

Parliamentary effectiveness

Coalitional incentives and restrictions in Costa Rica and Nicaragua

*“FROM POLITICAL CONTROL TO LEGISLATIVE CONTROL: case analyses about
Parliamentary performance in Nicaragua and Costa Rica”*

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Abstract³

This paper, which is part of a larger research, analyzes the legislative performance in the Parliaments of Nicaragua and Costa Rica, by studying legislative productivity and the effectiveness of parliamentary control, the formal and informal incentives that determine the exercise of the parliamentary opposition and their relations with the Executive Power. This research will therefore analyze the function and the real capacity of control, which should be understood in two fundamental dimensions: a) political-parliamentary control and b) legislative control, both cases in their formal and informal aspects. The different determinants of legislative performance will be analyzed: the a) parliamentary arithmetic, b) political-institutional performance of parliamentary minorities and c) the rights of parliamentary minorities.

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I. Introduction

1.1 Costa Rica and Nicaragua in the Central American context

Nowadays, 20 years after the signing of the Peace Agreements, Central American democracies find themselves on a new crossroad, which is once again the recognition of the effectiveness of dialogue and negotiation through the Rule of Law, to channel political and social conflict in our democracies.

The processes of democratic transition in Guatemala, El Salvador and Nicaragua contributed to channel and institutionalize the political opposition. However, the arrival of democracy struck with an important number of unsatisfied social demands, both because of their quantity and their quality, as well as the predominance of a short term vision of the governing elite and those they govern. Therefore, governmental action is oriented more towards governmental policies instead of state policies.

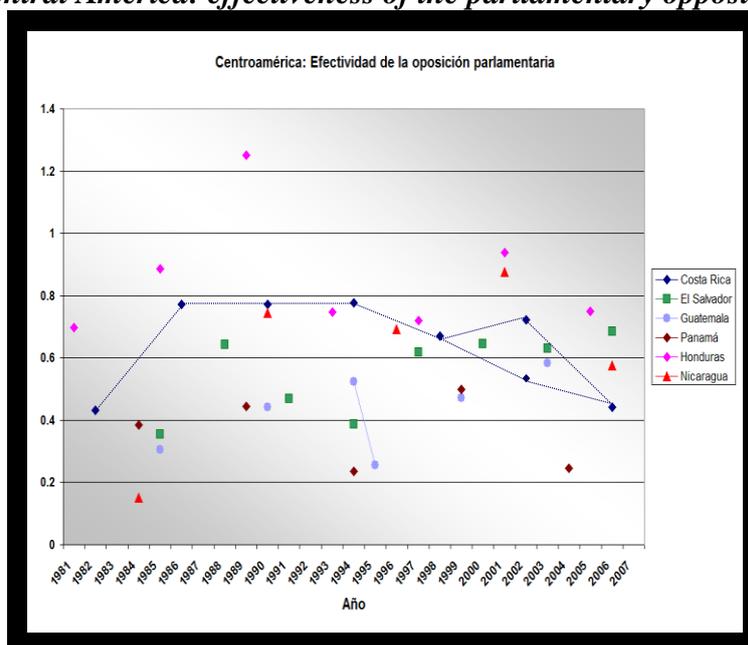
Currently, the political panorama in the Central American region is characterized by a configuration of Presidential systems without legislative majorities, and in some cases with important levels of ideological polarization between the Government and the opposition (El Salvador and Nicaragua), or with cases nuanced by a fragmented and disperse parliamentary opposition (Costa Rica and Guatemala), or even in scenarios of constant conflict or marginalization towards legislative majorities (Panama and Honduras). It seems to hold true that in most cases, small “half parties” – “hinge” and “wing” parties – insert best into the parliamentary arena.

The application of the Opposition Effectiveness Index (Altman & Pérez-Liñán) to the Central American region since the decade of the 1980’s shows that after the signing of the Esquipulas II Peace Agreements, the region has experienced an increase in its opposition effectiveness indexes. Nevertheless, only the political systems of Honduras and Nicaragua (“*transfuguisimo*”⁴ effect) have experienced a parliamentary opposition with a greater effective power than the government’s fraction in the process of formulating and adopting public policies, which does not necessarily imply their use.

⁴ By this Spanish term we refer to the very frequent phenomenon in Central America of members of Parliament leaving their fraction (switching party membership). A literal translation could be “trans-escapes” or “Parliamentary defection”. Some authors use the concept “overcoat”.

Graphic N° 1

Central America: effectiveness of the parliamentary opposition



Source: Vargas & Petri 2007, p. 382

In Costa Rica (2002 - 2006) and Guatemala (2004 - 2008) the phenomenon of “*transfuguismo*” has affected the effective capacity of the opposition; in the first case it implied a decrease, while in the second, an increase. Currently, countries like Costa Rica, Nicaragua and Honduras, are experiencing a decrease in the effectiveness of the opposition, while in Guatemala and El Salvador an increase can be noted. Panamá has maintained a historical trend with non-existent margins of effectiveness for the opposition.

Executive – Legislative relations in Costa Rica

The redistribution of the parliamentary power relations every four years in the Costa Rican political system reveals an increase of political disaffection that has come to affect the two main traditional political powers: PLN and PUSC. This situation reflects the preference of the electorate for a higher parliamentary fragmentation, progressively diminishing the decision power of the party that will be in control of government.

Since 1998 Costa Rica has celebrated three electoral processes, which have resulted in important changes in electoral behavior and implied an erosion of the bipartisan system that has been in vigor since 1986, with two parties capturing 95% of the votes. This can be explained by a number of events that occurred between 1994 and 1998 (that) triggering catalyzers for an increase of citizen discontent. The next table shows the tendencies that have structured the Parliaments according to the seats obtained by political parties, making a difference between the seats obtained by the government party and those by the political opposition. This table also shows the multiplication of small emerging parties.

Table N° 1

Seats obtained by political parties per constitutional period and classified between government fraction and opposition fraction

		CONSTITUTIONAL PERIOD												
Governme nt fraction	1982 – 1986 <i>Monge Alvarez</i>		1986 – 1990 <i>Arias Sánchez</i>		1990 – 1994 <i>Calderón Fournier</i>		1994 – 1998 <i>Figueres Olsen</i>		1998 – 2002 <i>Rodríguez Echeverría</i>		2002 – 2006 <i>Pacheco De la Espriella</i>		2006 – 2010 <i>Arias Sánchez</i>	
	PLN	33	PLN	29	PUSC	29	PLN	28	PUSC	27	PUSC	19	PLN	25
	PUSC	18	PUSC	25	PLN	25	PUSC	25	PLN	23	PLN	17	PAC	17
	PU	4	PU	1	PU	1	FD	2	FD	3	PAC	8	ML	6
	MN	1	AP	1	PUGEN	1	PUAC	1	ML	1	ML	5	PUSC	5
	ADA	1	PUAC	1	PUAC	1	PAN	1	PIN	1	PRC	1	PASE	1
									PRC	1	Ind.	1	PFA	1
									PALA	1	BPP.	6	PRN	1
													PUN	1

During the mandates from 1982 to 1994 the Executive Power and its parliamentary fraction did not have to negotiate with other fractions or members of Parliament in order to reach a majority. Because of the growing parliamentary fragmentation, between 1994 and 2006, the Executive Power and its fractions required votes of the opposition to sustain a simple majority. In addition, the opportunity for obtaining the necessary support implies a panorama composed by one big opposition party and several minority legislators.

The constitutional period from 2002-2006 – the presidency of Abel Pacheco – clearly shows the necessity of the Executive Power and its fraction to build strong bipartisan and multipartisan coalitions in order to obtain simple majorities, and even more for qualified majorities. It's in this period that the opposition fractions possess a more active space to intervene in a parliamentary agenda that is closer to their own interests.

During the constitutional period 2006-2010 – the presidency of Oscar Arias – the parliamentary composition, in spite of its fragmentation, offers an attractive advantage to President Oscar Arias because no opposition fraction has the power to break the quorum as a means to exercise pressure, since it would need a coalition in order to be able to use that mechanism. During this period the Executive Power also has great possibilities to obtain conjunctural coalitions – *issue coalitions* – that are able to assure a simple majority. In order to build a coalition with a qualified majority it can also articulate an agreement with the main parliamentary opposition party, the PAC, or form a big coalition with fractions PUSC and ML, and two of the unipersonal fractions.

Executive – Legislative relations in Nicaragua

With the defeat of Sandinism in 1989, Nicaragua entered into a phase of democratic transition. Violeta Barrios de Chamorro became President in 1990, thanks to the Unión Nacional Opositora (UNO), an alliance of parties composed of Liberals, Conservatives, and Christian Democrats and with the strong support of the private sector.

Violeta's government was followed by two other liberal governments controlled by the PLC; the first one presided over by Arnaldo Alemán (1996-2002). In theory the government of Alemán was ideologically very distant from the Sandinista opposition party FSLN, but in 1999 both parties started negotiations, commonly known as "El Pacto", which laid the basis for a redistribution of power in the public spectrum that

avored the two parties (FSLN and PLC). These negotiations gave the FSLN the possibility to seek a governmental mandate which they obtained in 2007.

President Enrique Bolaños (2002-2007) started his mandate with a comfortable parliamentary majority, the government fraction Partido Liberal Constitucionalista (PLC) occupying 53 of the 90 seats in the National Assembly. The only opposition party is the Frente Sandinista de Liberación Nacional (FSLN).

After internal struggles for the party leadership and an ambitious anti-corruption plan aimed against Alemán, the PLC broke relations with Bolaños in 2003. Under the influence of Alemán, Bolaños lost the support of his party, leaving him with a much reduced parliamentary minority, eventually leading to a government crisis between the Executive and Legislative Powers around a series of constitutional reforms that would take away power from the President.

The opposition exercised by the FSLN, being a single opposition party, was intense and conducted through a complex strategy. It was characterized by heated negotiations incited at the core of the Parliament over the election of the Directive Board, the Permanent Commissions and particularly over the formation of Investigation Commissions that are annually carried out. This opposition fought to control legislative instances with the aim to develop a strong control capacity of the Executive Power, as well as to control the speed and the way by which themes and law initiatives are to be resolved.

Through the elections of November 2006, the FSLN got back to power obtaining 38 seats (41%) and the presidency of Daniel Ortega (2007-2011). However this victory was mainly due to the division of the right wing opposition – the PLC had to share its electorate with the ALN, a new party created by deserters of the PLC. Despite being disciplined, the government fraction FSLN did not get the legislative majority, which obliges the Executive Power to negotiate with the opposition to approve laws. This is very difficult because of the high levels of political polarization. During the second half of 2007 the opposition started to form a coalition called the “Bloque contra la Dictadura” which intends to limit what they consider dictatorial tendencies of the government. This has resulted for instance in the rejection of two Presidential vetoes by the National Assembly.

1.2 Parliamentary performance: legislative and political-parliamentary control

This paper is part of a more extensive study, executed between November 2007 and April 2008 entitled “*FROM POLITICAL CONTROL TO LEGISLATIVE CONTROL: case analyses about parliamentary performance in Nicaragua and Costa Rica.*” This research document (in Spanish) is included as an appendix to this paper.

