

By Camilo de Castro

Carlos Roiz and Ernesto Cantillano died instantly on the night of December 11, 2005. As Carlos Cantillano turned left at a green light, a sport utility vehicle, traveling more than 100 miles an hour, crashed into his car. Witnesses rushed to the scene. The driver of the SUV and his companion emerged from the vehicle nervous but unscathed. And by the time emergency workers arrived, the two men were nowhere to be found.

Some hours later, a man was arrested, brought into a police station in Managua, and charged with the manslaughter of Ernesto Cantillano and Carlos Roiz. The problem: witnesses did not recognize him as the driver of the SUV. Meanwhile, Francisco Lopez, treasurer of the Sandinista National Liberation Front (FSLN—*Frente de Sandinista Liberación Nacional*) had removed the cars from the scene of the accident. The man that witnesses say is the real driver — Rafael Ortega-Murrillo, the son of former FSLN President Daniel Ortega — had vanished.

In an attempt to cover up the real identity of the driver, police authorities and prosecutors made up witnesses, tainted evidence and orchestrated a carefully prearranged trial, which convicted someone who was never at the scene of the accident. A journalist, who had recognized Ortega-Murrillo as the driver of the SUV, refused to testify out of fear of retaliation.

Despite organizing public protests, there was little the families of the victims could do. Powerful politicians, bent on protecting their political interests, controlled the Nicaraguan judicial system.

“This shows that the courts are controlled by corrupt politicians,” said William Roiz, father of Carlos Roiz, “we need to fight to unseat the members of the pact between the FSLN and the PLC [*Partido Liberal Constitucionalista*, or Constitutional Liberal Party.]”

The Political Pact

Just five months before he leaves office, President Enrique Bolaños faces the lowest popularity rate of any outgoing president in the last 16 years, with almost 50 percent of Nicaraguans disapproving of the way he is handling his job. This

result stands in stark contrast to the favorable ratings he received in March of 2003, when he stood before television cameras, to denounce acts of corruption during the administration of Arnaldo Aleman (1998-2002).

In a dramatic address to the nation, Bolaños explained how the former president, close associates and family members diverted more than one 1.7 billion córdobas (US\$100 million) in public funds to banks in Panama, the United States and the Caribbean.

The accusations began an intense legal battle to bring the former president to justice, which left Bolaños without the support of the PLC, the political party that brought him to power. Although the FSLN, the main opposition party led by former President Daniel Ortega, initially supported the president's battle against corruption, a series of clashes between Ortega and Bolaños led to a break between the two leaders. After Aleman was sentenced to 20 years house arrest for corruption charges brought against him by a FSLN judge, the terms of his imprisonment became the basis for political negotiations between the FSLN and the PLC in the National Assembly. For the FSLN, the president's loss of support in the National Assembly became an opportunity to strengthen its control over important government institutions. For its part, the PLC sought to negotiate the approval of an amnesty law that would absolve all politicians involved in acts of corruption since 1990 from prosecution. Enrique Quiñonez, leader of the PLC in the National Assembly, insisted that the law would guarantee Nicaragua much needed political stability.

Far from guaranteeing political stability, the amnesty law was further evidence of many legislators' fondness for immunity. Politicians who owe their careers to the head of their political party have few incentives to be accountable to the electorate. The National Assembly runs up debts every year. In addition to a salary of 84,265 córdobas (US\$4,750) a month, each legislator receives numerous other privileges: 390,280 córdobas (US\$22,000) per year to spend on social projects, 200 gallons of gasoline per month and a tax exemption to import two new cars during their term.

The 93 legislators are required to submit a detailed report of expenditures for the social projects they sponsor, but each year only a handful of them comply. Even though the number of staffers hired by the National Assembly tripled since 2002, legislators have only approved 10 laws during the first three months of 2005 — most of them of minor relevance. Moreover, according to the director general of Nicaragua's tax collection agency, Roger Arteaga, a substantial number of National Assembly members have not paid taxes since 2001. In response to pressure from the tax collection agency, legislators reduced the funding for the

agency by almost 36 million córdobas (US\$2 million) in 2005. So far they have not paid their back taxes.

Despite a pattern of questionable behavior, the PLC and FSLN approved a wide range of constitutional reforms in early 2005, ostensibly to make public services more efficient by bringing them under the control of the legislative branch. By placing the administration of telecommunication, electricity and water services under a single institution, known as the Superintendence of Public Services, legislators claimed they would be able to lower costs and provide better, more efficient services. However, the reforms unleashed a grave institutional crisis when the president refused to cede control over the administration of public services.

When the PLC and FSLN appointed loyal partisan bureaucrats to take over government departments, the president sent riot police to prevent them from occupying their offices. Shortly afterwards, the Supreme Court struck down a presidential appeal to declare the constitutional reforms illegal and gave control of government bank accounts to administrators appointed by the National Assembly. In the next seven months, many dollars would be spent to set up the new administrative offices. The director of the newly formed Superintendence of Public Services, Victor Guerrero, a loyal supporter of former President Aleman, hired his son and two other family members as highly paid consultants, while dozens of members of the FSLN and PLC occupied lower administrative positions.

In October, as a result of popular protests and international pressure, the executive and legislative branch struck a deal to suspend the constitutional reforms until Jan. 10, 2007, when the next freely elected president is due to take office. After a prolonged crisis, smaller political parties gained support by denouncing the instability created by the political pact between the FSLN and the PLC. Consequently, just four months before the national elections in November 2006, the FSLN offered to introduce a law to abolish the constitutional reforms approved in January of 2005. Miraculously, the reforms are no longer needed.

