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**ORGANIZATION OF AMERICAN STATES
ELECTORAL OBSERVATION MISSION
MUNICIPAL ELECTIONS
NICARAGUA**

November 5, 2017

FINAL REPORT

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I. FINAL REPORT TO THE PERMANENT COUNCIL¹

1. BACKGROUND

On October 15, 2016, the General Secretariat of the Organization of American States (GS/OAS) and the Government of Nicaragua organized a “round table of conversation and constructive dialogue” for the purpose of “supporting the strengthening of the country’s democratic institutions in accordance with the commitments of the State of Nicaragua to the instruments of the inter-American system and its domestic legislation.” At the end of the first stage of this process of conversation, a report was signed by OAS Secretary General Luis Almagro and Nicaragua’s Minister of Foreign Affairs Denis Moncada, in which the parties agreed to carry out several initiatives in the framework of the offer by the GS/OAS to provide cooperation to continue with the process of strengthening democratic institutions in Nicaragua.

As a result of this dialogue, a Memorandum of Understanding was signed on February 28, 2017, by the GS/OAS and the Government of Nicaragua, which constitutes the regulatory framework for the Cooperation Mission for Strengthening Democratic Institutions with emphasis on the improvement of the electoral process. Among the points included in the agreement was the deployment of an OAS Electoral Observation Mission (OAS/EOM)² for the 2017 municipal elections. The Secretary General named Wilfredo Penco, Vice President of the Electoral Court of Uruguay, as Chief of Mission.

The OAS/EOM for the 2017 municipal elections was the fourteenth Electoral Observation Mission sent by the Organization of American States to Nicaragua. The most recent elections observed were the general elections in 2011 and the municipal elections in 2012.

The Mission remained in the country from October 9 to November 9, 2017. It was composed of 60 persons from 19 countries, of which 45% were women and 55% men.

After the election, the OAS/EOM presented a Preliminary Report on Tuesday, November 7, with its main observations and recommendations. This document is the Mission’s Final Report, which supplements the previous one and gives more details about the various aspects observed. It also expands on the recommendations in an effort to assist Nicaragua with strengthening its election procedures.

2. INTRODUCTION

Nicaragua’s Constitution establishes that the national territory is divided into 15 departments and two autonomous regions, which in turn are made up of 153 municipalities. On

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1. A summary of this report was read by the Chief of Mission, Wilfredo Penco, to the Permanent Council of the Organization of American States at its meeting on December 20, 2017.
 2. According to the Agreement with the Government of Nicaragua the term “Electoral Observation Mission” was chosen because it is consistent with the OAS legal framework and the Inter-American Democratic Charter.

November 5, 2017, municipal elections were held for 6,088 positions in all the country's municipalities, including mayors, deputy mayors, and members of municipal councils. The elections were contested by a total of 18 political parties, organized in two alliances and seven individual parties, with a total of 43,962 candidates for the various positions available.

There were 3,894,104 eligible voters in the voter registry. They voted at 13,206 precincts [*Juntas Receptoras de Voto*] (JRVs), in 4,309 voting centers throughout the country. In addition, there was a list of 1,201,643 persons with ID cards who were not in the registry, but were eligible to vote because of reforms in the electoral law two months before the elections.

For this process the Supreme Electoral Council [*Consejo Supremo Electoral*] (CSE) prepared an elections timetable that was approved on May 9, 2017, including the dates and activities stipulated in the electoral law for the holding and organization of the elections.

3. PRE-ELECTORAL STAGE

From October 9 to 13, the Chief of Mission headed a preliminary visit to the country to install the Mission to observe the November 5 elections and meet with government officials, the Supreme Electoral Council and its technical areas, as well as the political parties registered to take part in the elections. The Mission met with the Constitutionalist Liberal Party [*Partido Liberal Constitucionalista*] (PLC), the Sandinista National Liberation Front [*Frente Sandinista de Liberación Nacional*] (FSLN), which headed the Nicaragua Triumphs United Alliance [*Alianza Unida Nicaragua Triunfa*], the Conservative Party [*Partido Conservador*] (PC), the Alliance for the Republic [*Alianza por la República*] (APRE), the Nicaraguan Liberal Alliance party [*Alianza Liberal Nicaragüense*] (ALN), the Yatama Party, the Democratic Restoration Party [*Partido Restauración Democrática*] (PRD), the Independent Liberal Party [*Partido Liberal Independiente*] (PLI), which headed the PLI Alliance, and the Citizens for Freedom Party [*Ciudadanos por la Libertad*] (CxL).

After the meetings with the parties, the Mission could perceive some of their main concerns about the elections. Highlights were the need for a breakdown of the results by the JRV level, the importance of having legible copies of their tallies, for party poll watchers' accreditation to be respected at the various electoral levels, and that the coordinators of the voting center, which is a position not stipulated in the law, often exceed their authority. Also, some parties mentioned problems with voter lists, and concern for the possible transfer of some soldiers and police to vote in specific municipalities. Finally, some stakeholders supported the work of the Supreme Electoral Council during this election because they consider that it is carrying out its Constitutional mandate as an independent power, while others distrusted the Council because they expected it to show favoritism for the governing party.

In meetings with the electoral organ, the Chief of Mission received information from the full CSE and its various technical areas on the parties participating in the elections, the electoral logistics plan for the elections, including aspects of election materials and information on the ballot, as well as information on the voter registry and the list of additional voters, among other elements.

