

CONSTITUTIONS OF THE COUNTRIES OF THE WORLD

Editors

ALBERT P. BLAUSTEIN & GIBERT H. FLANZ

CONTENTS

BINDER XI

Nicaragua (12/77) - *by Francisco H.
Galindo-Velez*

Niger (10/73) - *by Barry M. Dennis*

Nigeria (10/79) - *by D.I.O. Ewelukwa*

Norway (3/76) - *by Gisbert H. Flanz*

Oman (12/74) - *by Atta Abdel Moneim
Attia*

Pakistan (7/73) - *by Bruce J. Brafman*
Supplement (2/81)

Panama (4/80) - *by Gisbert H. Flanz*

Papua New Guinea (2/81) - *by Angela
Toleris and James M. Fraser*

Paraguay (4/71) - *by Gisbert H. Flanz and
Carol Serpa*

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NICARAGUA

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ALBERT P. BLAUSTEIN & GIBERT H. FLANZ

NICARAGUA

by FRANCISCO H. GALINDO-VELEZ

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CONTENTS

CONSTITUTIONAL CHRONOLOGY

THE CONSTITUTION

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The present Constitution was promulgated on March 14 and published in La Gaceta No. 89 on April 24. It is not entirely new in that about one-half of its provisions were carried over from the amended text of the 1950 Constitution. However, many of the changes are quite drastic, as will be shown in this short comparative analysis. Both in the preamble and in chapter 1, the term "nation" has been inserted. The Constituent Assembly was also transformed into a National Constituent Assembly. Important changes were made in Title II concerning nationality.

In the 1950 Constitution there were some provisions (Article 32 par 2) which were thought to discriminate against women. All these restrictions were removed in the 1974 Constitution. With respect to fundamental rights and guarantees (new Title V and formerly Title IV), it may be noted that article 38 declares human life to be inviolable but it allows the death penalty for certain offenses. With regard to minors or juvenile offenders, the new Constitution states that they have to be confined to special rehabilitation institutions (Article 46 par 2).

Both Constitutions guarantee the inviolability of the home but allow authorized officials to enter in nine specified cases. There are only slight changes in terminology in the identical Article 58. Under the 1950 Constitution Article 58(9) required at least prima facie proof (semi-plena prueba) that a criminal has concealed himself there. Under Article 58(9) of the new Constitution, grave presumption (presuncion grave) has to exist.

Provisions guaranteeing private property appear to be more firmly stated in the previous Constitution which actually declared property to be "inviolable". (Art.63). As in the 1950 Constitution (Article 86), one may find an article (66) in the 1974 Constitution which states that a "state of economic emergency" may be decreed. There is also an article (67) prohibiting private monopolies. In the 1950 Constitution this was laid down in article 87.

The provisions concerning freedom of speech and the specific restrictions are very similar. As in the 1950 Constitution (Article 116) the state prohibits the formation and activities of the Communist Party and organizations holding similar theologies (Art. 74). The old Article 120 of the 1950 Constitution, which placed under the protection of the state any activity directed toward the reconstruction of Central American unity, was incorporated into Article 74 of the 1974 Constitution in order to distinguish it from the prohibited international party activities.

There are some significant changes in the status of workers, as regulated in Title IV. The 1974 Constitution (Art. 105, paragraph 16) guarantees the right of workers to strike. In the 1950 Constitution social welfare articles (290 - 294) were very general. The 1974 Constitution contains more specific guarantees. Article 107 declares social security to be the duty of the State and extends it not only to workers but also to employers.

The new Constitution emphasizes education. About one half of the provisions contained in Title V are completely new. (There was no separate title devoted to education in the 1950 Constitution). According to Article 108, "Education is a primary duty of the state, which shall endeavor, by every available means to eliminate illiteracy and ignorance. It must be based on the application of scientific advancements and be guided by the following purposes and general standards:

- 1) To instill in youth, as a natural obligation, the defense of the political and economic independence of the country;

- 2) The ideas inherent in republican democracy, as guidelines for citizens and ideal of the government, without reference to militant policies;

3) Standards for a national way of life seeking constant economic, political, social and cultural advancement of the people;

4) A true understanding of the problems of the country;

5) The pressing duty of continuing and enriching our culture, its traditional values and its projections for the future; and

6) The need to make use of our resources."