“*Presidencialismo*” is a deformed application of the classical Presidential regime, which is the result of the weakening of the powers of Parliament and the hypertrophy of Presidential powers (Duverger p. 213). This centralization of power gives the President a great direct and indirect influence in the elaboration, discussion and approval of laws, and many other decisions that emerge from the legislative arena. This is especially so

when the government party exercises a strong control on diverse legislative instances such as the Directive Board of the Parliament or through legislative commissions.

As a pathological deformation of the constitutional engineering of the Presidential system, “*presidencialismo*” is a product of a dynamic and volatile combination between formal and informal institutionalism, a deformation that tends to be more common when the President counts with a disciplined and cohesive legislative fraction, and even more so when the parliamentary opposition is fragmented and dispersed. On the contrary, when the President lacks legislative majorities or has a highly unstable and undisciplined majority, the prophetic destiny tends to be paralysis and obstruction in the relations between the Executive Power and the opposition. This situation can eventually be overcome by a smart use of parliamentary engineering.

In situations of conflict between the Executive and Legislative powers, both powers can use the constitutional instruments to make their lives mutually hard, generating a perpetual friction between the parliamentary opposition and the parliamentary majority or directly with the President, who in turn will carry out unilateral actions when he considers them to have low political cost (see Ackerman 2002).

Paralysis and obstruction in the relations between Executive and Legislative Powers tend to occur more likely in systems where the President has broad constitutional powers. He could be tempted to use those powers intensively, as a way to avoid political fatigue from negotiations and tension with the parliamentary opposition (Cheibub 2007). At the same time it should not be underestimated that an intensive use of formal and informal mechanisms of citizen participation constitutes a recurrent strategy used by the President and by the parliamentary opposition to legitimate their positions and also identify alternative opportunities for decision such as social dialogues and referendums (Vargas & Petri 2007).

The principle of institutional separation of powers in the Central American Presidential regimes is facing a series of nuances caused by institutional, political and electoral dimensions. The general tendency in many cases is a weak exercise of the control function by the Legislative Assembly as an institutional actor, leaving this job mainly in the hands of the opposition.

Inversely, the possibilities for the exercise of opposition are more important when the President does not have a legislative majority. However, in the present paper we ask the question: *what kind of control is more important?* – political-parliamentary control or legislative control, by taking as an hypothesis that when the opposition is a minority, it has more possibilities to exercise political-parliamentary control to attract media attention than to exercise legislative control.

On the other hand, when the opposition has a majority, the institutional framework does not necessarily allow for an effective exercise of political-parliamentary control, but does provide possibilities for legislative control. Although parliamentary control is a constitutional faculty of the Legislative Assembly, it is exercised under certain political-institutional conditions, and it tends to be principally an instrument of media projection. In this realm, legislative control, being an extension and complement of political-parliamentary control based on the “production” of laws, is converted in a pressure and dissuasion instrument. The opposition can manipulate this instrument to intervene in the

political debate and in the setting of the agenda, as well as to design and incorporate tools to control public policy and government institutions.

Gianfranco Pasquino (1998) argues that a series of conditional factors that can positively or negatively affect these realities should be taken into consideration, such as fractioning of the opposition, institutional design, and internal conflicts within the opposition.

For this research paper, we opted to analyze the cases of Nicaragua and of Costa Rica. Although both systems have some similar aspects, they also present profound differences at the level of the electoral system, the party system and the government system – Nicaragua has four constitutional powers, and Costa Rica only three.

The Costa Rican Presidential system is the second oldest regime on the American continent after the United States, its Constitution being in force since 1949. In contrast, the present Constitution of Nicaragua is of a more recent date, as it was adopted only in 1987, after the peace processes that put an end to the civil war.

In the case of Nicaragua, it is possible to understand the implications of strong ideological polarization and rigid parliamentary discipline; on the contrary, the case of Costa Rica can be appreciated by the positioning of the themes on the parliamentary agenda, where allies in a determined initiative convert themselves in adversaries in other themes.

Although “*transfuguismo*” is not a historical tendency, in both systems it is a destabilizing factor. In the case of President Enrique Bolaños (Nicaragua), the government fraction suffered a majority division leaving the Executive Power with a small parliamentary minority. In the first years of the term of Costa Rican President Abel Pacheco, an internal split in both opposition fractions contributed to a bigger fragmentation and parliamentary dispersion, which got worse because of constant threats and an open conflict with his own government fraction, leaving him with very few parliamentary support at the end of his term, except for those instances when the theme of the agenda allowed multi-party cohesion.

In both political systems there has been a discussion about the necessity to reform the Presidential system. In the Costa Rican case, at the end of the Miguel Ángel Rodríguez Administration, the President introduced a legislative initiative containing a number of reforms which included the right of the Executive Power to dissolve the Parliament. This initiative had already been discussed during the first year of President Pacheco’s term, but had ended in the archives.

In the case of Nicaragua, after the government party’s split that was also derived from a combination of institutional and politico-electoral variables, the weak coalition between President Bolaños and the Sandinista party succumbed at the interest of the latter and the liberals, and introduced a vast package of constitutional reforms called “El Pacto”, including the power of Parliament to ratify the nomination of ministers designated by the President. It also included the capacity of the First Power of the Republic to remove them from office.

Many of these reforms are still on the Nicaraguan political agenda and currently constitute a theme that triggers ideological passions and the interests of diverse political groups.

Both countries are led by Presidents that have been reelected. President Daniel Ortega (Nicaragua) was elected after the democratic transition, while President Oscar Arias (Costa Rica) was elected thanks to a resolution of the Constitutional Tribunal that abolished the prohibition of Presidential reelection. Both Presidents returned to power 20 years after their first mandates and in both cases the President does not sit with legislative majorities.

While in the case of Nicaragua the international cooperation has strongly intervened in the processes of legislative modernization, the electronic blackboard is only used to designate the use of speech. In Costa Rica the Secretary of the Legislative Directory writes down the use of speech in a notebook. Also, in the first case there are technological instruments to keep a detailed registry of the voting behavior, but this is not or sporadically used. As a result, the only way to analyze the voting behavior of the legislator in Costa Rica is either through the parliamentary chronicle that is registered by some newspapers and on exceptional occasions, or through participatory observation.

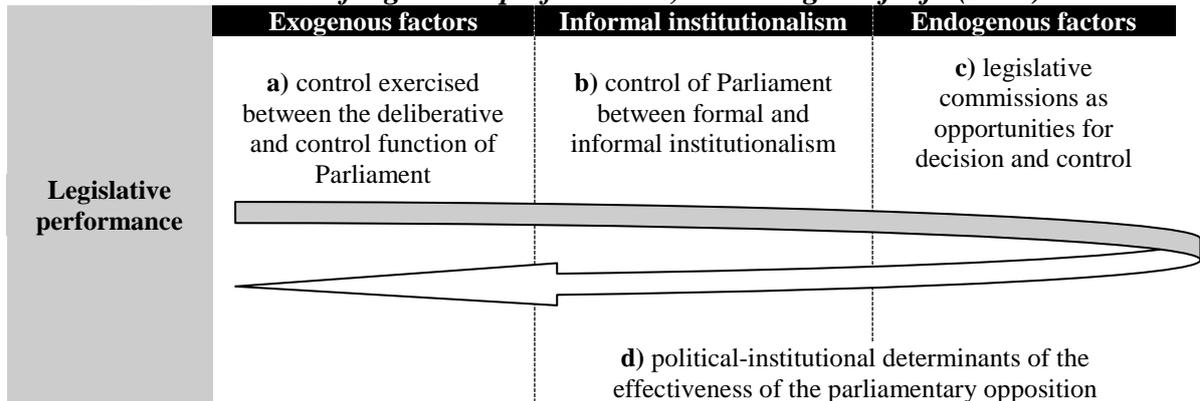
As a study of two cases, this comparative study is more intensive than extensive, and revolves around the following questions: *What is the performance of the Costa Rican and Nicaraguan legislature in the production of laws and in the legislative control exercised by the opposition, in situations of a President without legislative majorities, based on the study of the current and past Constitutional periods? What is the level of formal and informal institutionalization of the rights of parliamentary minorities and their performance in the implementation of parliamentary control in the Presidential systems of Nicaragua and Costa Rica?*

Natalia Ajenjo (2004), in her analysis about legislative performance, insists in the importance of two fundamental elements: *the constitutional design* – the position of the Parliament as a political institution – and the *procedural design*, which is the measure of formal actions that are required for legislative approbation. The constitutional design and the electoral system constitute the “exogenous factors” of legislative performance. The “endogenous factors” correspond to the procedural design and the dynamics within the parliamentary arena. There is also an informal institutionalism in the combination of exogenous and endogenous factors, which generate incentives or restrictions on the legislative performance of the respective parliamentary actors, which are not explained neither by the constitutional design, nor by the procedures included in the legislative regulation.

Therefore, Ajenjo’s proposal implies that legislative performance is a function of a number of “exogenous factors” (constitutional design and electoral system) and “endogenous factors” (legislative scenario and procedural design), and ultimately this performance can be analyzed from different points of view and at different levels, which are also interdependent as the next scheme shows.

Scheme N° 1

Determinants of legislative performance, according to Ajenjo (2004)



Source: inspired on Ajenjo 2004, p. 136.

In our research we studied four aspects or dimensions of legislative performance which are the **(a)** control exercised between the deliberative and control function of Parliament, **(b)** control of Parliament between formal and informal institutionalism, **(c)** legislative commissions as opportunities for decision and control and **(d)** political-institutional determinants of the effectiveness of the parliamentary opposition.

In this paper we will only broach the last dimension of legislative performance – the political-institutional determinants of the effectiveness of the parliamentary opposition. For the other factors of legislative performance please refer to the full investigation, which is included in this paper as an appendix (in Spanish).

II. Effectiveness of the parliamentary opposition

Analyzing the effectiveness of the parliamentary opposition implies a dose of subjectivity on behalf of the investigator, raising firstly the question *what is effectiveness?* and secondly *effectiveness measured by what parameters? and for whom?* No doubt, from the President's viewpoint, an obstructive opposition tends to be less effective, and vice versa, an opposition that operates within a permanent coalition with the government, will be viewed by the other opposition fractions as incapable of being effective.

Therefore, the fundamental question is not rooted in observing how the parliamentary opposition uses the procedures and instruments contemplated in formal institutionalism, but also in the roles they assume when defining their strategies for their legislative and controlling function.

Starting with the hypothesis that the quality of democracy does not only depend on the virtues of the government, or the interactions between government and the opposition, but also on its quality, the following can be said: well-equipped opposition increases the quality of democracy, through its actions of control, orientation, proposal and criticism, even when it does not reach to government, while persisting in affirming itself as a candidate for government (Pasquino 1997, p. 28). For that reason, the effectiveness of the opposition has to do with its capacity to internally articulate coherent standpoints, generate adequate social references, develop strong links with the extra-parliamentary opposition, and an institutional design that assures them of the ability of their functions.

