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REPORT ON CITIZENSHIP LAW: NICARAGUA

Roberto Courtney

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European University Institute, Florence
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Report on Citizenship Law

Nicaragua

Roberto Courtney

1. Introduction

In order to understand the citizenship regime in Nicaragua, it is necessary to be aware of the basic distinctions and overlaps between three terms used in Nicaraguan legislation. These terms are: 'nationals' (*nacionales*); 'naturalised' (*nacionalizados*), and 'citizens' (*ciudadanos*). The first category refers to those born as Nicaraguans, the second to persons born without an automatic right to be Nicaraguans from birth, that is, not born as Nicaraguans, and who acquired the nationality through legal processes meeting requirements or documenting affiliations later in life. The practical distinction between these two groups is in regard to candidacy rights and losing or regaining Nicaraguan citizenship. Those not born as Nicaraguans, that is, not as nationals, may not run for Congress, President, or mayor.¹ They cannot be appointed as judges to the Supreme or Appellate Courts, or as magistrates at the Supreme Electoral Council.² Naturalised citizens also stand to lose their nationality in a number of circumstances, some of which are final, and the remaining present serious obstacles to reinstatement. *Nacionales* may not lose their nationality under any circumstances. Owing to differences in meaning and scope, the term '*nacionales*' as a Nicaraguan legislative concept defined above and different from the way the term 'nationals' is used in international law, will be used in this text.

As for citizens, both *nacionales* and naturalised persons are, or become, citizens automatically when they reach the age of sixteen years. Upon becoming citizens, these persons acquire their differentiated political rights and duties, as discussed above. Most social, economic, labour, and family rights³ are acquired at the age of citizenship and there is no distinction between *nacionales* and naturalised citizens in these regards. Also, with respect to international law and diplomatic protection, there is no distinction between *nacionales* and naturalised citizens.

¹ Mayors are the heads of local (municipal) governments which is the second tier of executive government below that of national authorities.

² In Nicaragua, the electoral system is controlled by a separate fourth branch of government headed by the Supreme Electoral Council. The members of this body are chosen by a qualified majority of Congress (*Asamblea Nacional*).

³ These are the categories of rights stipulated in the Political Constitution of Nicaragua, 1996 (amended since), arts. 47 to 88.

Far from being a ground-breaking model of nationality legislation, Nicaragua's laws mainly imitate those of its neighbours and lag behind those of more developed nations. However, a recent modernising effort, evidenced by a new law in 2011, implied far-reaching changes in a country in which some 15 per cent of its population live overseas, and in which many of these migrants have adopted another nationality. For example, prior to 2011, the voluntary adoption of another nationality other than Central American or Spanish meant automatic loss of Nicaraguan nationality for nationals as well as naturalised citizens. This is now the case only for naturalised citizens.⁴

2. Historical Background

Upon independence from Spain in 1821, the citizens of Central American republics enjoyed a single nationality for some 30 odd years. Original nationality/citizenship was conferred upon any person born in the territory, although political rights were restricted to tax-paying landowners until the 1900s.

Historically, Central American citizens can attain Nicaraguan citizenship with greater ease than others and without giving up their original citizenship. This is so because reunification of the Central American republics is still, at least nominally, a goal for these countries. Likewise, the special status conferred by Spain to citizens of their former colonies since independence has generated a similar reciprocity in the region. No other country of origin or nationality enjoys similar preferred status. As for influence, laws in general, and nationality laws in particular, have used the laws of Spain, of Nicaragua's neighbours, (particularly Mexico and the other Central American republics) and the Napoleonic Code as models.⁵

Prior to the enactment of the first Nationality Law in 1980, the legal framework for citizenship had been exclusively limited to a few articles in the Constitution. A second Nationality Law replaced the 1980 legislation in 1992. The latter was also known as Law 149 and was expressly derogated in June 2011 by a law whose title is somewhat of a misnomer: the General Law for Migration and Foreigners, Law No. 761 (*Ley General de Migración y Extranjería. Ley No.761*). Because this name bears little indication that the law regulates nationality issues and that it replaced not just the Migration Law of 1993 but the Nationality Law as well, it is a common mistake to assume that it did not derogate the previous nationality law.⁶

