

Countries at the Crossroads

COUNTRIES AT THE CROSSROADS 2012: NICARAGUA

INTRODUCTION

Nicaragua's November 2011 elections marked a major step forward in President Daniel Ortega's consolidation of power, and served as a stark demonstration of the authoritarian tendencies he has exhibited since his return to office in early 2007. A onetime guerrilla leader and the head of the Sandinista National Liberation Front (FSLN) during the 1979–1990 Sandinista revolution, Ortega has ruled Nicaragua with increasing disrespect for the constitution, electoral integrity, and the rule of law. In order to run again, he engineered a questionable ruling from the Supreme Court of Justice (CSJ) to eviscerate a constitutional ban on successive terms for sitting presidents, as well as a limitation to two total terms of office.¹ Ortega then secured 62 percent of the popular vote, although irregularities were widespread enough to cast doubt on the size of his victory margin. The disputed election also gave his party, the FSLN, 63 of 92 seats in the National Assembly, a majority large enough to pass ordinary legislation, change the constitution, and even call a constitutional assembly. Armed with this supermajority, Ortega is now in a position to govern in the temperamental manner of his ideological brethren in the Bolivarian Alliance for the Americas (ALBA) headed by Venezuelan president Hugo Chávez, who has provided him an economic lifeline since 2007.

During his first term as president (1984–1990), Ortega presided over the drafting of a constitution in 1987 that reflected the quasi-socialist character of the revolution, which was marked by wealth redistribution and widespread confiscations of private property. The charter accorded the executive overweening powers that were only eliminated by reforms legislated in 1995. With his power again in ascent, some constitutional experts expect Ortega to use fresh reforms to legitimize his contested reelection and enhance the powers of the presidency once again, as well as deepen his control over the Nicaraguan army and police. Rosario Murillo, the president's wife and political right hand, has meanwhile recast the FSLN as a party inspired by socialist and Christian values, and in the process displaced rival leaders.

The 2011 election spelled the demise of the political pact between Ortega and former president Arnoldo Alemán that had been in place since 2000, through which the two *caudillos* of Nicaraguan politics shared power. During the years of the pact, state institutions became thoroughly politicized and corrupt. Voters castigated Alemán for his personal corruption, while his once-powerful Liberal Constitutionalist Party (PLC) has been reduced to just two seats in the legislature.

A somewhat more coherent opposition has emerged from the 2011 election: the Independent Liberal Party-Nicaraguan Unity in Hope (PLI-UNE) alliance, a coalition of disparate elements including democratic Liberals, dissident Sandinistas, and figures from sundry minor forces. PLI-UNE represents the modern democratic face of party politics, in contrast to Ortega and Alemán's corrupt strongman rule. Its candidate, Fabio Gadea, won 31 percent of the popular vote in November 2011 but refused to accept the outcome of

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the election, arguing that massive fraud had been committed by the Sandinistas. Although Gadea refused to occupy the National Assembly seat to which he has a right as runner-up, PLI-UNE's 26 elected deputies all took their seats in January 2012. But their role will be that of tribune, with scant influence over legislation. PLI party coordinator Eduardo Montealegre, a former presidential contender, will be the de facto leader of the alliance.

Persistent authoritarian tendencies and governance problems have impeded Nicaragua's economy, despite recent growth. It is the Western Hemisphere's second-poorest country, and although the percentage of Nicaraguans who are poor is declining slowly, their absolute numbers continue to rise and the distribution of national income is substantially skewed. The Ortega government has attempted to combat these trends by expanding access to health and education as well as through programs known as Zero Hunger and Zero Usury, but to limited effect. Coupled with the weaknesses of the political system, these severe social deficits have created a situation in which most citizens, though aware they are entitled to certain rights, lack the necessary resources to assert and defend them.

ACCOUNTABILITY AND PUBLIC VOICE

Controls sufficient to guarantee the integrity of electoral processes have all but disappeared in Nicaragua in recent years, undermining the country's tenuous claim that it remains an electoral democracy. Though there have been no restrictions on opposition party campaigning and little violence during campaigns, the last two electoral contests have been marked by allegations of fraud and increasing irregularities. Public confidence in the Supreme Electoral Council (CSE) is now mainly limited to supporters of the Sandinista Front.

Law 331, the electoral law spawned by the 2000 pact, imposes some of Latin America's stiffest requirements for the registration of political parties and coalitions. Parties must maintain organizational structures in all 153 municipalities and present candidates for 80 percent of the posts in every election to preserve their legal standing. The law's lack of clarity allows the CSE to arbitrarily exclude political parties and facilitates the manipulation of vote figures, because it does not require the electoral authority to maintain a full and permanent record of election results broken down by polling place. Campaign finance rules are also weak, allowing economically powerful actors to exert undue influence. Although the law provides for significant public funding of party campaigns, it imposes no restrictions on media spending, and rules for the disclosure of campaign donations are imprecise. In 2011 the FSLN made blatant use of official resources in its campaign, notably by propagandizing in public high schools. Further, most of the elite refrained from contributing to PLI-UNE candidate Fabio Gadea's campaign, largely out of fear of reprisals from Ortega, but also based on a calculation that his chances of victory were slim.

The FSLN and PLC parties shared power in the CSE in the years after their 2000 political pact. However, since his election in 2006 with 38 percent of the vote, President Ortega has taken full control of the election body. Abetted by the CSE—including the connivance of magistrates loyal to former president Alemán—the FSLN committed massive fraud in municipal elections in November 2008, seizing control of 105 of the 146

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municipalities being contested. The PLC alliance claimed to have won 81 races, to only 61 for the Sandinistas; however, these claims were ignored by the CSE. The fraud was blatant, as evidenced by the expulsion of opposition poll watchers from the voting stations, the alteration of tallies in municipal counting centers, and the CSE's refusal to publish 30 percent of the results in the capital, Managua. The aftermath of the election was violent conflict on the streets of Managua.²

The deceit continued in the 2011 election, mainly affecting races for the National Assembly. In contrast to 2008, the balloting was not followed by widespread unrest, although several revenge murders took place in rural areas. Irregularities increased enormously in number, indicating a sustained effort on the part of the FSLN to manipulate the vote.³ Among other things, restrictions severely compromised the PLI-UNE's ability to defend the ballots voters cast for it and document abuses during the process. Safeguards against ballot-box stuffing were abandoned, including such basic measures as verification that ballot boxes were empty before voters arrived at the polling stations.⁴ Many PLI-UNE poll watchers, among other observers, were denied accreditation at the last minute, were not allowed to be present when the votes were counted, or received illegible copies of the tallies.⁵ Furthermore, prior to election day, the CSE had conducted a biased distribution of voter identification cards to FSLN party members through party rather than institutional channels, generating protests and leaving an undetermined number of opposition sympathizers without the right to vote.

