



ΕΒΡΟΠΕΪΣΚΙ ΠΑΡΛΑΜΕΝΤ ΠΑΡΛΑΜΕΝΤΟ ΕΥΡΟΠΕΟ ΕΥΡΟΠΣΚΪ ΠΑΡΛΑΜΕΝΤ ΕΥΡΟΠΑ-ΠΑΡΛΑΜΕΝΤΕΤ  
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## PRESIDENTIAL, LEGISLATIVE AND PARLACEN ELECTIONS IN NICARAGUA

### ELECTION OBSERVATION DELEGATION

**4-8 NOVEMBER 2011**

REPORT BY MS. INÉS AYALA SENDER,

HEAD OF THE DELEGATION

#### ANNEXES:

- I. LIST OF MEMBERS OF THE DELEGATION AND FINAL PROGRAMME
- II. PRELIMINARY REPORT OF THE EUROPEAN UNION ELECTION OBSERVATION MISSION (EU EOM)
- III. SPEECH BY THE HEAD OF THE EUROPEAN PARLIAMENT DELEGATION IN THE PRESS CONFERENCE PRESENTATION OF THE EU EOM PRELIMINARY REPORT

## INTRODUCTION

On 6 November 2011, the Nicaraguan people were called upon to elect the President and Vice-president of Nicaragua and the national, departmental and Central American Parliament deputies.

While in 2010 the Nicaraguan authorities extended an invitation to the European Union to observe the 2011 elections on 17 August 2011, the new regulatory framework for election observation ("acompañamiento electoral = 'election support') was published in Nicaragua, which included conditions that were incompatible with the European Union's election observation methodology and the Declaration of Principles for International Election Observation. Nevertheless, the President of Nicaragua, Daniel Ortega made a public statement on 19 August confirming that election observers would be welcome and that they would enjoy freedom of movement. On 7 September, the European Union signed a Memorandum of Understanding with the Supreme Electoral Council (CSE) and with the Government of Nicaragua concerning international electoral observation and support in the general elections of Nicaragua on 6 November 2011. The signing of these agreements enabled the EU Election Observation Mission (EU EOM) to be deployed on 12 October, since the rules that they establish are in compliance with European and international standards relating to election observation.

The EU EOM was led by MEP Mr Yáñez-Barnuevo. Ninety long-term observers originating from the European Union Member States, Norway, Switzerland and Canada were deployed throughout the country in order to assess the electoral process in accordance with the laws of the Republic of Nicaragua the international standards for democratic elections.

The European Union, in addition to the Organization of American States (OAS), was the only international long-term mission accredited for observation of these elections.

The European Parliament Delegation joined the EU EOM on 3 November, authorised by the Conference of Presidents of 29 September. The Delegation, led by Ms Ayala Sender (S&D, Spain), also included the following MEPs: Mr Kaczmarek (PPE-DE, Poland), Mr Sonik (PPE-DE, Poland), Ms Gomes (S&D, Portugal), Mr López-Aguilar (S&D, Spain), Mr Kožušník (ECR, Czech Republic) and Ms Grèze (Verts/ALE, France).

## CONTEXT

Nicaragua, the poorest country in Central America and the second poorest in the (western) hemisphere, suffers from general underemployment and poverty. Although the country has recorded 4% growth in the GDP over past years, some macroeconomic stability and growth in its coffee and sugar exports, the informal economy is still vast (around the 70% mark) and there is a serious housing problem. In total, 17% of the population lives in extreme poverty. The

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<sup>1</sup> The Nicaraguan authorities reserved the right to decide on the scale of the Election Observation Mission and on its deployment plan and required the election observation missions to submit their preliminary reports for its authorisation before their publication. Furthermore, the guarantees for freedom of movement and access to information that appeared in the observation regulations of the 2006 elections (for which an Election Observation Mission of the European Union was deployed) had been suppressed.

Nicaraguan economy has a permanent budget and trade deficit and needs considerable external financial assistance. The debt service is very high and represents an obstacle for the country's economic development. Managua relies on the Extended Credit Facility (ECF) of the IMF.