Before its arrival in the country, the Mission was aware of the electoral reform to permit citizens who were not in the voter registry to vote, an aspect that in previous elections was known as the passive voter list. This reform took place a little more than two months before the election.

After the preliminary visit of the Chief of Mission, a mobile group of three coordinators remained in the country and visited Nicaragua's 15 departments and two autonomous regions. The mobile group met with electoral officials at the department level, with representatives and candidates of the political parties, with security forces, and maintained constant communication with the stakeholders before the arrival of the Mission's Base Group at the end of October. In total, the coordinators had 116 meetings with the various stakeholders in the period from October 16 to 27.

At the department or local level, the main worries of the parties before the election included that members of the departmental, regional, and municipal electoral councils must adhere to their respective mandates, that the poll watcher credentials be received in time to permit planning by the political parties, that the ID card process not be politicized and that the cost of the ID should not be so high as to hinder the right to vote. They also mentioned that the lack of an exhaustive purging of the voter registry could facilitate ballot stuffing or double voting, and that the participation of mayors in the inauguration of public works and other public events could be used to campaign for their re-election.

With respect to election day and consistent with some of the concerns expressed in the preliminary visit, some parties underscored that at the departmental level it is important for party poll watchers to be able to enter the voting centers, exercise their function throughout the day, and receive a legible copy of the vote count. They also said that the center coordinators should be included and regulated in the electoral law for the next elections and that during the election they should not exceed their authority. They also mentioned that the Departmental Electoral Councils should be transparent and impartial when they rule on a challenge, and that if there are opposition party complaints during the election, they should be made public. Finally, they stressed the need for a uniform and clear method to implement the reform of Article 196 of the electoral law, which permits persons with ID cards to vote even though they are not in the voter registry, the green list, and calling on the Supreme Electoral Council to clear up the confusion that has existed around this article.

On the latter point, the Supreme Electoral Council decided that in order to facilitate voters with IDs who are not in the registry, in each voting center the "green list" would be placed in the last JRV of the respective center, so that voters not on the registry for failure to vote in the last two general elections or interim elections could be eligible on election day to cast their ballot.

Initially there were supposed to be fewer JRVs than in the general elections of 2016, but in October 137 new JRVs were authorized by the addition of citizens who asked for an identity card after the preliminary voter list was submitted, amounting to 76,524 additional voters.

The reduction in the number of the JRVs and the use of the list of citizens with IDs who were not in the voter registry are two of the principal complaints made by the political parties in the

run-up to the elections, along with the constant criticism for the appointment of members of the Municipal Electoral Councils and the JRVs, where they call for more equal treatment for the various political forces for the appointment to the different jobs.

On the matter of accreditation of poll watchers from the parties, which had been a problem in previous elections, the CSE implemented a computer system to facilitate registration of the party representatives to the different election levels. This was an important step forward.

The team of specialists in electoral organization, voter registration, election-related technology, inclusion, political parties, election financing, and electoral justice arrived the week before the elections. The OAS/EOM team was completed with the arrival of the international observers and coordinators.

During election week the Chief of Mission, the specialists of the Core Group, and the regional coordinators held meetings with government and election authorities, with representatives of the parties and alliances taking part in the race, and with various civil society representatives and organizations.

4. ELECTION DAY

On election day, the members of the Mission observed the assembling and opening of the JRVs as well as the way the voting and vote tallying unfolded. They then accompanied the transfer of the poll tally sheets to the municipal tabulation centers, where they observed the arrival and filing of documents, the processing and arithmetic review thereof, and the transmission of the results. In Managua. The specialists in electoral organization and technology were present at the National Tabulation Center, where they watched as the national databases were reset and the results were tabulated.

The voting unfolded calmly, smoothly, peacefully, and without major incident. However, once the voting ended, a series of incidents of violence occurred, that in some cases continued on the days after the elections. The Mission learned that the violence resulted in the deaths of seven people and several injured. The Mission regrets these events and calls on the authorities to conduct the appropriate investigations and punish the perpetrators of these crimes.

Each of the JRVs observed by members of the OAS/EOM were comprised of all their full members—70% with women at the helm. The presence of poll watchers from the different political parties was also observed, with the majority of the representatives being from the Sandinista National Liberation Front [*Frente Sandinista de Liberación Nacional*] (100%), the Constitutionalist Liberal Party [*Partido Liberal Constitucionalista*] (67%), and Citizens for Freedom [*Ciudadanos por la Libertad*] (58%), which generally ensured pluralistic supervision by the political parties. The Mission also took note that no electioneering was observed at either the voting centers or in the surrounding areas.

The observers reported that the JRVs they visited opened on average at 7:13 a.m. and had on hand all of the essential election materials for voting. The observers also reported that, at

opening time, some parties received blank copies of the record of the opening because the carbon paper used only managed to print the information down two or three copies.

Throughout the day, citizens approached the OAS observers to report that upon arriving at their voting centers, they discovered that they did not appear on the voter list for the JRVs at that site, which is where they had customarily voted. The OAS/EOM received 52 complaints on this subject, which were forwarded to the CSE, as the investigation and resolution thereof do not fall to the Mission.

The OAS observers confirmed that in some isolated cases, citizens who were neither on the voter registry nor the civil registry were permitted to vote. It warrants noting that these individuals were not part of the group that was allowed to vote at a JRV at which they were not registered (e.g., center coordinators, JRV members, logistical coordinators, election police, poll watchers, support staff, soldiers, and police). On just one occasion, they saw a center coordinator voting twice in the same Voting Center but in different JRVs.