Although these irregularities were not judged by observers to be sizable enough to call into question Ortega's victory in the presidential race, they are believed to have augmented his cohort of National Assembly deputies by some 8 to 10 members,⁶ assuring him of the ability to change the constitution without having to negotiate votes from other parties (such reforms require 56 votes in two successive legislative sessions). More importantly, after two gravely flawed elections it is clear that the ruling FSLN will not allow itself to be pushed out of power by the ballot box. As a consequence, checks and balances among the powers of state, already gravely weakened by the Ortega-Alemán pact, have for all practical purposes disappeared. The president and his political party now dominate the executive, the legislature, and the judiciary (see Rule of Law) and can dictate decisions in each arena at will.

Nor does the international community serve as an extra-governmental check, despite Nicaragua's historic dependence on foreign aid. Although the support of foreign donors and international financial institutions is still essential, Ortega's strongman governing style and support from Hugo Chávez have reduced their ability to influence public policymaking, especially compared with the administration of Enrique Bolaños (2002–2007). Ortega has cooperated with the International Monetary Fund as a hedge against the potential loss of Venezuelan backing, but has provided the Fund with only minimal information concerning the funds he receives from ALBA (see Anticorruption and Transparency).

Albeit invisibly, Ortega's dominion extends to Nicaragua's business elite, primarily represented by the Higher Council of Private Enterprise (COSEP) and its advisory board, which contains the country's leading entrepreneurs. COSEP informally allied itself with Ortega during the 2009 global economic downturn, refraining from open opposition in exchange for protection against abuses by government. While the

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arrangement has afforded business a major voice in the crafting of legislation regarding the economy, critics charge it has come at the price of political quiescence.

In 2009 the administration also began forcing Nicaragua's public employees to become card-carrying members of the FSLN if they wished to keep their jobs. The forced affiliation vitiated a 2003 civil service law that requires the recruitment and promotion of public servants to be based on merit. Employees of certain ministries are also pressured to participate in FSLN political demonstrations. Over the last five years Ortega has allegedly ousted 24,000 government workers from their posts in order to award positions to party supporters.⁷ The resulting loss of expertise has hobbled his government from the start.

Interest groups and civil society have lost influence over public affairs in recent years. The Ortega government has all but closed down the constitutionally-mandated National Economic and Social Planning Council (CONPES), formerly a conduit for societal inputs into policy. Although early in its tenure the administration successfully divided civil society into antagonistic segments, even popular organizations linked to the Sandinistas now appear to exert little leverage as consultative mechanisms in key government ministries have been abandoned. At the local level, civil society organizations (CSOs) have mostly been absorbed into the Citizen Power Councils (CPCs), which have almost entirely displaced preexisting local development committees.⁸ However, FSLN party secretaries dominate the work of the CPCs and impose most decisions. Though non-Sandinista CSOs have also lost clout, a few technically sophisticated groups such as the Institute of Strategic Studies and Public Policy (IEEPP), the Nicaraguan Foundation for Economic and Social Development (FUNIDES), and the International Foundation for the Global Economic Challenge (FIDEG) exert minor influence over legislation and public policies, as do CSO networks dedicated to stemming violence against women and children.

The withdrawal of funding by six major Western European cooperation agencies has seriously weakened prominent non-Sandinista CSOs. Remaining donors now largely avoid funding groups or projects in the area of democratic governance because the authorities will object to such efforts as political interference. The combination of these trends has had an especially negative impact on organizations run by former Sandinistas—in particular the Civil Coordinator (CC), formerly a massive umbrella for domestic nongovernmental organizations (NGOs)—that the government regards as apostates and wishes to undermine. The administration also refused, in late 2010, to sign off on the disbursement of previously authorized Danish assistance, which deprived Ethics and Transparency (ET—the local chapter of Transparency International) and other civic groups planning to monitor the 2011 election of nearly US\$1 million in funding.⁹

The National Assembly continues to grant legal status to new civic associations, including churches, without major restrictions. Threats of judicial action against opposition NGOs intended to control these groups' political behavior have morphed into occasional threats of deregistration by the civil association registrar. Although there are no new official regulations, some opposition CSOs complain that the national tax inspectorate and social security administration harass them with constant audits and the imposition of arbitrary fines to keep them off balance. The result of these multiple pressures has been the waning of civil society capacity.

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The authorities refrain from direct censorship of the press and media, and have not yet demonstrably interfered with access to the internet. However, the government maintains unremitting hostility toward, and occasional pressure against, opposition media outlets. President Ortega persisted in 2010 and 2011 with verbal attacks on *La Prensa* newspaper and other elite-owned newspapers and broadcasters as mouthpieces of the “oligarchy,” while his ministers have systematically refused interviews to reporters from non-aligned media and barred them from news conferences.¹⁰ Information concerning government activities and programs is channeled mostly through official outlets. The secrecy surrounding some of these activities is so severe as to occasionally spark protests even from journalists employed by the official press and television.

In the run-up to the 2011 elections, harassment of independent media continued, but at a lower level and using different agents than in previous years. In early 2010, a self-proclaimed union of *La Prensa* distributors began periodically disrupting delivery of the paper to its subscribers, at times causing serious financial losses.¹¹ The customs directorate, meanwhile, episodically hindered access by *La Prensa* and *El Nuevo Diario* to imported newsprint, alleging nonpayment of certain taxes whose legality is in dispute.

