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# EUDO CITIZENSHIP OBSERVATORY

## *ACCESS TO ELECTORAL RIGHTS*

### *NICARAGUA*

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EUDO Citizenship Observatory

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# Access to Electoral Rights

## Nicaragua

*Roberto Courtney*

### 1. Introduction

Voting rights in Nicaragua are limited to citizens living in the country. Their expansion, and even the demand for it, is not a major political theme in the political and legislative agenda. The primary reason for this state of affairs is that there are more immediate and grave concerns related to large deficits in basic free and fair election issues that monopolise the attention of all relevant actors. These include problems in obtaining voting cards for citizens living in opposition strongholds, electoral authority partisanship, and non-transparent/proven inaccurate vote tallies, among other pending electoral issues. However, the demand of Nicaraguan citizens living abroad, particularly those in the United States, to activate their legally established (but not implemented) right to vote abroad has been minimal yet consistent for some twenty years now.

Historically, the Electoral Law and the Constitution have been generally mute concerning a requirement to be present in the country at the time of elections in order to vote. But the law and the authorities have consistently failed to establish a procedure to obtain voting documents overseas or exercise the right to vote abroad. Things began to change with the enactment of the Citizen's Identification Law (ID Law) in 1993, which established the legal right and procedure to request and obtain the national ID for citizens living abroad.<sup>1</sup> Consistent with such change, a brief and unelaborated article of the Electoral Law of 1995, present in all reforms since, states that the Electoral Authority (namely, the Supreme Electoral Council) should establish and facilitate the opportunity to vote abroad.<sup>2</sup> Since these principles became law, the issue has become increasingly relevant, especially in the light of the size and economic contribution of the expatriate population. It is estimated that some 800,000 citizens (out of a population of 5.825 million, or 10-13% of the total), reside abroad.<sup>3</sup> Some 600,000 of these migrants are distributed almost equally between Costa Rica, (Nicaragua's more prosperous neighbour to the south), and the United States. The money they send back to their families in Nicaragua equals 12.5% of the country's Gross Domestic Product.<sup>4</sup>

The Nicaraguans who reside in the United States have been more vocal about their demands than their counterparts to the south, given that those who migrated to Costa Rica

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<sup>1</sup> Art.2 Ley de Identificacion Ciudadana (Citizen's Identification Law).*La Gaceta* #46, 1993

<sup>2</sup> In its current valid version, art. 47 Ley Electoral Ley 331(electoral law).*La Gaceta* #168, 2012

<sup>3</sup> Perfil Migratorio en Nicaragua 2012 (Nicaragua's Migratory Profile 2012). Page 18. [costarica.oim.int/public/pdf/perfil\\_migratorio\\_nicaragua2012.pdf](http://costarica.oim.int/public/pdf/perfil_migratorio_nicaragua2012.pdf)

<sup>4</sup> ID., page 19

due to proximity retain far stronger ties to the country and return to it frequently. Nicaraguans in the United States make a far more expensive and complicated effort to travel back home. Currently, as it has been for the past eight years, or since the return to power of the Sandinista Liberation Front (FSLN, that is the predominant political party since the Sandinista revolution in 1979), and given the consolidation of its rule, the issue of voting abroad has become less prominent in the debate and the agenda. This is in tacit recognition of the fact that the political will to implement it is unattainable because the bulk of the emigration itself has taken place since the FSLN's rise to power and partly as a result of it. Polls reflect the fact that this potentially decisive constituency would favour strongly any viable opposition party if given the right to vote.