Misnomer aside, the new legislation replaces a very basic piece of law consisting of only 29 articles with a more comprehensive and relatively modern outlook, which in its preamble mentions the primacy of the relevant international treaties that the Republic of

⁴ General Law for Migration and Foreigners, Law No. 761, art. 47.

⁵ Up until the turn of the 21st century, the civil and penal codes were based upon Spanish law from about 100 years ago.

⁶ The General Law for Migration and Foreigners, Law 761, 2011 expressly derogates the nationality and migration laws previously in existence in article 222. Since there are significant differences between both passages of legislation in terms of general scope (the new one covers migration, residence, administrative issues of the office in charge of these matters, etc.), and on the narrow issue of nationality, it is crucial to note this fact.

Nicaragua has signed, recognising them as local law.⁷ From a normative perspective, this change means that the citizenship regime in Nicaragua now emerges from three sources, that is, seven constitutional articles, the relevant treaties that Nicaragua has signed, and Law No. 761, which attempts to codify into national law the commitments that result from the treaties, but provides that signing new treaties can change the national law. Among the most interesting articles derogated from the previous legislation is the catch-all provision that the relevant authority (Ministry of Governance, through its Office of Migration and Foreigners) was in charge of deciding the cases and circumstances not addressed by the law.⁸ Because the law is now mute on such circumstances, it is worth noting that administrative remedies for aggrieved parties are deemed to be exhausted after filing appeals for review by the same Ministry of Governance. Upon exhaustion of the administrative route, those affected have as legal recourse a direct writ of habeas corpus to the Supreme Court. Owing to a lack of publication, there is, so far, no available case law to flesh out issues and address nuances. As we have seen, Law No. 761 regulates primarily migratory issues. As far as nationality and naturalisation are concerned, perhaps the most far-reaching change under the new law is the fact that *nacionales* may no longer lose their nationality under any circumstances, and that the law paves the way for an orderly promotion of desirable migrants as residents in the country with a further route towards possible naturalisation.

Although it is not possible to refer to strong public demand for reform, two forces played a significant role in shaping the new law. First and foremost, the large number of migrant Nicaraguan *nacionales* that had technically and automatically lost their nationality by acquiring another voluntarily, and second, a world-wide tendency towards inclusion, and the preservation of migrants' human rights, already reflected in treaties signed by Nicaragua, generating a need to address and facilitate, for example, the acquisition of nationality by foreign parents of children born in Nicaragua.

As for public debate and media attention on nationality issues, notoriety was limited to two cases of a political nature, one in 2001 and the other in 2007, in which the real issue was the desire of partisan authorities to ban opposition and dissent. In the first case, José Antonio Alvarado, a popular dissident figure who was previously a member of the Constitutionalist Liberal Party CLP, in power from 1996 to 2006, attempted to run as candidate for Vice President of the Conservative Party and was blocked by the majority decision of an Electoral Authority controlled by his former party that deemed he had neither properly nor timely reacquired Nicaraguan nationality after becoming a US citizen in the 1980s. Once the electoral period ran its course and the goal was attained, meaning his name did not appear on the ballot, the issue was dropped by the authorities. But in 2006, he successfully ran for the Central American Parliament, a post that bore the same requirements he presumably did not meet the first time around. By then, he had rejoined the CLP.