In order to evaluate the performance of the opposition it is very important to study the capacity and intensity of the use of control instruments, both formal and informal⁵, and the impact those instruments have. Capacity is understood as the facility to access these mechanisms, also when this access implies an effective exercise of control. For its part, the intensity varies according to the recurrence of the use of these control mechanisms.

The legislative productivity of the opposition is substantially determined by the institutional design of every political system. It has to be considered in two fundamental dimensions, the first being a more traditional and simple view, based on the number of law initiatives proposed and the success rate of these proposals to become laws.

However, there is an alternative position, which emphasizes the need to understand the opposition beyond a mere "factory of law initiatives", focusing mainly on its capacity to control strategic positions in the process of formation of law. This vision also takes into consideration that the Executive Power counts with more institutional resources to formulate law proposals with a higher technical quality standard, compared to the parliamentary opposition and its staff of advisors and specialists. The effectiveness of the opposition can be observed through its participation in and provocation of an active dialogue and reflection on the conditions and effects of law initiatives, this being a vigorous exercise of legislative control.

⁵ For a detailed list of formal and informal political-parliamentary control instruments please refer to the appendix p. 144-146.

Analyzing the opposition by its legislative and controlling attributes, its performance is determined by its capacity to **(2.1)** intervene according to parliamentary arithmetic – the numerical force of the opposition parties –, **(2.2)** the legislative performance of the opposition, and **(2.3)** the inclusion of the rights of parliamentary minorities in the regulation of the Legislative Assembly.

2.1 The intervention capacity of the opposition through the legislative arithmetic

The parliamentary arithmetic in its simplest form is constituted by the percentage of opposition seats in comparison to the ones obtained by the government fraction. However, this analysis fails to determine the complexity and the relative weight that the parliamentary fragmentation has on the opposition internally, when the types of required majorities for the voting's vary from one Presidential system to another.

Therefore, it is fundamental to make a quantitative analysis of ideological distance, although strategic electoral calculations (electoral incentives) may make coalitions more probable between parties with great ideological distance.

2.2 The legislative performance of the opposition

If the President benefits from a concentration of power, it is possible that the capacity of control and deliberation of the opposition is conditioned by the parliamentary arithmetic. In opposite cases, when the parliamentary fragmentation affects the President's concentration of power, there is a greater possibility of deliberation on the part of the opposition – even without taking into account the level of fragmentation and dispersion within the opposition.

The dispersions of the power, and even a President without legislative majorities, have important effects on the role of the Executive Power in the formulation of public policies, since the agreements no longer exclusively depend on the negotiations between the President and his parliamentary fraction, but also on the capacity of the Executive Power to come to understandings with the opposition parties (Sartori 2007).

In order to value the effective capacity of the opposition in the conformation and approval of the parliamentary agenda, it is possible to confront its participation and level of success with the President's one and his parliamentary fraction. This analysis can be done on all the proposed and approved initiatives of law, or discriminating those that do not correspond to changes or creation of public policies, that is to say, excluding those related to modifications of names to institutions, donations and exoneration of taxes, the recognition of legal functions and the nomination of public employees, among other smaller aspects.

In order to better understand the control capacity on the parliamentary agenda – either belonging to the Executive Power, the government fraction or the opposition fractions – it is necessary to break down the analysis in the following variables: **a)** initiatives – the law initiatives presented by a parliamentary fraction, by proponent –; **b)** laws – the initiatives approved by fractions, by proponent –; **c)** the contribution rate – percentage

of the initiatives presented by a certain fraction in relation to the total of presented initiatives; and the success rate – the correlation of approved initiatives of a certain fraction in relation to the total of initiatives presented during a same period.

2.3 Inclusion of the rights of parliamentary minorities

If the parliamentary engineering does not allow an active participation of the minorities in the formation of the collective will, by not giving them the possibility to present law initiatives, deliberate about laws being discussed and participate in their approval, the system would be incapable to assure the right to dissent, and would therefore be incapable to preserve democratic institutionalism. Nevertheless, the exercise of influence by parliamentary minorities takes place within the boundaries of certain action margins (band levels) that are determined in the legislative regulations, and particularly the required types of voting.

Table N° 2 presents the main types of majorities that are used, although in many political systems other types of majorities can exist, according to their historical realities and based on the magnitude of the plenary of the Parliament. However, when determining the type of majority based on the level of fragmentation and political-partisan dispersion, the “*dominant political potential*” is identified, since the more parties exist, the more difficult it will be to find the minimum legislative thresholds required to govern.

Table N° 2

<i>Main types of legislative majorities</i>	
Majority	Characteristic
Relative Majority	Highest number of votes
Simple Majority	50% + 1 of present votes
Absolute Majority	50% + 1 of member votes
Qualified Majority	2/3 of member votes

Parliaments, being a heterogeneous institution, the dynamics of parliamentary minorities within it require to be analyzed in two fundamental internal and external dimensions. The internal dimension has to do with the ability of an opposition party to exercise legislative control and tends to be a framework of formal institutionalism that guarantees the power for the opposition to dissent, analyze, debate and propose in the process of formation and approval of laws. The external dimension refers to the capacity of exercising parliamentary control, that tends to be an almost exclusive task – although not solely – of the opposition fractions. From this perspective it is important to demonstrate the formal and informal barriers that determine the access to mechanisms and resources which can be used by the parliamentary opposition.

From the viewpoint of Presidential systems, the rights of the parliamentary minorities are fundamental both in the situation in which the President sides with parliamentary majorities as when he does not. Even though, in the second case, the fact that the President depends on the combination of conjunctural coalitions and the possibility of facing opposition coalitions against the government increase the price of the cooperation to obtain the necessary threshold of simple and absolute majorities.

When lacking a parliamentary majority, the control of the presidency and the secretariat of the Parliament assume a protagonist value for the Executive Power, with the object to assure a favorable interpretation throughout the formulation of laws and even the internal organization of the Legislative Assembly. The inclusion of the rights of parliamentary minorities in the regulation can be considered in two dimensions: **(a)** to assure its effective participation and **(b)** to assure its effective-inclusive participation⁶.

With the first dimension – *effective participation* – the capacity of minorities to implement their legislative and parliamentary control function is emphasized, transiting through the margins boundaries? and requirements properly established in the political constitution and the legislative regulation. This dimension assures the possibility of expression by the minorities to defend their positions, although the decisions are made according to the required majorities as they are specified in the legislative regulation, according to the case at stake.

The second dimension – the *effective-inclusive participation* of the minorities – contemplates the inclusion of proportionality in the design of the parliamentary organization as in different arenas of political articulation. This perspective includes specific expressions that go from participation and conformation of commissions, inclusion in the Directive Board of Parliament, as well as participation in the board of spokesmen and setting of the legislative agenda.

The following chapter will present the most relevant results about **(3.1)** parliamentary arithmetic and **(3.2)** the political-institutional determinants of political effectiveness, as applied to the cases of Costa Rica and Nicaragua. The following chapter **(IV.)** will deal with the rights of minorities.

⁶ A more detailed theoretical background about the rights of the minorities can be found in the appendix, p. 35-37.

III. Legislative performance without majorities in Costa Rica and Nicaragua

3.1 *Parliamentary arithmetic and its effects*

The opposition, in order to be a credible alternative to the government, has to actively exercise its formal and informal instruments of legislative and political-parliamentary control that it has at its disposal. It can be said that by a high legislative performance, the opposition can prove its vocation for government. This government vocation can be proven through its capacity to generate an alternative agenda from the Executive Power, or its capacity to become a real counterweight to it, acting between responsible obstructionism and the use of force when it is necessary.

The type of control that is exercised can therefore be *positive* – constructive and propositive (active participation in legislative commissions, proposals of initiatives, presentations of relevant motions, frequent public interventions, etc) – or *negative* – obstructionist and calling to institutional paralysis (excessive presentation of motions, frequent breaking of quorum, etc.).

Possibly, negative control actions can be more favorable in terms of electoral results. However, Vargas (2008) shows that in the case of Costa Rica there are margins for dialogue between the Executive Power and the opposition with a realistic vocation to become a government alternative, especially for agenda themes that are strategic for both political parties, when they find in the electoral processes a fertile opportunity for coalition, to minimize the transaction costs and the radicalization of a post-electoral conflict.

The capacity of an effective exercise of the opposition depends on several political-institutional variables. The following analysis will be centered on those variables that are derived from the composition of legislative forces that determine to a great extent the primary margins of the relations between the Executive and Legislative Power, as well as the relations within the Legislative Power.

The following three components are mutually interrelated: **(a)** the parliamentary arithmetic (the weight and opportunity that the opposition has from the configuration of power relations within the Parliament and its effects on the interactions with the Executive Power), **(b)** the effects of “*transfuguismo*” on the parliamentary arithmetic, and the **(c)** polarization and ideological distance. These aspects tend to influence directly and indirectly **(d)** the levels of discipline and partisan cohesion.

Parliamentary arithmetic

The external analysis of the parliamentary arithmetic is based on the calculation of volatility and partisan fluidity, while the internal analysis seeks to display the tendencies of fragmentation and the effective capacity of the opposition to participate in legislative processes.⁷

⁷ The following formulas are calculated and analyzed in the appendix, page 108-119: **(a)** the party volatility index (Pedersen), **(b)** the partisan fluidity index (Artiga), **(c)** the fractioning index (Rae), **(d)** the

Table N° 3

Historical behavior of the party systems of Costa Rica and Nicaragua (1980-2007)

YEAR	Costa Rica					Nicaragua				
	NEPE μ^1	NEPE μ^2	NEPP	OEI	(Fp)a	NEPE μ^1	NEPE μ^2	NEPP	OEI	(Fp)a
1981										
1982	2.167	2.534	2.27	0.432	BASE					
1983										
1984						2.0787	2.088	2.278	0.152	BASE
1985										
1986	2.068	2.485	2.212	0.773	3.5					
1987										
1988										
1989										
1990	2.049	2.556	2.212	0.773	1.75	2.1392	2.174	1.958	0.745	47.03
1991										
1992										
1993										
1994	2.108	2.733	2.296	0.777	4.38					
1995										
1996						2.4639	2.87	2.524	0.692	58.245
1997										
1998	2.378	3.313	2.556	0.669	5.25					
1999										
2000										
2001						2.0154	2.152	2.084	0.876	53.32
2002	3.1814	4.519	3.68	0.723	16.66					
2003										
2004										
2005										
2006	2.981	4.628	3.319	0.443	4.375	3.3117	3.445	3.226	0.575	20.865

Source: Vargas & Petri 2007

NEPE/ μ^1 : Effective Number of Parties calculated with Presidential votesNEPE/ μ^2 : Effective Number of Parties calculated with legislative votes

NEPP: Effective Number of Parties calculated with legislative seats

OEI: Opposition Effectiveness Index

(Fp)a: Fluidity of Partisan Supply

Based on the historical behavior of the party systems of Nicaragua and Costa Rica there has been a consolidation of the electoral engineering, particularly since the democratic transition in Nicaragua. However, the need to fortify that party system is still pending.

