

Overall Score:

**62 - Weak**

Legal Framework Score:

**75 - Moderate**

Actual Implementation Score:

**50 - Very Weak**

Category I. Civil Society, Public Information and Media

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## I-1. <sup>73</sup>Civil Society Organizations

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### 1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

**YES**

NO

**Comments:**

A number of secondary laws, including the citizen's participation law extend the ample and categorical protections of the Constitution's bill of rights.

**References:**

Articles 48 & 49 of the Constitution.

**YES:** A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

**Comments:**

While the Constitution and the laws do not refer to sources and forms of funding, what the law does not prohibit, it allows. There are only some basic reporting regulations due to tax exempt status.

**References:**

Articles 48 & 49 of the Constitution.

**YES:** A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

**NO:** A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

**Comments:**

Law 147 enables the Ministry of Governance to set up reporting requirements for all donations, and establishes a duty to inform of all donations to the named Ministry.

**References:**

Law 147, article 13e.

**YES:** A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

**NO:** A NO score is earned if no such public disclosure requirement exists.

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## 2. Are good governance/anti-corruption CSOs able to operate freely?

83

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

**Comments:**

Due primarily to donor policies, rather than law, CSOs must receive legal status as such, which requires basic paperwork for final approval by the legislature. Afterwards, there are basic reporting and bookkeeping requirements annually. The true scale value could just as well be closer to 100

**References:**

Law 147, article 11, et seq.

**100:** CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

**75:**

**50:** CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

**0:** Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

**Comments:**

Some CSOs get large amounts of airtime. Others must be consulted by law at specif times, such as the naming of top authorities of the judiciary and electoral bodies. The level of political power is relatively low.

**References:**

Interview with legislators Jorge Matamoros, Jaime Morales and Orlando Tardencilla.

**100:** Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

**75:**

**50:** Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

**25:**

**0:** Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

**YES** | NO

**Comments:**

For failures to report and bookkeep, some CSOs are placed in a dormant status. None were closed due to their work.

**References:**

Interview with Governance Minister (CSO regulatory body) Julio Vega

**YES:** A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

**NO:** A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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### 3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

**YES** | NO

**References:**

Interview with Governance Minister. Media follow up.

**YES:** A YES score is earned if there were no CSO activists imprisoned related to work covering corruption.

**NO:** A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the p

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

**Comments:**

No such attacks are known. Two journalists (Maria Jose Bravo and Carlos Guadamuz, a dissident of the FSLN) were killed during the past two years, presumably for political reasons/fanaticism, but the journalists' controversial positions were broadly political, not focused on corruption.

**References:**

Media reporting.

**YES:** A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work.

**NO:** A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

**Comments:**

No such attacks are known. Two journalists (Maria Jose Bravo and Carlos Guadamuz, a dissident of the FSLN) were killed during the past two years, presumably for political reasons/fanaticism, but the journalists' controversial positions were broadly political, not focused on corruption.

**References:**

Media reporting.

**YES:** A YES score is earned if there were no documented cases of CSO activists being killed related to a corruption case in the specific study period.

**NO:** A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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#### 4. Can citizens organize into trade unions?

100

4a. In law, citizens have a right to organize into trade unions.

YES | NO

**References:**

Constitution, article 87, chapter 5.

**YES:** A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

**Comments:**

Data from the Ministry of Labor reveals 837 new unions (35,000 workers) were formed from 1993-1999.

**References:**

UNDP Human development in Nicaragua index 2004.

**100:** Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

**75:**

**50:** Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

**25:**

**0:** Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

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## I-2. Media

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### 5. Are media and free speech protected?

5a. In law, freedom of the media is guaranteed.

YES | NO

**References:**

Articles 67 and 68 of the Constitution.

**YES:** A YES score is earned if freedom of the press is guaranteed in law, including all political parties, religions, and ideologies.

**NO:** A NO score is earned if any specific publication relating to government is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

**References:**

Articles 67 and 68 of the Constitution.

**YES:** A YES score is earned if freedom of individual speech is guaranteed in law, including all political parties, religions, and ideologies.

**NO:** A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

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## 6. Are citizens able to form media entities?

6a. In practice, the government does not create barriers to form a media entity.

**Comments:**

Normal business set-up fees and procedures apply, plus a license for use of airwaves.

**References:**

Interview with Carlos Fernando Chamorro, radio, TV and print media entrepreneur and anchorman.

**100:** Media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system.

**75:**

**50:** Formation of media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

**25:**

**0:** Media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. Division of broadcast bandwidth is widely viewed to be used as a political tool.

6b. In law, where a media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

**Comments:**

The communications law provides for an administrative appeal, regular courts and laws are available thereafter.

**References:**

Telecommunications Law (Law 200), articles 161-162 .

**YES:** A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied media license. A YES score is also earned if no license is necessary.

**NO:** A NO score is earned if there is no appeal process for media licenses.

6c. In practice, where necessary, citizens can obtain a media license within a reasonable time period.

