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## Nicaragua's President Declares State Of Emergency, Suspends Constitutional Guarantees

by LADB Staff

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Nicaraguan President Enrique Bolanos declared a State of Emergency on May 30, in an attempt to stave off a crisis caused by soaring energy prices. The decree was read over state radio. It suspends parts of the Constitution and imposes a hike of 11.83% in electricity bills for consumers of more than 150 kW a month. Bolanos said this would affect 25% of the population.

According to law, the decree, which would limit the right to protest for 180 days, had to be submitted to the Asamblea Nacional (AN) within 72 hours. It was, and a hostile AN began to look deeply into its implications and legality. The price increase corresponded to the exact amount requested by Union Fenosa, the Spanish firm that has taken the electricity sector private (see NotiCen, 2005-02-24). The measure also called for a month-to-month indexing that would allow the company to pass on any further fuel-price increases to the consumer. The smallest consumers would be protected through subsidies financed by value-added taxes.

### *The people will not pay, dispute Bolanos' claims*

Vituperative reaction came swiftly. Ruth Selma Herrera of the Red Nacional de Defensa de los Consumadores (RNDC) told reporters, "These decrees are a stab wound to all Nicaraguan mothers. It is the worst present we could receive on our [mothers'] day....Through this Economic State of Emergency, Bolanos has become Fenosa's best bill collector, which is not surprising because, since it came to Nicaragua, he has defended the interests of that company not of the population." She said that, according to figures RNDC has obtained privately and officially, of Fenosa's 580,000 customers, fewer than 50,000 consume less than 150 kW per month, those with just two lights and a television.

In possible defiance of anti-protest provisions of the decree, she said her organization has moved its protests against Fenosa up a notch and called upon users not to pay electricity bills, augmenting an existing program of painting over the meters and sending out "anti-cutoff brigades" to restore service. But, said Herrera, she would hold up on implementation until the AN had its chance at the decree. Her chances were very good. Initial reaction from that quarter was that the decree would go down in flames.

On May 31, the AN had not yet met, but the Frente Sandinista para la Liberacion Nacional (FSLN), which together with the Partido Liberal Constitucionalista (PLC) controls the congress, all but assured the media the measure was dead on arrival. The AN has bigger fish to fry with Bolanos. This decree and the well-being of Fenosa are related to an ongoing dispute regarding the terms of International Monetary Fund (IMF) requirements and those of bilateral lenders for the release of money with which to finance the national budget. Without this financing, the house of cards that is fiscal Nicaragua would fall.

Sandinista Deputy Edwin Castro told reporters it seemed wrong to suspend constitutional guarantees to resolve the energy situation. "Plus," he said, "we're not in a state of emergency, but by all means, we are going to decide this tomorrow." As it happened they did not decide the next day, but decided to let the 72-hour limit expire. Meanwhile, both parties said they had made the necessary preparations to reject the decree.

Apart from these issues, Augustin Jarquin Anaya, a member of the Comision de Energia e Infraestructura of the AN, raised another. He called the decree dangerous because Fenosa can use it as a tool to justify execution of a guarantee clause in its contract with the government. "This decree is unfortunate because it establishes situations that don't correspond to reality," he said. Anaya explained that the regulatory authority is presently without a director and has not made a determination on the increases sought by Fenosa. Bolanos' vice president, Jose Rizo Castellon, also sought to sink the decree. "We can't have legislation if the executive doesn't convince legislators in the AN," he said, adding that Bolanos also reformed another decree (42-92) giving himself power to fix electricity rates. Rizo Castellon called upon the AN to vote against the state of emergency.

Another blow to Bolanos came from the Centro Nicaraguense de Derechos Humanos (CENIDH), which rendered a legal opinion on June 1 stating that, regardless of the state of emergency, the rate increase was illegal because no law gave the president authority to do so.

And there was more. The opinion read, "The CENIDH considers that the attitude of the president against the people of Nicaragua is fraudulent because it purports to concentrate absolute power to order the suspension of constitutional rights and to repeal habeas corpus and protection (amparo), contravening resolutions of the commission and of the Interamerican Court of Human Rights (IACHR), with which Nicaragua is obliged to comply." The opinion had the support of former president of the Corte Suprema de Justicia (CSJ) Alejandro Serrano Caldera.

The jurist was most concerned about the suspension of liberties and protections under Articles 32, 45, and 52 of the Constitution. "I don't see a disposition of economic emergency suppressing, from any point of view, these constitutional guarantees, especially taking into account the crisis the country is in, which is basically a political crisis. It is a crisis that divides the nation into two juridical states, with two courts, the Centroamericana de Justicia and the CSJ, with two decisions, with two constitutions; that is to say, a total bifurcation and fragmentation of the entire Nicaraguan constitutional body," said Serrano. He was especially concerned with the suspension of Article 32, because that article contains "the basis of the state of law."

Serrano said Article 32 "establishes the universal principle of legality where it says that no one is obligated to do what the law does not direct nor is prohibited from doing what the law does not prohibit."

By June 1 the people began to speak more loudly, with violence in the streets. Students and unions were involved in burning a state-owned truck. And the legislature began to speak as well. Both parties of the majority coalition firmly rejected the decree, but, rather than taking the matter to a decisive vote, they decided to take advantage of the 45 days they have to debate the matter to look into some of the issues involved.

Daniel Ortega, FSLN party leader, said the AN would use the situation to review and verify the profit margins of Standard Oil and of Fenosa. "It is necessary to request accounts of the refineries and the accounts of the generators. They are all earning, nobody is losing, and it's the people who keep on paying," said the party's leader and presidential candidate.

For the PLC, Deputy Wilfredo Navarro said he would invite the government to a dialog and negotiation to resolve the country's problems and avoid "international interjection," by which he meant an observational mission from the OAS. The junta directiva has called the AN into "sesion permanente." That means, said Second Secretary Edwin Castro, that they will be in session from 9 a.m. daily, including Saturday and Sunday, for as long as necessary. They will also send the decree to the asesoria juridica of the AN for study, analysis, and opinion.

Defending his decree against all this, Bolanos warned that, if he cannot get the 11.83% rate increase, there would be an energy deficit, factories would close, cities would be plunged into darkness, and security measures would have to be taken.

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