We are currently experiencing Presidential systems with a strong tendency to generate situations of governments without legislative majorities. The opposition in Nicaragua is affected by profound ideological polarization. In Costa Rica the opposition tends to be more fragmented and disperse. In these scenarios it can be observed that in order to avoid constant institutional conflicts, small parties tend to assume strategic hinge positions.

fragmentation index or effective number of parties (Laakso-Tageepera), and the derived indexes by Pérez-Rodríguez, and (e) the opposition effectiveness index (Altman-Pérez Liñan).

The effects of “transfuguismo” (parliamentary defection) on the legislative arithmetic

It cannot be denied, at least for the administrations of Abel Pacheco (Costa Rica) and Enrique Bolaños (Nicaragua), that “*transfuguismo*” has been a characteristic trait of political life. Parliamentary defection can be the reflection of weak partisan discipline and cohesion. Its effects are not only the alteration of the analysis and measure of parliamentary fragmentation, but the distortion of the reality and possibilities of legislative and political-Parliamentary control.

Table N° 4

“Transfuguismo” rates in Costa Rica and Nicaragua

Country	Presidential period	Percentage of defecting legislators
Costa Rica	Pacheco	56,14%
	Arias	1,75%
Nicaragua	Bolaños	47,83%
	Ortega	4,35%

Parliamentary defections bring about party-political realignments and a redistribution of the forces in Parliament. The question that can be asked is therefore *how does “transfuguismo” come to influence the effective number of parliamentary forces?*, supposing there is effectively some kind of influence. A second question would be *who does “transfuguismo” benefit*, considering if it reinforces the government or on the contrary generates more openings for the interaction of the parliamentary opposition.

In Costa Rica “*transfuguismo*” has been a general tendency that has affected equally government and opposition fractions, at least during the period of Abel Pacheco. “*Transfuguismo*” means therefore a considerable increase in the levels of fractioning and fragmentation and a progressive diminution of the OEI. During the Arias Administration, “*transfuguismo*” has not yet become a dominant tendency.

Table N° 5

Impact of “transfuguismo”: indexes Costa Rica

	Period of Abel Pacheco				Period of Oscar Arias	
	May 2002	May 2003	May 2004	May 2005	Mayo 2006	Mayo 2007
NEPP	3,6795	4,18147	4,18147	5,06864	3,31869	3,35294
OEI	0,7229917	0,5761773	0,5761773	0,5176471	0,4425	0,43
F	0,7282241	0,7608495	0,7608495	0,8027085	0,7388137	0,7017544
ENP _{GM}	2,591	2,364	2,364	2,77	2,441	2,521
ENP _{PM}	3,134	3,345	4,345	3,501	3,409	3,46

In Nicaragua, two scenarios are observed. During the period of Bolaños “*transfuguismo*” was a weakening factor of the government fraction. During the period of Ortega, the few cases of “*transfuguismo*” came to reinforce, although timidly the government fraction FSLN. If the legislators that left the small opposition party MRS and declared themselves as independent – but *de facto* respond to the FSLN – the Opposition Effectiveness Index diminished, going from 0,57 in 2007 to 0,54 in 2008.

Table N° 6

Impact of “transfuguismo”: indexes Nicaragua

	Period of Enrique Bolaños		Period of Daniel Ortega	
	January 2002	January 2006	January 2007	January 2008
NEPP	1,98966	2,69383	3,22561	3,29595
OEI	0,6990808	4,0977242	0,5750487	0,5477583
F	0,4974008	0,6287807	0,6899811	0,6965974
ENP _{GM}	2,043	2,326	2,129	2,176
ENP _{PM}	2,628	3,1586	3,158	3,239

Party defections can be explained by various elements that can be (a) personal opportunism, (b) a higher ideological proximity within another party, (c) the need to respond to a strong electoral demand, or even (d) to defend a national interest position, among many other possible reasons.

To answer the question *what is the orientation of “transfuguismo”?* – whether it affects government or opposition fractions – can be calculated by a transfuguismo index (IT), based on the variations of the opposition effectiveness indexes (OEI) before and after its apparition⁸.

Table N° 7

“Transfuguismo” index applied to Costa Rica

	Period of Abel Pacheco		Period of Oscar Arias	
	May 2002	May 2005	May 2006	May 2007
OEI	0,7229917	0,5176471	0,4425	0,43
IT	-	-0,3966885	-	-0,02907

Table N° 8

“Transfuguismo” index applied to Nicaragua

	Period of Enrique Bolaños		Period of Daniel Ortega	
	January 2002	January 2006	January 2007	January 2008
OEI	0,6990808	4,0977242	0,57504873	0,5365385
IT	-	0,829398	-	-0,0717754

Polarization and ideological distance

A central determinant of the feasibility of the conformation of parliamentary coalitions – conjunctural or structural – is the ideological distance between political parties, as well as the level of polarization between them. Ideological preferences are also an explaining factor of some cases of “*transfuguismo*”, although often party defections are rather caused by personal and opportunistic motives.

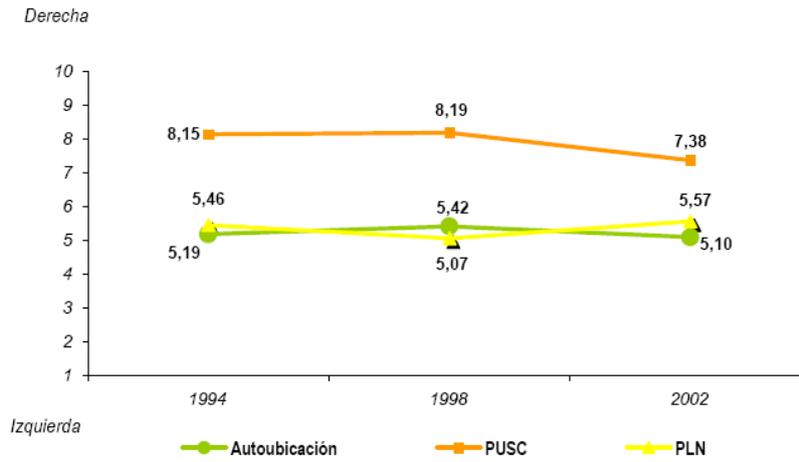
The ideological distance can be measured through perception surveys of legislators and their own ideological positioning on a scale from 0 to 10, 0 being extreme left and 10 the extreme right.⁹

⁸ The “*transfuguismo*” index can be calculated as follows: $IT = [(OEI, t-1 - OEI, t) / OEI, t]$ with OEI = the Opposition Effectiveness Index in t and t-1. Please refer to the appendix p. 124.

⁹ The analysis of polarization and ideological distance can also take into account studies of ideological superposition or measures of the ideological polarization of party systems (PELA and Instituto Interuniversitario de Iberoamérica). Please see appendix p. 128.

Graphic N° 2

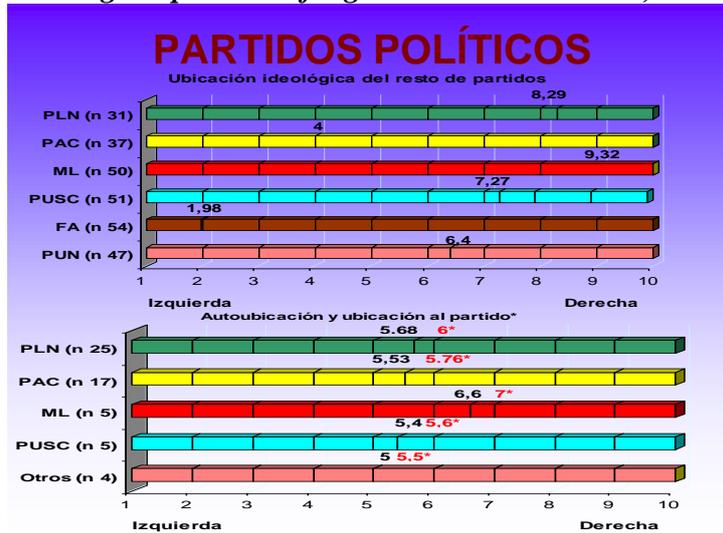
Ideological position of legislators in Costa Rica, 1994-2002



(The words “derecha” and “izquierda” mean “right” and “left” in English)
 Source: Instituto Interuniversitario de Iberoamérica

Graphic N° 3

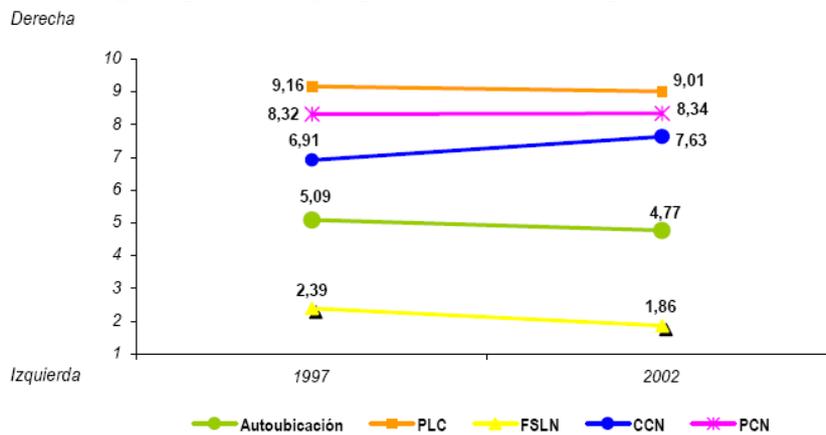
Ideological position of legislators in Costa Rica, 2006



Source: Alcántara & Corral, 2007

Graphic N° 4

Ideological position of legislators in Nicaragua, 1997-2002



Source: Instituto Interuniversitario de Iberoamérica

The ideological distance between the Costa Rican parties is very limited compared to the two majority parties in Nicaragua. In the terminology of Sartori (1980) it is possible to affirm that the party system in Costa Rica is segmented. There is a relatively high number of parties (the party system is multipartisan bipolar) but the ideological distance between the parties is not unbridgeable. While the party system in Nicaragua has a higher level of polarization. It is a centripetal and bipolar system in ideological terms, which reflects the important ideological distance between the PLC and the FSLN, the two main poles of Nicaraguan policy. Costa Rica can therefore be classified as ideologically moderate, while Nicaragua presents a form a polarized pluralism with two dominant parties (Vargas & Corral 2007).

Cohesion and party discipline

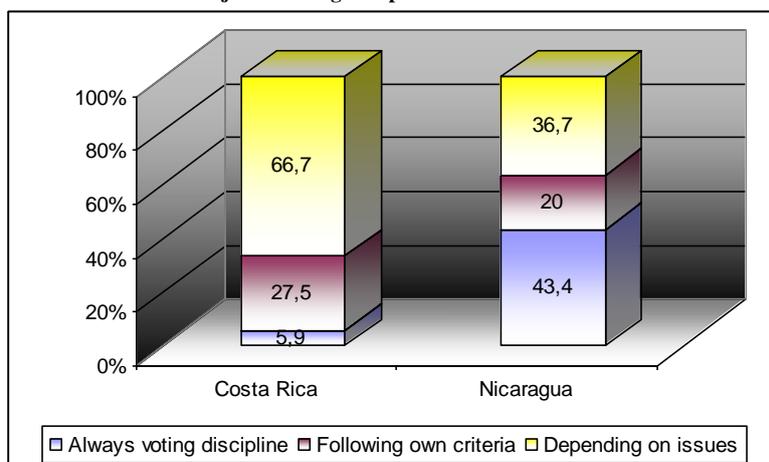
The level of party discipline affects the extent to which the Executive Power can confide in the legislative fractions for the approval or blocking of a certain initiative based on its preferences. When discipline is low it is more difficult for the Executive Power to maintain stable relations with the Legislative Power as well as between the parliamentary benches, because the possibility exists that what the heads of the fractions agree on will not be respected internally by their fractions.