The Mission confirmed that the responsibilities of the electoral police and of the voting center coordinators are not stipulated in the current law, but rather in the training primer. The OAS/EOM observed that in some cases, the actions of these CSE representatives overlapped with the functions that are the exclusive responsibility of the members of the JRVs.

The law stipulates that members of the military and police mobilized outside their JRV's district may vote at the nearest polling station, provided they present the proper certification. Despite this being provided for under the law, the Mission received complaints from citizens who were concerned because security forces had shown up as a group to vote, thereby significantly increasing the number of voters at a single JRV. In such context, just two cases of soldiers who voted without showing their certification letters were observed.

The Mission identified an improvement in the election materials used for closing down the polling stations. The tally sheets contained a bar code that made it possible to better control and monitor the records. Nevertheless, as carbon paper had to be used to make copies, the same problems seen at the opening of the JRVs when the party poll watchers had trouble obtaining legible records were repeated.

When it came to counting the votes, the members of the JRVs faced difficulties in doing the tallies, in part, because choices for both elections (mayoral posts and municipal councils) were marked on the same ballots and because members of the JRVs were unfamiliar with the procedures.

The Mission observed the transmission of the records from the Municipal Tabulation Centers. It received several complaints that the party poll watchers could not directly see the screen for the transmission of data, but were located in front of the computers, a situation that was observed by the OAS/EOM at various centers. This enabled them to observe the process but not the data processed.

It was past 11:00 p.m. when the Supreme Electoral Council announced the first election results during a press conference. As of that time, the information on the results at the JRV level was posted on CSE website and it was updated through the night. In addition, political parties' delegates were able to review the records from a dedicated terminal at the National Tabulation Center.

5. POST-ELECTORAL STAGE

After the presentation of the Mission's Preliminary Report, read at a news conference on Tuesday, November 7, the Mission received complaints from some parties about certain municipalities where there were alleged alterations of the results for the election of mayors after the issuance of the records of the JRVs, or that certain records that would have changed the results were not taken into account. The cases affect six of the 153 municipalities: San Pedro de Lóvago, San José de Bocay, Rancho Grande, El Coral, El Jicaral, and San Miguelito. The OAS/EOM received documentation from the parties, including copies of the records that differ from those published on the CSE website, to substantiate the complaints. The Mission also received information from the Supreme Electoral Council about receipt by the Actions Secretariat of the electoral organ of 13,192 records already reviewed, and the absence of 14 records, burned or taken, which is now under investigation. The Mission was also told about the various appeals presented at the different electoral levels, and how they were resolved.

The provisional results of the elections were published in the Official Gazette on Friday, November 10, starting the three-day period for filing appeals to the Supreme Electoral Council. During that period the parties presented appeals. The Mission finds that some of the complaints presented are justified, because there can be reasonable doubt about the published results, either because of transcription errors or alterations in the documentation.

The Supreme Electoral Council rejected the appeals. It declared that some of them were inadmissible "because they did not satisfy the procedural requirements prescribed by law for review of elections, because the petitioners did not file the challenges in the JRVs and sought the remedy in a venue not open to them; because this Council, lacking recourses and according to the law must confirm the actions of Departmental and/or regional electoral councils; because the political parties have intermediate organs to resolve their challenges or bring them to the Supreme Electoral Tribunal, otherwise everything is resolved and/or precluded in this Electoral Tribunal." In the ruling, the CSE dealt with each of the appeals presented by the parties in the same resolution, referring to different complaints in different municipalities in the same judgment.

Although there is no doubt that the principles of preclusion and intangibility of the voting record are guiding principles of electoral law, there are exceptions in their application in the case of flagrant irregularities or evidence of the documentation substantiating the various electoral procedures, and specifically the vote tallies. In such circumstances the law must provide for the intervention of competent organs at all levels.

The OAS/EOM considers that with respect to these cases the claimants were left unable to defend themselves, in view of the impossibility of challenging in litigation the accuracy of the

published results. The legal framework for the means of redress is unclear and limited, and does not facilitate the resolution of this type of controversy. In the light of background evaluated by the Mission, there are grounds to believe that if an investigation of the facts or situations in question had been pursued, the outcomes in some municipalities could have been changed. The OAS/EOM considers it desirable for the Supreme Electoral Council to reconsider and investigate these facts, so as to dispel the reasonable doubts about the results in these municipalities.

By way of background, in addition to the copies of the records provided by the parties, the Mission could verify the data of two JRVs of the disputed municipalities whose data are published on the CSE website, and are from the last JRVs of the voting centers. Because they are the last JRVs, they are residual in number of voters and include persons from the civil registry that are not on the voter registry. In both cases there are substantially more voters on the website than the number of persons registered to vote. In one case there were 270 votes, without counting null ballots, when the voter registry had 51 persons and the civil registry list had 59. In another case, a JRV with 34 persons in the voter registry and 195 on the civil registry list reported a total of 361 votes according to the website, without counting null ballots. In other words, in the first case votes were allegedly cast by 160 persons more than on the voter lists, and in the second case 132. Although JRV members, poll watchers, coordinators, auxiliaries, and police and armed forces can vote in precincts where they are not registered, these figures do not conform to normal voting standards. These polling places are the JRV 1105050702, at the Puertas de París School Voting Center in San Pedro de Lóvago, and JRV 1408051503, at the Primary and Secondary School Voting Center in San José de Bocay, respectively.

