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REPORT NO. 18/19
PETITION 1261-08
REPORT ON ADMISSIBILITY

SANDINISTA RENOVATION MOVEMENT *ET AL.*
NICARAGUA

Electronically approved by the Commission on February 24, 2019.

Cite as: IACHR, Report No. 18/19. Petition 1261-08. Admissibility. Sandinista Renovation Movement *et al.* Nicaragua. February 24, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Nicaraguan Human Rights Center (“CENIDH”) and Center for Justice and International Law (“CEJIL”) ¹
Alleged victims:	Sandinista Renovation Movement (“MRS”) and others ²
Respondent State:	Nicaragua
Rights invoked:	Articles 8 (fair trial), 23 (participation in government), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights ³

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	October 27, 2008
Additional information received at the stage of initial review:	August 30, 2010 and February 15, 2011
Notification of the petition to the State:	May 6, 2013
State’s first response:	July 15, 2013
Additional observations from the petitioner:	November 7, 2014; January 20, 2016; June 7, 2018

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of ratification instrument on September 25, 1979)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 5 (humane treatment), 8 (fair trial), 13 (freedom of thought and expression), 16 (freedom of association), 23 (participation in government), 24 (equal protection) and 25 (judicial protection) of the Convention in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

¹ CEJIL has represented the Sandinista Renovation Movement members in this petition since January 20, 2016.

² The instant petition is filed also in relation to the Conservative Party (PC).

³ Hereinafter “Convention” or “American Convention.”

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioners request that the State of Nicaragua be declared responsible for the violation of the rights to equal protection, to a fair trial and judicial protection and the right to participate in government and the freedom of association. They allege the arbitrary cancellation of the juridical personality of the Sandinista Renovation Movement (hereinafter "MRS") and the Conservative Party ("PC") political parties, in view of which their candidates were barred from standing in the 2008 and subsequent elections. They also claim that in the cancellation proceeding filed by the Supreme Electoral Council ("CSE") the submitted evidence was not considered. According to them, it was a politically motivated decision aimed at excluding opposition candidates from the elections. They claim that because of the cancellation of its juridical personality, the MRS was barred from standing independently in the municipal elections of 2008, 2012 and 2017 and in the national elections of 2011 and 2016. They claim that there has been a pattern aimed at limiting opposition and minority parties' political participation and expression in a context where democratic institutions and the rule of law are increasingly undermined and public authorities' independence and impartiality is being called into question.

2. They claim that the current Nicaraguan Electoral Law is the outcome of talks between the Constitutionalist Liberal Party ("PLC"), represented by Arnaldo Alemán Lacayo, and the Sandinista National Liberation Front ("FSLN"), represented by President Daniel Ortega Saavedra. Those talks culminated in the Alemán-Ortega agreement, which, according to the petitioners, sought to introduce deep reforms in the Nicaraguan institutions in order to impose a two-party system. The petitioners submit that the reforms of 2000 and 2005 as well as the electoral rules and the enforcement of the law have curtailed citizens' political rights, mainly in terms of the diversity of political parties, as new and very strict requirements have been added. They claim that although the Nicaraguan Constitution recognizes the right to political participation, over the last years the electoral administrative apparatus has been used to exclude certain social sectors and movements from the formation, execution and management of national public policy. They indicate that despite the Inter-American Court on Human Rights observation on these rules of the CSE in the context of the *Case of Yatama v. Nicaragua*, where the State was found responsible for the violation of political rights and equality, Nicaragua continues excluding the opposition from political participation, in flagrant defiance of the Court's judgment.

3. The MRS held its National Convention on February 18, 2007. In this convention, resolution no. 5 was issued that ruled the termination of duties of the party's departmental and municipal boards of directors and the beginning of a reorganization process which, although was expected to last a year, extended until March 2008.

4. According to the petitioners, the 2008 election calendar was passed on February that year and the candidate filing deadline was scheduled for April 3. The deadline for filing objections against candidate nominating petitions closed on the eighth day of the same month. They submit that on April 29 and May 2, 2008 the CSE published the final lists of candidates in the Nicaraguan gazette, said candidacies thus became official. On May 20, 2008 Carlos Wilfredo Navarro Moreira, the deputy for the PLC and the Constitutionalist Liberal Party-Alliance representative, reported to the CSE that several parties, including the MRS and the PC, had failed to meet the requirements of the electoral law and requested that their candidates' nominating petitions be voided and that said parties be banned in view of their not being registered for the elections called.