Discipline and partisan cohesion is principally observed through the consistency of the voting behavior of legislators by assessing whether legislators of a fraction vote systematically in the same direction – and the intensity of “*transfuguismo*”. However, in Costa Rica and Nicaragua, the parliamentary organization does not permit the analysis of votes cast by individual legislator, because only the number of votes are registered. An alternative way to assess these variables involves utilizing opinion surveys. The studies carried out by the Instituto Interuniversitario de Iberoamérica will be used as a reference.

Graphic N° 5

Voting discipline

Question: With which of the following opinions do you agree more: voting discipline within a parliamentary fraction has always to be accepted; it should be allowed for a legislator to vote according to his own criteria; some themes should be subject to voting discipline and others don't?

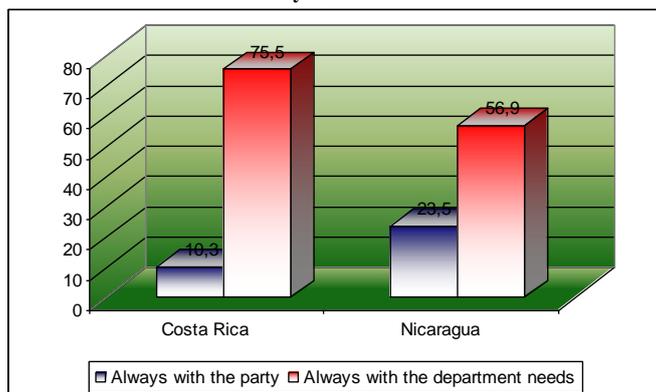


Source: Instituto Interuniversitario de Iberoamérica

Graphic N° 6

Conflict between the department and the party

Source: when there is a conflict between the needs of your department and the position of your political party, what would you vote?

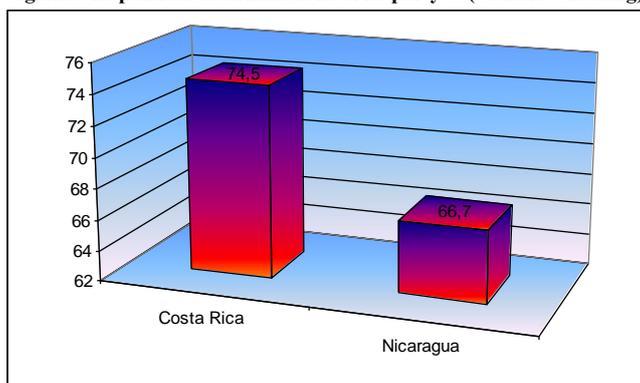


Source: Instituto Interuniversitario de Iberoamérica

Graphic N° 7

Partisan loyalty

Question: To what extent do you agree with the following affirmation: "a political party has to expulse a legislator who votes against the political determinations of its party"? (% little + nothing)

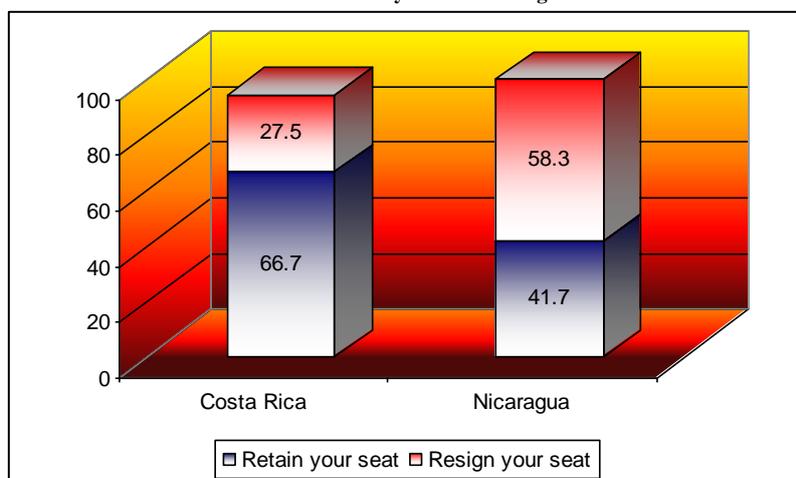


Source: Instituto Interuniversitario de Iberoamérica

Graphic N° 8

Retain or resign your party seat

Question: At occasions it happens that a legislator that has been elected by a specific party decides to leave the party and defect to another one. What do you think the legislator should do?



Source: Instituto Interuniversitario de Iberoamérica

These survey results confirm the relative acceptance of “*transfuguismo*” by the members of the Costa Rican and Nicaraguan Parliaments. In none of the countries partisan loyalty and discipline are considered as an important value, at least not above departmental and individual interests. In fact, in both Costa Rica and Nicaragua the legislators who leave their fraction do not have to return their seat to the party, which doesn’t constitute an incentive to limit parliamentary defection.

3.2 Political-institutional performance of the parliamentary opposition

The accessibility of institutional arenas for the exercise of legislative and political-parliamentary control does not only depend on the numerical force and levels of fragmentation (legislative arithmetic), but also on its political capacity in different types of legislative performance, as in **(a)** the production of laws, **(b)** the control of strategic positions, **(c)** the control of the parliamentary agenda, **(d)** the participation in special and investigation commissions, **(e)** the intensive use of vetoes and insistence, and finally **(f)** the technical capacity of opposition fractions.

This paper is limited to describing only points **(a)** and **(b)** in order to give a general impression the main political-institutional determinants of the effectiveness of the parliamentary opposition¹⁰.

Legislative productivity

Legislative productivity can be measured statistically through the contribution rates (percentage of laws proposed by fraction) and the success rates (percentage of law proposals by fraction which are approved). Although the production of laws does not constitute an exclusive task of opposition fractions, and certainly is only a partial indicator of its effectiveness as Parliament is not designed to be a “law production factory”, it can reflect the interest of the opposition in generated alternative agendas to the Executive Power, and their interest in exercising legislative control.¹¹

The Pacheco Administration (Costa Rica) was one of the least productive periods in respect to the adoption of the laws. During the 2004-2005 period the lowest production in the last 15 years of the Costa Rican Presidential system was recorded. Only 30 of the 68 proposals sent by the commissions to the Plenary were approved by the Assembly.

On the other hand, not only was the number of laws low, but the majority of the laws that were approved had a sectorial and communal scope. Only a few laws regarded national issues. Another factor is the slowness of the formal procedures necessary for approving laws. That’s why the individual productivity rate was around 0.53 laws per legislator. Estimations show that the average time to approve a law was close to 600 days during that Administration. This raises the question whether an extensive use of the legislative control implies a reduction in legislative productivity, as well as contributing to a longer processing time for the adoption of the law.

¹⁰ For the complete analysis of the other elements mentioned above, please refer to the appendix, p. 191-215.

¹¹ The information presented here is a summary of a broader analysis of legislative production which can be found in the appendix, including an extensive study of legislative production in Costa Rica since 1990. Please see p. 169.

Respecting the first year of the Arias Administration (2006-2007), the contribution rate of the Executive Power was of 8,83% and its success rate was 24%. The PUSC is the opposition party that registers the highest contribution and success rates, which comes to prove how the achieved performances can be reached through the articulation of a coalition with the governing party. Another fundamental finding is that the initiatives that were presented by interparty coalitions are very important, with a contribution rate of 11,31% and a success rate of 21,33%.

The most important producer of laws is the government fraction PLN with a contribution rate of 22,97%. This situation reinforces the idea that the government fraction is a fundamental driver for the presentation and construction of the parliamentary agenda, including for the Executive Power. However, the analysis of the success rate of the Executive Power also shows that the government tends to generate a shadow effect on its parliamentary fraction.

Table N° 9

Contribution and success rates by proponent in Costa Rica (2006-2007)

Proponent	Presented law projects	Contribution rate (%)	Adopted law projects	Success rate (%)
<i>Government</i>				
Executive Power	50	8,83	18	24
Partido Liberación Nacional (PLN)	130	22,97	6	8
<i>Opposition</i>				
Partido Unidad Social Cristiana (PUSC)	82	14,49	24	32
Partido Movimiento Libertario (ML)	37	6,54	1	1,33
Partido Acción Ciudadana (PAC)	44	7,77	4	5,33
Partido Frente Amplio	10	1,77	0	0
Partido Restauración Nacional	13	2,30	0	0
Partido Accesibilidad Sin Exclusión (PASE)	54	9,54	0	0
Partido Unión Nacional (PUN)	63	11,13	0	0
Several fractions	64	11,31	16	21,33
Others	19	3,37	6	8
TOTAL	566		75	

Source: Vargas & Petri 2007, p. 305-306

During the first year of government of Daniel Ortega (2007) in Nicaragua, the contribution and success rates indicate some elements of consensus through negotiations between the Executive Power and parliamentary fractions, mainly during the first half of 2007. 33 laws were adopted – just 1 less than in 2006 – and included some laws with a great impact. Five law proposals were elaborated by a coalition of several fractions. Of the 33 laws that were adopted, 15 were proposed by the government (Executive Power or FSLN) which indicates a certain control of the legislative process by the FSLN fraction.

Table N° 10

Contribution and success rates by proponent in Nicaragua (since 2007)

Proponent	Presented law projects	Contribution rate (%)	Adopted law projects	Success rate (%)
Government				
Executive Power	23	3,51	11	33,33
FSLN	219	33,38	4	12,12
Opposition				
ALN-PC	150	22,87	7	21,21
MRS	24	3,66	4	12,12
PLC	202	30,79	1	3,03
Indep.	38	5,79	1	3,03
Several fractions	n.a. ¹²	n.a.	5	15,15
TOTAL	633		33	

Source: based on www.asamblea.gob.ni and Hagamos Democracia 2007

The control of strategic positions

The control of strategic positions is another indicator of legislative performance. Its analysis helps to understand the capacity of a fraction to condition and influence the definition of the legislative agenda, and indirectly determines its capacity to contribute to the process of formation of the law. The control of strategic positions can be in the (permanent) legislative commissions as well as in the Directive Board of the Parliament.

The control of strategic positions in legislative commissions

Both in Costa Rica and Nicaragua, the distribution of strategic positions in commissions tends to be central to understanding the effectiveness of the parliamentary opposition. The more commissions in which a fraction presides, the greater its influence will be on the legislative process which ultimately increases its capacities to exercise legislative control.¹³

The analysis of the parliamentary frameworks (regulations) of Costa Rica and Nicaragua shows that holding the presidency of a legislative commission implies the ability of that fraction to exercise a substantial control of that commission. However, when a political party does not control a commission in this way, it will try to do it by obtaining a numerical superiority in order to have a majority in the voting's within the commission.