6. RECOMMENDATIONS

The OAS Electoral Observation Mission in Nicaragua has conducted a comprehensive analysis of the process. With the objective of contributing to the ongoing improvement of the electoral system in Nicaragua, the Mission hereby presents a series of observations and recommendations.

6.1. Electoral Organization and Technology

Training

The CSE has developed a training primer and workbook ³ that are used to train election officials. The CSE trains the members of the Departmental Electoral Councils [*Consejos Electorales Departamentales*] (CEDs), who then go on to train the members of the Municipal Electoral Councils [*Consejos Electorales Municipales*] (CEMs) and the JRVs. They also provide training to the party trainers so that they can then go on to instruct their poll watchers. Despite the existence of this system, the lack of human and material resources to offer more detailed and pedagogical training became apparent on election day at the JRVs insofar as some of their members and some of the party poll watchers had difficulties in discharging their functions.

3. Training Primer and Training Primer Workbook. 2017 Municipal Elections.

The Mission recommends enhancing the training systems by providing them with instructional tools and in-person sessions that make it possible to ensure that officials taking part in the process become familiar with the procedures they will have to carry out on election day. This includes developing an electoral training strategy and a program of civic education in the institution, a specific area in the CSE dedicated to this subject, and the generation of teaching materials on the internet.

Use of technology in electoral logistics

In the week leading up to the election, the Mission visited the center where election packages were being prepared, as well as the storage and distribution centers of the CEMs. During these visits, the Mission observed that the assembly and delivery of election materials was being done manually and that there were no computerized mechanisms to verify that the packages were complete and properly distributed. Despite these limitations, the Mission verified that all of the polling stations observed had the necessary materials on hand to allow voting to proceed. It is recommended that technology be used to supplement the whole process of electoral organization and logistics to permit increasing the controls and monitoring of the process of preparation of the election packages so they are traceable from the start of packing to their arrival at the polling centers (JRVs), and their subsequent delivery to each Municipal Electoral Council.

The EOM applauds the use of computer software to register and accredit the party poll watchers with the JRVs, which helps to improve and automate oversight of the personnel involved in the process. One of the issues identified previously by past missions deployed by the OAS was hereby addressed.

The Mission invites the CSE to continue implementing technological solutions that enable the procedures employed throughout the entire electoral process to be streamlined and simplified. The recommendation, therefore, is to install a computer platform or program that enables members of the CEMs to take all of the steps necessary to appoint and accredit JRV staff. The tool could contain a registration module for JRV members for the different political parties, as well as a review thereof, in order to facilitate their accreditation. This would, at the same time, make it possible to generate departmental or national statistics for different areas, political groups, ages, gender, etc.

Ballots

The Mission once again noted that the design of the ballot made the process of vote counting difficult. The Mission therefore reiterates the recommendation it made in 2012, which underscored the benefits of using different ballots for each election. The aim is to make vote tallying nimbler and facilitate the precise recording of results, thereby reducing the number of mathematical errors.

Copies of poll records

The Mission observed that the copies of the records that political parties receive are not legible starting with the third or fourth copy. The use of carbon paper does not meet the conditions necessary to ensure that all parties have a reliable record of each JRV's election results. The OAS/EOM recommends that implementation of a different system that ensures the legibility of the information be considered.

Dissemination of results

For these elections, the CSE posted the results, at the JRV level, on its website and allowed the parties to access images of the records from the tabulation center. The Mission salutes this advance, which helps make the process more transparent and is in line with the recommendation made by the OAS in 2012. For the next elections, it would be advisable to make the scanned images of the records available and accessible to the public in general as well, and not just to the political party poll watchers. To this end, the CSE needs adequate scanners and servers as well as security mechanisms to protect the integrity of the data.

Access to information

The Mission took note of the need to more widely publicize the regulations and procedures related to the electoral process underway. The CSE website could contain the applicable law as well as historical records of previous election processes, among other valuable data, both for the public and for political parties. In this regard, the Mission recommends making public all information of interest to the citizenry.

The CSE must have the necessary human and material resources to be able to address these aspects of electoral organization; only then would it be able to modernize and hone its processes.

6.2. Voter Registry

Nicaragua's voter registry is comprised of all citizens who have cast votes at least once in the previous two general elections or in other elections held in the interim. This definition stems from the need to ensure an ongoing update of the voter rolls. Nevertheless, the reform of provisional Article 196 *bis* of Election Law 331, published on September 1, 2017, gave individuals who are registered citizens, but who are not in the voter registry, the ability to request to be added to the rolls on election day and exercise their right to vote.

In order to provide the certainty required by an electoral practice, it is not a sound practice to implement reforms shortly before the elections, especially when the electoral process is already underway and its various stages are being executed. Nevertheless, initiatives to induce greater voter turnout by reforms that enable the most people to vote are a necessary aspect of any electoral process, provided they are implemented in a timely manner, with adequate publicity and technical safeguards. In the case of Nicaragua, the need for this type of reform stems from a structural limitation that is not exclusive to the voter registry, but rather applies to a series of processes. The integrity and quality of voter registry data are directly linked to the quality of the

information in the identification records, which itself relies on the integrity of and access to information corresponding to birth registrations, which is managed by the Civil Registry.