**Comments:**

There is a requirement for a license . The state agency in charge (TELCOR),generally takes between two and six months to process requests.

**References:**

Telecommunications Law (Law 200).

**100:** Licenses are not required or licenses can be obtained within two months.

**75:**

**50:** Licensing is required and takes more than two months. Some groups may be delayed up to six months.

**25:**

**0:** Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

**Comments:**

Registry and reporting requirements are substantial, so it requires legal advice and diligence. Cost are reasonable for medium-sized operations.

**References:**

Telecommunications Law (law 200), articles 51- 69.

**100:** Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

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## 7. Are the media able to report on corruption?

92

7a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

**Comments:**

Truth is an absolute defense in cases of damage to reputation

**References:**

Constitution, articles 66 and 67.

**YES:** A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

**NO:** A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

7b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

Subtle pressures, in the form of a request of silence as a favor, the denial of government advertising funds and difficulties in securing access to information may occur, but generally the media investigates and reports on corruption freely.

**References:**

Various media owners.

**100:** The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

**75:**

**50:** The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

**25:**

**0:** The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

7c. In practice, there is no prior government restraint on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

All media is free of prior censorship. Libel laws of international standards apply.

**References:**

Various media owners.

**100:** The government never prevents publication of controversial corruption-related materials.

**75:**

**50:** The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. In countries where illiteracy is higher, the government may allow a free print press but censor broadcast media.

**25:**

**0:** The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material.

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## 8. Are the media credible sources of information?

63

8a. In law, media companies are required to disclose their ownership.

YES | **NO**

**Comments:**

Not all applicants names must be disclosed to obtain the permit to operate, only that of the legal representative or applicant.

**References:**

Telecommunications Law (Law 200), article 54.

**YES:** A YES score is earned if media companies are required by law to disclose all owners of the company.

**NO:** A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

8b. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

**Comments:**

While generally all major media outlets operate with professionalism, the coverage can be affected by the owner's ideological preferences. When political figures are concerned, the treatment they receive from the media outlets has some correlation to the media's political/ideological preferences.

Many media outlets have their own internal codes of conduct, but none are known to be universal to all reporters in the country.

**References:**

Interviews with media owners.

**100:** Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

**75:**

**50:** Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

**25:**

**0:** Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

8c. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, all parties have access to paid media. Free airtime/coverage is in close relation to poll ratings of the party/candidate. Some major media let their preferences known in the treatment received by candidates, but with some moderation. Editorial lines of support or rejection for candidates are used by some major media.

**References:**

Etica y Transparencia, Electoral reports 1996-2006

**100:** All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

**75:**

**50:** Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

**25:**

**0:** The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

8d. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

**Comments:**

Not only does the law provide for equal access for candidates, but it secures access to all media under published fee arrangements, applicable to all parties.

**References:**

Electoral Law (Law 331), articles 90-94.

**100:** The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content.

**75:**

**50:** The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

**25:**

**0:** The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

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## 9. Are journalists safe when investigating corruption?

100

9a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

**References:**

Media analysis and review. Interview with Carlos Fernando Chamorro, radio, TV and print media entrepreneur and anchorman.

**YES:** A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period.

**NO:** A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

**YES** | NO

**References:**

Interview with Vilma Nuñez, President of Nicaraguan Human Rights Commission

**YES:** A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues.

**NO:** A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9c. In practice, in the past year, no journalists investigating corruption have been killed.

**YES** | NO

**Comments:**

Three journalists were killed in the past three years. None of the deaths were due to investigating or reporting on corruption. Ordinary crime and political fanaticism were the generally regarded grounds, in those three cases.

**References:**

Interview with Vilma Nuñez, President of Nicaraguan Human Rights Commission

**YES:** A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period.

**NO:** A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

10. Do citizens have a legal right of access to information?

67

10a. In law, citizens have a right of access to government information and basic government records.

YES | NO

**Comments:**

In practice, the lack of an access to information law, prevents most citizens from getting any information beyond a police record.

**References:**

Article 26 of the Constitution.

**YES:** A YES score is earned if there is a formal right to access any government documents. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request. There should be a formal process for requesting this information.

**NO:** A NO score is earned if there is no such right.

10b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

**Comments:**

In practice, there is no access to information law and there is nothing to do when an information request is denied,

**References:**

Article 45 of the Constitution provide access to the judiciary in case of constitutional violations.

**YES:** A YES score is earned if there is a formal process of appeal for rejected information requests.

**NO:** A NO score is earned if there is no such formal process.

10c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

**Comments:**

There is no access to information law, nor a culture of such access to government records.

**References:**

Interview with Camilo De Castro, leading journalist.

**YES:** A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

**NO:** A NO score is earned if there is no such formal mechanism or institution.

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## 11. Is the right of access to information effective?

10

11a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | **0**

**Comments:**

During the past 10 years, Etica y Transparencia, a domestic NGO and national chapter of Transparency International, has made no less than 80 such requests. The correspondence and calls have not been acknowledge by most state and government institutions.