5. On May 22, 2008 the CSE issued a resolution claiming that it had several times requested the MRS to observe the electoral law, the party statutes and the resolutions of the National Convention, that the MRS did not comply with this; that, therefore, the CSE decided to initiate a proceeding to cancel the party's juridical personality. The CSE specifically held that the MRS had failed to meet the following requirements: 1) submitting records of replacements and changes made in its organizational structure; 2) submitting a copy of its rules of procedure or norms regulating the revocation, dismissal or suspension of party authorities, along with the grounds; 3) submitting the names of all the provisional authorities considering the dismissal of all its municipal and departmental authorities; 4) scheduling the reorganization process approved by the party's national board of directors; and 5) submitting the final list of authorities elected in the process closing in

February 2008. Additionally, by this resolution the CSE granted the party a period of six days for submitting observations. The petitioners allege that the documents mentioned by the CSE had been submitted on May 28, August 15, November 8 and December 15, 2007. On May 27, 2008 Juan Enrique Sáenz Navarrete, the MRS leader, presented the information which the CSE claims was not submitted. Likewise, he contended that the resolution was void because it was unfounded, in that it did not mention the applicable grounds specified by article 74 for canceling the party.

6. On May 29, 2008, by the Directorate General for Political Parties, the CSE issued a resolution granting the MRS a period of 10 days for the submission of proof. On June 4 that year the MRS representative filed a document in writing before the CSE arguing that since the electoral law has no provisions regulating the substantiation of evidence, the applicable law was the Civil Code of Procedure and that the burden of proof lied with the plaintiff, the CSE, in accordance with article 1079 thereof. Despite the party's providing the information required by the CSE, on June 11, 2008 the CSE cancelled the juridical personality of the MRS. The decision of the CSE was based on the facts that the party's reorganization process was wrongful and purportedly entailed the dissolution of the party and that the greater democratic participation was not guaranteed in the selection of the party authorities and candidates.

7. On June 13, 2008 Juan Enrique Sáenz Sánchez filed an amparo action and a petition seeking the suspension of that proceeding, before the Civil Chamber No. 1 of the Court of Appeals of Managua. In his petition, he claimed that the decision adopted by the CSE infringed the principle of legality and the rights to due process, defense, political participation and the freedom of assembly as well as the party's juridical personality. He also claimed that the interpretation that the party's reorganization entailed its own dissolution was "unreasonable, wrongful and arbitrary." The MRS leader insisted that the party did fulfil the requirements established by the electoral law and that the decision to ban said party was based on political—not judicial—interests. On October 17, 2008 the MRS was notified that the members of the CSE had submitted their reports on the amparo action; however, these were not shown to the party. In their communication of January 20, 2016, the petitioners hold that until then the amparo action was still pending resolution. They indicate that the file of their amparo action is in the hands of the presiding judge of the Constitutional Chamber, which confirms that the denial of justice in this case is due to interference from the government's political operators, the petitioners allege. In connection with this, they refer to the amparo action filed in 2009 by current President Daniel Ortega Saavedra, resolved in only three days.

8. As for the PC, they allege that the initiation of the cancellation proceeding in view of Deputy Wilfredo Navarro's complaint that the party did not have 80 percent of the total number of candidates registered in 80 percent of the municipalities, was informed by a resolution of May 22, 2008. On May 28 the party representatives filed a written document in which they demonstrated, through an arithmetic calculation, that they had fulfilled the legal requirements. They also submitted the final lists published by the CSE itself, two certificates from the Institute for Development and Democracy ("IPADE") and the Ethics and Transparency Civil Group, both of which certify that the PC did fulfil the requirements established by the electoral law. On June 11, 2008 the CSE found that it met only 75.8 percent of the required number, but it did not rule on the situation of those candidates who were already registered. The petitioners claim that, in accordance with the law, the unfulfillment of said requirement is not a reasonable ground for canceling the party's juridical personality.