After being elected and sworn in as a congressperson, in 2007 Alejandro Bolaños, son of the former President, began to make a name for himself challenging many actions of the newly elected Sandinista government. In a strange turn of events, the Electoral Authority found that it had the power to remove him (there were no other legal means to do so), owing

⁷ Namely, The Universal Declaration of Human Rights, The American Declaration of the Rights and Duties of Man, The International Covenant on Economic, Social, and Cultural Rights, The International Covenant on Civil and Political Rights, and The International Covenant on the Protection of the Rights of all Migrant Workers and their Families (General Law for Migration and Foreigners, Law No. 761, 2011. Preamble).

⁸ Nationality Law, Law 149 (June 1992) art. 27

to a discrepancy between his birth certificate, which stated he was born in the US of Nicaraguan parents, and his national ID card, which stated he was born in Nicaragua. Notwithstanding that, under either circumstance, he met the criteria to serve in Congress, the Sandinista regime found it necessary to quash dissidents. In an even stranger turn of events, a more mellow and quietist Bolaños was reinstated three years later. Unfortunately, the resolutions of the Supreme Electoral Council are not available in any form to be read or cited, contrary to what is stated in the law.

Since the Nicaraguan Electoral Authority (Supreme Electoral Council) is responsible for issuing the national ID card (the foremost proof of citizenship), and it is the recipient of well-deserved media scrutiny of its actions owing to documented cases of electoral and administrative fraud, nearly ten cases of improper issue of ID cards to foreigners have also received media attention.

On another front, although Nicaragua recently won a case against Colombia in the International Court of Justice that, in effect, expands Nicaragua's territorial waters by an extra 150,000 square miles, the few islands in those waters and their small populations have caused no known controversies over the rights of those persons to adopt Nicaraguan nationality as nationals (without having to naturalise).

To highlight the fact that there are always some Nicaraguan citizens beyond the law and that there is an unofficial track to citizenship, during a Central American summit in Costa Rica the Nicaraguan delegation included Puerto Rican partisans of independence for Puerto Rico from the US. The rules of the event granted access to the forum only to Nicaraguan nationals or naturalised citizens. It became known that the partisans had attained Nicaraguan citizenship without meeting any of the criteria in the law or the procedures stated in it. No parliamentary act had been passed, which the law allows for in article 52.⁹ They were Nicaraguans simply because the Nicaraguan Executive had made them so, a power it nominally does not have.

3. The current citizenship regime

Nacionales

Ius soli applies unconditionally to all children born in Nicaragua. Law No. 761 states in its article 45 the types of persons that can be considered *nacionales*: those born within Nicaraguan territory, including the children of foreign officials in service born within the country, if they so eventually choose;¹⁰ the children of Nicaraguans born overseas regardless

⁹ General Law for Migration and Foreigners, Law No. 761, art. 52.

¹⁰ The children of foreign officials born in Nicaragua can choose Nicaraguan nationality upon reaching the age of majority. In fact, the parents can obtain a standard Nicaraguan passport for the child, which has the effect of making the child a dual national from birth, since almost all nations recognise as nationals the offspring of their officials born abroad. If a child is found within Nicaraguan territory, and the parents are unknown, they are also nationals of Nicaragua. General Law for Migration and Foreigners, Law No. 761, art. 45.

of any other nationalities they may have,¹¹ and foreigners to which Congress awards the status of nationals owing to their outstanding service to the country. Citizens in this latter category are distinct from those born as Nicaraguans: For some practical purposes, they are treated as naturalised citizens because they have the same restrictions to candidacy rights as other categories of naturalised citizens.

The other advantage of being a *nacional*, as opposed to naturalised, is more obvious when a person seeks to regain Nicaraguan nationality. *Nacionales* simply cannot lose their Nicaraguan citizenship, not even when they voluntarily acquire another citizenship.¹² Even at the time of the previous legislation when it was possible for nationals to lose their citizenship, re-acquiring Nicaraguan citizenship was rather straightforward: They were only required by the authorities to manifest such a desire and give up the acquired foreign nationality.

