

115TH CONGRESS
1ST SESSION

H. R. 1918

IN THE SENATE OF THE UNITED STATES

OCTOBER 4, 2017

Received; read twice and referred to the Committee on Foreign Relations

AN ACT

To oppose loans at international financial institutions for the Government of Nicaragua unless the Government of Nicaragua is taking effective steps to hold free, fair, and transparent elections, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Nicaraguan Invest-
3 ment Conditionality Act (NICA) of 2017”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) The House Committee on Foreign Affairs
7 convened a congressional hearing on December 1,
8 2011, entitled “Democracy Held Hostage in Nica-
9 ragua: Part 1” where former United States Amba-
10 sador to Nicaragua Robert Callahan testified,
11 “First, that Daniel Ortega’s candidacy was illegal,
12 illegitimate, and unconstitutional; second, that the
13 period leading to the elections and the elections
14 themselves were marred by serious fraud; third, that
15 Daniel Ortega and his Sandinista party have system-
16 atically undermined the country’s fragile govern-
17 mental institutions.”.

18 (2) According to the Organization of American
19 States (OAS) report on the Nicaraguan 2011 Presi-
20 dential elections, the OAS recommended that the
21 Government of Nicaragua take a number of steps to
22 improve its electoral systems, including accrediting
23 poll watchers to ensure political parties and civil so-
24 ciety are represented to observe elections, and rede-
25 signing the structure of the Nicaraguan electoral
26 council to allow proper registration of the electorate.

1 (3) On January 25, 2012, a press statement
2 from Secretary of State Hillary Clinton said: “As
3 noted by international observers and Nicaraguan
4 civil society groups, Nicaragua’s recent elections
5 were not conducted in a transparent and impartial
6 manner, and the entire electoral process was marred
7 by significant irregularities. The elections marked a
8 setback to democracy in Nicaragua and undermined
9 the ability of Nicaraguans to hold their government
10 accountable.”.

11 (4) According to the Department of State’s
12 2015 Fiscal Transparency Report: “Nicaragua’s fis-
13 cal transparency would be improved by including all
14 off-budget revenue and expenditure in the budget,
15 auditing state-owned enterprises, and conducting a
16 full audit of the government’s annual financial state-
17 ments and making audit reports publicly available
18 within a reasonable period of time.”.

19 (5) According to the Department of State’s
20 Country Reports on Human Rights Practices for
21 2015: “In 2011 the Supreme Electoral Council
22 (CSE) announced the re-election of President Daniel
23 Ortega Saavedra of the Sandinista National Libera-
24 tion Front (FSLN) in elections that international
25 and domestic observers characterized as seriously

1 flawed. International and domestic organizations
2 raised concerns regarding the constitutional legit-
3 imacy of Ortega’s re-election. The 2011 elections
4 also provided the ruling party with a supermajority
5 in the National Assembly, allowing for changes in
6 the constitution, including extending the reach of ex-
7 ecutive branch power and the elimination of restric-
8 tions on re-election for executive branch officials and
9 mayors. Observers noted serious flaws during the
10 2012 municipal elections and March 2014 regional
11 elections.”.

12 (6) According to the Department of State’s
13 Country Reports on Human Rights Practices for
14 2015 in Nicaragua: “The principal human rights
15 abuses were restrictions on citizens’ right to vote;
16 obstacles to freedom of speech and press, including
17 government intimidation and harassment of journal-
18 ists and independent media, as well as increased re-
19 striction of access to public information, including
20 national statistics from public offices; and increased
21 government harassment and intimidation of non-
22 governmental organizations (NGOs) and civil society
23 organizations.”.

24 (7) The same 2015 report stated: “Additional
25 significant human rights abuses included consider-

1 ably biased policies to promote single-party domi-
2 nance; arbitrary police arrest and detention of sus-
3 pects, including abuse during detention; harsh and
4 life-threatening prison conditions with arbitrary and
5 lengthy pretrial detention; discrimination against
6 ethnic minorities and indigenous persons and com-
7 munities.”.

8 (8) On June 7, 2016, the Department of
9 State’s Bureau of Democracy, Human Rights and
10 Labor posted on social media: “Disappointed govern-
11 ment of Nicaragua said it will deny electoral observ-
12 ers requested by Nicaraguan citizens, church, and
13 private sector * * * We continue to encourage the
14 government of Nicaragua to allow electoral observers
15 as requested by Nicaraguans.”.