**References:**

Empirical study by Etica y Transparencia of government records regarding electoral financing.

**100:** Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

**75:**

**50:** Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

**25:**

**0:** Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

11b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Journalists report that cost is not the issue, gaining the access is the problem.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

11c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

No such appeal mechanism exists.

**References:**

Interview with Camilo De Castro, leading journalist.

**100:** The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

11d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Cost is not the issue, gaining access is the problem.

**References:**

Interview with Camilo De Castro, leading journalist.

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

**25:**

**0:** The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

11e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

**Comments:**

Written reasons are rarely given, occasionally there is a verbal excuse.

**References:**

Leading journalists interviews.

**100:** The government always discloses to the requestor the specific, formal reasons for denying information requests.

**75:**

**50:** The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

**25:**

**0:** The government does not regularly give reasons for denying an information request to the requestor.

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## II-1. <sup>57</sup>Voting & Citizen Participation

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### 12. Is there a legal framework guaranteeing the right to vote?

100

12a. In law, universal and equal adult suffrage is guaranteed to all citizens.

**YES** | NO

**Comments:**

At the age of 16 all citizens get the right to vote.

**References:**

Electoral Law (Law 331), art. 30.

**YES:** A YES score is earned if the right to vote is guaranteed to all citizens of that country. A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

**NO:** A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

12b. In law, there is a legal framework requiring that elections be held at regular intervals.

**YES** | NO

**Comments:**

Since 1990 all elections have been held as scheduled.

**References:**

Law 331 establishes periodic elections at fixed dates for the presidency, congress and the local authorities, as well as for the authorities of the autonomous regions (every four years for some and five years for others).

**YES:** A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

**NO:** A NO score is earned if no such framework exists.

### 13. Can all citizens exercise their right to vote?

100

13a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

**Comments:**

To vote one must register. To register there is some paperwork required. For example, one must obtain and present a birth certificate. Nicaragua is one of very few places in the world that provides a voting booth within two miles of one's residence.

**References:**

Electoral reports of domestic observer group, Etica y Transparencia, election years, 1996, 1998, 2000, 2001, 2002, 2004 and 2006.

**100:** Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

**75:**

**50:** Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

**25:**

**0:** Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

13b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

**References:**

Law 331. Electoral reports of Etica y Transparencia from 1996-2006.

**100:** Ballots are secret, or there is a functional equivalent protection, in all cases.

**75:**

**50:** Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

**25:**

**0:** Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

13c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

**References:**

Etica y Transparencia's electoral reports from 1996-2006.

**100:** Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

**75:**

**50:** Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

**25:**

**0:** Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

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## 14. Are citizens able to participate equally in the political process?

80

14a. In law, all citizens have a right to form political parties.

YES | NO

**Comments:**

There are basic requirements in order to establish a party and run for elections. Generally speaking, they are in accordance with international practices: gather 3 percent of signatures of registered voters, elect internal authorities, etc.

**References:**

Law 331. Electoral reports of Etica y Transparencia from 1996-2006.

**YES:** A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

**NO:** A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

14b. In law, all citizens have a right to run for political office.

**YES** | NO

**Comments:**

There are general requirements including nationality, age and freedom from inhibiting factors, such as felonies. During the recent past (2001) there have been some political maneuvers, such as gerrymandering and imposing legal proceedings, to prevent some candidates from running.

**References:**

Law 331, arts. 77 et seq.

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

**NO:** A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

14c. In practice, all citizens are able to form political parties.

100 | 75 | **50** | 25 | 0

**Comments:**

The law sets up requirements to form parties. A few of these are deemed excessive burdens in order to form a party and to remain a lawful party after an election. For example, parties must have board of directors at all levels, including the municipal level and present candidates in all elections and political posts, otherwise they can not run for any post. This precludes small parties from starting and building along the way.

**References:**

Law 331.

**100:** While there is no guarantee of electoral success, political parties can form freely without opposition.

**75:**

**50:** Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some

political parties or organizations may have extra barriers to getting on a ballot.

**25:**

**0:** Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

14d. In practice, all citizens can run for political office.

100 | 75 | **50** | 25 | 0

**Comments:**

The cost of running a campaign necessitates significant funds that are unavailable to most citizens. The state finances parties with US\$10 million (2006) to be distributed as reimbursement and in proportion to results obtained. This amount is between 30-50 percent of what parties use to run successful campaigns. The rest must be raised privately, with a law that provides for very little accounting and disclosure.

**References:**

Law 331. Electoral observation reports of Etica y Transparencia from 1996-2006.

**100:** While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

**75:**

**50:** Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

**25:**

**0:** Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

14e. In practice, an opposition party is represented in the legislature.

**100** | 75 | 50 | 25 | 0

**Comments:**

For the past three legislative periods (15 years), the current, main opposition party, the FSLN, has held about 40 percent of the seats, which gives them a say in crucial legislation that requires a qualified majority. Currently, five parties are represented in the national congressional body.