9. On June 16, 2008, PC representatives filed an appeal for review before the CSE alleging that the submitted body of evidence had not been considered. They moreover alleged the violation of the principle of legality because, according to the petitioners, the CSE abused its powers in that it also infringed the principle of legal certainty accorded by the Nicaraguan Constitution.

10. The petitioners claim that on May 19, 2010 the CSE restored the juridical personality of the PC and Deputy Alejandro Bolaños Davis' seat in Congress; that, however, candidates from the 2008 election were excluded from this decision. Moreover, according to the petitioners, the PC was authorized to participate in the elections of 2011, only to split ballots for the opposition and not in order to resolve the appeal for review lodged in 2008.

11. They allege a manifest lack of arguments on concrete facts, jurisprudence or rules because the State's replies about the causes of the cancellation proceeding are unclear and even contradictory. They indicate that the State mentions, on the one hand, that the proceedings for verification and cancellation were undertaken at Deputy Carlos Wilfredo Navarro Moreira's written request dated May 20, 2008; and, on the other hand, that the party dissolved on February 18, 2007. In addition, they claim that on February 27, 2008 a certificate signed by the head of the CSE Directorate General for Political Parties was granted to them that indicates that the MRS is a lawfully established political party.

12. Concerning due process and with reference to the *Case of Yatama v. Nicaragua* before the Inter-American Court of Human Rights, they argue that given that electoral legislation is unspecific, its application may be arbitrary, extensive and contradictory. In that regard, they claim that even if the arguments of the State were accepted, proceeding to suspend the party should have been initiated, for none of the grounds for cancellation established by article 74 of the Electoral Law has been proven to exist. They allege that the CSE had heard about the purported dissolution of the MRS since February 2007 and that it decided to ban it one year later, right before the elections of 2008. They indicate that there never was a process of dissolution but one of reorganization, and that the cancellation of the party was an arbitrary measure aimed at silencing the opposition, which hinders the progress of democracy.

13. They affirm that unless a law is passed that will guarantee political rights and the restoration of democracy, international standards must be taken as guidelines, and that in this case not even these standards were followed. At the same time, they submit that the CSE filed the proceeding ex officio after it made resolution on the matter, which consisted in barring the MRS from taking part in the 2008 and later elections.

14. Furthermore, they allege the existence of a systematic pattern of violation of political rights in Nicaragua that causes irreversible harm to the exercise of democratic liberties in that country. By way of an example, they inform the cancellation of the juridical personality of the Christian Democratic Union (UDC) party as a result of which it was excluded from the 2012 elections even though it had fulfilled the formal requirements and the legally required percentage, and duly confirmed its intention to participate in those elections. They also indicate that in July 2016 the Constitutional Chamber of the Supreme Court of Justice ousted Eduardo Montealegre, the main leader of the opposition coalition since 2011, from legal representation of the Independent Liberal Party ("PLI") and appointed Pedro Reyes instead. They submit that Pedro Reyes called a meeting of opposition deputies of the PLI Alliance opposition party in Congress and that these rejected his invitation in view of their disagreement with the Constitutional Chamber's decision. Because of this, among other allegations, on July 25, 2016 Pedro Reyes requested the CSE to dismiss these deputies, including several MRS members, for disobeying orders. In view of his petition, on July 28, 2016 the CSE ordered the mass removal of 28 deputies (16 deputies and 12 substitutes) despite their being elected by popular vote. They indicate that the dismissed deputies had openly rejected the constitutional reforms of 2014 that allow consecutive terms for presidents and the dismissal of deputies on grounds of changing political party, among other aspects. They inform that on August 16, 2016 the dismissed deputies filed, before the Court of Appeals of Managua, an amparo action against the resolution issued by the CSE and the National Assembly by which they were dismissed. The amparo action is pending resolution. Likewise, the Supreme Court of Justice cancelled the participation of the National Coalition for Democracy, led by the PLI in order to take part in the presidential and legislative elections of 2016.

15. They allege that since the instant petition was filed, the exercise of political rights has been undermined and different groups and individuals supporting views other than that of the party in government have seen their political participation curtailed. They claim that several national and international organizations have agreed with that opinion after monitoring the elections of 2008, 2011, 2012 and 2017. The petitioners refer to an internet website gathering evidence of the alleged fraud and submit a short summary of the actions undertaken by the government against opposition parties in a context of retaliation and political persecution. These actions vary; they include differential treatment for parties allied with the government, arbitrary actions, enforcement of rules non-existing in the national legal framework, acts of violence even against the media, and irregularities in electoral processes in general. The OAS Electoral Observation Mission and multiple national organizations agreed on the need for an electoral reform.

