising ability to go on dictating to his party from prison, Alemán will likely determine not only the choice of a new president but a new legislative cohort as well. A variant of this scenario, cherished by a minority of subaltern PLC leaders but difficult to evaluate at present, holds that Alemán will be forced to share control of the party and its 2006 candidates in the event the PLC suffers a severe defeat in the municipal elections scheduled for November 2004.²¹¹

Victory by one or another Alemán delegate offers significant continuity in government economic and social policy, including progress in decentralization, albeit at the probable cost of backsliding in governmental probity. But it offers little prospect of political reform or consolidation of the rule of law, and is more likely to propitiate continued politicization and the repeated pact-making that has undermined institutions in recent years. It is not a convincing scenario for Nicaragua's rapid advance as a society.

The Breakout. The former scenarios presume that Nicaragua's two caudillos maintain control over their respective parties. While this is more likely than not, a potentially significant challenger has emerged in each. Managua's highly popular mayor Herty Lewites, about to finish his four-year term, is obliquely but firmly contending with Daniel Ortega for the FSLN's next nomination. On the other side, banker Eduardo Montealegre has recently resigned as presidential secretary of the Bolaños government to work for the democratization of the PLC. Despite certain poll find-

ings indicating that the two men are currently more popular as pre-candidates in their respective camps than either of the *caudillos*, neither man has a clear chance to prevail in his contest at the present time.

An alternative scenario, initially regarded as quixotic, is for the two challengers to forsake their parties of origin and join forces, possibly as candidates of the emerging APRE coalition in the 2006 elections. This option would require an uncommon act of political courage from each. But it may be the most rapid path to fundamental change. Political change in Nicaragua starts with the emergence of alternative leaders. Though their drawing power is untested, a strong showing by this pair in 2006 could begin the needed turnover of Nicaragua's political class and force the now dominant parties finally to change. This proposal is audacious and a long shot, but audacity on this order is needed if Nicaragua's democratic transition is to recommence in the short term.

The Urgency of Change. As the three scenarios (and others that may be drawn) suggest, Nicaragua's future is essentially open-ended. While continuity in the society's current political impasse is unfortunately the most likely denouement of the story told in this report, a leftward lurch followed by the possible outbreak of severe conflict is now a distinct possibility. With imagination and resolve, however, a route toward to a more positive future can also be devised, although traversing it will face formidable obstacles.

The urgency of reviving democratic progress cannot be overemphasized. Nicaragua's incapacity to transcend the cleavages of its revolutionary period is clearly compromising its long-term future as a society. In Bolivia, a Latin American country whose political history has important parallels with Nicaragua's, the divisions engendered by another failed revolution in power from 1952 to 1964 lasted for 16 years, but finally gave

way to a more complex set of electoral choices.²¹² By contrast, the sterile combat between Nicaragua's outmoded caudillos threatens to go on far beyond that time span, in fact, to go on indefinitely.

This is a problem for which only Nicaraguans can find the solution. They cannot expect external actors to save them from ruin or the folly of their own politicians. Invoking the Democratic Charter of the OAS to bring foreign governments to his rescue may help Enrique Bolaños

stay in office until the end of his term. But in the current "era of the pact," in which Daniel Ortega and Arnoldo Alemán combine to thwart any sort of positive change, such actors exert a limited and declining ability to shape Nicaragua's political future.

It is up to Nicaraguans themselves to demonstrate that they will no longer let that future be determined by two men who insist upon living in the past.

ENDNOTES

INTRODUCTION

(pages 1-3)

- 1 Larry Diamond and Marc F. Plattner, eds., *The Global Divergence of Democracies* (Baltimore: Johns Hopkins, 2001), pp. ix-xiii.
- 2 Thomas Carothers, "The End of the Transition Paradigm," *Journal of Democracy* 13:1, January 2002.
- 3 Guillermo O'Donnell, "Illusions about Consolidation," in Diamond and Plattner, Op. cit., p.115.
- 4 Cf. Daniel Kaufmann, "Rethinking Governance: Empirical Lessons Challenge Orthodoxy," discussion draft, March 11, 2003.