Furthermore, Nicaragua receives approximately USD 500 million annually from Venezuela (almost 7% of its GDP). This financial assistance, which is not part of the State budget, has been useful to Mr Ortega for financing client welfare programmes such as Hambre Cero, Usura Cero, Casas para el Pueblo, Plan Techo, etc. The opposition reveals that of this financial aid is not subject to any independent auditing and that it has been diverted to businesses owned by people close to the president and to Sandinista Front campaigns.

## **RELATIONS BETWEEN THE EUROPEAN UNION AND NICARAGUA**

The European Union has a long track record of political dialogue and cooperation with the countries of Central America, particularly Nicaragua. Since 2000, the European Union has devoted EUR 421 million to bilateral cooperation with Nicaragua.

On 10 December 2008, the European Commissioner for External Relations, Ms Ferrero-Waldner announced her decision to the Nicaraguan government to suspend payments intended for direct budgetary support in Nicaragua as of 2009. The suspension was adopted after claims by the opposition of extensive irregularities in the municipal and regional elections of 9 November 2008. This fraud was the culmination of a gradual deterioration of the rule of law and democracy in Nicaragua and a violation of the fundamental democratic principles which govern the budgetary support programmes, in particular the right to free and fair elections. The European Union has supported financial assistance projects intended for sectors such as education.

The European Commission established a political dialogue with the Nicaraguan authorities to resume the budget support programmes based on adopting measures aimed at the field of governance and electoral reform. After a promising start, which materialised in the invitation to observe the presidential and legislative elections of November 2011, the Commission decided in September 2009 to resume budgetary support payments, but suspended them again in 2010, after the decision by the Supreme Court of Justice to authorise Mr Ortega's new candidacy despite being in violation of the Constitution.

## **REGIONAL COOPERATION**

The European Union and six Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama) have a comprehensive relationship that includes political dialogue, cooperation and a favourable trade regime. The current legal basis for cooperation between Central America and the European Union is the Framework Cooperation Agreement signed in San Salvador in February 1993. Signing of the EU-Central America Association Agreement is scheduled for March or April 2012, while the provisional application of the commercial part, immediately after its adoption by the European Parliament, is anticipated for summer 2012.

## ELECTORAL PANORAMA

The Nicaraguan political environment is characterised by polarisation, a lack of trust in the main democratic institutions, a divided political opposition and claims of widespread irregularities. The fact that there has been minimal violence is a significant achievement when the history of the country is taken into account.

Some analysts think that one of the causes of the lack of trust in the main democratic institutions comes from the consolidation of a political 'model' which has its basis in the 'Pact' that former president Arnoldo Alemán and Mr Ortega reached in 2000. The Pact established a bipartisan system of mutual control. The action of the Constitutionalist Liberal Party (PLC) – which is described by different analysts more as a partner of the Sandinista National Liberation Front (FSLN) than as an actual opposing force – means that the Nicaraguan electoral system is now controlled in practice by a single party, with scarcely any counterweight at all.

In this respect, Executive Decree 03-2010 extended the mandates of 22 government officials whose terms of office were over or about to be over, including seven magistrates from the Supreme Court of Justice and three from the Supreme Electoral Council (CSE), in spite of the fact that the appointment of the magistrates and deputy magistrates of the CSE for a second five-year term is a matter for the National Assembly. As a gesture of protest against the 2008 election fraud, the opposition established an agreement known as 'Metrocentro II' by which a commitment was made not to re-elect the current members, whose term of office was about to end in June 2010. In response, Mr Ortega issued a decree in January 2010 by which the terms of office were extended indefinitely for the magistrates of the CSE. By constitutional law, a presidential decree cannot replace the legislative power of the Assembly. However, the CSE organised the elections of November 2001 with the same de facto magistrates.

This is the context in which Mr Ortega decided to run for a second consecutive re-election, despite this being expressly forbidden by the 1987 Constitution. Article 147 of the Nicaraguan Constitution states that those candidates who held the office or have held the office of Presidency of the Republic at any time during the period in which the election is held for the following term, and anyone who might have held office for two presidential terms, will not be able to stand as candidates for President or Vice-president of the Republic. The Supreme Court of Justice issued a ruling on that occasion that the ban on repeated re-election for high-level positions violated the human and constitutional rights of the officials who might wish to stand for re-election.