As far as foreign residents' right to vote is concerned, the issue is non-existent. No voices have ever publicly advocated their cause. The main political parties do not identify foreign citizens (or even nationals living abroad) as an attractive voting block and their inclusion would certainly alienate many national voters. The party with the strongest grip on power has an ideologically implanted suspicion of foreigners. This owing to the fact that the country was invaded and ruled by law or de facto by foreign forces five times in the last century alone. Also, according to reliable official data of the General Directorate for Migration (*Dirección General de Migración y Extranjería DGME*), published by the UN office for Migration (IOM),<sup>5</sup> permanent migration to Nicaragua is still low and recent, that is, primarily retired individuals with pensions from North America (about 1,500) and other Central Americans engaged in trade and border commerce (about 4,000). These individuals are unlikely to make any kind of political waves in a country that only 25 years ago drafted and applied laws that resulted in widespread confiscation of property for any individual that spent more than six consecutive months abroad. Currently, the law forbids foreigners (resident or not) from meddling in national political affairs.<sup>6</sup>

According to official data, only 531 foreign citizens were naturalised in the six-year period between 2007 and 2012, primarily Central Americans and Spaniards.<sup>7</sup> Those two populations are exempt from the requirement of renouncing their citizenship of origin in order to obtain Nicaraguan citizenship. All other nationals must give up their nationalities in a sworn statement in order to become naturalised in Nicaragua. The continuous residency requirement doubles to four years for the latter group. These facts undoubtedly play a role in explaining the low number of naturalised citizens in Nicaragua.

As for distinctions between nationals and citizens, or nationality and citizenship in Nicaragua, citizens are simply a subset of nationals, namely those who have reached the age of sixteen.

## 2. Historical background

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<sup>5</sup> Perfil Migratorio en Nicaragua 2012 (Nicaragua's Migratory Profile 2012). Pages 31 and 32. [costarica.oim.int/public/pdf/perfil\\_migratorio\\_nicaragua2012.pdf](http://costarica.oim.int/public/pdf/perfil_migratorio_nicaragua2012.pdf)

<sup>6</sup> "Foreigners have the same rights and duties as Nicaraguans, with the exception of political rights as established by law. They may not meddle in the political affairs of the country". Art. 27 Constitución política de la república de Nicaragua (Political Constitution of the Republic of Nicaragua) *La Gaceta* #32, 2014.

<sup>7</sup> Perfil Migratorio en Nicaragua 2012 (Nicaragua's Migratory Profile 2012). Page 33. [costarica.oim.int/public/pdf/perfil\\_migratorio\\_nicaragua2012.pdf](http://costarica.oim.int/public/pdf/perfil_migratorio_nicaragua2012.pdf)

From its independence from Spain in 1821, as part of the Confederation of Central American Republics, and up until the Constitution of 1893 and the subsequent Electoral Law of 1894, the right to vote was not universal in Nicaragua. Presidents were chosen indirectly by a body of representatives and voter status was granted to those who appeared in the census which registered only citizens with taxpayer status or property owners.<sup>8</sup> Up until 1932, no less than three general elections were held under foreign occupation, which also established two-party rule. The requirements to vote still included certain scholastic levels or at least literacy on the part of the citizens, disenfranchising a vast majority of the population. In 1950 women acquired the right to vote and an Electoral Authority established as a fourth branch of power was created. Long periods of elite rule, authoritarian and military dictatorships from the birth of the nation to 1979 generated fraudulent and mistrusted elections with participation rates just as questionable and opaque as the vote tally itself. For example, until the 1960s the vote was not secret in practice because the ballot had to be marked in front of the Electoral Authority at the polling station. Likewise, in most jurisdictions the voter had to show the ID card (called 'La Magnifica') of the ruling party to be even given a ballot (or a state pay cheque, for that matter).<sup>9</sup>

In 1983, though a Political Parties Law, and in 1984, during the first elections since the Sandinista revolution the creation and participation of multiple parties came into being. But it is not until 1990 that the first modern, free, and fair elections in Nicaragua's history took place, with over 5,000 international observers from the UN, OAS, Carter Center, and other organizations. Lately, after the return to power of the Sandinista party in free and fair elections held in 2006, all elections, including the presidential election of 2011, have raised well-supported claims of fraud, lack of transparency, and political partisanship on behalf of the electoral authorities. Most of these claims relate to inaccurate vote tallies, ballot stuffing, lack of verifiable publication of results and the like, but the issue of disenfranchisement of citizens according to their known, or presumed, opposition party affiliation has gained strength. Since there are special facilities and a parallel system for acquiring the voting document run by the party in power, it is reasonable to question whether the principle of the unfettered, egalitarian, universal right to vote has lost validity in the present period.