Physical attacks on journalists exercising their duties declined in 2010 and 2011, but several *El Nuevo Diario* reporters have been subjected to repeated death threats from what they regard as Sandinista sources. Silvia González, the paper’s correspondent in Jinotega department, fled the country in 2011, fearing for her family’s safety.¹² The threats appear to have been sparked by her reporting on local corruption and drug trafficking. In addition, in January 2011 the Nicaraguan Institute of Mail and Telecommunications (TELCOR) arbitrarily stripped a local TV station, Channel 15 in Condega, of its operating license, apparently in reprisal for criticism of local authorities.

Official government advertising, the largest chunk of a very small publicity market, goes almost exclusively to government-owned media, the ruling FSLN party, or members of the Ortega family. The number of official and semi-official outlets has soared in recent years as the Ortegas have bought up preexisting stations (allegedly using Venezuelan money) or used TELCOR to grant themselves new radio and television frequencies and licenses.¹³ The Ortegas are now believed to control six television stations, most of them run by the president’s children, and the government has additionally resuscitated the state-owned Channel 6 to trumpet its achievements.¹⁴ Endowed with plentiful resources, these outlets have weakened their traditional rivals by luring away key personnel with offers of high salaries and perks. In 2011, the Ortegas sought to purchase Nicaragua’s second-ranking newspaper, *El Nuevo Diario*, but were outbid by a local banking group.¹⁵

Specious court suits against journalists have disappeared, but the authorities have recently used libel and slander accusations to silence political opponents. In 2011, Managua’s Sandinista mayor lodged a slew of charges against Luciano García and Leonel Téller, two opposition members of the municipal council who had accused the mayoralty’s secretary general of siphoning off municipal funds to pay for progovernment street demonstrations. Both men were convicted and ordered to pay US\$20,000 fines.¹⁶ Public opinion rallied around them, however, and money was raised to pay their fines.

CIVIL LIBERTIES

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State-sponsored murders and politically-motivated disappearances have not existed in Nicaragua since the early 1990s. Arbitrary detentions of government opponents, banned by Article 33 of the 1987 constitution, are uncommon but may be increasing in frequency. A former Sandinista army officer, Marvin Vargas, leader of a protest occupation of the Managua cathedral in March 2011, was reportedly held in prison for six months despite a judicial order for his release.¹⁷

Each year since 2009, allegations of a small number of unlawful killings have been leveled against members of the Nicaraguan National Police. The most flagrant case occurred after the 2011 presidential election in San José de Cusmapa, Madriz department, where the local police chief and several officers murdered three members of a peasant family who had supported defeated PLI-UNE candidate Fabio Gadea. The officers involved were convicted of the homicides in February 2012 but received very light sentences.¹⁸

Physical abuse and degrading treatment against civilians are frequent relative to the size of the police force, which consists of just over 10,000 officers. Between January and November 2010, the internal affairs division of the police inspectorate investigated 2,010 complaints of abuse against 2,296 personnel; of these, 730 received some sort of sanction and 126 were dishonorably discharged. Only 29 cases were remanded to the courts for processing, suggesting the continuity of a significant level of impunity.¹⁹

Opposition political activists and members of civil society organizations who demonstrate in the streets have been periodically subjected to physical attack by individuals or gangs of Sandinista militants. These activities waned in 2010 and 2011 as the Ortega government sought to create a public impression of tranquility in advance of the presidential election; however, given frequent violence in the period following the 2008 municipal elections, activists perceive a latent threat of resumed attacks.

Gravely weakened after 2004 by the Alemán-Ortega pact, the official ombudsman, the Advocate for the Defense of Human Rights (PDDH), continues to be highly politicized. In 2010, it published its first report in three years, which opens by accusing the “right-wing” opposition of trying to foment a climate of ungovernability and block the government’s program.²⁰ The report does give evidence of a surge of activity, with 3,672 denunciations of all kinds, the bulk of them against the police (1,291), the judiciary (597), and the penitentiary system (163). After processing, the PDDH issued 495 resolutions citing human rights violations, compared with just 95 the year before. Only 23 percent of recommendations were implemented by the offending institutions, however, down from 37 percent in 2009. The report praises the National Police for its 80 percent compliance rate, while the judicial system did not cooperate. The PDDH thus appears to be a limited conduit for grievances against the police and other institutions for those aligned with the government. The opposition, however, seeks redress for their cases by taking their cases to human rights NGOs.²¹

Arbitrary and lengthy pretrial detention remains a problem, especially in Atlantic coast areas, which lack prison facilities, leaving detainees to await case resolution in local jails. Conditions in the prisons have become harder to verify. No new statistics on the prison population have been published, although the overall number is believed to be some 6,500, roughly 1,000 over capacity. Both the Nicaraguan Human Rights Center (CENIDH) and the Human Rights Commission of the National Assembly reported being

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denied access to prisons in 2010. The perception is that while guards continue to treat prisoners reasonably well, their nutrition is grossly inadequate, and access to clean water and healthcare are spotty. Police holding cells, where short-term detainees are routinely held under wretched conditions, continue to be grossly overcrowded, sparking what the police called “mutinies and escapes (*fugas*).”²²

Although Nicaraguans express notably less concern about crime than most Latin Americans,²³ the penetration of state institutions by drug traffickers is clearly increasing. Although not as serious as in other parts of Central America, starting in late 2010, a series of scandals in which judges released imprisoned traffickers without due cause (dubbed “narco-liberations” by the press) forced the Supreme Court to open an investigation, which eventually led to the resignations of three magistrates of the Granada appeals court.²⁴ The number of homicides attributed to hired killers (*sicarios*) is also growing, especially in the Atlantic port city of Bluefields, which is emerging as a national center of the drug trade.²⁵ At 14 per 100,000 inhabitants, the murder rate in Nicaragua is much lower than in Honduras, El Salvador, and Guatemala, but violent crime is in general increasing and the ability of the police to counter it is declining.²⁶

The constitution bans discrimination based on gender, ethnic origin, and nationality, though not on sexual orientation. Legal basis for discrimination suits exists in the 2007 penal code and a 2008 Equal Rights and Opportunities law; such actions are rare. Mechanisms for enforcement of women’s equal rights have not been put into place, and the official Nicaraguan Women’s Institute (INIM), charged with its implementation, has suffered budget cuts. The Ortega administration has introduced some initiatives with a gender focus designed to compensate for discrimination against women, including the Zero Hunger and Zero Usury programs, whose beneficiaries are mostly female.