16 (9) On June 14, 2016, President Ortega ex-
17 pelled three United States Government officials (two
18 officials from U.S. Customs and Border Protection
19 and one professor from the National Defense Uni-
20 versity) from Nicaragua.

21 (10) On August 1, 2016, the Department of
22 State issued a press release to express grave concern
23 over the Nicaraguan government limiting democratic
24 space leading up to the elections in November and
25 stated that “[o]n June 8, the Nicaraguan Supreme

1 Court stripped the opposition Independent Liberal
2 Party (PLI) from its long recognized leader. The
3 Supreme Court took similar action on June 17 when
4 it invalidated the leadership of the Citizen Action
5 Party, the only remaining opposition party with the
6 legal standing to present a presidential candidate.
7 Most recently, on July 29, the Supreme Electoral
8 Council removed 28 PLI national assembly members
9 (16 seated and 12 alternates) from their popularly-
10 elected positions.”.

11 (11) On November 7, 2016, the Department of
12 State issued a press release stating: “The United
13 States is deeply concerned by the flawed presidential
14 and legislative electoral process in Nicaragua, which
15 precluded the possibility of a free and fair election
16 on November 6. In advance of the elections, the Nic-
17 araguan government sidelined opposition candidates
18 for president, limited domestic observation at the
19 polls and access to voting credentials, and took other
20 actions to deny democratic space in the process. The
21 decision by the Nicaraguan government not to invite
22 independent international electoral observers further
23 degraded the legitimacy of the election.”.

24 (12) In November and December of 2016, the
25 Board of Executive Directors of the Inter-American

1 Development Bank postponed consideration of a pol-
2 icy based loan of \$65 million to the Government of
3 Nicaragua due to the efforts of the United States
4 mission that expressed serious concerns of the ab-
5 sence of transparency, systemic corruption, and the
6 lack of free and fair elections in Nicaragua.

7 (13) According to the Department of State’s
8 Country Reports on Human Rights Practices for
9 2016: “[A]ctions by the ruling Sandinista National
10 Liberation Front (FSLN) party resulted in de facto
11 concentration of power in a single party, with an au-
12 thoritarian executive branch exercising significant
13 control over the legislative, judicial, and electoral
14 functions.”.

15 (14) According to the Department of State’s
16 Country Reports on Human Rights Practices for
17 2016 in Nicaragua, “The November 6 elections for
18 president, vice president, national assembly mem-
19 bers, and representatives for the Central American
20 parliament did not meet the conditions of being free
21 and fair * * * The November 6 presidential and leg-
22 islative elections were marred by allegations of insti-
23 tutional fraud and the absence of independent oppo-
24 sition political parties. National observers and oppo-

1 sition leaders claimed rates of abstention from 60 to
2 70 percent.”.

3 (15) According to the Department of State’s
4 Country Reports on Human Rights Practices for
5 2016: “Companies reported that bribery of public of-
6 ficials, unlawful seizures, and arbitrary assessments
7 by customs and tax authorities were common * * *
8 The courts remained particularly susceptible to
9 bribes, manipulation, and other forms of corruption,
10 especially by the FSLN, giving the sense that the
11 FSLN heavily influenced CSJ and lower-level court
12 actions.”.

13 **SEC. 3. STATEMENT OF POLICY.**

14 It is the policy of the United States to support—

15 (1) the rule of law and an independent judiciary
16 and electoral council in Nicaragua;

17 (2) independent pro-democracy organizations in
18 Nicaragua;

19 (3) free, fair, and transparent elections under
20 international and domestic observers in Nicaragua;
21 and

22 (4) anti-corruption and transparency efforts in
23 Nicaragua.