NICARAGUA'S NATIONAL PROBLEM

(Pages 4-10)

- 5 United Nations Conference on Trade and Development, *The Least Developed Countries Report 2002*, presents a profile of this group of nations in Chapters 1-2.
- 6 At 16-17% of GNP, its tax coefficient also coincides almost exactly with that of the "least developed countries."
- 7 The National Development Plan formulated by the Bolaños government even argues that there is negative growth in the total productivity of the country's production factors. See Government of Nicaragua, *National Development Strategy*, draft for

- discussion, December 2002, p.4. Authorship attributed to Mario de Franco.
- 8 UNCTAD, Op. cit., p.69 ff.
- 9 United Nations Development Program, *Human Development in Nicaragua 2002*, p. 29.
- 10 *Sistema de Cuentas Nacionales de Nicaragua: Año Base 1994*, p.71 and Banco Central, *Informe Anual 2003*, p. 54.
- 11 INEC, Encuesta de Medición de Nivel de Vida: Indicadores Básicos, 2002, p. 3.
- 12 World Bank, *Nicaragua Poverty Assessment*, December 2003, p. iii. As a result, the occurrence of diarrhea and respiratory infections has not varied much either.
- 13 See *Metas de Desarrollo: Seguimiento a la Cumbre del Milenio, Primer Informe, December 2003*, p. 11. The evaluation considered it "unlikely" that Nicaragua would reach seven of the ten goals set for 2015.
- 14 The UN lamented the abrupt decline in external aid to the LDCs during the 1990s, which in net terms was 46%. UNCTAD, op. cit., p. 215.
- 15 UNCTAD, p.147.
- 16 Ibid, p. 160.
- 17 See argument in Ibid, Chapter 5.
- 18 US Department of State, *International Narcotics Control Strategy Report 2003*, p. xx.
- 19 La Prensa, "Escasean policías", May 13, 2004.
- 20 La Prensa, "Costeños eligen autoridades", May 2, 2004. CITE ASDI.