Specifically, the OAS Electoral Observation Mission held that despite the significant progress seen over the years, there is still need for strengthening the electoral process.

16. They also refer to acts of violence ranging from harassment and threats to physical attacks leading to deaths and wounds in the elections of 2016.⁵ Moreover, they inform of acts of harassment to the media.⁶ They report similar acts of violence in the context of the 2017 municipal elections.⁷

17. Finally, the petitioners allege that while, according to the State, it is possible to rebuild the MRS now that the minimum period banning its activity is over, this does not repair the damage caused or the human rights violations because reparation should be provided by the State in accordance with its international obligations and not depending on the passing of time. In addition to this, they claim that due to institutional decay in Nicaragua it is unlikely that the CSE grants the party juridical personality even though legal requirements are met. Furthermore, they mention that despite and after its cancellation, the party is still governed by its statutes and rules of procedure. New boards of directors were elected in 2012 and five deputies have a seat in Congress thanks to the alliance formed with the PLI. Regarding the State's allegations about the professionalism and actions of CENIDH, said organization contends that the allegations are part of a systematic smear campaign. This is the reason why in November 2008 the IACHR granted precautionary measures in favor of Vilma Nuñez de Escorcía, President of CENIDH, and members of the organization. They claim that although the IACHR has requested the State to comply with these measures, these have not been observed.

18. The State alleges that due process was guaranteed because both the electoral law and the Nicaraguan constitution entitle the CSE to undertake the actions it carried out regarding the verification and ban of the parties' juridical personality as well as regarding compliance with electoral provisions and the party's statutes and rules of procedure. The State indicates that, contrary to the petitioners' claims, said proceeding was not expeditious, in that it is done annually and this one began on February 12, 2007 and finished on June 11, 2008. It argues that in this case the proceeding was initiated at the request of a party and not ex officio. It indicates that, under the Electoral Law, the CSE has the power to ensure compliance with the statutes of political parties. Also, under said law political parties must guarantee the greater democratic participation in party primaries and submit to the CSE information on the organization of the bodies of the party.

19. The State mentions that by an order of October 31, 2007 the General Directorate for Political Parties, under the CSE, requested the MRS to submit the schedule of the party reorganization process as well as the reason for changing the party authorities, and that the party never presented said information. It alleges that the MRS did not present election returns but several incomplete documents; that election returns include place and date, content and full names, including voters' identification numbers and signatures, in addition to a certification from the party's notary public.

⁵ Among the reported cases, there is information about three people killed in the city of Ciudad Antigua by gunshots while being chased by police and the army for taking part in protests against the government's issue of identity cards. Another incident was reported in the morning of November 6 as some 50 armed men came to three Electoral Precinct Boards in the region of Salvadorita in Puerto Príncipe, Nueva Guinea, and burnt the electoral material. The petitioners also refer to the acts of violence following a demonstration organized by the Yatama party in Bilwi to protest against allegations of manipulation by electoral authorities and the exclusion of Yatama's poll watchers from access to election returns at the tabulation center in Managua. They claim that in the protest of November 7 anti-riot police officers attacked protesters and that, as a result, 19 people were injured and the offices of the Regional Council were damaged, among other actions.

⁶ It is reported that on the day before the 2016 election, 12 police officers came to Radio Naranjo radio station in Waslala, forced the people inside to open the door and searched for an alleged press release calling a protest in Waslala on the election day. On searching the station and finding the document, the officers apologized. It is also alleged that on the election day, journalists of *La Prensa* newspaper were banned from several polling places.

⁷ They inform that the figures submitted by the Deputy Director General of the Police of Nicaragua indicate that from the night of November 5, 2017 acts of violence were reported in 13 cities of the country that resulted in five deaths and 67 people injured at least, in addition to over 30 persons arrested by police. They indicate that, of the people killed, two belonged to the Yatama party, two to the Citizens for Liberty party and one to the Constitutionalist Liberal Party.