The PDDH has also appointed a special prosecutor for sexual minorities, giving greater visibility to discrimination against gays and lesbians. Discrimination against women in hiring and wages remains very strong. Sexual harassment is also a frequent problem in the workplace, where little is done to stop it.

Women and children are very poorly protected against sexual abuse and domestic violence. The National Police’s 38 women’s commissariats received 10,204 formal denunciations of crimes in 2010, of which 2,934 were cases of intrafamily violence, while another 2,737 were categorized as sex crimes, including 1,276 rapes.²⁷ An alliance of women’s centers run by CSOs provided assistance to thousands of battered women and children; however, official avenues for redress remain limited. In a majority of cases referred to the Public Ministry, it is unclear what, if any, action was taken.²⁸ Significant impunity surrounds murders of women, as according to CENIDH, only half of the alleged perpetrators of 89 murders in 2010 were apprehended.

Human rights organizations have long characterized the insensitive conduct of judicial system personnel at all levels as “revictimization.” The treatment of Fátima Hernández, a government employee raped by a coworker, gained notoriety when her assailant was released from prison, allegedly as a result of political connections, in 2011.²⁹ Starting in 2010, outrage at victims’ poor treatment prompted civil society organizations to press for passage of a specific law on violence against women in order to force public institutions to act properly and undertake prevention efforts. After fusion with a separate bill prepared by the president of the Supreme Court, the Comprehensive Law Against Violence Toward Women gained final approval in January 2012.³⁰

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However, Ortega has yet to ratify the Optional Protocol to the United Nations Convention to Eliminate All Forms of Discrimination against Women (CEDAW), which would allow private denunciations to be brought to the committee that oversees treaty adherence.³¹

The 2007 penal code outlaws human trafficking. Most organized trafficking sends young Nicaraguan women to work as prostitutes in other Central American countries and Mexico, while certain cities in Nicaragua serve as sites for sex tourism.³² In 2010, the government stepped up efforts to combat the traffic, setting up a dedicated unit in the police force for the purpose and initiating more prosecutions, as well as classifying violations as an organized crime-related offense. Both the National Police and civil society groups conduct educational work in schools to combat the trade.

The realization of full rights for ethnic minorities of the Atlantic coast (Miskito, Mayangna, Rama, Creole, and Garifuna, which in total comprise about 5 percent of the country's population) is a distant prospect. A 1987 Autonomy Statute mandated some representation for the coast minorities on autonomous regional councils, but tokenism has prevailed in implementing these provisions. The FSLN dominates the political scene in the North Atlantic Autonomous Region (RAAN) in alliance with the Miskito-based party YATAMA, which is the only sizable ethnically-based political force. In March 2010, the FSLN committed significant fraud in the elections for regional authorities in an attempt to deny the Liberal opposition control of the South Atlantic Autonomous Region (RAAS) government.³³

The Ortega administration has largely sidelined local participation in the planning of Atlantic coast development, and regional leaders who serve in central government posts are viewed as doing little for their constituents. However, in 2010 and 2011, the Ortega government took positive steps to comply with a 2003 law providing for the demarcation and titling of indigenous territories in the two Atlantic regions. The objective of the law is to hinder the encroachment of mestizos on indigenous landholdings and stabilize local communities. As of November 2011, some 15 indigenous territories had been formally established.³⁴

A 1998 law assists people with disabilities, as many as 500,000 of whom are disabled as a legacy of civil war. In reality, there are no government programs in this area and civil society provides the little help that is available. As is the case with women and indigenous peoples, protection for people with disabilities against discrimination in hiring and wages is basically nonexistent.

The majority of Nicaraguans are Roman Catholics, but there is no state religion and the government has consistently respected the right of citizens to hold and freely express religious beliefs. The state also places no restrictions on religious observance or education, and some religious schools (including universities) receive state subsidies. The government also refrains from interference in the appointment of religious leaders or the internal affairs of churches. Despite these practices, Catholic leaders have recently alleged favoritism toward evangelicals in the distribution of benefits from government programs.³⁵

The constitution guarantees freedom of association and assembly, with exceptions for police and military personnel. In practice, however, governmental and state institutions discourage the organization of opposition unions, political parties, and civic organizations. A 2007 law mandates the creation of professional colleges with broad powers to regulate the activities of their members, but to date none have been set up. A

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college of physicians was authorized by law in September 2009 but did not materialize due to opposition from a Sandinista doctors' union. A college of journalists has existed since 2003 and is now under FSLN control, but its importance in the daily life of the profession is small.

Nicaragua has ratified International Labor Organization Conventions 87 and 88 on freedom of union organizing. However, the 1996 Labor Code makes union organization difficult, as employers can legally fire organizers if they are willing to pay extensive severance benefits. The code forbids compulsory membership in unions, and many workplaces have more than one. The Sandinista government presently stands accused of illegally disbanding 130 unions in the public sector while pressuring workers to join its union affiliates.³⁶ Although official statistics are no longer published, 100 new Sandinista unions were reportedly formed in 2010.³⁷

Despite the labor ministry giving priority attention to free trade zones, cases are still reported in which garment employers fire and refuse to reinstate union leaders in violation of both ministry rulings and court injunctions.³⁸ The restrictive labor code also mandates complicated and cumbersome procedures for going on strike, making legal strikes rare and dampening the incentive to unionize.

Since mid-2008, the Ortega regime has responded to some protest demonstrations with informal repression, sending its supporters and occasionally members of urban youth gangs into the streets to impede and intimidate opposition marchers. It simultaneously orders the National Police not to use violence against "the people," which facilitates intimidation of protesters by government supporters, thus violating the opposition's right to peacefully assemble. Scores of protestors have been injured in these clashes, though there have not been fatalities. The disruption of opposition marches by gangs of Sandinista militants has decreased following a successful large-scale protest in November 2009 against Ortega's presidential candidacy, but they continued at a relatively low level during the recent election period.