- 21 El Nuevo Diario, "Sublevación jurídica en el Caribe", June 15, 2004; La Prensa, "Proclama independentista inquieta a la RAAN", June 6, 2004.
- 22 La Prensa, CITE.
- 23 This is the thesis of the recent *Report on Democracy in Latin America*, published by the United Nations Development Program in 2004. See particularly Chapter 3.
- 24 United Nations Development Program, *Human Development in Nicaragua 2002*, pp. 28 and 32.
- 25 This figure is found in SETEC, *Estrategia Reforzada de Crecimiento y Reducción de Pobreza*, 2001, official Government of Nicaragua document. By contrast, the Economic Commission for Latin America (CEPAL) estimates that overall poverty in Nicaragua for the same year stood at 67.4% of the population, cf. CEPAL, *Panorama Social de América Latina 2001-2002*.
- 26 World Bank, *Nicaragua Poverty Assessment 2003*, p.7.
- 27 Dennis Rodgers, "Globalización de un barrio desde abajo: emigrantes, remesas, taxis y drogas", in *Envío*, No. 264, March 2004. This interesting anthropological work portrays the vertiginous growth of drug consumption and trafficking in a Managua neighborhood since 1999, and points to signs of police complicity in the phenomenon.
- 28 This forecast comes from an institution that works to prevent these phenomena and prefers that its identity not be disclosed.
- 29
- A TOUR OF THE TRANSITION**
(Pages 10-15)
- 30 See Robert Pastor, *Not Condemned to Repetition* (Boulder: Westview Press, 2002), chapter 16 for a review of events in this period.
- 31 The basic book on Nicaraguan politics in this period is David Close, *Nicaragua: The Chamorro Years* (Boulder: Lynn Rienner, 1997).
- 32 For a review, see Roberto J. Cajina, *Transición política y reconversión militar en Nicaragua* (Managua: CRIES, 1997), Chapter 4.
- 33 These are discussed in Ángel Saldomando, *Nicaragua con el futuro en juego* (Managua: CRIES, 1996), pp.86-99.
- 34 David R. Dye, "Notes on the Nicaraguan Transition," in *Nicaragua's Search for Democratic Consensus: A Conference Report*, Woodrow Wilson Center, Working Paper 213, 1995.
- 35 These changes began the process of politicizing the Supreme Electoral Council (CSE). Cf. Hemisphere Initiatives, *Democracy Weakened? A Report on the October 20, 1996 Nicaraguan Elections*, November 1997. pp. 5-6.
- 36 David R. Dye, *Patchwork Democracy*, 2000, pp.12-16.
- 37 David Close, ed. *Undoing Democracy*, CITE CHAPTERS
- 38 El Nuevo Diario, "Aleman entre los diez más corruptos", August 5, 2004.
- 39 Dye, *Patchwork Democracy*, pp.20-21, 23-25.
- 40 David R. Dye and David Close, "Patrimonialism and Economic Policy in the Aleman Administration," in David Close ed. *Undoing Democracy*, Pp. cit., pp.
- 41 David R. Dye with Shelley McConnell, *Observing the 2001 Nicaraguan Election*, The Carter Center, 2002, passim.
- SYSTEM SNAPSHOT**
(Pages 15-21)
- 42 Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Washington D.C.: The Carnegie Endowment, 1999), pp. 86-90.
- 43 Oscar René Vargas, *El síndrome de Pedrarias* (Managua: CEREN, 1999).
- 44 For an exhaustive treatment of Nicaraguan political thought during this whole epoch, see Andrés Pérez Baltodano, *Entre el Estado Conquistador y el Estado Nación* (Managua: INHCA, 2003).
- 45 Arturo Cruz S., *La república conservadora de Nicaragua* (Managua: Fundación Vida, 2003).
- 46 Emilio Álvarez Montalván, *Cultura política nicaragüense* (Managua: Pavsa, 1999).
- 47 Instituto de Estudios Nicaragüenses (IEN), Cuaderno No.1: *Cultura Política*, 1997.