**References:**

Electoral observation reports of Etica y Transparencia from 1996-2006.

**100:** The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

**75:**

**50:** The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

**25:**

**0:** The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

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## II-2. Election Integrity

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15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

**YES** | NO

**Comments:**

The electoral authority is the fourth branch of government, equal to the executive, legislature and judiciary, according to the Constitution.

**References:**

Constitution , article 7.

**YES:** A YES score is earned if there is an agency or set of agencies/entities formally assigned to ensure the integrity of the election process.

**NO:** A NO score is earned if no agency or set of agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police.

---

16. Is the election monitoring agency effective?

40

16a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

**Comments:**

The National Assembly, by a qualified majority, names the seven heads of the electoral authority. The result is considered a bipartisan electoral body. The lower levels of the electoral administration are bipartisan by law.

**References:**

Law 331.

**YES:** A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies being contested in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no election monitoring agency.

16b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

Since 2000, the two main parties have sent to the top level of the electoral authority their former party legal representatives, legislators, chief negotiators and other extremely partisan figures.

**References:**

Electoral reports by Etica y Transparencia from 1996-2006.

**100:** Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

16c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Although the electoral body was re-staffed by partisans in 2000, by now their experience is sufficient to organize elections quite well in matters of logistics and administration. The political partisanship at the top generates problems of credibility and the like, but the organizational part runs well.

**References:**

Electoral reports by Etica y Transparencia from 1996-2006.

**100:** The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

16d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

**Comments:**

Other than the electoral results reports, issued generally in a timely fashion, other resolutions, reports and rules rarely reach the public. Sometimes not even the political parties receive them.

**References:**

Electoral reports by Etica y Transparencia from 1996-2006.

**100:** Reports are released to the public on a predictable schedule, without exceptions.

**75:**

**50:** Reports are released, but may be delayed, difficult to access, or otherwise limited.

**25:**

**0:** The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

16e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no records of any penalties ever imposed upon political parties or candidates, for any issues.

**References:**

Electoral reports by Etica y Transparencia from 1996-2006.

**100:** When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

**75:**

**50:** The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

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## 17. Are elections systems transparent and effective?

83

17a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

**Comments:**

A significant number of Nicaraguans, primarily the rural, young and poor, find the transactional costs of voter registry (the necessary paperwork and diligence) to be a significant burden. More than 93 percent of those of voting age are registered, and there are opportunities before each election to verify and modify the registry.

**References:**

Electoral reports by Etica y Transparencia from 1996-2006.

**100:** There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

**75:**

**50:** There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

**25:**

**0:** The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

17b. In law, election results can be contested through the judicial system.

**YES** | NO

**Comments:**

Given its status as an independent branch of government, with final judiciary responsibility over all electoral matters, the electoral authority is in charge of adjudicating all electoral challenges and disputes. Behind each electoral right lies a human right, and therefore, the Supreme Court sometimes gets involved, superseding the electoral authority on some electoral matters.

**References:**

Law 331.

**YES:** A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

**NO:** A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

17c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | **50** | 25 | 0

**Comments:**

The law provides for legal means to challenge electoral disputes. In practice, administrative and legal recourse is available to parties and candidates. Abuses motivated less by fact and more by political convenience do occur, given the partisan composition of the electoral authority.

Two examples from 2002 are worth noting. First, the supreme court restored the registration of a political party that was taken away by the electoral body for not meeting the minimum number of votes required to retain registration (there was a dispute about the actual standard). In the second ruling, the court overturned the mechanism of signature drives that the electoral body had established for parties and candidates.

**References:**

Law 331, articles 161 et seq.

**100:** The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

**75:**

**50:** The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

**25:**

**0:** The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

17d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

**References:**

Etica y Transparencia electoral reports from 1996-2006.

**100:** The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

**75:**

**50:** The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

**25:**

**0:** The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

17e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

**Comments:**

OAS, Carter Center and European Union have observed presidential elections in Nicaragua since 1990. Etica y Transparencia (ET) as well as a dozen or so other NGO's, have done domestic observation since 1996 in the case of ET, with as many as 12,000 observers.

**References:**

Electoral law art. 10(8). Among the duties of the electoral authority are to establish rules for accreditation and participation of observers of the electoral processes.”

See also Etica y Transparencia electoral reports from 1996-2006.

**YES:** A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

**NO:** A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

17f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

**Comments:**

The access for domestic and foreign observers has been traditionally very broad. However, this has been true by practice, the law and regulations grant less access.

**References:**

Law 331 and Rules Regarding Electoral Observation, 2006.

**100:** Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

**75:**

**50:** Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

**25:**

**0:** Election observers’ movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

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74  
II-3. Political Financing

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18. Are there regulations governing political financing?

0

18a. In law, there are regulations governing private contributions to political parties.

YES | **NO**

**Comments:**

The law only regulates campaign financing (only 75 days before elections). The rest of the time there are no rules applicable to political financing. The 75 days requirements are applicable only to parties, not to candidates, so they need not report at all. Anonymous donations, limitless in amount, are legal.