In Nicaragua, municipalities are responsible for preparing birth certificates, death certificates, corrections, replacements, and all vital statistics on individuals. The records must be sent periodically to the CSE's Central Registry Office, which is the entity responsible for the centralized recording and archiving of civil registry records from the municipalities. In this regard, the CSE has developed an application that currently covers birth registrations and replacement birth and death certificates so that the municipalities are able to electronically generate the records, the records are digitized, and the data are updated online. There are currently 71 inter-connected municipalities and four hospitals in Managua. The application has made the work of the municipalities easier and streamlined their assistance to citizens.

For their part, the birth records coming from the municipalities are the basis upon which the CSE's Identification Office is able to process, verify information, and issue ID cards. An ongoing ID-issuing process has been established—with ID offices in 121 municipalities—which facilitates the issue of ID cards and eliminates the need for nearly all supplementary voting documentation.

The foregoing points mark progress in key areas for the development of a reliable voter registry. That notwithstanding, this essential component for exercise of the right to vote continues to be an aspect that requires specific measures to prevent the existence of a voter registry alongside a separate list of registered citizens, which, in practical terms, could lead to a lack of certainty. Having a single voter list would make it possible to precisely determine voter turnout.

Nicaragua would benefit from a comprehensive audit of its voter registry that includes several verification and control exercises. Registered citizens who have not voted in the last five elections must be identified and this information cross-checked with birth certificates, data uploaded from the registry system, death records pending upload, and ID information. Such an exercise would further provide information on the different registration and identification processes for Nicaraguans.

In addition, the Mission recommends continuing implementation of the inter-connected civil registry system in the rest of the country's municipalities; this would include digitizing the hard copy birth and death certificates—particularly of those citizens who now have ID cards—contained in the municipalities' books so that they can be incorporated into the same system.

A campaign for the mass implementation of the ID card design in place since 2014 is also recommended. This requires a deadline for citizens to secure the new ID and offers an opportunity, as the ID is being renewed, to verify the information on the card against the individual's birth certificate and thereby update the voter registry. For the long term, implementation of a biometric ID system should be considered.

6.3. The Electoral Branch

According to Nicaragua's Constitution, the *Poder Electoral* (Electoral Branch) is an independent branch of government comprised of the Supreme Electoral Council (CSE) and its decentralized bodies (Departmental or Regional Electoral Councils, Municipal Electoral Councils, and polling stations (JRVs).

The Mission heard both criticism and praise for the Supreme Electoral Council. Some accused it of being biased in favor of the government and lacking in independence, while others said it was fulfilling its Constitutional mandate. Trust in institutions is key to all election processes. In an effort to achieve or consolidate trust, the Mission encourages Nicaragua to seek out mechanisms that enable it to strengthen and promote, to the extent possible, the active participation of representatives of political organizations in the activities of the Electoral Branch, as this would help to build greater levels of trust in the authority and create an institutional framework for the channels of dialogue. It is important for political forces as a whole to trust and feel represented by the highest electoral authority.

Membership in the Departmental Electoral Councils (CEDS) or Regional Electoral Councils⁴ (CERs), the Municipal Electoral Councils (CEMs), and polling stations (JRVs) is party-based and determined using three-person slates submitted by the political organizations. Appointments are made by the higher-level Electoral Councils.⁵ The Chair and ranking member of these bodies are assigned drawing from the political organizations that secured the highest number of votes in the previous general election. The second member must be taken from the three-member slates of the remaining political organizations.⁶

Unlike the deadline for submission of the slates, which is regulated by law, the procedure and criteria for distribution of political organization representatives as members of the CEDs or CERs, CEMs, and JRVs is not regulated under existing legislation. During this electoral process, political organizations had to present their three-person slates when a decision had not yet been made as to whether they would be participating individually or via alliances. According to the electoral calendar,⁷ the slates for the CEDs/CERs had to be submitted between May 10-25, and these were formed on June 1. In the meantime, the slates for the CEMs had to be submitted between June 5-10, and the CEMs were formed on June 15.⁸ Requests to form alliances could be presented between July 24-28 and alliances were registered August 2-5. Thus, at least in the case of

4. They are called Regional Electoral Councils in the Autonomous Regions (North Caribbean Coast Autonomous Region, South Caribbean Coast Autonomous Region).

5. The Supreme Electoral Council elects the Departmental or Regional Electoral Councils; the Departmental or Regional Electoral Councils elect the Municipal Electoral Councils; and the Municipal Electoral Councils elect the members of the polling stations (JRVs).

6. Law 331, Article 16.

7. Adopted by the Supreme Electoral Council on May 9, 2017 and published in *La Gaceta*, the Official Journal, on May 10.

8. The three-person slates for the JRVs are presented between September 29 and October 13, though the CSE extended the deadline until October 16 (since most of the political organizations had not yet presented the total number of slates required).

the CEDs/CERs and the CEMs, it was possible for the second member of these bodies to be proposed by a political organization that ultimately decided to participate jointly with the first or second political force from the last general election,⁹ which did occur. In several cases there were two representatives from one of the alliances that participated in the elections. The Mission received several complaints about the membership of the Municipal Electoral Councils.

In these elections there was a reduction (of 1,521) and then a subsequent increase (of 137) in the number of JRVs. The electoral calendar indicated that the preliminary voter registry and initial distribution of voting locales (“electoral mapping”) was published on August 7, 2017. However, citizen and political organization objections could be filed (through August 21) and new inclusions or address changes could be made (through October 6), which made it possible to have a final voter registry and definitive electoral map by October 16, 2017, that is, by the time the deadline had passed to designate slates for the JRVs (a time period that began on September 29 and was extended to that same day). The CSE authorized a new deadline for the formation of these new JRVs and to complete the slates originally submitted.