- 48 Manuel Ortega Hegg, *Cultura política, gobierno local y descentralización* (San Salvador: FLACSO, 2001), pp. 6-7.
- 49 The voter turnout in the last three presidential elections averaged 76% of those enrolled.
- 50 Karlos Navarro, *La reforma al sistema electoral de Nicaragua* (Managua: Foro Democrático, 2004), pp. 80-99, presents a capsule history and rudiments of Nicaragua's electoral system. The Zelaya regime introduced proportional representation in voting for deputies in 1894. Ibid, pp.108-109.
- 51 An opinion survey in September 2004 found that 12% of the population feel themselves represented by a deputy. *La Prensa*, September 28, 2004.
- 52 *El Nuevo Diario*, TITLE June 17, 2004.
- 53 *El Nuevo Diario*, "¿Visión clasista para rechazar politización?", August 23, 2004. Magistrate Iván Escobar Fornos dissented from this ruling, arguing that "it is not correct" for the CSJ to have the power to interfere in the process of debating a law.
- 54 For a history of the Nicaraguan army during these years, see Roberto J. Cajina, *Transición política y reconversión militar en Nicaragua, 1990-1995* (Managua: CRIES, 1996).
- 55 Former Gen. Cuadra has revealed that the army was on the point of insubordination against the president in this affair. *La Prensa*, "Ejército estuvo a punto de insubordinarse," September 2, 2004.
- 56 For an example of this opinion, see *La Prensa*, "A la salud del Ejército," September 4, 2004.
- 57 In the affair a shipment of 3,000 rifles supposed destined for the Panamanian National Police went astray to the AUC in Colombia. See OEA, Informe de la Secretaría General sobre el desvío de armas nicaragüenses a las Autodefensas Unidas de Colombia, January 6, 2003.
- 58 This phrase refers to a running controversy, dating from 1992, over allocation of a 6% share of the national budget to the public universities.
- 59 ASDI, Informe de Equipo Exterior de Monitoreo y Asesoría, Programa de Apoyo Institucional a las Regiones Autónomas, June 2000, p.21.
- 60 Manuel Ortega Hegg, *Cultura política, gobierno local y descentralización* (San Salvador: FLACSO, 2001), pp.25-29.
- 61 Manuel Ortega Hegg y Guadalupe Wallace Salinas, *Nicaragua: Experiencias de gestión municipal* (San Salvador: FUNDAUNGO, 2001). This volume recounts eight case studies done in 1996-2000.
- 62 Interview, Manuel Ortega Hegg, CASC-UCA, July 9, 2004.
- 63 Cf. Daniel Kaufmann, *Governance Redux: The Empirical Challenge*, World Bank Institute, 2004, pp.3-8.
- 64 Daniel Kauffman et al, *Governance Matters III: Governance Indicators for 1996-2002*. World Bank. The numbers are percentile ranks, indicating the percentage of countries surveyed that rate below Nicaragua on each indicator. Averages for Latin America and Sub-Saharan Africa are calculated from Kaufmann, *Governance Redux*, p. 10.
- 65 All data from Corporación Latinobarómetro, *Informe-Resumen Latinobarómetro 2004: Una década de mediciones*, August 13, 2004. This survey was conducted between May 21 and June 29, 2004 in 18 countries.
- 66 Suggestively, Latinobarómetro's 2004 survey finds that employed Nicaraguans (87%) score second only to Guatemalans (91%) in their fear of becoming unemployed. And in the group's 2003 poll, 71% of Nicaraguans complained that their monthly earnings were not enough to live on, the highest such figure in all of Latin America.
- 67 *La Prensa*, "Población desconfía de las instituciones," August 20, 2004. The table is taken from a recent survey done by IDESO/UCA.
- 68 An upcoming study of political culture coordinated by Dr. Mitchell Seligson will argue that political tolerance in Nicaragua fell between 1999 and 2004, after rising steadily in prior years.
- 69 Sofía Montenegro and Elvira Cuadra, *Jóvenes y cultura democrática en Nicaragua* (Managua: IHNCA-UCA, 2003), pp. 187-208.

THE BOLAÑOS GOVERNMENT

(Pages 22-28)

- 70 *El Nuevo Diario*, "Discurso a la Nación del Ing. Enrique Bolaños Geyer," January 11, 2002.
- 71 Rose J. Spaulding, *Capitalists and Revolution in Nicaragua* (Chapel Hill: University of North Carolina Press, 1994) Chronicles the evolution of business-government relationships during the Sandinista revolution.