The following graphics present the distribution of the most important permanent commissions during the successive periods of Abel Pacheco and Oscar Arias in Costa Rica, and of Enrique Bolaños and Daniel Ortega in Nicaragua. It shows that the distribution of seats within the commissions does not necessarily reflect the distribution in the plenary in a proportional way.¹⁴

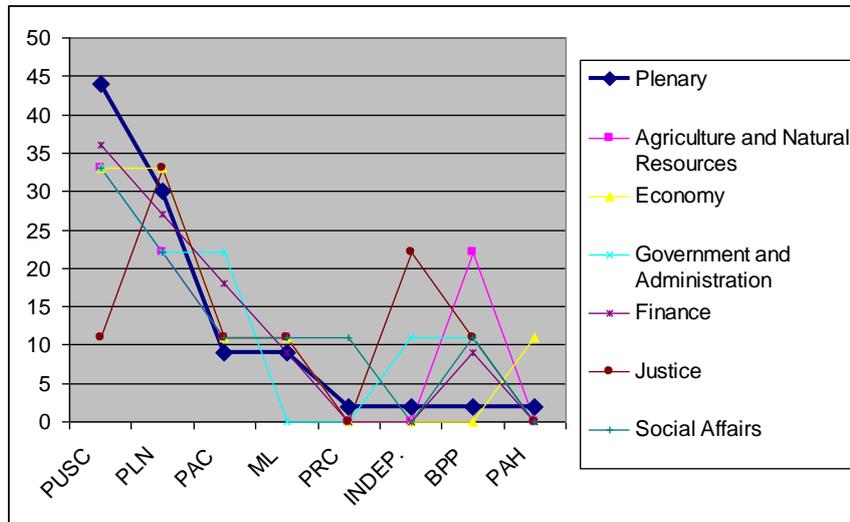
¹² The construction and systematization of information in the Nicaraguan Parliament is very weak. Although it is feasible to obtain all the legislative acts for the periods of Bolaños and Ortega, there are no statistics and systematic classifications of legislative registries, principally respecting legislative production.

¹³ Please refer to appendix p. 98-102 for the analysis of the control of presidencies and secretaries of permanent legislative commissions. Please refer to appendix p. 103-106 for the same analysis about special and investigation commissions.

¹⁴ The indexes OEI and NEPP for every permanent and special commission in both countries for the actual and the preceding period have been calculated in the appendix on p. 175-185.

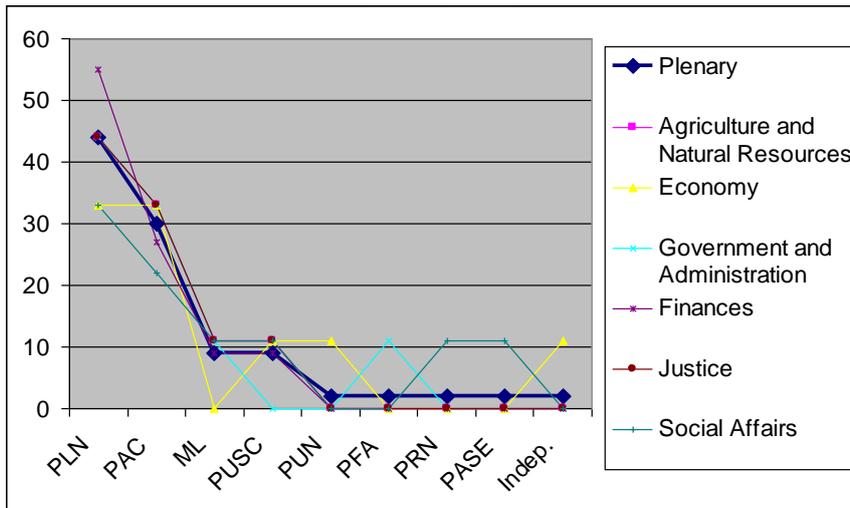
Graphic N° 9

Distribution of the most important Permanent Commissions by parliamentary fraction in comparison with the Plenary during the period of Abel Pacheco (June 2005)



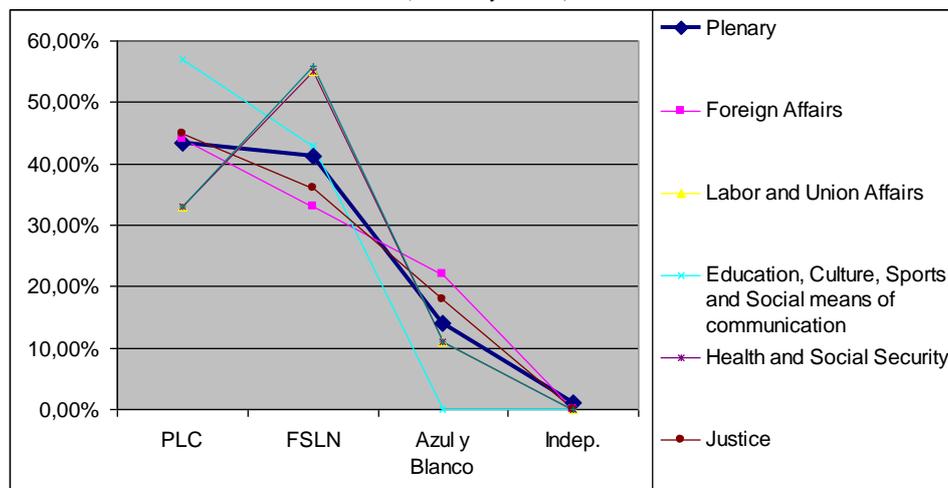
Graphic N° 10

Distribution of the most important Permanent Commissions by parliamentary fraction in comparison with the Plenary during the period of Oscar Arias (January 2008)



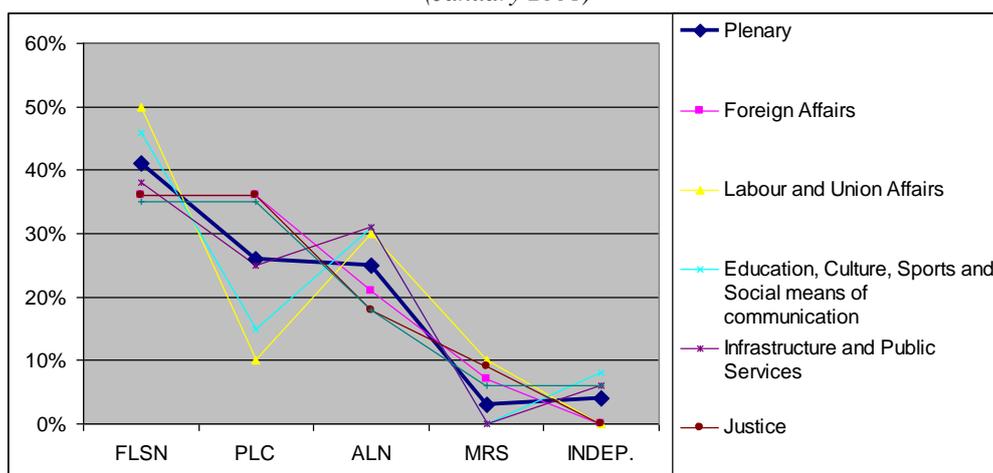
Graphic N° 11

Distribution of the most important Permanent Commissions by parliamentary fraction in comparison with the Plenary during the period of Enrique Bolaños (January 2006)



Graphic N° 12

Distribution of the most important Permanent Commissions by parliamentary fraction in comparison with the Plenary during the period of Daniel Ortega (January 2008)



The control of strategic positions in the Directive Board of the Parliament

The control of strategic positions in the Directive Board of the Parliament depends not only the definition of the legislative agenda but also the distribution and structure of the legislative commissions, since they are decided by the President of the Board (Costa Rica) or by the majority of the Board (Nicaragua). The exclusion of a fraction from the Directive Board can thus considerably weaken its effectiveness and its exercise of political-parliamentary and legislative control.

The following table presents the distribution of the Directive Boards of the Parliaments of Costa Rica and Nicaragua¹⁵. It shows that the composition of the Directive Board in

¹⁵ For a more in depth analysis about the composition of the Directive Boards in Costa Rica and in Nicaragua, please refer to the appendix, p. 185-190.

Nicaragua tends to be more pluralistic than in Costa Rica. It is important to underline that pluralism is hard to fulfill in a Parliament that is affected by “*transfuguismo*” which distorts the inter-fraction relations by increasing the dispersion of parliamentary forces.

The higher pluralism of the Directive Board in Nicaragua to a great extent has to do with the fact that there are fewer political parties with a representation in the National Assembly than in the Legislative Assembly of Costa Rica. Another reason is there are seven positions in the Directive Board of Nicaragua, one more than in Costa Rica.

Table N° 11

Who controls the Parliament?

Country and legislature	Directive Board controlled by		Who controls the Presidency?	Who controls the first Secretariat?	Number of parties represented / total of parties	Relative respect of the proportionality principle
	Fraction	Proportion GP				
Costa Rica						
First Directive Board of Abel Pacheco (May 2002-April 2003)	GP and OP	3/6	GP	OP	2/5	No
Second Directive Board of Abel Pacheco (May 2003-April 2004)	GP and OP	4/6	GP	GP	3/7	No
Third Directive Board of Abel Pacheco (May 2004-April 2005)	GP and OP	2/6	GP	OP	5/7	Yes
Fourth Directive Board of Abel Pacheco (May 2005-April 2006)	GP and OP	1/6	GP	OP	5/10	Yes
First Directive Board of Oscar Arias (May 2006-April 2007)	GP and coalition	4/6	GP	GP	3/8	No
Second Directive Board of Oscar Arias (May 2007-April 2008)	GP and coalition	5/6	GP	GP	2/9	No
Nicaragua						
First Directive Board of Enrique Bolaños (January 2002)	OP	5/7	GP	GP	3/3	Yes
Second Directive Board of Enrique Bolaños (January 2003)	GP and OP	2/7	GP	GP	4/6	Yes
Third Directive Board of Enrique Bolaños (January 2004)	OP and GP	1/7	OP	GP	4/6	Yes
Fourth Directive Board of Enrique Bolaños (January 2005)	OP	0/7	OP	OP	2/6	No
Fifth Directive Board of Enrique Bolaños (January 2006)	GP and OP	1/7	GP	OP	4/6	Yes
First Directive Board of Daniel Ortega (January 2007)	GP and OP	4/7	GP	OP	4/4	Yes

OP: Opposition parties

GP: Government party

Source: inspired on Vargas & Corral 2007

Respect of the proportionality principle is not systematic. Directive Boards including more than 50% of the parties have been qualified as “relatively proportional”. Even during one legislative term, the composition of the Directive Boards can present substantial differences.

After the Presidency of the Parliament, the First Secretariat is probably the next most strategic position in the Directive Board because it manages the legislative procedure. The individual in this position can therefore exercise a strong informal influence on the legislative process, intentionally slowing, blocking or even accelerating law proposals or motions that are presented.

If the Presidency and the First Secretariat of the Assembly are being controlled by two different parties, it can be considered there is a relative equilibrium in the Directive Board that theoretically will imply a neutral definition of the legislative agenda.