Amendment of the Election Law or adoption of a regulation that lays out the procedure for designating the members of the CEDs/CERs, CEMs, and JRVs is recommended in order to create a mechanism that ensures the participation of all or the majority of political organizations taking part in the electoral process. A further recommendation is to have slates submitted once the political organizations’ mode of participation (individual or alliances) has been decided so that none of them are over or under-represented in these bodies. Furthermore, it is excessive to ask all political parties to submit slates of three candidates to serve on these bodies, considering that with the exception of the two parties that will serve as chair and ranking member, parties will not have a presence everywhere throughout the country. It is therefore recommended that political organizations only be required to submit lists of three candidates once party participation at the different entities has been determined.

In addition, it is key that there first be certainty about the universe of eligible voters (in the voter registry and even regarding the list of registered citizens who are not included in the voter registry) and only then should the number of JRVs be determined so that changes do not have to be made down the line, which leads to confusion or distrust among the public or political organizations.

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9. According to the information furnished by the Supreme Electoral Council, each political organization has the following number of members:
- **CED / CER:** FSLN: 38; PLC: 34; CCN/PUC/AC/PRN (in Alliance with the FSLN): 9; CxL: 5; APRE: 4; PRD: 4; PLI: 4; ALN: 2; PC: 2.
 - **CEM:** FSLN: 306; PLC: 306; CCN/PUC/AC/PRN (in Alliance with the FSLN): 121; CxL: 42; APRE: 25; PRD: 34; PLI: 14; ALN: 27; PC: 14; MYATAMARAN: 2; PAL: 1; PIM: 1; PLN: 20; YATAMA: 5.

6.4. Election dispute resolution system

A system for challenges exists, which derives from the Election Law (Law 331 and its amendments). This system has not, however, been subject to any regulation.¹⁰ Thus, the existing procedures and their scope with respect to challenges are not regulated in detail.

Challenges regulated under this law¹¹ are very limited in scope (and do not cover the totality of issues that might affect the pre-election day phase, election day, and the post-election phase) and can only be filed by political organizations (not citizens).¹² During the post-election phase challenges may only be made over numerical issues¹³ and will be heard only on an exceptional basis. Also, the time for filing appeals is limited, since almost all challenges must be made before the polling stations (JRVs) or else the appeal will be dismissed.¹⁴ In this regard, many of the most relevant incidents that could affect the electoral process (from the time elections are called until announcement of the results) lack clearly established legal and regulatory mechanisms for challenges thereto.¹⁵ In light of the problems that arose with the results in certain municipalities, it is imperative to amend the law to ensure mechanisms to safeguard voting and the accuracy of the results, particularly when they are called into question due to situations that arise after the records are issued by the JRVs. This would preserve the rights of stakeholders who lodge legitimate challenges within the framework of due process.

Political organizations and the public do not generally make use of challenges or existing dispute settlement mechanisms with the different competent public bodies (CSE, Office of the Attorney General of the Republic, Supreme Court of Justice); rather, this time around they have preferred to share information with the media or the OAS/EOM.

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10. According to the Recording Secretary of the CSE (November 1 meeting), this was a decision made by the CSE.
 11. This includes challenges of candidacies, appeals for annulment of a JRV, appeals to challenge a JRV, appeals for review (for numerical errors by a JRV, or in departmental or regional records), and appeals for national review (against the provisional results published by the CSE). There are also election-related crimes, which are the purview of the Office of the Attorney General of the Republic, and more specifically, the Office of the National Electoral Prosecutor.
 12. With the only exception being election-related crimes.
 13. The only one that could be called qualitative is annulment by the JRV, but this is only allowed for certain grounds that have little potential impact (such as changing a JRV voting site).
 14. The exception, although also for numerical reasons, is the appeal for review or appeal for national review (of the departmental or regional records, or of the provisional results published by the CSE once it concludes the full vote tally, respectively).
 15. The report from the EU's Observation Mission for the 2011 elections indicates that restrictive and limited regulations of the grounds for challenging a JRV under the election law fail to encompass a large number of incidents and irregularities that might have a relevant impact on the validity of the voting or vote tallying. The recommendation is to have the CSE adopt clear and detailed rules about the procedures to challenge any decision, act, or omission by the CSE. Regulations governing complaints should clearly specify timelines for filing and resolution, as well as possible types of legal remedies should the competent body admit them.

The political organizations involved are notified of the disputes settled by the CSE (25-30 resolutions)¹⁶, but no mechanism for publicizing them has been created (via the website, etc.), that allows for broader dissemination for both political organizations and the public.¹⁷ It is essential to publicize and make accessible decisions adopted at the different levels. This would allow people to know the reasoning and motivations behind a given decision, and see the evidence used to accept or dismiss any challenges made.

In the context of these elections, the Mission received 219 complaints that were forwarded to the Supreme Electoral Council. The Mission appreciates the trust of the public who see it as a means to channel their grievances, and reiterates the importance of using the legal mechanisms established by law to peacefully settle disputes.

The Mission recommends that disputes and challenge mechanisms applicable to the electoral process be regulated in order to address the main issues that could impact the validity of the vote and potentially, the right to political participation. It is also important to provide clarity and predictability with respect to procedures (regulated, timelines, processing, remedies).