- 72 See interview with Liberal leader René Herrera, in 7 Días Ilustrado, “Quien no negocie con Arnoldo, no tiene posibilidades,” July 5-11, 2004.
- 73 For a critical view, see René Mendoza and Klaus Kuhnekath, “Tratados de libre comercio, Plan Nacional de Desarrollo y clusters: ¿Cambio de ruta o más de lo mismo?”, in Encuentro, No. 67, 2004.
- 74 CID-Gallup, Opinión Pública Nacional, Nicaragua #46, p.26
- 75 Several members of the president’s family also compose this circle.
- 76 Confidencial, “Bolaños escucha pero al final tiene la última palabra,” April 4-10, 2004.
- 77 Payment of this pension was finally eliminated in the 2004 budget law.
- 78 El Nuevo Diario, “Obispos cierran filas,” June 19, 2004.
- 79 Interview, Hennington Hodgson, coordinator, RAAN-ASDI-RAAS, July 20, 2004.
- 80 El Nuevo Diario, “A autodemarcar!”, June 25, 2004.
- 81 La Prensa, “Paralizan Puerto Cabezas,” September 1, 2004.
- 82 La Prensa, “Suspenden Estado de Emergencia en la RAAN,” September 5, 2004.
- 83 An example is the recent proclamation of the Coordinadora Civil, “A Rescatar Nicaragua,” in Confidencial, April 25-May 1, 2004.
- 84
- 85 Examples may be found in the *Memoria del CONPES* for the years 2002 and 2003.
- 86 Confidencial, “CONPES propone reforma política,” November 24-30, 2004.
- 87 Interview, Ana Quirós, Coordinadora Civil, August 10, 2004.
- 88 Interviews with economists Sergio Santamaría, CINASE, May 29, 2003; and Roger Cerda, June 9, 2003.
- 89 Interview, Alejandro Mansell, vice-president, Higher Council of Private Enterprise, October 2003; interview with Blanca Mangas, Centro Humboldt, in *El Observador Económico*, February 2004, pp.10-11.
- 90 *Memoria del CONPES 2003*, pp.102-07.
- 91 Two organizations in particular, Hagamos Democracia and the Centro de Derechos Constitucionales, played key roles in the formulation of the LPC. Interview, Yader Loza, executive director, Hagamos Democracia, July 30, 2004.
- 92 Interview, Mignone Vega, governability advisor, Presidency, July 26, 2004. Hence in 2003, the government conducted a department level consultation over the PND.
- 93 Interview, Azálea Solís and Ana Verónica Ortiz, Centro de Derechos Constitucionales, September 1, 2004.

THE CAUDILLOS CLASH

(pages 29-38)

- 94 El Nuevo Diario, “La revolución nos devolvió dignidad,” July 19, 2004.
- 95 In response to a perceived threat from the US against Cuba, Ortega recently offered to put himself in the front line of defense of that country’s leader. Cf. El Nuevo Diario, “Respaldo total del FSLN a Cuba,” July 4, 2004
- 96 Interview, FSLN, August 8, 2004.
- 97 7 Días Ilustrado, “Con Daniel de candidato, el Frente volverá a perder las elecciones,” June 28-July 4, 2004. This article is an interview with former FSLN Directorate member Víctor Tirado.
- 98 The most important of these is retired Gen. Alvaro Baltodano, who serves as Ortega’s liaison with the Convergence, a group of political notables allied with the FSLN.
- 99 Sandinista union leader Roberto González has admitted this corruption. La Prensa, “”, July 26, 2004.
- 100 Those accused included a former member of the FSLN’s National Directorate and comrade in arms of Ortega. La Prensa, “Nueva condena contra Henry Ruiz,” July 17, 2004
- 101 El Nuevo Diario, “Herty, o la quimera del oro,” May 28, 2004.
- 102 One of these, journalist Carlos Guadamuz, a former intimate of Ortega, ended up dead in a pool of blood in January 2004. See William Grigsby, “El asesinato de Carlos Guadamuz: La mano de Caín siembra el terror,” *Envío*, No. 264, March, 2004.