The dramatic increase in the international price of oil, however, means huge losses for small and middle size businesses. In part because of poor incentives in the energy sector and repeated political crisis, large swathes of the country currently face prolonged blackouts with no end in sight. Although Nicaragua has an enormous potential for producing renewable energy, foreign investors have been slow to arrive in the country, in part because of lack of trust in the judicial system, which has also been badly undermined by the political pact between the FSLN and the PLC.

“These are long term projects, which require political stability and clear rules of the game,” said Erwin Kruger, president of the Chamber of Private Enterprise.

The Judicial System

Investors are not the only ones with misgivings about the judicial system. Recently published polls reveal that the judicial branch is one of the least trusted institutions in government. The courts are frequently implicated in new corruption scandals and judicial decisions are the subject of constant scrutiny by journalists and independent analysts.

Even judges admit that the judicial system needs reform. In a recent report financed by the European Union, 59 percent of the judges, lawyers and public defendants said that the courts lack independence. Another 46 percent said they believe that the courts are corrupt and a solid majority – 64 percent – said that the courts do not have enough resources to do their jobs properly.

With salaries that range from 13,820 córdobas to 35,214 córdobas (US\$779 to US\$1,985) per month, judges are easy targets for bribery. As the judicial system creaks under the strain of a vast backlog, the best way to expedite judicial proceedings is to make payments under the table. Poorer Nicaraguans, who cannot make these payments, often wait years for a hearing in the courts.

Additionally, Supreme Court justices have become involved in high profile cases of corruption. During last two years, the National Assembly confirmed PLC and FSLN judges to the court as part of a power sharing agreement between Aleman and Ortega. According to the agreement, the presidency of the court would alternate yearly between each party.

Under the presidency of PLC judge Manuel Martinez in 2005, US\$609,000 (about 10.8 million córdobas) confiscated from Colombian drug traffickers disappeared from a Supreme Court bank account. The morning of the Sept. 28, 2005 Mario Roberto Peña, a former Nicaraguan public prosecutor wanted for embezzlement in the United States, his son and a substitute judge walked into a bank and withdrew the money with a check signed by Martinez.

More than a year later, it is clear that judges at all levels of the judicial system participated in a scheme to free Columbian drug trafficker Luis Angel Gonzalez Largo, along with his girlfriend and other accomplices. Gonzalez was ultimately extradited to the United States, but no one knows where the money ended up. Far from being reprimanded for the scandal, the Supreme Court justices involved were reappointed for another term, fomenting a culture of impunity within the judicial system.

Several lower court justices are now under investigation for setting drug traffickers free, while high-ranking law enforcement officials warn that Nicaragua is on the verge of becoming a safe heaven for South American drug cartels.

The Good News

The media continues to play a critical role by reporting cases of wrongdoing by public officials, making the need for transparency and accountability a key issue in the upcoming presidential elections. If it were not for the media, corruption scandals in the judicial system would go unnoticed. In fact, as the theft of US\$609,000 from a Supreme Court bank account made headlines, Supreme Court justices silently waited for the scandal to blow over. But insistent media reporting forced the judges to admit wrongdoing – and gave civil society advocates demanding greater transparency more traction in the fight against corruption.

After months of consultation among experts and media groups, a coalition of NGOs drafted an access to information law, currently awaiting approval in the National Assembly. Legislators pledged to bring the law to a vote before the end of 2006, but they have yet to include it in the legislative agenda.

Meanwhile, the executive branch began a pilot project, known as Voluntary Strategy of Access to Information (EVA—*Estrategia Voluntaria de Acceso a Informacion*), to provide information about key government ministries via the Web. On the EVA Web sites citizens can access information about government expenditures, specific projects under execution, and the government officials responsible for them. Even if access to the Internet is still limited, the project sets a valuable precedent.

At the same time, a recent World Bank-financed, nationwide study of the public perception of corruption suggests that efforts to reduce corruption at the local level are paying off. According to the study, between 2003 and 2006, the number of inappropriate payments given to public officials in exchange for services or to avoid fines went down in four out of five of the institutions under review.

The incidence of inappropriate payment in public health clinics declined from 17 to 11 percent, while inappropriate payments in the police force payments fell from 28 to 18 percent.

Progress was more modest in the public school system, with a decrease of four percentage points in three years, to 53 percent in 2006. The only institution that did not show any improvement at all was the judicial system: In the case of the courts located in Managua, inappropriate payments skyrocketed from 27 percent in 2003 to 42 percent in 2006.

Overall, though, the World Bank's data show that the level of public trust in the government's fight against corruption increased slightly during the last three years.

Future in the Balance

As the November 2006 presidential and congressional elections come to a head, candidates for public office are making the fight against corruption a key campaign promise. Actions, however, speak louder than words. Despite pressure from civil society organizations demanding greater transparency during the campaign, only one political party has made public the identities of its campaign donors. All of the presidential candidates publicly declared their personal patrimony before the comptrollers office, but the media must work to verify the accuracy of the information. There is already strong evidence that the patrimony declaration made by former President Daniel Ortega, who is running for office for the fifth time, considerably underestimates his personal wealth.

In the end, the future of the fight against corruption is in the hands of Nicaraguans themselves. They must decide among politicians who have repeatedly put their personal interests before the interests of the nation on the one hand, and leaders who are trying to change, little by little, a culture of minimal accountability, nepotism and disregard of the rule of law.