**References:**

Law 331, arts. 99 to 104

**YES:** A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

**NO:** A NO score is earned if there is no regulation of private contributions to political parties.

18b. In law, there are limits on individual donations to candidates and political parties.

YES | **NO**

**Comments:**

In a typical case of regulatory double speak," regarding public and foreign donations, article 104 refers to limits "elsewhere in the law" but there are none anywhere in the law.

**References:**

Law 331, art 103.

**YES:** A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

**NO:** A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18c. In law, there are limits on corporate donations to candidates and political parties.

YES | **NO**

**Comments:**

There are no limits on donations. Additionally, the reporting requirements are practically null and void, due to several factors including the allowance of anonymous donations, the fact that only the last 75 days of campaign need to be reported and the fact that if anyone other than the party receives the funds, the reporting is not applicable.

**References:**

Law 331, articles 103, 104.

**YES:** A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

**NO:** A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18d. In law, there are limits on total political party expenditures.

YES | **NO**

**Comments:**

There are no limits.

**References:**

Law 331.

**YES:** A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

**NO:** A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

18e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | **NO**

**Comments:**

The reporting requirements, for expenditures only, are applicable only to the public funding available to all parties. Private and foreign funds are covered by the anonymity clause and the 75-day limit referred to previously.

**References:**

Law 331.

**YES:** A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

**NO:** A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

18f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | **NO**

**Comments:**

The state provides 1 percent of the national budget in an election year to the parties for campaigns, as a refund based on percentage of votes earned (2006= US\$10 million). To seek this refund, parties must present audited expenses to cover their shares. No reporting/auditing for income from other sources is required by law.

**References:**

Law 331, articles 99/104.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

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## 19. Are the regulations governing political financing effective?

0

19a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | **0**

**Comments:**

There are no limits, or any review or enforcement.

**References:**

Law 331.

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

**75:**

**50:** Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or

parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no limits, no reporting and no enforcement under the current law for private financing.

**References:**

Law 331.

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no limits for fundraising or expenditures in the law.

**References:**

Law 331.

**100:** Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

19d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

Given the lack of regulations, it is not surprising that there have been no investigations regarding political/electoral financing, outside the issue of use of public funds. One of the few prohibitions in the law is a blanket prohibition on any other use of state funds in campaigns.

**References:**

Law 331. Etica y Transparencia electoral reports from 1996-2006.

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

**75:**

**50:** The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

19e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

An agency has never taken on this issue. Once, a court, in a spin-off case about embezzlement of public funds (some monies were diverted to a political campaign) opened a case, but found nothing in the law to investigate and eventually dismissed all parties.

**References:**

Law 331. Etica y Transparencia electoral reports from 1996-2006.

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

**75:**

**50:** The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

19f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no such requirements in the law.

**References:**

Law 331. Etica y Transparencia electoral reports from 1996-2006.

**100:** Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

**75:**

**50:** Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

**25:**

**0:** Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

---

20. Can citizens access records related to political financing?

20a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Parties must publish financial reports once a year. Generally, they provide few details and low numbers. By contrasting obvious expenditures with the statements' numbers, the general is that they do not disclose the reality.

**References:**

Law 331. Etica y Transparencia electoral reports from 1996-2006.

**100:** Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

**75:**

**50:** Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

**25:**

**0:** Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

20b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The law does not require parties/candidates to disclose their records to the public. In a study by Etica y transparencia (August 2006), all parties failed to respond some 30 separate requests for financial information.

**References:**

Law 331.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take two to four weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

20c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

The information is kept as a state secret by all parties/candidates. Etica y Transparencia did studies of visible expenditures, and this was all the public information available on the subject. Some parties do some voluntary disclosure to Etica y Transparencia, but they are very limited in scope.

**References:**

Law 331, Etica y Transparencia electoral reports.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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Category III. Government Accountability

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III-1. <sup>E1</sup> Executive Accountability

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21. In law, can citizens sue the government for infringement of their civil rights?

100

21. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

**Comments:**

At least four other lesser laws secure this right.

**References:**

Article 45 of the Constitution.

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

**NO:** A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

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## 22. Can the chief executive be held accountable for his/her actions?

81

22a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

**Comments:**

If the issue is raised by the media, almost always the executive provides some public explanation. It varies greatly how satisfactory these explanations ultimately are.

**References:**

Interview with Pablo Ayon, President of Etica y Transparencia.

**100:** The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

**75:**

**50:** The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

**25:**

**0:** The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

22b. In law, the judiciary can review the actions of the executive.

YES | NO

**Comments:**

The principle of judicial review is prescribed by the Constitution and used in practice with some frequency, without any exemptions.

**References:**

Article 164 of the Constitution.

**YES:** A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

22c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

**Comments:**

Reviews are generally few. There is always the issue of political motivation and lack of or excess of speed to act. However, rarely are the courts unable to have their judgments enforced.