An increased nationalistic orientation is also revealed in several other unusual articles. Thus article 111 stipulates that courses on the history, geography and Constitution of Nicaragua must be taught by professors who are native born Nicaraguans.

Among other new features are the provisions for adult education, agricultural and industrial schools.

An entire article (115) is devoted to the National University. The extent of its autonomy is carefully defined.

Title VI is inscribed "The Legislative Power" (Articles 127–179). The numbering of articles is practically identical. However, numerous changes have been made. The bicameral system has been retained but the two bodies are considerably enlarged because the system of representation has been altered.

Under the 1950 Constitution, the Chamber of Deputies consisted of 42 members and the Senate of 16. The new Chamber of Deputies will consist of no fewer than 70 members and the Senate of 30.

Important changes have also been made in the articles concerning the Executive Power (Title VII), which corresponds to Title VI of the 1950 Constitution.

Under Article 180 of the Constitution of 1950, provision was made for three vice-presidents. This has been completely eliminated (Art. 179). Corresponding changes have been made in the subsequent articles. The new Article 180 provides for the election of the President by direct popular vote.

The President is still not allowed to succeed himself (Art. 185, formerly Art. 186). In this article certain persons were disqualified from candidacy to the office of President. This list has now been extended to exclude certain other officeholders: the Vice Minister of State, Magistrates of the Supreme Electoral Tribunal, the Superior Labor Tribunal and the Administrative Tribunal (Article 185).

Formerly, under Article 188 of the 1950 Constitution, in the event of temporary or permanent inability of the President to exercise his function, they were to be assumed by the Vice President "whom Congress shall elect". Now there are no more Vice Presidents and no provision for Congress to elect anyone immediately. The new Article 187 states that in such cases the Minister of Government shall exercise the functions of the President on an interim basis.

The constitutional powers of the President of the Republic have been increased, in other respects, especially in times of emergency. The new Article 196, which defines the powers of the President "in cases of public calamity due to natural unforeseen events or sinister causes" empowers him to declare a state of national emergency in the affected regions or throughout the national territory.

In relationship to the legislature the President's position has been strengthened because the President, according to the new Article 190(5) now has 90 days from the opening of the new Congress to deliver his message to both chambers. Under Article 191(5) of the previous constitution this had to be done within one month.

The pardoning power of the President has been extended under the new article 190 (12).

The President's immunities and "prerogatives" under the new Article 181 have now been made "permanent". Article 182 of the previous constitution did not contain this word. However, the accountability of the President to the National Congress has been maintained.

The Judicial Power which formerly followed the Executive Power (Title VII) has been shifted toward the end of the Constitution. The pertinent articles (280—313) are now grouped under Title XII.

A new Penal Code, consisting of 565 articles was promulgated on January 16. It was published in Official Gazette (La Gaceta) on May 3, 1974 No. 96, p. 897-960.

On October 30 the Junta Nacional extended the state of emergency. (La Gaceta, No. 281 published December 9, 1974).

On November 15 the Junta Nacional de Gobierno announced that the National Constituent Assembly had adopted a new Electoral Law. This lengthy document, consisting of 125 articles was published in the Official Gazette (La Gaceta) on December 4 and 5.

By Decree No. 4 of December 28, the President provided the basis for the establishment of a "Permanent Military Court of Investigation" and a "Permanent Military Tribunal". These measures were linked to the declaration of a state of emergency, under one of the constitutional laws, the "Martial Law", following the killing of Minister Jose Maria Castillo and the holding of high-ranking government officials by guerrilleros.

1975

On the basis of this decree the Ministry of Defense established these two military bodies on January 25. They were given broad powers for the duration of martial law.

On July 18 a military tribunal tried 37 persons (several in absentia) for their alleged participation in the Sandinista guerrilla terrorist movement.

In an effort to promote regional economic cooperation, the Government of Nicaragua, along with other Latin American and Caribbean nations, signed a treaty on October 18 creating the Latin American Economic System (SELA).

1976 In June, following the lead of several neighboring countries, the Government of Nicaragua extended its exclusive fishing zone to two hundred miles.