Naturalised citizens

First, a caveat. It is unclear from the law if an application for naturalisation by a foreigner, resident or not, is a formality to insure that the requirements are met, or if the application can be denied even if the person meets the stated criteria. Since the rules fleshed out in law No. 761 establish, for example, that applicants must *present* police records, it follows that such records may be deemed insufficient by the authorities and the application denied on such account. Likewise for resident investors, the amount necessary to invest, or the method of documentation, before the authorities will grant the petition is not clear in the law or its attached rules. As far as the categories of applicants are concerned, the law states that a general category of persons not born as Nicaraguans may become naturalised upon applying and meeting two criteria, that is, giving up their former citizenship and documenting four years of continuous legal residence.¹³ Additionally, they must present a number of documents to prove means of subsistence and any other criterion that facilitates attaining the nationality, such as having Nicaraguan children or marriage to a Nicaraguan.¹⁴ The provision of a certificate from the Ministry of Education proving that the person has sufficient knowledge of the Spanish language, as well as the geography, history, and the “operating political and social system of the country”, required in the previous legislation, is no longer necessary.

Specific categories of foreigners enjoy a fast track path to citizenship. The four- year legal residence requirement is halved for nationals of Spain or of countries that exercise such reciprocity for Nicaraguans seeking nationality. It is also divided by two for persons of foreign origin married to Nicaraguans,¹⁵ and for those who have Nicaraguan children.

¹¹ Even if such Nicaraguan parents gave up Nicaraguan citizenship to acquire another, their children need only request Nicaraguan citizenship upon reaching the legal age of majority. A similar automatic right upon application is granted to all children born aboard Nicaraguan vessels. General Law for Migration and Foreigners, Law No. 761, art. 45.

¹² This is a change consequent upon Law No. 761. Prior to 2011, even *nacionales* stood to lose their Nicaraguan nationality upon voluntarily acquiring another, non -Central American, citizenship.

¹³ The period of four years begins once the individual obtains a permanent residence ID card. Central Americans and Spaniards are exempt from having to give up their nationalities (arts. 112 and 113 of Decree No. 31-2012).

¹⁴ Arts. 112 and 113 of Decree No. 31-2012 establish a number of additional requirements, including a clean police record.

¹⁵ Those in this last category are not required to renounce their former citizenship if they lose it automatically by marrying a Nicaraguan.

Finally, this fast track is also available to residents who have made significant monetary investments and individuals who document activities 'that contribute to the economic, social or cultural' development of the country.¹⁶ Those born as nationals of any Central American Republic have an automatic option to become Nicaraguans without residency requirements or renunciation of other nationalities.¹⁷

The under age children of all naturalised citizens are also considered naturalised. When they reach the age of citizenship eligibility, they may opt to become Nicaraguan citizens or not.

Naturalised Nicaraguan citizens can lose their nationality automatically in a number of ways. Hence when they acquire another citizenship, even if that country allows dual citizenship, upon renouncing Nicaraguan citizenship or making use of a former nationality to enter or exit the national territory.¹⁸ In these cases, their Nicaraguan citizenship status can be recovered. If the application was false or fraudulent, nationality can be revoked without possibility of reinstatement if the citizen refuses the government's call to arms or is convicted of treason.¹⁹

Until 2011, naturalised citizens could lose nationality upon being found guilty of a crime by a court of law in the final instance on two separate occasions. That is no longer a ground for losing nationality. However, the new law retained treason and rejecting a call to arms to defend the country as grounds for permanent loss of citizenship. Obtaining Nicaraguan citizenship through fraud also provides a ground for losing it permanently. The withdrawal of acquired citizenship is, in all cases, an administrative procedure, where administrative silence works in favour of the accused.²⁰

It is worth noting that, unlike the stipulations for fast track naturalisation and the need to give up a former nationality, the law makes no distinctions with regard to the rights of naturalised citizens depending upon length of residence, country of origin, or similar criteria. The Nicaraguan nationality acquired by foreigners is extended to their children below the age of 21, regardless of where the parents reside at the time of birth.