**References:**

Interviews with Pablo Ayon, president of Etica y Transparencia and Rafael Solis, vice president of the Supreme Court.

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

**75:**

**50:** The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

22d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

**Comments:**

Executive orders are rarely used when a law is more likely the proper form of regulation.

**References:**

Rafael Solis, vice president of the Supreme Court.

**100:** The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

**75:**

**50:** The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

**25:**

**0:** The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

---

### 23. Is the executive leadership subject to criminal proceedings?

50

23a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

**Comments:**

The immunity from prosecution must be lifted by a qualified majority of Congress and the judgment of the Supreme Court. This has never happened.

**References:**

Constitution articles 130, 131.

**YES:** A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations.

**NO:** A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

23b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | **NO**

**Comments:**

Ministers enjoy immunity, which must be lifted by simple majority of Congress in order for the official to face trial

**References:**

Constitution article 131.

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

**NO:** A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

---

## 24. Are there regulations governing conflicts of interest by the executive branch?

47

24a. In law, the heads of state and government are required to file a regular asset disclosure form.

**YES** | NO

**Comments:**

They must file asset disclosure forms at their entry and exit from office. These records are not public.

**References:**

Law 438, Probitry Law.

**YES:** A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES.

**NO:** A NO score is earned if either the head of state or government is not required to disclose assets.

24b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

**Comments:**

They must file asset disclosure forms at their entry and exit from office. These records are not public.

**References:**

Law 438, Probity Law.

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

**NO:** A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

24c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

**Comments:**

Generally gifts are not allowed. If they are received in the name of the nation, they must be reported and turned over to the applicable institution.

**References:**

Probity Law. Procurement Law. Penal Code.

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

24d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

**Comments:**

The law does not mandate the auditing of asset reports, just their verification.”

**References:**

Law 438.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

24e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

**Comments:**

There is no time period a former public official must wait to engage in private practice/business, even in areas where, while in office, it would cause a conflict of interest.

**References:**

Probity Law. Penal Code. Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**YES:** A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

24f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

**Comments:**

No such restrictions exist.

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

24g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | **25** | 0

**Comments:**

No cases or audits have been brought for issues relating to gifts to public officials.

**References:**

Penal code. Procurement Law. Comptroller's Law. Probity Law, article 9.

**100:** The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

24h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | **50** | 25 | 0

**Comments:**

Upon entry or leaving office, officials disclosure records are sometimes audited upon request.

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Executive branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

---

## 25. Can citizens access the asset disclosure records of the heads of state and government?

0

25a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

**Comments:**

Citizen's may request the information, but officials must grant approval for access to the disclosure records.

**References:**

Probity Law, article 22.

**YES:** A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

25b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | **0**

**Comments:**

These records are hardly ever available, unless the officials publish them on their own.

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some additional delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Money is not the issue, lack of legal standing to obtain the information is the problem.

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

---

26. In practice, is the ruling party distinct from the state?

50

26. In practice, is the ruling party distinct from the state?

**Comments:**

The civil law (and its counterpart for local governments) regarding this separation has passed, but it is not yet applicable. The party in power traditionally appoints its own and forces all people in the top posts to contribute 5 percent of their salary to the party. Generally, there are some mild abuses of government posts and assets by the ruling party, but the extent is far less than in earlier times.

**References:**

Interview with Pablo Ayon, president of Etica y Transparencia

**100:** Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

**75:**

**50:** The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

**25:**

**0:** The government is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

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## III-2. Legislative Accountability

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27. Can members of the legislature be held accountable for their actions?

92

27a. In law, the judiciary can review laws passed by the legislature.

**YES** | NO

**References:**

Constitution, article 164.

**YES:** A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

27b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

**References:**

Rafael Solis, Vice President Supreme Court

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

**75:**

**50:** The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

27c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

**Comments:**

Members of Congress have immunity, which must be lifted by a simple majority before they can face charges.

**References:**

Constitution, article 139.

**YES:** A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

**NO:** A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

---

28. Are there regulations governing conflicts of interest by members of the national legislature?

28a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

**References:**

Probity Law, articles 438 et seq.

**YES:** A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

**NO:** A NO score is earned if any member of the legislature is not required to disclose assets.

28b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

**Comments:**

There are no restrictions for government officials after leaving office.

**References:**

Interview with Guillermo Arguello Poessy, president of Comptroller's Office.

**YES:** A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

28c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

**References:**

Probity Law, article 9. Law 438, article 22. Constitution, article 135.

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

28d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

**Comments:**

The law provides for the Comptroller's Office to verify" the forms, not to audit them. It does so for less than 10 percent of officials upon their entry into office. Less than 10 percent of officials leaving posts even bother to file at exit disclosure form.

**References:**

Probity Law, law 438. Etica y Transparencia's review of compliance of Nicaragua with the OAS Anti-Corruption Convention.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

28e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

**Comments:**

No such restrictions exist.