1977 As in other Latin-American countries, human rights in Nicaragua became the most sensitive political and legal issue, both in its internal and external affairs. The new policy of the U.S. Government linking the compliance with human rights to bilateral aid programs and even multilateral ones through the American vote in international financing institutions made the question of human rights a key issue.

The House of Representatives continued to hold hearings on compliance with human rights in several Latin American countries, including Nicaragua. Unlike other Latin-American countries, Nicaragua neither renounced American military aid nor was excluded from it by the House of Representatives.

The General Assembly of the Organization of American States, meeting in Grenada, adopted by a bare majority strong resolutions on this issue. There was, as elsewhere in Latin America, a bitter discussion on the relations of human rights and the activities of terrorist groups.

The news media recorded widespread charges of violations of human rights by the Nicaraguan Government. Amnesty International compiled those charges in a booklet published in August 1977.

On September 9, the state of emergency, declared on December 28, 1974, was lifted and full guarantees and rights were restored.

Due to ill health the President of the Republic was temporarily unable to exercise his functions. He was absent from the country for about three months. In accordance with the Constitution, the Minister of Government temporarily exercised the functions of the President during his absence. The Constitution also prescribes that under such circumstances the immediate convocation of the Congress to transfer the Presidency to the person designated by the President. Lacking this designation, the Congress should elect one of its members to exercise the functions of President. However, the Congress did not take either action during the absence of the President. A controversy ensued on the interpretation of the Constitution involving the political parties. Since the Constitution does not provide precise terms for action by the Congress, the interim exercise of the Presidency by the Minister of Government remained in effect during the absence of the President.

CONSTITUTION

SOMOZA-AGUERO POLITICAL TREATY *

ANASTASIO SOMOZA DEBAYLE, as representative of the Nationalist Liberal Party, and FERNANDO AGUERO ROCHA, as representative of the Conservative Party of Nicaragua, factions which, combined, comprise the historical image of the nation, starting from its independence, and which are responsible to present and future generations of the Country, made commitments to each other in a "Political Treaty", the fundamental terms of which are enumerated in the ensuing.

Both traditional Parties, without detriment to the structure and ideologies germane to them, agree that historical co-existence may continue to fashion the Republic and agree to preserve it from the threat of radicalism which is nurtured by political differences and disagreement.

They agree that the Nation must be peacefully organized, but not as one party disposed to keep to itself the essences of Christian civilization and of the virtues of the Republic and the institutions of democracy which is developing in a sincere and orderly manner.

Since the memorable agreement between Jerez and Martínez, during the struggle of the National War, experience has shown that whenever the principal parties (factions) settle their quarrel in conference and resolve that their struggles achieve a common purpose, the Country enjoys the fruits of honor and profit and the intent of settling the internal problems of the Nation through evolution which, as history has already pointed up, marked the beginning of a search for solutions which would satisfy all Nicaraguans.

*SOURCE: José Luis Velasquez-Pereira, El Poder Constituyente en el Derecho Contitucional Nicaraguense, León, Nicaragua, March 28, 1974.

The doctrine promulgated in the complete declaration of November 27, 1970, set the pattern for successive talks which culminated in the present document and were aimed toward achieving National Unity, Political Stability, and Social Justice in a formula of prolonged duration.

The fact is that both Parties perceive equally the temptations and threats of International Communism which feeds on discord and on the breaking up of the great Parties. They are convinced that National Unity together with the practice of justice which is not contradictory to the natural limits of democracy, can protect the developing peoples from that threatening trap so prevalent on the Continent.

They are agreed upon the inevitable necessity of carrying out, by means of peaceful evolution, the Socio-economic and Political changes indispensable to the integral development of the Nation and of overcoming obstacles of every kind which render difficult the Democratic, Social Economic and Cultural Progress of the Nicaraguan people.

Each and every one of the clauses of the "Political Treaty" not only builds the common aspirations of the principal parties into a national precept, but puts into practice the legitimate and reasonable points of view of the small dissident groups.

It (the Constitution) guarantees, as a basis for public confidence, successive interchange (alternabilidad) of power and electoral justice in such a manner that voting and election returns will be the genuine expression of the will of the people.