Dual Nationality

Dual nationality is regulated by reciprocity and international treaties,²¹ applying the principle of *ius domicilii*.²² Nicaragua has treaties on dual nationality only with Argentina, Italy, Spain, and the nations of Central America. However, reciprocity, as the term is used in Nicaraguan law, means that citizens from countries in which Nicaraguans are not required to give up their nationality to attain another citizenship have a right to similar treatment, leading to a waiver of the renunciation requirement in Nicaraguan law. The requirement to forfeit their

¹⁶ Arts. 52 to 57 General Law for Migration and Foreigners, Law No. 761.

¹⁷ *Id.*

¹⁸ By law, dual nationals are obliged to use their Nicaraguan passports at the points of entry and exit in Nicaragua. Art. 65 of Law No. 761 states that, in the three circumstances mentioned above, Nicaraguan nationality can be recovered.

¹⁹ *Id.* Art 65

²⁰ General Law for Migration and Foreigners, Law No. 761, art. 45.

²¹ Art. 46 of General Law for Migration and Foreigners, Law No. 761, allows 'multiple nationalities' for Nicaraguans, based upon treaties and reciprocity.

²² General Law for Migration and Foreigners, Law No. 761, art. 62.

citizenship of origin is waived in those cases.

The children of Nicaraguans born overseas who obtain another citizenship at birth are also recognised as dual nationals, just as the children of foreigners (except diplomatic personnel) born in Nicaragua are Nicaraguans even if they have a right to their parents' nationalities. They must use Nicaraguan documents to enter or exit the country.²³ According to the law, only children born overseas to naturalised Nicaraguans must ratify their Nicaraguan citizenship, and in order to do so, must renounce another citizenship upon reaching sixteen years of age, that is to say, upon becoming '*ciudadanos*'.²⁴

4. Current trends

According to reliable official data from the General Direction for Migration (*Dirección General de Migración y Extranjería - DGME*), published by the International Organisation for Migration (IOM),²⁵ permanent migration to Nicaragua is still low and recent and comprises primarily retired individuals with pensions from North America (about 1,500) and other Central Americans engaged in trade and border commerce (about 4,000).

Such residents appear not to be very interested in seeking Nicaraguan nationality, and must take into account that the tax system is not particularly benevolent, that the welfare system is unattractive, and that travel abroad under a Nicaraguan passport is generally more cumbersome than for most nationalities when it comes to obtaining visas and other travel requirements. Since the economic and financial benefits of acquiring Nicaraguan nationality are not readily apparent, few long- term residents have applied for citizenship, even though the process and requirements are not particularly restrictive. These potential citizens must, not least, weigh the benefits of membership in a country that only 25 years ago drafted and applied laws resulting in widespread confiscation of property for any individual who spent more than six consecutive months abroad, and has, for ideological reasons, tense relationships with its neighbours and trading partners. To date, the Constitution forbids foreigners (resident or not) to: 'intervene in the political affairs of the country'.²⁶

As a result, according to the latest official data available, only 531 foreign citizens, primarily Central Americans and Spaniards, were naturalised in the six- year period between 2007 and 2012.²⁷ Those two populations are exempt from the requirement to give up their citizenship of origin in order to obtain Nicaraguan citizenship. All other nationals must renounce their previous 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 latter facts undoubtedly play a role in explaining the low numbers and the origins of naturalised citizens in Nicaragua.

²³ General Law for Migration and Foreigners, Law No. 761, art. 62

²⁴ General Law for Migration and Foreigners, Law No. 761, art. 67

²⁵ Perfil Migratorio en Nicaragua 2012 (Nicaragua's Migratory Profile 2012: 31-32).

costarica.oim.int/public/pdf/perfil_migratorio_nicaragua2012.pdf

²⁶ Art. 27 Constitución política de la república de Nicaragua (Political Constitution for the Republic of Nicaragua) *La Gaceta* #32, 2014. The article forbids all foreigners 'to intervene in the political affairs of the country.'