6.5. Political parties

Election Law 331 regulates the creation, participation, and revocation or suspension of the legal status of political parties. Grounds for the loss of legal status are spelled out exhaustively in

16. Information from the Recording Secretary (November 1 meeting).

17. Access was gained to the following resolutions:

- Resolution granting legal status to the political group *Ciudadanos por la Libertad* (CSE)
- Resolution granting legal status to the political group *Partido de Restauración Democrática* (PRD)
- Convening of municipal elections - 2017 (CSE)
- Assignment of boxes to the political groups *Ciudadanos por la Libertad* and *Partido de Restauración Democrática* (CSE)
- Adoption of the electoral calendar (CSE)
- Formation of the CED/CER (CSE).
- Formation of municipal election alliances 2017 (CSE)
- Amendment of the electoral calendar (regarding candidacies) – August 15, 2017 (CSE)
- Electoral Ethics Regulation (CSE)
- Electoral campaign rules (CSE)
- “Regulations for Duty-Free Customs Processing, Municipal Elections 2017” (CSE)
- “Procedural regulations for processing complaints, petitions, claims, and grievances in connection with the 2017 municipal elections” (CSE)
- Four resolutions on candidacies from different parties– September 13, 2017 (CSE)
- Cancellation of appointment to the San Dionisio CEM – October 29, 2017 (CSE)
- Supplementary procedure for JRVs—in connection with list of registered citizens who are not on the voter registry –October 19, 2017 (CSE).
- Copy Nº 4 of the record for the political group *Ciudadanos por la Libertad* – October 29, 2017 (CSE, although the OAS/EOM first gained access from that political group).
- Possible rescheduling of JRV member training due to rain – October 27, 2017 (CSE).

the law,¹⁸ among them, non-participation in elections, and, where parties have taken part, failure to secure at least four percent of the total number of valid votes in national elections.

Moreover, Article 82 stipulates that the parties have the duty to register candidates in all districts involved in the election in which they are participating, with the exception of municipal elections, for which they must put up candidates in 80 percent of the municipalities. The Mission received complaints from a number of political parties that reported having difficulties meeting this requirement.

In this context, the OAS/EOM received complaints from citizens who had been registered as candidates without having been previously consulted, meaning that in order to meet a requirement, parties included a number of individuals on their slates who they had not consulted in advance in an effort to prevent their legal status from being revoked.

The participation of new parties in the race denotes a pluralistic system and is testament to the ease with which parties can be created. Nevertheless, the disintegration of political forces for different reasons reflects the difficulties they face if they wish to remain on the scene.

The Mission believes that taking the measures necessary to enhance equity and strengthen the system of national political parties is key, with the understanding that these institutions are essential to the functioning of democracy. Accordingly, the Mission recommends that a law on political parties be drafted that includes a permanent financing mechanism and internal democracy rules.

6.6. Electoral-political financing

Nicaraguan law provides for a mixed financing model for election campaigns, to wit: Spending on campaign activities is covered by donations and contributions from private sources and by public funds received by the parties in the form of reimbursements once the elections are over.

In the case of public financing, Article 99 of the law indicates that, “[funds] will be granted to political parties that secure four percent of the valid vote.” It does not, however, specify in which election that vote threshold must be reached. Moreover, the law does not stipulate timelines for payment of the reimbursement; the electoral calendar does not set a deadline for making the payment either.

Additionally, the current regulatory framework does not include limits or ceilings on the amounts parties can bring in to spend on campaigns. Article 103 of the law provides that “parties shall be able to receive donations from Nicaraguan citizens or foreigners, within the amounts and limits, and in keeping with established requirements and conditions.” Nevertheless, neither the law nor the regulation on campaign-spending accountability makes reference to this spending.

18. Election Law 331, Articles 73 and 74.

Regarding indirect public financing, Article 91 of the Election Law provides that parties or alliances have the right to use state radio and television stations to campaign. Party representatives and CSE members stated, however, that this is limited inasmuch as there is just one state radio station and no state television channels. Consequently, media access is primarily a function of the private funds parties have.

As to sanctions, Article 104 of the existing law provides that penalties apply to those cases in which election authorities are able to confirm the existence of banned sources of income, such as anonymous contributions¹⁹ or contributions from autonomous or decentralized entities. And while the Office of the Comptroller General of the Republic is the institution in charge of reviewing political parties' cash inflow and outflow records, the law does not establish any requirement, format, or specific regulation for doing so.

The law expressly prohibits the use of State property for purposes of political advertising and makes using public offices for political campaign activities an election-related crime.²⁰ The OAS/EOM received eight complaints in connection with the use of government resources during the election campaign, but discovered that the Office of the Prosecutor had received only one report of use of government resources in the election campaigns.²¹

The Mission recommends that the possibility be examined of providing public funds to parties in advance so that they can communicate their political platforms to voters. It further suggests that the law regulate procedures for reporting inflows and outflows, reimbursement, and reviews of campaign incomes and expenditures that determine the requirements, regulated entities, competent authorities, and deadlines for compliance in each stage, defined in the applicable regulatory framework, as well as seek transparency mechanisms for public access to campaign financing. Furthermore, the Mission reiterates the recommendation made in 2012 regarding the need to clearly and precisely regulate the substantive and formal procedures political parties must complete when disclosing income from private sources.