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<sup>8</sup> CSE (Consejo Supremo Electoral) Historia del Consejo Supremo Electoral [www.cse.gob.ni/index.php/sobre-cse/historia](http://www.cse.gob.ni/index.php/sobre-cse/historia)

<sup>9</sup> id.

### 3. Eligibility: Who has rights under national law

#### 3.1. Citizen residents

##### *Minimum age*

Active voting rights are granted by the Nicaraguan Constitution to all citizens upon reaching the age of sixteen. As for passive electoral rights, citizens face age minimum requirements depending upon the electoral posts, as well as other eligibility requirements related to nationality or residency issues. According to articles 134 (a,c.) of the Nicaraguan Constitution, to run for Congress, Nicaraguans must be 21 years old and must have renounced any other acquired nationality at least four years prior to the election. Additionally, such citizens must have resided continuously in the country for the past four years, and for those seeking a congressional seat as representative of any of the country's seventeen regions and jurisdictions, a two-year continuous residency in such jurisdiction is required.<sup>10</sup> An exception is granted those studying or representing the country diplomatically abroad. To run for President, citizens must be at least 25 years old, (Constitution art. 147 (3)) with the same residency and exceptions as stated above for candidates seeking office in Congress. Likewise, such candidates must have renounced any other acquired nationality at least four years before the election day. The operative word 'acquire' seeks to distinguish between those Nicaraguan citizens who possess another nationality as a birth right from those who obtained another nationality later in life. Presumably, those in the first category are not required to renounce nationalities other than the Nicaraguan because they have not been in a position to swear an oath of allegiance to any other nation in order to gain such nationality, unlike those who acquire nationalities later in life. There is no case law to flesh out this issue. As for proof of such timely renunciation, the candidate must present it published in a copy of the official newspaper *La Gaceta*.

Curiously, there are no residency requirements for local government electoral posts such as mayor or councillor. The Constitution only states that such candidates must be at least 21 years old (Constitution art. 178 (3)).

##### *Mental disabilities*

There are no current provisions in the law for the disenfranchisement of mentally disabled individuals.

##### *Persons convicted of criminal offences*

In order to be a candidate for any electoral post, a citizen must be in: “full enjoyment of his or her civil and political rights”.<sup>11</sup> Such a stipulation enabling “full enjoyment” is missing, causing a suspension of political rights to vote or run as candidate when such a person has a final sentence against him/her by a court of law for crimes more serious than a

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<sup>10</sup> Art. 143 (d) Constitución política de la república de Nicaragua (Political Constitution of the Republic of Nicaragua) *La Gaceta* #32, 2014

<sup>11</sup> Arts. 143 (d) and 178 Constitución política de la república de Nicaragua (Political Constitution of the Republic of Nicaragua) *La Gaceta* #32, 2014

misdeemeanour. In all other cases, even if the citizen is under arrest or imprisoned, his/her electoral rights are not legally limited. The suspension of electoral rights is for the duration of such sentence. As a practical matter, however, the electoral rights of any incarcerated person are in fact suspended because the state does not set up any provisions for an effective opportunity to vote or run for office. On the other hand, given that neither in law nor in practice are there any blacklists or suspensions of citizenship rights owing to former imprisonment, as soon as such previously impaired citizens regain their freedom, their political rights are restored. As a practical matter, the incarcerated population is disenfranchised not because it is blacklisted or due to temporary elimination from voting registries. Out of a population of 5.8 million, the approximately 10,550 incarcerated Nicaraguans (or 0.02%), do not vote because they cannot reach a polling place owing to their restricted mobility.