- 103 Confidencial, "CSJ: luz verde al pluripartidismo," November 24-30, 2002.
- 104 Confidencial, "Ortega, Obando y Alemán juntos en arreglo CSE," October 6-12, 2002.
- 105
- 106 For a synopsis of the bargaining, see La Prensa, "Así nació la crisis," November 28, 2003. See also "The Twelve Days that Shook Nicaragua," in *Envío*, No. 269, December 2003.
- 107
- 108 Dye, *Patchwork Democracy*, pp.12-13.
- 109
- 110 El Nuevo Diario, "Arnoldismo fue una involución del PLC," August 17, 2003.
- 111 Confidencial, "Crisis de conducción en el PLC," August 17-23, 2003.
- 112 For Herrera's inside view of the party squabble, see La Prensa, "Un partido no se encarga a la familia," September 28, 2003, and Confidencial, September 28-October 4, 2003, p.3.
- 113 La Prensa, "Canibalismo en el PLC," September 25, 2003.
- 114 La Prensa, "Persiste fisura en PLC," August 22, 2003.
- 115 Confidencial, "Convención PLC mata-muertos," October 26-November 2, 2003. Third secretary Eduardo Montealegre was among those ousted along with Herrera.
- 116 Confidencial, "Golpe de timón en Asamblea," January 11-17, 2004.
- 117 La Prensa, "Otro intento para liberar a Alemán," September 14, 2004, reviews the PLC's ploys, which included an amnesty decree, an interpretation of anti-drug legislation to limit the crime of money laundering only to money derived from drug trafficking, and a reform of the Penal Procedure Code to replace Alemán's preventive detention with house arrest.
- 118
- 119 La Prensa, "Montealegre decapitado," June 30, 2004.
- 120 CID-Gallup, *Opinión Pública Nacional #46*, Nicaragua, July 2004, p.19.
- 121 For a chronology, see El Nuevo Diario, "La vida de los rojos bolañistas," June 2, 2003.
- 122 The latter included governance minister Eduardo Urcuyo, who later left the grouping.
- 123 La Prensa, "Unidad Nacional explora alianzas con GUL y PC," May 21, 2004.
- 124 La Prensa, " ", May 26, 2004.
- 125 La Prensa, "Emerge nueva crisis en CSE," May 26, 2004.
- 126 Confidencial, "CSE aprueba apertura política," May 30-June 5, 2004.
- 127 Interview with Rafael Córdova, vice-mayoral candidate, APRE, July 7, 2004. Córdova is a leader of the National Unity Movement (MUN), headed by former Gen. Joaquín Cuadra.
- 128 La Prensa, "Jugada contra Fiallos," August 18, 2004.
- 129 Other interpretations saw the judge's action as stemming from the Sandinistas or even from a bipartisan agreement.
- 130 La Prensa, "APRE dispuesto a conversar con un PLC renovado," October 5, 2004.

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- 131 La Prensa, "Discurso en Cierre de Campaña de Managua," October 29, 2004.
- 132 Confidencial, "Plan anti-corrupción de Bolaños será limitado por la Fiscalía," December 9-15, 2001.
- 133 Using official judicial records, the Law Faculty of the Central American University in Managua has published three small books on the principal investigations. See *La imagen de Nicaragua*, June 2004; *Los carros de fuego*, April 2004; and *La Guaca, o el esplendor de la corrupción*, February 2004.
- 134 Confidencial, "Segundo round: conexión mexicana," March 26-April 2, 2002.
- 135 Confidencial, "Prisión a Jerez," May 5-11, 2002.
- 136 The high-ranking functionaries included Alemán's private secretary Alfredo Fernández, finance minister Esteban Duque Estrada; two former heads of the state telephone company Enitel, Jorge Solís and Gabriel Levy; health minister Mariángeles Argüello and her husband Silvio Argüello, head of the grain marketing agency Enabás; foreign cooperation secretary David Robleto Lang; and Martín Aguado, head of the social security