20. It claims that by resolution no. 5, the National Convention decided to dissolve the structure of the party and begin a process of reorganization. According to the State, that process had to finish one year after the Convention was held; that, however, the party did not meet the deadline and, in an untimely manner, an extension was agreed on March 9, 2008. According to the State that failure to comply with the requirement lasted until December 2009.

21. It claims that the MRS never explained why all its boards of directors were dismissed and that despite several irregularities and violations of the statute, decisions made by the National Convention are legitimate and sovereign; that, consequently, the party dissolved on February 18, 2007.

22. As for the alleged discretionary annulment and suspension of authorities, it contends that the power of the National Convention does not apply to the integrity of certain political parties but only to the annulment of offices in national, departmental or municipal bodies and to replacements needed due to resignations.

23. The State affirms that CENIDH is not impartial, something widely known through the media. It alleges that CENIDH has made statements against the government thus taken a political stance that contradicts its observations, in that these denote a lack of professionalism, neutrality and impartiality. The State refers to electoral processes of 2008, 2010 and 2011, in which 18 political parties took part and even the MRS won seats in Congress thanks to an alliance with the PLI. It also indicates that in Nicaragua the concept of independent candidates does not exist; that therefore political parties must observe the electoral law. In addition, it considers that the MRS is responsible for the violation of candidates' rights because it failed to observe the law and its own statutes.

24. Concerning the claim filed CENIDH regarding a pattern of exclusion from politics aimed at securing the power of political parties represented in the CSE, the State claims that this is false because in 2011 26 PLI deputies were elected, yet it has no representation in the CSE. Lastly, it mentions that the Electoral Law establishes that political parties that were cancelled cannot be rebuilt under the same name for at least four years; and it explains that, in this case, that period is over, consequently there is nothing to prevent citizens from joining said party.

25. The State requests that the instant petition be filed in the archives because domestic rules were duly observed and because currently nothing prevents the MRS from rebuilding itself.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

26. The petitioners claim lack of remedies to protect political rights, as the Inter-American Court found on the *Case of Yatama v. Nicaragua*. Particularly, they allege that no remedy is admitted against decisions of the CSE regarding electoral processes. However, the Commission notes that the alleged victims filed different remedies concerning the ban of the parties: the MRS filed an amparo action and the PC filed an appeal for review. In this regard, the petitioners submit that there was an unwarranted delay in the settlement of these remedies. As for the purported unwarranted delay, the petitioners allege that the amparo action was presented on July 13, 2008 and that on October 17 that year the Supreme Court notified them of an agreement to admit the case for study and rule on the matter; that, however, a final resolution has not been issued yet. Additionally, the PC presented an appeal for review in June 2008 and the CSE restored its juridical personality in June 2010. Nevertheless, during those two years no decision was made on that appeal. For its part, the State has not commented on that aspect. Consequently, the Commission finds that the exceptions to the requirement of prior exhaustion of domestic remedies established in Article 46.2 paragraphs a) and c) of the Convention are applicable to this case.

27. Since the instant petition was received on October 27, 2008 and considering the specific circumstances of the instant petition, particularly the unwarranted delay in the amparo and review proceedings, and the lack of a remedy that effectively solves the situation presented by the petitioners, the

Commission finds that the instant petition was filed within a reasonable period and that the admissibility requirement of timeliness must be declared met.

VII. ANALYSIS OF COLORABLE CLAIM

28. In view of the elements of fact and law presented by the parties and given the nature of the matter brought to its attention, the Commission deems that the alleged arbitrary ban of the MRS and PC parties and the consequences thereof, including MRS and PC candidates' being excluded from elections, without prejudice to those victims that may be individualized in the report on the merits; as well as the alleged arbitrary ban of the candidates and the violation of political rights, all of which reportedly took place in a context of violence and harassment, if proven, all could establish violations of the rights enshrined in Articles 5 (humane treatment), 8 (fair trial), 13 (freedom of thought and expression), 16 (freedom of association), 23 (participation in government), 24 (equal protection) and 25 (judicial protection) of the Convention, in accordance with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.

VIII. DECISION

1. To find the instant petition admissible in connection with Articles 5, 8, 13, 16, 23, 24 and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof; and

2. To notify the parties of this decision; to continue with the analysis on the merits, and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 24th day of the month of February, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.