### *Special arrangements for regional elections*

Nicaragua also has two autonomous regions, with a Regional Autonomous Congress of 45 members in each. These 90 individuals are selected in a total of 30 separate jurisdictions drawn along ethnic lines. Candidates to such regional assemblies must meet ethnic requirements that establish that the first candidate from the competing political party candidate lists – all elections in Nicaragua use closed lists presented by parties – must be from one of the many ethnic groups that inhabit each of these jurisdictions. The law does not establish what proof there must be to authenticate ethnicity, so presumably birthplace or ancestry would be decisive. No cases are known to substantiate this issue.

### **3.2. Citizens abroad**

The Nicaraguan Constitution and the Electoral Law establish that, at least as a matter of law, residence in the country is not a prerequisite for the franchise. Art. 47 of the Electoral Law states that Nicaraguans travelling or residing overseas can register to vote and get their voting cards (the national ID card) en the Nicaraguan Consulate where the citizen is located or where such a consulate establishes a location for registration purposes. Art. 47 goes on to state that the active voting right would have to be exercised at home, at a polling station in the jurisdiction in Nicaragua that they choose while residing overseas, that is, their Nicaraguan address.. Finally, this article from the 2000 Electoral Law, which remains in force, opens the legal door for future change, stating that voting will take place at the corresponding polling station in Nicaragua: “except any other rule to [that] effect that is established by the Electoral Supreme Council”.<sup>12</sup> In reality, no such opportunity to register abroad has existed at any time and no possibility to vote abroad has been set up by the authorities.

The only other article or reference to overseas voting in Nicaraguan legislation is article 122 of the Electoral Law that establishes that the right to vote overseas is limited in any case to national presidential elections, that is, the 20 seats in the 90-seat National Congress that represent a nationwide jurisdiction and constituency (as opposed to the remaining 70 which represent regions and local constituencies) and of congresspersons selected to represent Nicaragua in the Central American Parliament (PARLACEN), a mostly

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<sup>12</sup> Art. 47, Ley Electoral Ley 331(Electoral Law) La Gaceta #168, 2012



nominal legislative body that represents the embryonic stage at which the Central American integration process is today. The same article also states roughly how this overseas voting would commence and under what conditions. These include a registry elaborated by the Electoral Authority (a voters' list) that would determine the number of citizens abroad with the right to vote primarily in order to address the logistics of such voting. Other requirements include the establishment of polling stations, the presence of party electoral observers with the same powers and privileges as these have in Nicaragua, the posting of electoral authority personal and electoral material to such jurisdictions without stating in which of all places where Nicaraguans reside voting may occur and other specific criteria. In conclusion, the article states that the Electoral Supreme Council: "through the necessary evaluation, must establish six months in advance of the beginning of the electoral process whether the enumerated conditions in this article can be established and decide accordingly".<sup>13</sup> As a matter of fact, no efforts to set up this process have been undertaken at all by the Nicaraguan state.

As far as candidacy rights are concerned, the residency requirements were stated in the section above. Accordingly, there is the yet-untested and unlikely possibility that candidates for mayors or local councils in Nicaraguan regions and local governments could reside overseas, since those are the only elected posts for which the law does not list any residency requirements. It also follows that citizens who reside overseas and take the trouble to attend their Nicaraguan polling station on election day have no restrictions to cast their votes under the same conditions as those who reside in the country in all types of elections. If and when the option to vote overseas is established by the electoral authority, citizens residing overseas will be able to vote abroad for nationwide representatives, but would have to travel back to Nicaragua to vote in local elections, according to the Electoral Law currently in force.

A crucial distinction exists in the law between nationals by birth and naturalised citizens. Naturalised citizens have the same civil and electoral rights as nationals when it comes to voting. However, being a national of Nicaragua, as opposed to a naturalised citizen, is a requirement for candidacies to the offices of President, Vice-President, all seats in the national congress, as well as of local mayors and local congress members. This is so regardless of whether or not such nationals hold multiple nationalities or only Nicaraguan nationality. Finally, it is important to note that the category 'nationals', includes those who are born overseas but with an automatic birthright to citizenship.