- administration. Several are still fugitives from justice.
- 137 In all, the *huaca* indictments involved \$8.1m and C60m. Of this sum, some \$700,000 supposedly went to PLC campaign, while more than \$8m was channeled to businesses controlled by Alemán and Jerez.
- 138 Confidencial, “Palabras del Sr. Presidente de la República,” August 11-17, 2004.
- 139 Confidencial, “Nueva mayoría es precaria,” September 22-28, 2002.
- 140 Confidencial, “El coletazo de la huaca,” September 15-21, 2002.
- 141 Confidencial, “Alemán líder o cadáver político,” December 15-21, 2002.
- 142 Confidencial, “Novoa, Bolaños y el Cardenal,” June 2-8, 2002.
- 143 Bolaños’s disagreement with an unauthorized decision to ask Panamanian authorities to bring money-laundering charges against the wife of Arnoldo Alemán eventually cost Fiallos his job. Cf. Confidencial, “La caída del procurador,” December 7-13, 2003.
- 144 La Prensa, “Me extrañó mi nombramiento,” August 15, 2004.
- 145 Interview, Iván Lara, PGR, September 13, 2004.
- 146 *La Corrupción en Nicaragua*, pp.306-307.
- 147 Ibid, p.357. This interpretation of Law 285, Nicaragua’s anti-drug statute, is strongly contested.
- 148 El Nuevo Diario, “Policía tras Aguado,” August 12, 2004.
- 149 La Prensa, “Tribunal libra a acusados de ordeñar a Enitel,” September 25, 2004.
- 150 La Prensa, “Fiscalía pide limpiar a Alemán del caso huaca,” August 13, 2004.
- 151 Blanca Salgado, the Public Ministry’s electoral *fiscal*, entered the official accusation. See Fiscalía Específica Electoral Nacional, Acusación Por Delitos Electorales, November 7, 2002.
- 152 According to official CGR data, the total number of officials affected by its rulings of administrative, civil or penal responsibility rose to 329 in 2002, as opposed to 156 the year before.
- 153 La Prensa, October 5, 2003.
- 154 El Nuevo Diario, “Reto a Novoa: cobrar corrupción,” August 30, 2004.
- 155 El Nuevo Diario, “Hallazgos pesados contra Noel Sacasa,” July 5, 2003.
- 156 La Prensa, “Contraloría dice que Bolaños respondió a medias,” May 11, 2004. The “Taiwan Donation” was the name on an account opened by the Alemán government in Nicaragua’s Central Bank through which to route funds from the *huaca*.
- 157 La Prensa, “Disputa entre contralores,” July 14, 2004.
- 158 La Prensa, “Impasse en la CGR,” July 30, 2004.
- 159 In one key case in which they did come to agreement, the Comptrollers absolved Coprosa of malfeasance in its vehicle imports. Cf. La Prensa, “CGR también exoneró a Coprosa,” August 13, 2004.
- 160 Interview, Humberto Avilés, External Relations Director, CGR, July 15, 2004.
- 161 PNUD/PRODECA, Perfil del Sistema Nacional de Integridad de Nicaragua, June 2003, p.16.
- 162 Ibid, pp.27-28, 30.
- 163 Confidencial, “Un test para la transparencia,” November 16-22, 2003.
- 164 David Pezzullo, “Anti-Corruption and Governance Strategy and Plan,” 2003, mimeo.
- 165 Interview, Presidency, July 29, 2004.
- 166 TI’s Corruption Perception Index is not limited to the central government but embraces all the powers of state, including the judicial system.

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- 167 The judgments in this section of the report are based on interviews with six experts on Nicaragua’s judicial system. Their names are withheld on request.
- 168 La Prensa, “20 años para Alemán,” December 8, 2003.
- 169 Confidencial, “Un precedente en la justicia,” June 8-14, 2003.
- 170 Both the PGR and the *Fiscalía* dissented. Cf. El Nuevo Diario, “Jerez sabía y se lucraba,” December 9, 2003.
- 171 El Nuevo Diario, “Fallo infame”; La Prensa, “Jerez declarado inocente,” October 7, 2004.
- 172 The indictment against Jerez in this case had been handed down under the old Code of Criminal Instruction, which was indeed archaic.