The OAS/EOM further reiterates the need to have mechanisms in place to ensure that parties have equitable and transparent access to the media, as well as the need to establish limits or ceilings for campaign spending.

19. With the exception of those that come from citizens.

20. Article 107, paragraph four: The use of State-owned property is prohibited for purposes of political advertising. Public offices may not be used for political campaigning. Article 175(9): Whosoever engages in political campaigning in public offices...

21. Information communicated by the Attorney General of the Republic during a meeting with OAS/EOM specialists on November 3, 2017.

6.7. Political inclusion

Women's participation

In these elections, 21,953 of the 43,962 candidates for elected office in mayoralties and municipal councils were women, which is equivalent to 49.9 percent. The OAS recognizes the progress Nicaragua has made in narrowing the gender gap, as seen in the achievement of full parity, alternation, and proportionality in elected office within a guarantee-based regulatory framework, which serves as a model for the entire hemisphere.

These achievements, which were enshrined in the constitution in 2012 and are present in the Election Law, must be underpinned by the creation of sanctions, at a regulatory level, for failure to comply with the principle of parity explicitly, and by reducing some of the gaps that still exist under the law. As proof thereof, the percentage of female candidates running for mayor in the 2012 municipal elections was 49.1 percent, while in this race that number was 46.9 percent.

The Mission reiterates the need to ensure that efforts made to respect the spirit of the law are formalized in a regulation that will guarantee that the system functions just as well in the future. The OAS/EOM further reiterates the recommendation made in 2012 to promote women's leadership within political organizations. Capacity building for female party members and the strengthening of women's leadership, targeted public financing, and encouraging democracy within the parties remain challenges.

The Mission also recommends that the Supreme Electoral Council develop a gender approach at the regulatory and institutional policy level so as to incorporate it into all of its work, in both the management and development of equity criteria and norms, training programs, regulations banning political and electoral harassment, etc.

Departmental Electoral Councils and Municipal Electoral Councils are provisional electoral bodies whose female presence is quite uneven. In the case of Departmental Electoral Councils, for example, the number of women who hold the top position is negligible (16/1). The Mission therefore recommends that minimum quotas be set for the composition of these entities such that a proportional presence of women may be guaranteed.

Civil society participation

The Mission recommends encouraging the broad and pluralistic participation of national election observation organizations, groups that help to provide transparency and build trust among those involved in the process. Observation of elections, it must be noted, is not a substitute for the oversight responsibilities that fall to the political parties, nor does it replace the functions of the election authorities. It is key that such groups have an effective legal framework, are non-partisan, and have the access they need to ensure they are able to work professionally, impartially, and objectively.

7. CONCLUSIONS

In this report, the Mission lays out its main observations and recommendations with respect to the electoral process. Important advances were identified in different areas, as were weaknesses typical of all electoral processes. Such elements, added to the Mission's verified findings as well as the complaints it received make it possible to determine that there is space to strengthen the legal, technical, procedural, technological, and human aspects of electoral processes in Nicaragua. Attached to this report are specific observations made by the Mission in connection with electoral organization, election-related technology, voter registration, gender, political financing, and electoral justice that can help to achieve this end.

Nicaragua's electoral system would benefit from a comprehensive electoral reform that addresses various topics. A permanent judicial and administrative framework that gives more confidence and security to political forces and citizens is necessary.

The voting on Sunday, November 5 resulted in the election of 153 mayors and vice-mayors as well as the respective municipal governments' council members. While some of the findings of this report are targets of recommendations for elimination or improvement, they did not substantially affect the popular will expressed through the vote in the vast majority of Nicaragua's municipalities. That notwithstanding, as far as the municipalities mentioned in this report are concerned, the Mission believes that certain claims regarding the accuracy of the results in the mayoral elections have sufficient merit to be contested, examined, and investigated in light of the information provided. The existing legal and procedural framework to which election authorities must adhere for these cases—according to what they have expressly indicated—does not enable them to respond adequately to those who are legitimately seeking to contest those results. Therefore, in order to safeguard the popular will, the OAS/EOM once again states that it would be advisable for the Supreme Electoral Council to reconsider and investigate the claims, to the extent it has the authority to do so, so as to remove the reasonable doubts clouding the results in those municipalities.

The Mission reiterates the profound concern it expressed in its Preliminary Report regarding the acts of violence that occurred after the election, expresses its solidarity with the families of the victims and the people of Nicaragua, and calls on society as a whole to resolve its differences through peaceful means.

The OAS/EOM acknowledges that the different recommendations made in this report require financial, material, and human resources for implementation.

The Supreme Electoral Council provided the Mission with all the help it needed to discharge its work and there was smooth and direct communication with this electoral body throughout. The Mission is especially grateful for the assistance and cooperation it received from the President, Vice President, magistrates, and staff of the CSE. In addition, it thanks the government authorities, especially the Ministry of Foreign Affairs, political parties, civil society organizations, national and

international media, security forces, and the public for all the support and cooperation they provided so that the Mission could conduct its work.

The Mission wishes to thank Argentina, Bolivia, Chile, the Dominican Republic, Germany, Honduras, Korea, Luxembourg, Spain, and Switzerland for their financial contributions, which made our deployment in Nicaragua possible.

The Electoral Observation Mission also expresses its thanks for the essential support of the members of the conversation and constructive exchange group established between the OAS General Secretariat and the Government of Nicaragua. We hope this document serves as a technical input for the work that will continue in the coming years.