### 3.3. *Foreign residents*

All categories of foreign residents in Nicaragua hold absolutely no electoral rights. According to the last national census (2005), as few as 34,693 foreign nationals live in Nicaragua (approximately 70% of them are from other Central American republics). The National Immigration and Naturalisation Office records in its 2012 report 11,547 foreign residents, less than 8,000 of whom are permanent residents, with over 70% from the Central American sub-region.<sup>14</sup> Residency requirements forbid them (as well as all other non-Nicaraguans) to participate in domestic politics in any way. There is a category of foreign citizens, that of

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<sup>13</sup> Art. 122 Ley Electoral 331 (Electoral Law) *La Gaceta* #32, 2014

<sup>14</sup> Perfil Migratorio en Nicaragua 2012 (Nicaragua's Migratory Profile 2012). Page 32. [costarica.oim.int/public/pdf/perfil\\_migratorio\\_nicaragua2012.pdf](http://costarica.oim.int/public/pdf/perfil_migratorio_nicaragua2012.pdf)

citizens from the other Central American republics, who may opt to attain Nicaraguan citizenship if they choose to reside in Nicaragua, without even having to renounce their former citizenship, a type of fast track to nationality that is also available to Spanish citizens. There are also regional agreements to facilitate travel without passports, visas, or payments among Central American nations. But unless such Central Americans become naturalised, they hold no voting rights either. From this discussion, it becomes clear that no foreign citizen can hold candidacy rights and be a candidate for elected public offices in Nicaragua.

#### **4. Exercising Electoral Rights**

According to the law, resident and non-resident citizens must follow exactly the same steps and meet the same simple requirements (proof of citizenship) to register to vote and obtain the national ID card that enables them to vote, all of which must be done inside Nicaragua. As previously mentioned, the electoral law contemplates, but has not acted upon, the possibility of overseas registration for those travelling or living abroad. It also roughly establishes that voting abroad, when and if it becomes available, would be limited to nationwide elected representatives, as opposed to residents who are able to vote in all elections.

According to the law, citizens (residents and non-residents) must vote by marking paper ballots provided by the authorities at the polling station within the country in which they are registered. Other stations in the country are available under specific exemptions for military or electoral service primarily, with another narrowly construed exception in order to address errors in the national registry that allows a citizen to vote at the polling station corresponding to the address on his/her ID card, even if the citizen does not appear on such polling station list. Early voting, mail or absentee voting, proxy or electronic voting are neither contemplated under the current law nor is there reform activity in such directions.

The reasons stated for the lack of registry and overseas voting contemplated in the law are of a budgetary nature. However, as mentioned in the introduction, there is also a lack of political will, given that the large overseas constituency does not favour the ruling party and that the Electoral Authority is dominated by that party, and in any case would require additional funds from the political branches of power to implement such electoral rights.

## 5. Conclusion

Nicaragua is a country where only Nicaraguan citizens can vote and run for office. Among these, those who have naturalised do not hold candidacy rights. No electoral rights are granted to foreign residents. As a practical matter, all voting must be done inside the country's borders and only on election day at a specific polling station for each citizen. While the law has left the door open for voting overseas in certain elections, there is no political debate or movement to implement voting overseas or expand the categories of voters or generate additional facilities to non residents or residents to vote. The reason is simple. The current government wields considerable control over all political life and debate in the country and electorally it is not to its benefit to allow citizens to vote overseas, or to modify voting at one place on one day to suit its partisan muscle. According to polls and analysts, the stronghold of the current regime, which plays out even larger than its 2/3 majority in the National Congress, is likely to continue and even expand over the next few years, envisaging a new presidential term in the elections of 2016.

The current debate on electoral matters, as well as internal and external political pressure (to the extent that there is any), suggests greater transparency and respect for the popular will, issues that have been raised by domestic and international observers since the 2008 municipal elections and that would put the country on a more equal footing with its neighbours and other Latin American states, as well as live up to its fortunes at the turn of the Twenty-first century when on many accounts Nicaragua became an example of peaceful electoral transitions from military rule to democracy.