- 173 El Nuevo Diario, "Lavan a corruptos," July 21, 2004
- 174 Dye, *Patchwork Democracy*, pp.22-23.
- 175 An accord to this effect was recently published by the CSJ. Cf. La Prensa, September 1, 2004.
- 176 La Prensa, "Jueces denuncian ingerencia y presiones de magistrados," October 4, 2004.
- 177 Confidencial, "Percepción CSJ: hay que pagar para ganar fallos," September 5-11, 2004.
- 178 El Nuevo Diario, "Bancos fomentan corrupción," August 24, 2004.
- 179 Three people mentioned as lynchpins in these networks are CSJ magistrate Rafael Solís, former security head Lenín Cerna, and former revolutionary *comandante* and current FSLN deputy Bayardo Arce.
- 180 Confidencial, "Complejo reacomodo en la CSJ," March 26-April 1, 2000.
- 181 Confidencial, "Elección en CSJ trabada," October 20-26, 2002.
- 182 Confidencial, "PLC y FSLN premian fidelidad política," June 15-21, 2003.
- 183 Confidencial, "Empate PLC-FSLN en CSJ," October 19-25, 2003.
- 184 Confidencial, "Aleman cede y amarran CSJ," March 14-20, 2004.
- 185 Confidencial, "Estamos perfeccionando el poder judicial," May 19-25, 2002.
- 186 Comisión Jurídica, "Agenda de Trabajo para la Transformación de la Justicia en Nicaragua," n.d. 2002.
- 187 Confidencial, "CSJ reacciona a propuestas de comisión jurídica," May 19-25, 2002.
- 188 La Prensa, "Presentan Cinco Puntos a Bolaños," June 11, 2003; interview, Marta de Sacasa, June 13, 2003.
- 189 Interview, Lorena Zamora, June 4, 2003.
- 190 Confidencial, "Bolaños rehusó negociar CSJ," June 15-21, 2004.
- 191 Cf. Corte Suprema de Justicia, Primer Borrador del Anteproyecto de Ley de Carrera Judicial, June 2001, p.2.
- 192 Comisión de Justicia, Asamblea Nacional, Dictamen de Minoría, October 15, 2003, p.7.
- 193 La Prensa, " ", March 26, 2004.
- 194 El Nuevo Diario, "CSJ se erige en superparlamento," May 14, 2004. This initiative sprang from the Sandinista majority on the CSJ's constitutional chamber, supplemented by renegade Liberal justice Carlos Guerra.
- 195 La Prensa, "Jueces insatisfechos con Ley de Carrera Judicial," October 15, 2004.
- 196 La Prensa, "Repacto se impuso en Ley de Carrera Judicial," October 16, 2004.
- 197 La Prensa, "Sacasa deja la SIB y se corre," July 3, 2003. See also interview in La Prensa, "No estoy escapando," July 4, 2003. Sacasa also voiced fear of harassment by the CGR, which had decided to do an "operational audit" of the superintendency.
- 198 7 Días Ilustrado, "INISER recibe pleno respaldo del COSEP," August 25-September 1, 2003.
- 199 La Prensa, "Iniser cae en poder de Agroinsa," July 24, 2003.
- 200 Zamora revealed that after offering him the controlling interest in Banco Mercantil, Montealegre proceeded to sell part of his shares to someone else.
- 201
- 202
- 203 La Prensa, "Jueza entrega acciones de Parmalat a Montealegre," June 24, 2004.
- 204 La Prensa, "Rumor pone a temblar a magistrados de la Corte," August 14, 2004; El Nuevo Diario, "Piden golpe a Corte," August 14, 2004.

CONCLUSION

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- 205 The CGR's charges are detailed in La Prensa, "Cinco cheques recibió Bolaños," October 16, 2004.
- 206 La Prensa, "Centroamérica y EE.UU. respaldan a Bolaños," October 15, 2004.
- 207 La Prensa, "Por la defensa de la democracia," October 11, 2004.
- 208 CID-Gallup, Opinión Pública Nacional, Nicaragua #46, August 2004, p.18 shows that PLC and FSLN party loyalty is if anything growing slowly over time.
- 209 El Nuevo Diario, "Sermón histórico," July 20, 2004.
- 210 Confidencial, "Ortega promete Asambleas de Poder Ciudadano," October 10-16, 2004.

- 211 Interview, Eduardo Urcuyo, July 15, 2004.
- 212 Herbert S. Klein, *Bolivia: The Evolution of a Multi-Ethnic Society*, 2nd ed. (New York: Oxford university Press, 1992), p.264.