**References:**

Interview with Guillermo Arguello Poessy, president of Comptroller's Office.

**100:** The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

28f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | **25** | 0

**Comments:**

No such cases have occurred, but experts think that some thinly veiled bribes do occur and go unnoticed

**References:**

Interview with Guillermo Arguello Poessy, president of Comptroller's Office.

**100:** The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

28g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | **25** | 0

**Comments:**

The law provides for the Comptroller's Office to verify" the forms, not to audit them. It does so for less than 10 percent of officials upon their entry into office. Less than 10 percent of officials leaving posts even bother to file at exit disclosure form.

**References:**

Probity Law, law 438. Etica y Transparencia's review of compliance of Nicaragua with the OAS Anti-Corruption Convention.

**100:** Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Legislative branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

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## 29. Can citizens access the asset disclosure records of members of the national legislature?

0

29a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

### Comments:

Asset disclosure records are not made public.

### References:

Interview with Guillermo Arguello Poessy, president of Comptroller's Office.

**YES:** A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

29b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

### Comments:

The law does not provide for disclosure.

### References:

Empirical tests conducted by Etica y Transparencia.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

29c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Cost is not an issue. Lack of legal access to the forms is what prevents public disclosure.

**References:**

Interview with Guillermo Arguello Poessy, president of Comptroller's Office.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 30. Can citizens access legislative processes and documents?

50

30a. In law, citizens can access records of legislative processes and documents.

YES | NO

**Comments:**

All voting occurs in open, public sessions. However record keeping is weak, so it may not be possible to see who voted for what in the past.

**References:**

Constitution, article 132 et seq.

**YES:** A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

**NO:** A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

30b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Some records are available online, but they are not uniformly available. Sometimes it is not possible to find anything other than the text of the law.

**References:**

Interview with Pablo Ayon , president of Etica y Transparencia.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Costs is not an issue. A lack of access and record-keeping are the known obstacles.

**References:**

Interview with Yader Loza, executive director of Hagamos Democracy, a legislative watchdog group.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 44 III-3. Judicial Accountability

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### 31. Are judges appointed fairly?

42

31a. In practice, there is a transparent procedure for selecting national-level judges.

YES | **NO**

**Comments:**

While the new judiciary career law established a competitive process to select judges, the law has yet to be put into practice.

**References:**

Judiciary Career Law. Interviews with former Chief Justice Alejandro Serrano.

**YES:** A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages.

**NO:** A NO score is given if there is no formal process of selection or the process is conducted without public oversight.

31b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | **25** | 0

**Comments:**

Currently, meeting only basic criteria, such as having a law degree, is needed.

**References:**

Constitution, article 161. Judiciary Organic Law. Judiciary Career Law.

**100:** National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

**75:**

**50:** Most national-level judges selected meet these qualifications, with some exceptions.

**25:**

**0:** National-level judges are often unqualified due to lack of training or experience.

31c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

**YES** | NO

**Comments:**

With a qualified majority, the legislature selects the Supreme Court judges. Those judges select all others.

**References:**

Constitution, article 137.

**YES:** A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

**NO:** A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

---

## 32. Can members of the judiciary be held accountable for their actions?

25

32a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

**YES** | NO

**Comments:**

Only Supreme Court decisions provide more than just the ruling. This is published annually by the Supreme Court

**References:**

Judiciary Organic Law. Supreme Court Annual Review 2004.

**YES:** A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

**NO:** A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

32b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | **50** | 25 | 0

**Comments:**

Lower court judges almost never provide anything other than the ruling and basic information for possible appeals to a higher court.

**References:**

interview with Rafael Solis, Vice President of the Supreme Court.

**100:** Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

**75:**

**50:** Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

**25:**

**0:** Judges commonly issue decisions without formal explanations.

32c. In law, there is an ombudsman (or equivalent agency or mechanism) for the national-level judicial system.

YES | **NO**

**Comments:**

No such figure or mechanism exists. The Supreme Court has its own disciplinary commission.

**References:**

interview with Rafael Solis, Vice President of the Supreme Court.

**YES:** A YES score is earned if there is a ombudsman or equivalent mechanism for the judicial system. A judicial ombudsman is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

**NO:** A NO score is earned if no agency or mechanism is specifically mandated to act as a judicial ombudsman.

32d. In law, the judicial ombudsman (or equivalent agency or mechanism) is protected from political interference.

YES | **NO**

**Comments:**

There is no such figure/role.

**References:**

interview with Rafael Solis, Vice President of the Supreme Court.

**YES:** A YES score is earned if there are formal rules establishing that the judicial ombudsman is operationally independent from political interference by the executive, legislative or judicial branches.

**NO:** A NO score is earned if there are no formal rules establishing the independence of the judicial ombudsman. A NO score is given if the judicial ombudsman function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

32e. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) initiates investigations.

100 | 75 | 50 | 25 | **0**

**Comments:**

Not applicable.

**References:**

interview with Rafael Solis, Vice President of the Supreme Court.