RULE OF LAW

The judiciary's lack of independence from political influence is one of Nicaragua's most severe governance problems. The 2000 FSLN-PLC pact allowed the party caudillos, Ortega and Alemán, to use their control over the National Assembly to handpick loyal magistrates to the Supreme Court of Justice (CSJ), which in turn appoints all lower-level personnel. The independence of lower-court justices is therefore scant. A judicial career law passed in October 2004 established an apolitical merit system for the hiring, promotion, and discipline of lower court judges. However, regulations for implementing this law were not issued until 2008, and in practice clientelism still dominates in the selection of judges. Both judicial training and overall legal education remain weak.

Since 2007, Sandinistas have dominated court proceedings and administration almost completely. This process culminated in 2010, when Ortega signed a decree arbitrarily rolling over the terms of two Sandinista magistrates on the CSJ (in addition to 23 other high officials). When six Liberal justices refused to accept this fiat, the FSLN side of the court illegally called up alternate magistrates (*conjueces*) to take their places. The irregular appointees proceeded to ratify a controversial October 2009 ruling of the

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CSJ's constitutional chamber that permitted Ortega to run again for president in 2011. The Court ruled the constitution's ban against immediate reelection inapplicable to both Ortega and dozens of sitting mayors, arguing that it violated the principle of equality of all citizens before the law. This argument met with generalized rejection among constitutional lawyers.

As a result of these trends, public and ruling party officials are rarely prosecuted for abuse of power and wrongdoing. The belief that judicial rulings can be bought is also widespread. Only 18 percent of firms polled in a 2010 survey regarded the functioning of the courts as "fair, impartial and uncorrupted," far below Latin America and the Caribbean's regional average of 31 percent.³⁹ Decisions on whether to enforce rulings are moreover subject to political considerations and influence peddling. Judging from frequent reports, the Ortega government has ignored court orders to reinstate fired workers, evict land invaders, and free prisoners from jail when it regards them as a threat.

According to the constitution, criminal defendants are presumed innocent until proven guilty. A modern criminal procedure code introduced in 2002 established an oral accusatory system, and proceedings are now relatively prompt and generally fairer than before.⁴⁰ A drawback is that a politicized Public Ministry has significant control over which cases are taken to court, a fact that allows politically-sensitive cases to be delayed or discarded. Human rights defenders argue that many crime victims suffer from this prerogative, as their cases are not pushed forward and they are disadvantaged by mediation procedures designed to reduce the load on courts and prosecutors. According to CENIDH, mediation is frequent even in spousal abuse and rape cases when it should not be applied.⁴¹ The jury system is subject to bribery and pressure from judges, especially in drug cases. Courts are lacking in the outlying rural areas, where a system of judicial volunteers sponsored by the Organization of American States operates alternative dispute resolution mechanisms.

The state makes public defenders available on a limited basis to indigent defendants. Though these lawyers are well trained and operate without hindrance, they meet only a small part of the demand and their numbers are declining. Under the criminal procedure code a more professional corps of public prosecutors was recruited and trained by foreign assistance missions. Most are still in their posts, but in a politicized ministry prosecutors at all levels continue to be pressured by their superiors as to how to handle certain cases.

The civilian branches of state do not exercise full and effective control over the military and the intelligence service. Presidential authority is limited to naming the three highest-ranking officers in the army, and Ortega was unable to handpick a new army chief in 2010. Instead, an informal tradition continued in which the chief of the general staff moves up to the top spot. While the legislature exercises pro forma supervision of the military budget, there are few outward signs that the deputies are informed about its details or question military budget requests. Supervision by the finance ministry and comptrollers general of the assets held in the army's pension fund is similarly weak, leaving it open to possible malfeasance.

Although the army leadership has studiously refrained from interfering in the political process, there is fear that Ortega is bringing the institution under his personal sway by tapping lingering ideological loyalties from the revolutionary period and catering to the military's corporate interest. In recent years he has named numerous high-

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ranking officers to public posts or as managers of ALBA-related companies as they retire from service. In November 2010, he furthermore engineered an expansion of the military's role when the assembly passed laws putting the army at the center of a new intelligence system and giving it enhanced powers over border security and responses to national emergencies.⁴² Current army chief Julio César Avilés has vocally supported the government in its boundary conflict with Costa Rica over the San Juan River. Few army officers have been accused of human rights violations in recent years, although human rights groups have gone to the Inter-American Commission on Human Rights to demand action against army personnel stationed along the Atlantic coast accused of committing sexual offenses against minors.⁴³

A legal change in early 2007 removed the National Police from the purview of the governance ministry and put it directly under the presidency, a move that began the politicization of the force. In September 2011, Ortega capped a series of controversial changes in the police hierarchy by renaming Aminta Granera as police director despite the fact that the police organic law limits chiefs to only one term. According to press reports, promotions up the ladder have become politicized, and aspirants to high posts seek informal backing for their bids from FSLN party bodies.⁴⁴ In addition, the repeated failure of police officers to protect the rights of opposition protestors from attacks by FSLN militants has fostered a widespread belief that the force is essentially at Ortega's disposal at key moments.

The right to individual private property is recognized in the constitution, while cooperative and indigenous communal holdings are covered by ordinary law. The executive branch has not committed acts of expropriation without fair and prior compensation in many years, although it occasionally muscled in on private investors.⁴⁵ Property rights in general are very poorly enforced, and Nicaragua ranked 118 out of 130 countries in a recent survey on the matter.⁴⁶ A politicized and poorly trained judiciary also makes contract enforcement fragile. Nicaragua ranks below the Latin American average on procedural complexity and time necessary for enforcement of contract provisions.⁴⁷ But enforcement through the courts is unusual, as informal social pressures are invoked instead. Registration of property is also more cumbersome and time consuming than the already high Latin American averages. An outmoded system of property registration, administered by the CSJ and subject to political manipulation and bribes, contributes substantially to the problem.

Property rights in certain areas have deteriorated markedly in the last few years as the government has refused to evict squatters, thus encouraging large-scale takeovers of private farmland. This process especially affects the southern coast of Rivas department, a tourist area which has been the site of notorious frauds surrounding land titles.⁴⁸ The state attorney (*procurador general*) has annulled titles and is resurveying the entire area in an ostensible effort to resolve conflicts, in some cases involving foreign investors who have bought land from peasant cooperatives under dubious circumstances.