1 **SEC. 4. INTERNATIONAL FINANCIAL INSTITUTIONS.**

2 (a) IN GENERAL.—The President shall instruct the
3 United States Executive Director at each international fi-
4 nancial institution to use the voice, vote, and influence of
5 the United States to oppose any loan for the benefit of
6 the Government of Nicaragua, other than to address basic
7 human needs or promote democracy, unless the Secretary
8 of State certifies and reports to the appropriate congres-
9 sional committees that the Government of Nicaragua is
10 taking effective steps to—

11 (1) hold free, fair, and transparent elections
12 overseen by credible domestic and international elec-
13 toral observers;

14 (2) promote democracy, as well as an inde-
15 pendent judicial system and electoral council;

16 (3) strengthen the rule of law;

17 (4) respect the right to freedom of association
18 and expression;

19 (5) combat corruption, including investigating
20 and prosecuting government officials that are
21 credibly alleged to be corrupt; and

22 (6) protect the right of political opposition par-
23 ties, journalists, trade unionists, human rights de-
24 fenders, and other civil society activists to operate
25 without interference.

1 (b) REPORT.—Not later than 180 days after the date
2 of the enactment of this Act, the Secretary of the Treasury
3 shall submit to the appropriate congressional committees
4 a written report assessing—

5 (1) the effectiveness of the international finan-
6 cial institutions in enforcing applicable program
7 safeguards in Nicaragua; and

8 (2) the effects of the matters described in sec-
9 tion 2 on long-term prospects for positive develop-
10 ment outcomes in Nicaragua.

11 (c) DEFINITIONS.—In this section:

12 (1) APPROPRIATE CONGRESSIONAL COMMIT-
13 TEES.—The term “appropriate congressional com-
14 mittees” means—

15 (A) the Committee on Foreign Affairs, the
16 Committee on Appropriations, and the Com-
17 mittee on Financial Services of the House of
18 Representatives; and

19 (B) the Committee on Foreign Relations,
20 the Committee on Appropriations, and the
21 Committee on Banking, Housing, and Urban
22 Affairs of the Senate.

23 (2) INTERNATIONAL FINANCIAL INSTITU-
24 TION.—The term “international financial institu-
25 tion” means the International Monetary Fund,

1 International Bank for Reconstruction and Develop-
2 ment, European Bank for Reconstruction and Devel-
3 opment, International Development Association,
4 International Finance Corporation, Multilateral In-
5 vestment Guarantee Agency, African Development
6 Bank, African Development Fund, Asian Develop-
7 ment Bank, Inter-American Development Bank,
8 Bank for Economic Cooperation and Development in
9 the Middle East and North Africa, and Inter-Amer-
10 ican Investment Corporation.

11 (d) TERMINATION.—This section shall terminate on
12 the day after the earlier of—

13 (1) the date on which the Secretary of State
14 certifies and reports to the appropriate congressional
15 committees that the requirements of subsection (a)
16 are met; or

17 (2) 5 years after the date of the enactment of
18 this Act.

19 (e) WAIVER.—The President may waive this section
20 if the President determines that such a waiver is in the
21 national interest of the United States.

22 **SEC. 5. ORGANIZATION OF AMERICAN STATES.**

23 The President shall direct the United States Perma-
24 nent Representative to the OAS to use the voice, vote, and
25 influence of the United States at the OAS to strongly ad-

1 vocate for an Electoral Observation Mission to be sent to
2 Nicaragua in 2017 to observe the possibility of credible
3 elections.

4 **SEC. 6. SENSE OF CONGRESS.**

5 The Department of State and the United States
6 Agency for International Development should prioritize
7 foreign assistance to the people of Nicaragua to assist civil
8 society in democracy and governance programs, including
9 human rights documentation.

10 **SEC. 7. REPORT ON CORRUPTION IN NICARAGUA.**

11 (a) REPORT REQUIREMENT.—Not later than 90 days
12 after the date of the enactment of this Act, the Secretary
13 of State, in consultation with the intelligence community
14 (as defined in section 3(4) of the National Security Act
15 of 1947 (50 U.S.C. 3003(4)), shall submit to Congress
16 a report on the involvement of senior Nicaraguan govern-
17 ment officials, including members of the Supreme Elec-
18 toral Council, the National Assembly, and the judicial sys-
19 tem, in acts of public corruption or human rights viola-
20 tions in Nicaragua.

21 (b) FORM.—The report required in subsection (a)
22 shall be submitted in unclassified form, but may contain

- 1 a classified annex. The unclassified portion of the report
- 2 shall be made available to the public.

Passed the House of Representatives October 3,
2017.

Attest:

KAREN L. HAAS,

Clerk.