Four political alliances and one political party stood in the general elections of 6 November: the Sandinista National Liberation Front (FSLN), the Independent Liberal Party Alliance (UNE-PLI), the Constitutionalist Liberal Party (PLC-PC), the Alliance for the Republic (APRE) and the Nicaraguan Liberal Alliance party (ALN). The presidential candidates were Mr Ortega (FSLN), Arnoldo Alemán (PLC), Fabio Gadea (PLI), Enrique Quiñónez (ALN) and Roger Guevara Mena (APRE).

In contrast with the swift ruling on the constitutionality of Mr Ortega's bid for re-election (which was issued within four days), the Supreme Court of Justice has still not made a ruling on the banning of candidates of the PLI alliance, maintaining an unjustified uncertainty concerning the deputies elected for the coalition.

In the last legislature, the FSLN did not have the majority in the National Assembly. Constitutional reforms require 60% of the votes. Therefore, the main objective and challenge for the FSLN in these elections were, in addition to re-electing Mr Ortega, to obtain the qualified majority which would allow him to pass constitutional amendments such as changes in the political system and electoral law.

The Constitution of Nicaragua establishes the electoral body (the Supreme Electoral Council – CSE – and its subordinate electoral bodies) as the fourth branch of power. As a result of its action during the 2008 elections and the fact that it maintained its magistrates in spite of the National Assembly, the CSE lacks impartiality, transparency and responsibility, which are fundamental points of reference for holding valid elections.

#### **ACTIVITIES OF THE EUROPEAN PARLIAMENT DELEGATION IN NICARAGUA**

The work of the Delegation got underway, according to usual practice, within the framework of the EU EOM, in Nicaragua on 12 October 2011 and was presided over by MEP Mr Yáñez Barnuevo.

The Delegation wants to emphasise that the working relations with both the EU EOM and the Delegation of the European Union in Nicaragua, and in particular with the ambassador, Mr Goldstein, was excellent.

The Delegation remained in Nicaragua from 4–8 November 2011. In addition to meeting on several occasions with the head of the EU EOM and his team, the Delegation had the opportunity to meet with the ambassadors of the member countries present in Managua and all of the presidential candidates, except with Mr Ortega (despite having duly requested this).

The Delegation also met with the electoral authorities (CSE) and groups of national observers, Ética y Transparencia, Hagamos Democracia, and IPADE – not authorised by the CSE- as well as with the National University Council (CNU, authorised).

#### **ELECTION DAY**

On the day of the elections, the EP Delegation split into four groups to observe voting in Managua and its outlying areas, including the nearby cities of León and Granada.

It is worth pointing out the very noticeable drop in violence during both the campaign and on the day of the elections, although five deaths, in connection with the election results, were sadly acknowledged in the days following the elections.

All of the European Parliament Delegation teams reached similar conclusions, coinciding with assessments made by the EU EOM.

#### **PRESS CONFERENCE OF THE EU EOM AND THE PARLIAMENTARY DELEGATION**

The European Parliament Delegation backed the preliminary report by the EU EOM. The head of the Delegation carried out a political evaluation of this election, on the basis of the assessments made by the EU EOM and by the Delegation itself on election day.

The preliminary report by the EU EOM, which is attached, analyses an entire series of anomalies at length: as an example, days before the elections, ‘centre coordinators’ were created, a key figure which does not exist in Nicaraguan electoral law, but to which the CSE gave maximum power in the Vote Receiving Boards (polling stations), including transporting the ballot papers at the end of the day.

- Another obstacle hindering pluralism on polling day was that the CSE delayed the accreditation process of the scrutineers from the political parties in the polling stations until the eve of election day. While the apathy of many scrutineers from the political parties was noticeable within the polling stations, the various observation teams of the Delegation were approached, in the entrance of the electoral centres that they visited, by representatives of the PLI who complained about not having been accredited.
- The CSE recognises that the electoral roll is inflated, since a significant number of the names included correspond to deceased persons. Barely 3.5 million of 4,341,935 entries might correspond to actual voters. The Delegation indeed noted deficiencies in the electoral roll, deficiencies which furthermore allow ‘additional’ voter lists to be counted in the polling stations. The Delegation of the European Parliament regretted the attitude of indifference and lack of consideration by the CSE towards the Nicaraguan people, by not allowing them to have available an adequate civil registry and electoral register, despite the offer of technical assistance from the European Union to this end.
- In Nicaragua, as the authorities recognise, not having an identity document is tantamount to being deceased for all civil purposes. The EU EOM, although unable to make a full assessment, has identified an extensive problem in issuing identity cards, the distribution of which has been delayed and in many cases left in the hands of officials of the FSLN and members of the 'Consejos del Poder Ciudadano'. Moreover, the CSE stated that if more than 30 000 documents existed but were not distributed, it was the fault of the citizens who had not gone to collect them.
- The CSE has accredited two national observer groups, rejecting others of notable prestige, in the CSE President’s own words, for being ‘excessively critical’.