²⁷ Perfil Migratorio en Nicaragua 2012 (Nicaragua's Migratory Profile 2012), page 33.

costarica.oim.int/public/pdf/perfil_migratorio_nicaragua2012.pdf

It has been estimated that some 800,000 Nicaraguans (out of a population of 5.825 million, or 10 to 13 per cent of the total) reside abroad.²⁸ About 600,000 of these immigrants 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 amounts to 12.5 per cent of the country's gross domestic product.²⁹ It is not known how many have acquired another nationality, but it is worth noting that Costa Rican nationality would not affect their status as Nicaraguans, according to the law. US law does not require giving up Nicaraguan citizenship in order to naturalise. The fact that many of these Nicaraguans stood to lose their nationality under the former rules precipitated the current law making it impossible for a Nicaraguan *nacional* to lose citizenship. Obviously, the view of the authorities changed from a forced withdrawal that punished those who left the country to seek better fortunes towards promoting the retention of nationality. Other than the sheer numbers, the reason is that, generally, those Nicaraguans are better off than the average and can contribute significantly to the development of the country. This reason is consonant with the promotion of migration to Nicaragua, or at least the promotion of investments by affluent foreigners.

5. Current political debates and reform plans

Nationality and citizenship have not been salient issues in the electoral or political debate in the past and very little work on the matter is done by local NGOs. Given the recent far-reaching changes that came in the wake of the 2011 reforms, it appears that there is no movement for further reform for the time being. Similarly, no further reforms are envisaged in the current government's programme and the political debate in the run-up to the 2016 national election has not considered the topic.

²⁸ Perfil Migratorio en Nicaragua 2012 (Nicaragua's Migratory Profile 2012), page 18.
costarica.oim.int/public/pdf/perfil_migratorio_nicaragua2012.pdf

²⁹ ID., page 19

6. Conclusion

The most salient feature of the law regarding naturalisation in Nicaragua is that it is primarily meant to address migration issues and aims to bring the law in line with modern treaties and international standards in this regard.³⁰ As for the content of the law, with regard to candidacy rights, loss of nationality and the possibility of dual citizenship, among other distinctions, its most salient feature is the marked difference between *nacionales* and those who acquired Nicaraguan nationality later in life,

As for naturalisation, the law is short and often vague and has to rely upon secondary rules regarding rather basic aspects, such as clear eligibility criteria and application procedures. This causes concerns about discretionary authority and the reliability of the rules over time. Finally, several cases have revealed flaws in the system, shedding light upon how politics and institutional weaknesses can result in unregulated granting of citizenship or improper denial. It is not surprising that a country that ranks low on many rule-of-law assessments³¹ has encountered such problems, beyond those that stem from the letter of the law. Access to official data and transparency are often missing in many areas of public life in Nicaragua, including those covered in this report. Some of this results from gaps in the law. For example, while the state office in charge is responsible for keeping a registry of naturalised citizens, it is not responsible for publishing data about applications received or rejected.³² Structural reasons also play a role. Nicaragua does have a modern Access to Information Law, but its provisions are largely ignored by the authorities who have tended to keep data and documents out of the public eye.

³⁰ The law also establishes fees for migration documents and fines for violations. It also regulates the career of migration officers (arts. 184 to 211). As for modern components missing in previous legislation, Law No. 761 considers migrant workers and statelessness. See generally, General Law for Migration and Foreigners, Law No. 761, arts. 40 and 219.

³¹ For example, in the Corruption Index of [Transparency international], which evaluates issues of transparency and access to information, Nicaragua has been placed consistently in the lower third of countries evaluated with scores that classify the country as one where 'corruption is endemic'. See generally, Transparency [International Corruption Index], 1997 to 2014.

³² General Law for Migration and Foreigners, Law No. 761, art. 10, section 20.