ANTICORRUPTION AND TRANSPARENCY

As is common in Latin America, Nicaraguan public administration is overwhelmed by excessive regulation and red tape. In a 2010 survey, senior business executives reported

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spending more than 20 percent of their time dealing with regulations, well above the Latin American average and double the 9.3 percent measured in 2006.⁴⁹ The increase likely reflects new customs and agriculture ministry regulations, which make compliance by businesses more difficult and have in some cases led to increased corruption.⁵⁰

Direct government interference in the economy is slight and chiefly involves temporary export and import restrictions. With very few exceptions, the vast system of state enterprises inherited from the revolutionary period has long since been liquidated, and few prices are controlled. However, Venezuelan aid in recent years has fostered the growth of a series of quasi-state joint ventures (the so-called ALBA companies) in which the Nicaraguan government has an interest and which are not monitored by official organs of control. These companies are particularly active in power generation, where the Ortega-linked energy company ALBANISA plans massive investments in renewable energy resources in order to make itself a major player.

The separation of officeholders' public functions from their private interests is established in Article 130 of the constitution, and conflicts of interest are dealt with in a Probity Law approved in 2002. However, the law lacks both coercive power and clarity regarding enforcement. According to a 2010 corruption index, company officials said they were asked for or expected to pay a bribe 7.1 percent of the time when seeking permits or services from government (the Latin American average was 6.6 percent).⁵¹ Pledges of political support for the FSLN are also important in getting official levers to move.

The law also provides rules for assets declarations by public officials. However, declarations are only made upon officials' entering and leaving office, rather than on a yearly basis, and few are effectively verified. More importantly, the law does not enjoin the comptroller's office to publish the declarations, greatly reducing transparency. Under Ortega, the percentage of officials making initial postings has averaged over 80 percent, a slight decline from the Bolaños years, while those offering final accountings have risen slightly but still average only about 15 percent of some 11,000 public officials to whom the law applies.⁵²

An Office of Public Ethics, lodged under the state attorney since 2009, conducts training seminars for public officials on a code of public ethics adopted the same year.⁵³ According to surveys, acts of petty corruption on the part of low-ranking public functionaries have declined in recent years, albeit for reasons that remain to be determined.⁵⁴ Citizens may denounce corrupt acts to the Comptroller General of the Republic (CGR)—which is the government's primary auditor—the state attorney, the Public Ministry (headed by the attorney general, who is elected by the National Assembly), or the police. In theory, a citizen could also seek an injunction known as a writ of *amparo* and bring suit before the administrative law chamber of the Supreme Court, but the undertaking is complex and the likelihood of success is minimal, given the court's politicization. Denunciations are relatively rare due to fear of reprisals and the lack of protection for whistleblowers.

Although a revised budget law passed in 2005 obliges public universities to account for how they spend a constitutionally-mandated 6 percent share of all government revenue, they have so far failed to fully comply. The allocation of some 15 percent of those universities' registration fees to the Sandinista-dominated university students union (UNEN) has continued to draw fire as a source of corruption and a prop

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for political clientelism in which some rector collude. While there are cases of teachers selling grades to students, a far larger problem is the practice of allocating grade points to high school students in exchange for participation in political activities organized by the July 19th Sandinista Youth movement.

Control over tax collection by the finance ministry has deteriorated since 2007 and recently occasioned a major scandal. Under Ortega, ministerial reporting to the integrated financial management system (SIGFA) grew lax, and both the General Tax Division (DGI) and the General Customs Division (DGA) of the finance ministry have become notorious for arbitrary treatment of businesspeople. In April 2011, the president suddenly ousted DGI director Walter Porras from his post after business interests complained that the official was demanding kickbacks (some for the official party) from entrepreneurs who are entitled to tax rebates on certain types of imports.⁵⁵ Although Porras left his post under a cloud of suspicion, he was not charged with any malfeasance.

Both the CGR and the Public Ministry are formally independent organs of state whose heads, the comptrollers general and the attorney general, are elected by the National Assembly. In practice, the institutions have long been highly politicized, and their effectiveness is severely questioned. Corruption investigations by the Public Ministry are rare and are hindered by writs of amparo presented before the Supreme Court to block findings of responsibility by the CGR.⁵⁶ Coupled with judicial system malfeasance, these barriers mean that most corruption allegations are never properly investigated; a recent media review of 11 highly-publicized cases failed to turn up a single successful prosecution.⁵⁷ In 2011, the Global Integrity Index, a measure of the effectiveness of anticorruption mechanisms, accorded Nicaragua a score of just 57 out of 100, considered very low.⁵⁸ The office of the state attorney took 16 cases to court in 2010, but retrieved less than US\$100,000 in mishandled state funds.⁵⁹ The code of criminal procedure allows the state attorney to initiate court proceedings only when the attorney general declines to act.

Starting in the Alemán years, the press and television became the most vigorous investigators of official abuses and won public confidence for their denunciations of wrongdoing. With the Ortega family's influence over the media growing, journalists expose less corruption than before. While high-profile cases still make a splash, the response of relevant state organs such as the CGR is now often indifferent. In the most notorious case in recent years, an accusation against CSE president Roberto Rivas for embezzlement of US\$20 million from the institution's funds, the comptrollers declined to act.⁶⁰ With political polarization intense, muckraking by independent outlets is directed exclusively at the Sandinista government, and private sector collusion goes unmentioned. The government's response to critical reporting is, as before, withdrawal of official advertising and harassment in varied forms.

The Ortega administration shrouds itself in secrecy and many government websites are bereft of content. In theory, Nicaraguans have practical tools to demand information from government agencies. The National Assembly passed an access to information law in May 2007, putting in place a mostly adequate legal framework, although the military was excluded from its purview. In the last few years most ministries have complied formally with the law, setting up access to information offices to respond to citizen inquiries. However, tests of these mechanisms initiated by journalists and NGOs continue to reveal a weak response rate. In a recent sounding, government entities

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at various levels replied to just 38 of 95 queries, in many cases grudgingly.⁶¹ While the police and some mayoralties readily provide information, central government ministries are loath to follow suit.