IV. The rights of parliamentary minorities

The rights of parliamentary minorities can be analyzed through two complementary dimensions, although they do not always coexist. The first one is **(4.1)** the *effective participation of parliamentary minorities*. This can be defined as the real capacity of the minorities to participate in the functions of the Parliament, particularly with the support given by the legislative framework (regulation) to assume its legislative and political-parliamentary control attributes.

The second dimension, **(4.2)** the *inclusive-effective participation of parliamentary minorities* goes beyond the first one because the parliamentary engineering assures its inclusion in the strategic areas of Parliament: Directive Board, commissions, Plenary, etc. based on the proportionality in the legislative arithmetic.

The combination of these aspects permits making a general analysis about **(4.3)** the rights of parliamentary minorities in the systems of Costa Rica and Nicaragua.

4.1 *Effective participation of parliamentary minorities*

The size of the strategic areas within Parliament, and the margins of liberty where effective participation of the parliamentary minorities is assured, determines to a great extent the possibilities for parliamentary minorities to exercise its legislative and political-parliamentary control.

The effective participation of parliamentary minorities fundamentally relies on **(a)** the majorities and quorum that are required for decision making because these aspects determine the accessibility of formal and informal resources of power. However, other aspects also include **(b)** the legislative powers of the President which determine the margin for minorities to maneuver, and the **(c)** mechanisms for the channeling of conflicts and tensions.

Required majorities and quorums for decision making

The types of majorities determine the magnitude that the opposition requires in order to play a protagonist role in the legislative process. By its capacity to block certain voting's and processes – becoming a *veto player* –, a small opposition party can become a *veto player*. This gives a fraction a strong position in decisional processes and allows it to adopt formal or informal mechanism in order to intervene in the definition of the agenda (Tsebelis 2002). However, the design of the parliamentary engineering determines to a great extent the influence and the power that opposition fractions can have.

It cannot be omitted that a parliamentary opposition fraction, including minority fractions, will always be a strategic actor for the government party when it comes to the conformation of qualified majorities, including when these develop over-dimensioned coalitions – becoming a *bigger quantity of votes than the ones that are strictly necessary*.

In this way, a minority opposition – including unipersonal fractions – can condition their support to **(a)** the inclusion of their initiatives in a preferential order in the legislative agenda, **(b)** the approval of motions about a determined project, **(c)** the approval of determined initiatives even when they are presented by other fractions, **(d)** strategic positions in commissions or in the Directive Board, **(e)** the inclusion in specific permanent commission, **(f)** public funding support from the Executive Power, **(g)** influence on a determined public policy, and **(h)** others. However, conditional supports are the result of the individual capacity of a fraction or legislator and can only be during moments of conjunctural dependence. These types of conditional support are not included in the political Constitution or in the legislative regulation, as they do not form part of a system of channeled incentives in the political constitution or the legislative regulation.

The margins of the required majorities – principally qualified majorities but also simple majorities when the levels of fragmentation are high – are more sensitive to the rights of parliamentary minorities. That is the reason why the exercise of the minorities “*by the majorities*” strongly depends on the levels of fragmentation, dispersion, and also the incentives and restrictions for parliamentary discipline and cohesion, as well as the intensity of “*transfuguismo*”. These factors determine, through a complex spectrum of interactions, the parliamentary effectiveness of both government and opposition fractions.

The higher the required majority for the adoption of a law, the stronger are the incentives for the conformation of coalitions. However, these incentives can become prohibitive when they respect to very high majorities – greater than 60% of the members of Parliament (see *Table N° 12*).¹⁶

Table N° 12

Types of majorities in the Parliaments of Costa Rica and Nicaragua

Types of Majorities	Majority of present members		Majority of members			
	Relative Majority	Simple Majority	Absolute Majority (50%+1)	Qualified Majority (60%)	Qualified Majority (2/3)	Qualified Majority (3/4)
Costa Rica	X	X	X		X	X
Nicaragua	X	X	X	X	X	

Legislative powers of the President

Table N° 13 presents a classification of legislative powers of the President in Costa Rica and Nicaragua, providing an indication of the level of intervention of the Executive Power in the legislative process.

¹⁶ Please refer to the appendix, p. 134-139 for a more detailed analysis of majority construction and coalition dynamics in Costa Rica and Nicaragua.

Table N° 13

Legislative powers of the Costa Rican and Nicaraguan President

COUNTRY	Proactive faculties				Reactive faculties				Total legislative powers
	Decree	Budget	Action Powers – Subtotal	Veto	Partial veto	Exclusive initiatives	Reaction Powers – Subtotal	Plebiscite powers	
Costa Rica	0,00	0,64	0,27	0,77	0,00	0,00	0,22	0,00	0,25
Nicaragua	0,00	0,73	0,31	0,15	0,15	0,00	0,09	0,00	0,19

Source: La Política Importa 2006; BID, IDEA / PNUD 2004

The political Constitution describes the distribution of faculties between the Legislative and Executive Powers in the process of formulation of laws. These faculties can be proactive and reactive. The *proactive faculties* give the President the capacity to modify unilaterally the *status quo*. To mention only a few, these include the faculty to issue decrees, to define the legislative agenda and to execute the budget, and according to Tsebelis (2006), the faculty to send a law back to Parliament with observations instead of vetoing it.

On the other hand there are factors that contribute to the faculty of the President to impede the Parliament when it modifies the *status quo*. These are called *reactive faculties* of the President, and include total and partial veto and the exclusive right to present initiatives in specific areas (BIP 2006, p.50). Nolte & Llanos (2006, p.13) add the faculty of redacting laws and the faculty of the President to call a plebiscite or referendum as these are constitutional faculties that determine the division of power in the legislative process.

Table N° 14 applies the enumeration of legislative powers of the President as elaborated by Shugart (2001) to the cases of Costa Rica and Nicaragua. The legislative powers of the President can be considered as non-existent, fragile or strong.

Table N° 14

Legislative powers of the President in Costa Rica and Nicaragua

Legislative powers of the President		Costa Rica	Nicaragua
Veto power	Total veto	Fragile: can be overcome by the favorable vote of 2/3 of the legislators	Very fragile: can be overcome by the favorable vote of 50%+1 of the legislators
	Partial veto	Very fragile: can be overcome by the favorable vote of the absolute majority (informal) ¹⁷	Very fragile: it can be overcome by the favorable vote of 50%+1 of the legislators ¹⁸ .
Decree power		Non-existent	Non-existent
Exclusive political attributions		Non-existent	Non-existent
Extraordinary budget initiative		Fragile: the Legislative Power can change the amount of expenses of individual sectors, but cannot raise the total amount of expenses described in the budget. If the budget is not approved the budget of the precedent year is valid until the new budget is adopted.	Fragile: the Legislative Power can change the amount of expenses of individual sectors, but cannot raise the total amount of expenses described in the budget. If the budget is not approved the budget of the precedent year is valid until the new budget is adopted.
Referendum		Fragile: the Legislative Power and the citizenship can also call a referendum	Fragile: the Legislative Power and the citizenship can also call a referendum

In the report “Politics Matters” (2006) of the Interamerican Development Bank, the Presidential powers of Nicaragua and Costa Rica are qualified as being “weak of action” and “weak of reaction” compared to other Central American countries. The enumeration of the main legislative powers elaborated by Shugart (2001) as applied to Costa Rica and Nicaragua confirms this analysis. In these countries none of the legislative powers listed by Shugart can be considered as strong. They are all fragile or non-existent.

Therefore it can be said that, at least in theory, that the legislative powers of the President do not constitute an incentive for the search for parliamentary coalitions and consensus. The analysis of the institutional legislative powers of the President in Costa Rica and Nicaragua shows they are fragile.

This conclusion is only theoretical because the influence of the President in the legislative process also depends on other factors, principally the levels of parliamentary fragmentation, as well as internal discipline of the government fraction. Another factor is the greater technical capacity of the Executive Power as it can rely on a more developed administration with public employees when compared with Parliament. Taking all these factors into account – which correspond to informal legislative powers of the President – the previously stated affirmation can be adjusted to value the legislative Presidential powers not as fragile, but as moderate.

Mechanisms for the channeling of conflicts

Constitutional restrictions, as they have been elaborated by Duhamel (2003), apply principally to parliamentary regimes. In the context of “political stability”, this can in a way be interpreted as “the conditions under which a parliamentary regime can be stable” – political stability – just as are presidential regimes with a strict separation of powers, and whose “purest” expression is the system of the United States of America.

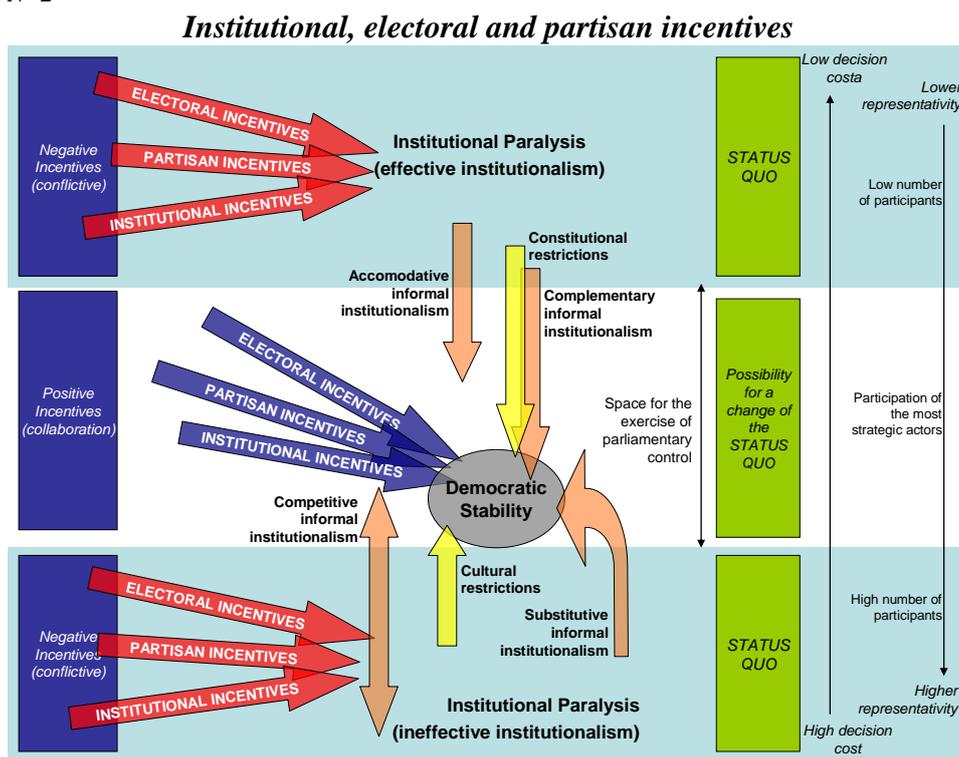
¹⁷ The partial veto does not exist formally, but the President can include observations and propose modifications to a law project and return it to the respective commission, which is *de facto* a partial veto. The President can introduce modifications in a law project in the veto, which can be accepted by an absolute majority, while the overcoming of a total veto requires a 2/3 majority to be overcome.