From a more political point of view, the Delegation of the European Parliament laments the unduly prominent role of the CSE in the internal affairs of political organisations. The EU EOM states in its report that the CSE has become an arbitrator of parties’ internal discrepancies on highly pertinent questions such as its legal representation, its legal personality or the legitimacy of the constitution of its institutions, all areas which, in addition, the law regulates in an ambiguous way, due to the lack of a political party law. This excessive power has served in the past, as has also happened in the recent electoral process, to weaken the autonomy of the parties, which is a fundamental guarantee of political pluralism.

It is worth highlighting that except in Venezuela and Cuba, which rushed to congratulate Mr Ortega even before the full results of the elections were published, other countries and organisations waited for the press conference, in which the preliminary report was presented by the EU EOM, in order to express their opinion on the electoral process and the results. In this

way, the EU EOM has been able to bear witness to the reality of these elections, and its credibility has been greatly appreciated by the international community and Nicaraguan civil society.

## **PROVISIONAL RESULTS**

The provisional results of the CSE show 76% participation and give a clear victory to Mr Ortega and his FSLN party, which obtained a parliamentary majority with 62 seats – six more than are needed to carry out constitutional reforms and appoint all of the members of the CSE and the Supreme Court of Justice. For its part, the UNE-PLI coalition obtained 26 seats in the National Assembly, becoming the main opposition group, although it does not have the power to block proposals. Representation of Arnaldo Alemán's PLC dropped to two seats, although it avoided losing political party status, since it reached the threshold of 4% in the presidential elections.

The CSE indicates that 38.04% of new deputies of the National Assembly are women, which undoubtedly represents a step forward in issues of gender equality.

## **CONCLUSIONS AND RECOMMENDATIONS**

The EU EOM, as well as the Delegation of the European Parliament, regretted the deterioration observed in the area of transparency in comparison with the 2006 elections, and states that the recommendations made by previous missions, aimed at strengthening the neutrality and independence of the CSE, have not been implemented, except for the recommendation to publish the results once they leave the Vote Receiving Boards: the CSE promised to publish these on its website, although it has still not done so.

The EU EOM remained in Nicaragua up to the end of the time limit for the presentation and resolution of appeals and objections. The EOM has expressed a clear opinion on the collection and publication of the results in a public statement issued on 17 November, describing as opaque and arbitrary the way in which the CSE has completed the process of publishing the results.

Within two months, the EU EOM will present a final report to the electoral authorities and the Nicaraguan Government, bringing together the final conclusions of the observation, as well as suggestions and recommendations for future elections, intended for the Nicaraguan authorities, civil society and the international community:

The European Union in general, and particularly its Parliament, at this key time for Nicaragua and regional integration in Central America, should reiterate their willingness to maintain their firm commitment to supporting plural, guaranteed democracy in Nicaragua, as well as the well-being of the Nicaraguan people.

The Delegation of the European Parliament, within the framework of the long-term EU election observation mission, has been an important instrument for witnessing the political situation in Nicaragua and promoting the political continuation of this Mission. The Delegation recommends that the Election Coordination Group, the Committee on Development, the Committee on Foreign Affairs and the Delegations involved should closely follow the conclusions and recommendations

of the final report by the EU EOM, making use of all the powers that the Treaty of Lisbon grants to the European Parliament. Similarly, the European Parliament will make use of the inter-parliamentary delegations to provide a timely follow-up to the recommendations made in the final report by the EU EOM. The European Parliament should now cooperate as much as possible with the political parties of the newly re-elected Assembly and with Nicaraguan civil society in favour of political pluralism.