Under Ortega, the budget-making process has become incomplete and opaque. Because sizable foreign assistance from Venezuela is kept off-budget, a large volume of quasi-public spending goes unrecorded. Moreover, with CONPES inactive, civil society has lost any chance to provide input into the budget that is officially presented. Once the draft makes it to the National Assembly, legislative consultation with affected social sectors is spotty. Oversight of revenue and expenditure by the Assembly is enshrined in law and is effectively applied, but analysis and debate of budgetary questions by the lawmakers is considered by experts to be relatively superficial. Similarly, the Ministry of Finance and Credit publishes a quarterly report on budget execution on its website, but the data are neither complete nor presented in a detailed fashion; therefore, they cannot provide a basis for evaluating public policy performance.⁶²

Under Ortega, both the central and municipal governments have frequently asked the CGR to waive bidding procedures altogether in favor of direct contracting for “emergency” reasons, and for larger amounts than before. In late 2010, with technical assistance from the Inter-American Development Bank, the National Assembly passed a reform of the general contracting law that stripped the CGR of prior control functions and forced all bidding information to be put online, but did little to resolve fundamental weaknesses in the system of control.⁶³ Business leaders have thus continued to complain privately of favoritism toward government cronies.

Nicaragua’s scores on Transparency International’s Corruption Perceptions Index have gradually declined, from 2.8 in 2005 to 2.5 in 2011, and the country has dropped to a rank of 134 out of 183 countries surveyed.⁶⁴ The decline is due to the opacity surrounding flows of Venezuelan aid, frequent resort to direct contracting, and impunity for high-profile cases of corruption. Venezuela’s ever-larger share of foreign assistance has been channeled to the private sector and is out of the reach of control mechanisms, which has made the extent to which aid is administered honestly and fairly more difficult to assess. Independent evaluations of the Zero Hunger program have regularly detected political bias in the selection of beneficiaries, and it is widely assumed that much other unregistered assistance has been used to nurture the FSLN’s electoral clientele. Bilateral donors ended a sizable budgetary support program in 2010 as part of a generalized withdrawal from the country, and the Inter-American Development Bank is now the only institution offering the Ortega government such assistance.

RECOMMENDATIONS

- Magistrates to the Supreme Electoral Council should be named on a strictly professional and nonpartisan basis in order to restore credibility to elections. The elections law also should be reformed to eliminate partisan influence from electoral administration, facilitate the registration of parties and alliances, and strengthen checks against fraudulent practices.

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- The government should scrupulously respect the right of opposition political parties and civil society organizations to assemble peacefully in the streets and protest actions and policies with which they disagree.
- The National Assembly should ensure that the Comprehensive Law Against Violence Toward Women receives a budget sufficient to ensure its implementation. The executive and judicial branches should draft specific plans to put the law promptly into practice.
- The selection of Supreme Court justices should be made on a professional and nonpartisan basis. The 2004 Judicial Career Law should be revised to transfer control of the hiring, promotion, and disciplining of judges from the magistrates of the Supreme Court to an independent body.
- The executive branch should finalize a general anticorruption strategy, channel all foreign assistance through the official public budget, and ensure that public policy outputs flow equally to all Nicaraguans.

¹ According to Nicaraguan jurist Oscar Castillo, this is just one of 60 decrees since 2007 that violate the constitution. Cf. “Rumbo a una dictadura constitucional,” *Confidencial*, September 25-October 1, 2011.

² Ética y Transparencia, Informe Final Elecciones Municipales 2008 (Managua, EyT February 2009).

³ Ética y Transparencia, Valoración Técnica del Proceso Electoral para Presidente y Diputados Nicaragua 2011, at eyt.org.ni/images/stories/pronunciamentos/informe_final_observacion_2011.pdf.

⁴ <http://eyt.org.ni/images/stories/pronunciamentos/2011/informefinal2011ingles.pdf>, pp. 5-7

⁵ *Ibid.*, p. 6.

⁶ *Ibid.*, p. 2.

⁷ Information from Álvaro Leiva, human rights secretary, Federación Democrática de Trabajadores del Sector Público (Fedetrasep), December 16, 2011.

⁸ Ver Centro de Estudios y Análisis Político (CEAP), *Legitimidad Municipal*, November 2010. pp.51-55.

⁹ Carlos Salinas, “Dinamarca se va, Austria le sigue,” *Confidencial*, February 21, 2011.

¹⁰ For details, see the biannual reports of the Sociedad Interamericana de Prensa for 2010-2011. at www.sipiapa.org.

¹¹ Cf. Moisés Martínez, “La Prensa sufre censura a través de turbas,” *La Prensa*, September 5, 2011.

¹² Laura Rodríguez, “Periodista END exiliada,” *El Nuevo Diario*, September 20, 2011.

¹³ Roberto Morales, “Más frecuencias de TV al orteguismo,” *El Nuevo Diario*, September 9, 2011.

¹⁴ Most other VHF stations are in the hands on a Mexican media ally who refrains from criticism of the Sandinista government. Cf. “El fantasma de Ángel González,” *La Prensa*, December 5, 2011.

¹⁵ <http://www.nacion.com/2011-05-13/Mundo/NotaPrincipal/Mundo2776347.aspx>

¹⁶ Elisabeth Romero, “Ni pago de multa, ni obras sociales,” *La Prensa*, September 27, 2011.

¹⁷ Rafael Lara, “Se cose la boca en forma de protesta,” *El Nuevo Diario*, October 22 2011. CENIDH lawyers claim knowledge of ten similar cases.

¹⁸ <http://www.elnuevodiario.com.ni/nacionales/240679>

¹⁹ Policía Nacional, *Informe Institucional Sobre Derechos Humanos 2010*, anexo 3.

²⁰ Procuraduría para la Defensa de los Derechos Humanos, *Informe Institucional PDDH, enero-noviembre 2010*, passim.

²¹ These are the Nicaraguan Human Rights Center (CENIDH) and the Permanent Commission on Human Rights (CDPH).

²² Policía Nacional, *Informe Institucional*, p.5.

²³ http://www.latinobarometro.org/documentos/LATBD_La_seguridad_ciudadana.pdf, pp. 5, 38, 44.

²⁴ Marta Vásquez and Róger Olivas, “Narcoliberaciones,” *El Nuevo Diario*, January 21, 2011.