¹⁸ En Nicaragua, the President can introduce modification or suppress articles of a law, giving him the strongest proactive faculty in the region regarding the partial veto.

However, the concept of constitutional restrictions remains valid and useful. The enumeration of constitutional restrictions by Duhamel include the following: the direct election of the head of government; the majoritary election of members of Parliament; the discretionary right to dissolve Parliament; and constructive censuring. These restrictions would have to be adapted to the systems of Costa Rica and Nicaragua, which are “*presidencialismos*” – a distorted form of the classic presidential regime. If the constitutional restrictions are applied to these two countries, only one would be fulfilled: the direct election of the head of government, the President of the Republic. That is the reason why it is necessary to “tropicalize” the constitutional restrictions so they sufficiently cover local specificities.

Therefore it is useful to adopt a broader definition of the concept of constitutional restrictions that has been defined as the “mechanisms for channeling inter-power conflicts”, i.e. the mechanisms that contribute to the restoring of political stability, transiting through formal and informal institutionalism, and establishing an equilibrium between political stability and democratic stability. From these constitutional restrictions emerge formal and informal incentives, which allow to absorb of institutional deadlocks.

Scheme N° 2



Constitutional restrictions are very important because without them, the only way to ease institutional deadlocks would be an intensification of the competitive and substitutive informal institutionalism, or even more violent and revolutionary expressions. An example of this is the intent to remove from office President Enrique Bolaños through the informal competitive use of a formal mechanism designed to impeach Presidents that are “incapable to govern”.

In some Latin-American countries, in situations of paralysis between the Executive and Legislative powers, the Presidents resorted to “govern by decrees”. However, legislating by decrees isn’t possible in Costa Rica and Nicaragua, because the decree power of the President is virtually inexistent. The other legislative powers of the President as they are identified by Shugart (2001) are too limited in Costa Rica and Nicaragua to be considered as constitutional restrictions.

Vargas & Petri (2007) analyze the referendum as a pacific outlet to an inter-power conflict, principally when the government does not have a legislative majority, which is when it serves as a way to get out of a situation of institutional deadlock between the Executive and Legislative Power. The possibility of calling a referendum can be considered an incentive for intra-power negotiations, principally between a (minority) government and the opposition. However, the referendum does not constitute an effective tool in Costa Rica and Nicaragua because of the fact that both Executive and Legislative powers have the capacity to do so, what dissuades each power to do so.

In the Presidential systems of Costa Rica and Nicaragua a series of formal and informal mechanisms that contribute to restoring the equilibrium – political stability – can be identified as they fit our definition of constitutional restrictions. In Nicaragua, the “Pacto” between Ortega and Alemán was an informal tool that permitted to guarantee a certain level of political stability.

In Costa Rica an important constitutional restriction is the IV Chamber – Constitutional Chamber – of the Supreme Court, which operates like a kind of Senate, and has the possibility to unblock lasting parliamentary conflicts.

During the administration of Figueres Olsen (1994-1998) the “Pacto Figueres-Calderón” contributed to give political stability to its administration because a series of incentives and informal restrictions that condition the margins of parliamentary action were derived from it.

For both presidential systems another collateral formal restriction that determines the capacity of the coalition is the strategic timing for the presentation of initiatives. For example in Costa Rica, during extraordinary parliamentary sessions the parliamentary agenda is set by the Executive Power which acts as an incentive for the government fraction but a restriction for the parliamentary opposition.

Including the fact that constitutional reforms require a debate in two different legislatures becomes an incentive or a restriction in the decision making process.

Both in Costa Rica and Nicaragua the opportunities to exercise political-parliamentary control by parliamentary minorities are stronger in informal areas where the required majorities are less important. It tends to be a natural consequence that when the exercise of the control through formal mechanisms is inaccessible, parliamentary minorities fall back on informal mechanisms. The mechanisms often have a higher political visibility and impact in the collective imaginary.

4.2 Inclusive-effective participation of parliamentary minorities

In a situation of parliamentary fragmentation and dispersion where the government fraction does not have the majority, the government's objective will be to reduce the margins of the rights of parliamentary minorities by modifying the regulation of the Legislative Assembly. On the contrary, a strong opposition with a high capacity to influence the legislative process will look to support the reforms that would give more rights to parliamentary minorities.

The presentation in the past section about effective participation referred to the arithmetic dimension and the level of feasibility of an *effective* exercise of the opposition and its access to mechanisms of parliamentary control. The *inclusive-effective participation* concerns the set of institutional dispositions that do or do not guarantee the access of minorities to mechanisms of parliamentary control, and opportunities in the parliamentary organization and to strategic positions. It is no longer about the rights of the minorities *by the majorities* and the formation of coalitions, but the rights of the minorities that are guaranteed in the institutionalism by their proportional inclusion in strategic areas of Parliament.

The inclusive-effective participation of parliamentary minorities depends on the formal rights conceded in the legislative regulation in terms of strategic positions, the access to resources (of all kinds) and in the definition of the agenda, and more generally the respect of the principle of proportionality.

Regarding the rights of the parliamentary minorities in the process of formation of the law, it can be said they are formally guaranteed in both Costa Rica and Nicaragua. However, there are often distortions that contribute to the obstruction of the exercise of legislative and political-parliamentary control on behalf of the smallest parties.¹⁹

4.3. Typology of the rights of parliamentary minorities

The following developments will make a general statement on the rights of parliamentary minorities for the cases of study. Both dimensions of the rights of parliamentary minorities – *effective participation* and *inclusive-effective participation* – will be juxtaposed in a typology of the rights of parliamentary minorities. This typology will take into account the systemic relation between the institutional design – and more specifically the resources that allow the exercise legislative and political-parliamentary control – and the dynamics for reaching majorities. The parliamentary engineering will be evaluated to the extent that it fulfils the proportionally principle permitting an effective and inclusive participation of minorities.

The rights of the minorities can be mentioned in the legislative regulations but their respect and *effective* exercise depends on a series of factors that condition an adequate exercise of control on behalf of the parliamentary minorities. The proportionality and

¹⁹ See appendix p. 146-153 for a more extensive study of *inclusive-effective participation*, including remarks about the institutional dispositions for the formation of Parliamentary fractions, the pluralism of the commissions in comparison with the plenary, the integration of strategic positions in the Directive Board, the participation in special and investigation commissions and the participation in the definition of the agenda.

pluralism of the strategic areas within the Legislative Powers as well as the legal guarantee of the access to these areas constitute the most important determinants of the rights of the minorities.

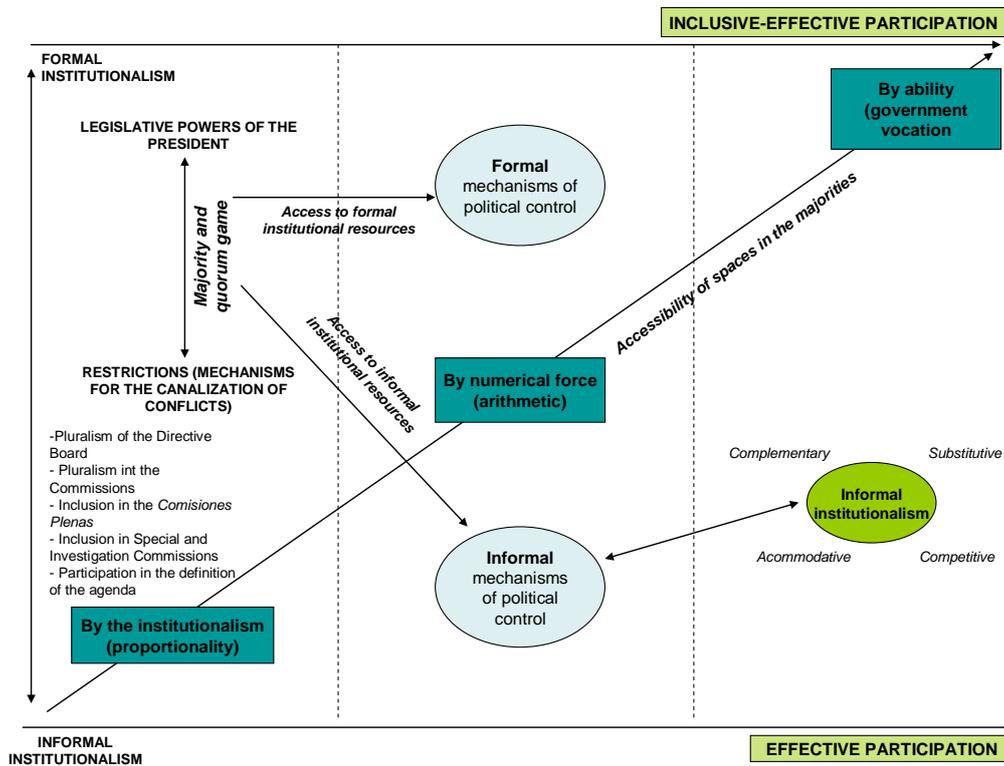
As it has been mentioned, the *effective participation* of the minorities depends on the dynamics for the conformation of majorities and the quorum that represent the framework in which parliamentary minorities can participate. The game of majorities by the minorities reaches its essence in the interaction between legislative powers of the President which can be limited – restricted – by mechanisms that channel conflicts and tensions by restricting the access to formal and informal institutional mechanisms of political control.

The *inclusive-effective participation* goes beyond this, because it is concerned with the legal guarantees that respect of the rights of the minorities in the organization and in strategic positions of the Assembly. Between the effective participation and the inclusive-effective participation, the minority fractions will adjust their strategies according to the institutional guarantees they have and their numerical force. Furthermore, an opposition with government vocation will use formal and informal mechanisms in order to fulfill its objectives and reach a high political visibility.

The inclusive-effective participation can compensate the weakness of the effective participation, through the majorities, but the inclusive-effective participation in many cases does not guarantee effective participation. However, if an opposition party reaches to position itself, through the legislative arithmetic, in the effective participation, it will not need the resources the inclusive-effective participation would need because its numerical force gives it enough possibilities to obtain its goals.

In this aspect it is very important to take into account the ability of the opposition to choose the most adequate strategies to project itself. This ability includes the set of informal practices that determine its legislative performance and an effective control of the Executive Power and the government fraction, even when the institutional design does not permit it. The following scheme summarizes this idea.

Typology of the rights of the minorities in the parliamentary engineering in Costa Rica and Nicaragua



Determinants of the access to resources for political control as well as the access to openings in the majority can be of a distinct nature. In its superposed formal and informal dimensions, it is the expression of participation of the parliamentary minorities in the parliamentary engineering that determines whether an effective participation and/or inclusive-effective participation is reached.

The respect of the rights of the minorities can be included in the institutional design by guaranteeing a real fulfillment of pluralism. However, when pluralism is not respected, the parliamentary minorities, in order to make their rights be respected, have to achieve this respect through numerical force, eventually through the conformation of coalitions with the goal of generating majorities. In the last case, the respect of the rights of the minorities depends on the minorities themselves and their technical and political capacity to participate in the legislative construction.

V. APPENDIX – Efectividad parlamentaria. Incentivos y restricciones coalicionales en Costa Rica y Nicaragua