Political constitutions, particularly those which originate from a compromise, are living, even-moving organisms like life itself, and are subject to the dynamics of reality which cannot be achieved through fixed formulas. The changes which social, economic, and political relations experience, indicate that a constitutional norm which appeared reasonable may have lost its ability to function effectively and, therefore, it may become necessary to complete, to eliminate or, in some way, to adapt it to the new exigency, in the interest of assuring a frictionless development of the political process.

The basic tenets which follow constitute a profound and solemn education in patriotism and political ethics.

In the name of both parties, both presidents of the National and Legal Executive Councils, with full authority in accordance with their respective statutes, and holding the Nicaraguan people as inspiration and the well-being of the Country as their goal, underwrote (agreed to) and presented these tenets to the Nation.

BASIC TENETS OF THE POLITICAL AGREEMENT:

- I. Recognition as essential to the Nation, of the necessity of convoking a National Assembly to elaborate and promulgate a new Constitution for the Nation.
- II. During the first week of August of that year, the representatives of both historic factions (parties) presented before the Legislative Chambers, a proposal to totally reform the political constitution in conformity with the provisions of said constitution and to give their full support toward approval of this project.

III. The Decree of total reform and the Convocation to Election of Deputies to the National Assembly for the Constitution will be required to contain the following stipulations:

- a) The date of the Election will be the first Sunday in February, 1972, and the installation of the Assembly, April 14 of the same year.
- b) The number of Delegates to the Assembly will be 100 landowners with their respective alternates directly elected in a single circumscribed national area. The Parties attending the elections will have as many representatives as are due them as set by the electoral quotient; but in no case will the representative of the minority be less than 40 per cent of the Assembly.
- c) The legal and constitutional provisions for carrying out elections.
- d) The right of petition in conformance with the Electoral Law.
- e) The period of time the Political Constitution and current Constitutional laws and those of the existing (court) will be in effect.
- f) Once the National Congress has dissolved, and until the National Assembly of the Constitution has been installed, the President of the Republic will exercise his legislative duties within the powers and limitations established in Art. 150 of the current Constitution.

Once installed he will also exercise his ordinary legislative duties.

- g) Before the first of May, 1973, the National Assembly of the Constitution will elect a Governing Board, comprised of three citizens who possess the following qualifications:

They must be native Nicaraguans, adults over 30 years of age and of secular (lay) status. Two of the members must belong to the majority party and one to the party which ran second in the voting. Three designated delegates must also be elected at the same time to fill final or temporary vacancies, each of these belonging to the same party and having the same qualifications as the delegate for whom he will function.

- h) The life of the Governing Board will be two years and a half. Its decision will be taken from the majority vote (or will be made by the majority vote).
- i) The basic tenets of the new Political Constitution.

1. The system of the Republican and Democratic Representative Government.

2. The legislative Powers will be exercised by a Congress composed of two houses: the Senate and the House of Representatives. The latter will consist of seventy delegates directly elected by the people, with their respective alternates in the state areas, with one representative (Proprietario--Landowner) and one alternate for every 30,000 inhabitants or fraction thereof which exceeds 5,000 inhabitants; and the former will consist of 30 landowner Senators and their respective alternates, also elected directly by the people within a single national area.

In both Houses, the parties attending the election will have as many representatives as are due them according to the "Election Quotient" system. However, if in practice this party system or system of parties which had not gained first place in the presidential election, should result in a number of representatives not totalling 40 per cent of the members of each House, said system will not be applicable, since in that case, as many Senators as will make up 40 per cent of the Senate and as many Representatives as will complete the 40 per cent required for the House of Representatives will be considered as elected by the parties.

In the same way, the Presidential Candidate of the Political Party which gained second place by popular vote will integrate that House. In addition, the ex-presidents of the Republic, who had come into the presidential office by direct popular vote, will form part of the Senate and serve as lifelong Senators.

The term of office of the Representatives, as well as that of the candidate who ran second in the voting, will be the same as that of the President of the Republic.

The provisions in each House will be decided by the absolute majority of votes.

3. The Congress will have the power to summon (convene--as call to a meeting) the ministers of the states and to investigate the economic and administrative functioning of the Executive and of the autonomous bodies.