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- ²⁵ Cf. Iepp, *Delitos y Drogas en Bluefields*, March 2011.
- ²⁶ Cf. UNDP, *Seguridad Ciudadana 1998-2010. Nicaragua: Riesgos, Retos y Oportunidades*, August 2011, pp.121-124.
- ²⁷ Policía Nacional, *Informe Institucional*, pp.6-7.
- ²⁸ Nicaraguan CSOs assert that few cases reported to the Comissariats are remanded to the courts, and impunity prevails in those that are. Rafael Lara, “Alta impunidad en justicia a niñez,” *El Nuevo Diario*, December 6, 2011.
- ²⁹ Álvaro Navarro, “Fátima Hernández buscará justicia ante la CIDH,” *Confidencial*, August 4, 2011.
- ³⁰ Rafael Lara, “Ley por la mujer va sin victoria ni derrota,” *El Nuevo Diario*, December 1, 2011.
- ³¹ <http://www.confidencial.com.ni/articulo/2252/nicaragua-rehuye-firmar-y-ratificar-protocolo-cedaw>
- ³² For background, see Save the Children Nicaragua, *La esclavitud del siglo 21*, 2010 at www.savethechildren.org.ni.
- ³³ María José Uriarte and Arlen Cerda, “CSE reedita fraude en la Costa Caribe,” *La Prensa*, March 23, 2010.
- ³⁴ Rodrigo Rodrigues, “Banco Mundial: Titulación en 15 territorios indígenas,” *Confidencial*, September 11-17, 2011.
- ³⁵ US Department of State, *July-December 2010 International Religious Freedom Report*, at www.state.gov/documents/organizations/171788.pdf.
- ³⁶ In response to denunciations by Fedetrasep, the International Labor Organization has agreed to send an inspection mission to Nicaragua to investigate violations of union rights. Laura Rodríguez, “OIT viene a indagar,” *El Nuevo Diario*, September 21, 2011.
- ³⁷ Tim Rogers, “Nica government accused of violating union rights,” *Nica Times*, January 28, 2011.
- ³⁸ Rafael Lara, “Demandan reintegro de empleados de textilera,” *El Nuevo Diario*, October 1, 2011.
- ³⁹ International Finance Corporation (IFC), World Bank, *Enterprise Surveys*, Nicaragua Profile 2010, p.14, at <http://www.enterprisesurveys.org/~media/FDPKM/EnterpriseSurveys/Documents/Profiles/English/Nicaragua-2010>.
- ⁴⁰ The Civil Procedure Code is now being similarly reformed.
- ⁴¹ Cenedh, *Derechos Humanos en Nicaragua, Informe Anual 2010*, pp.158-59.
- ⁴² See Iepp, *VII Informe de Gestión del Sector Defensa*, August 2011, pp.10-15 for details.
- ⁴³ Jesús Salgado, “Caso de violación de niñas de Monkey Point llega a CIDH,” *El Nuevo Diario*, October 28, 2011.
- ⁴⁴ Elisabeth Romero, “Orteguismo va por toma total de la Policía,” *La Prensa*, April 7, 2011.
- ⁴⁵ The ministry of energy and mines recently conceded to Albanisa quarrying rights on a private property without permission. Cf. *El Nuevo Diario*, May 31, 2011.
- ⁴⁶ *International Property Rights Index 2012*, <http://www.internationalpropertyrightsindex.org/ranking>.
- ⁴⁷ World Bank, *Doing Business 2012*, Nicaragua, at www.doingbusiness.org/~media/FDPKM/Doing%20Business7Documents/Profiles/Country/NIC.pdf. In 2011 enforcing a contract in Nicaragua took 409 days compared with a 710-day average in Latin America and the Caribbean.
- ⁴⁸ Lésber Quintero, “Mafia de tierras corre inversiones,” *El Nuevo Diario*, October 3, 2011.
- ⁴⁹ International Finance Corporation, op.cit, p.13.
- ⁵⁰ “COSEP: DGA genera más problemas,” *Confidencial*, February 6-12, 2011.
- ⁵¹ IFC, *Enterprise Surveys*, op.cit., p.9.
- ⁵² Iepp, *Declaraciones patrimoniales en Nicaragua*, 2011.
- ⁵³ *La Voz del Sandinismo*, “Desarrollan Plan de Acción para la buena gestión pública,” November 17, 2011. The institution claims to employ 60 ethics officers and to have trained 3,963 public servants in 2010.
- ⁵⁴ Latin American Public Opinión Project (LAPOP), *Cultura política de la democracia en Nicaragua 2010*, p.76. 12.1 % of those surveyed in 2010 reported having been victimized by corruption, as opposed to 18 % in 2006. At www.vanderbilt.edu/lapop/nicaragua/2010-culturapolitica2.pdf.
- ⁵⁵ Iván Olivares, “Descubren Walter-Gate en DGI,” *Confidencial*, May1-7, 2011.
- ⁵⁶ Matilde Córdoba, “Amparos: refugios para la impunidad,” *El Nuevo Diario*, October 24, 2011. There is a backlog of 611 such writs, some ten years old, awaiting adjudication.
- ⁵⁷ José Adán Silva, “Nunca hubo corrupción cero,” *El Nuevo Diario*, October 4, 2011.
- ⁵⁸ Global Integrity, “Nicargua,” in *2011 Global Integrity Report* (Washington, D.C., Global Integrity), <http://www.globalintegrity.org/report/Nicaragua/2011/>
- ⁵⁹ Procuraduría General de la República, *Informe de Gestión Institucional 2010*, p. 2.

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⁶⁰ Luis Galeano and José Adán Silva, “El método Rivas,” *El Nuevo Diario*, February 21, 2011.

⁶¹ Data from May 2011. Information from Fundación Violeta Barrios de Chamorro, December 12, 2011.

⁶² The Open Budget Index 2010 accorded Nicaragua a score of 37 out of 100, below the average of 42 for 94 countries surveyed. At www.internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Nicaragua.pdf.

⁶³ In late 2011 the IDB complained of resistance in certain ministries to putting the law into effect. Ricardo Guerrero, “Instituciones se resisten a aplicar la Ley de Contrataciones,” *El Nuevo Diario*, October 20, 2011.

⁶⁴ Transparency International, *Corruption Perceptions Index 2011*, p. at www.cpi.transparency.org/cp12011/results/.