**100:** The ombudsman aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The ombudsman is fair in its application of this power.

**75:**

**50:** The ombudsman will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The ombudsman, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The ombudsman rarely investigates on its own or cooperates in other agencies' investigations, or the ombudsman is partisan in its application of this power.

32f. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

Not applicable.

**References:**

interview with Rafael Solis, Vice President of the Supreme Court.

**100:** When rules violations are discovered, the ombudsman is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The ombudsman enforces rules, but is limited in its effectiveness. The ombudsman may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The ombudsman does not effectively penalize offenders. The ombudsman may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The ombudsman may be partisan in its application of power.

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## III-4. Budget Processes

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33. Can the legislature provide input to the national budget?

83

33a. In law, the legislature can amend the budget.

YES | NO

**Comments:**

While in theory, the legislative body may only know, discuss and approve" the budget, that translates into helping shape and change it through negotiations while withholding approval.

**References:**

Constitution, articles 138 and 141.

**YES:** A YES score is earned if the legislature has the power to add or remove items to the national government budget.

**NO:** A NO score is earned if the legislature can approve, but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

33b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the executive underestimates revenues from taxes to some extent, so that such funds are not earmarked for expenditures. Depending on the executive's relationship with Congress, he/she may dispose of some of these funds without congressional intervention.

**References:**

National Annual Budget Law. Interview with Orlando Tardencilla, legislator.

**100:** All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

**75:**

**50:** Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

**25:**

**0:** The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

33c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

**Comments:**

Staff is qualified but limited. Because the legislators are generally experienced and the budgets reflect similarities from one year to the next, the legislative body's capacity is adequate.

**References:**

Interviews with legislators, Orlando Tardencilla and Jorge Matamoros.

**100:** Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

**75:**

**50:** Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

**25:**

**0:** Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

---

## 34. Can citizens access the national budgetary process?

67

34a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

**Comments:**

There is public debate of the budget proposal, but some items are approved without any or much input or debate

**References:**

Interviews with legislators, Orlando Tardencilla and Jorge Matamoros and former legislators.

**100:** Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

**75:**

**50:** There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

**25:**

**0:** Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

34b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

**Comments:**

A few NGOs and unions for teachers and others analyze the budget and publicly push for particular allocations. Some of this action returns results.

**References:**

Interview with Pablo Ayon, president of Etica y Transparencia

**100:** Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

**75:**

**50:** Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

**25:**

**0:** Citizens or CSOs have no formal access to provide input to the budget debate.

34c. In practice, citizens can access itemized budget allocations.

100 | 75 | **50** | 25 | 0

**Comments:**

When the executive presents the annual budget law, journalists and CSOs can access it in its entirety, but often through informal means. It is not posted on the Internet by line item until it is approved.

**References:**

Annual Budget law

**100:** Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

**75:**

**50:** Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

**25:**

**0:** Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

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35. In law, is there a separate legislative committee which provides oversight of public funds?

100

35. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

**Comments:**

It is a permanent legislative commission.

**References:**

National Assembly, General Statutes, articles 48-72.

**YES:** A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

**NO:** A NO score is earned if no such body exists. A NO score is earned if there is a body executing this function but it is not under the direction of the legislature.

---

### 36. Is the legislative committee overseeing the expenditure of public funds effective?

44

36a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

**Comments:**

In 2005, five ministers were compelled to testify in front of the plenary/commission, but there are no regularly scheduled hearings or reports.

**References:**

Media monitoring.

**100:** Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

**75:**

**50:** Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

**25:**

**0:** There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

36b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

**Comments:**

Opposition parties may head the commission or have the majority of seats in it, but its role is limited.

**References:**

National Assembly, General Statutes, articles 48-72.

**100:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

**75:**

**50:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

**25:**

**0:** The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

36c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

As a congressional committee, it is always part of the political process. But its role is limited to the budget approval process primarily, with little follow-up duties.

**References:**

Interview with Pablo Ayon, president of Etica y Transparencia

**100:** This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

**75:**

**50:** This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

**25:**

**0:** This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and

decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

36d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | **50** | 25 | 0

**Comments:**

Other committees, such as the Probity Commission and others, usually take the lead when there are issues of financial irregularities in any branch of government. Its independence is always questioned.

**References:**

Interview with legislators.

**100:** When irregularities are discovered, the committee is aggressive in investigating the government.

**75:**

**50:** The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

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## Category IV. Administration and Civil Service

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### IV-1. <sup>54</sup>Civil Service Regulations

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37. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

37a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

**References:**

Judiciary Career Law. Civil Service Law. Municipal Career Law.

**YES:** A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

**NO:** A NO score is earned if there are no formal rules establishing an independent civil service.

37b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

**References:**

Constitution, article 130. Probity Law, article 11.

**YES:** A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

**NO:** A NO score is earned if no such regulations exist.

37c. In law, there is an independent redress mechanism for the civil service.

YES | NO

**Comments:**

The protections are extremely weak and do not apply for applicants, only for current employees.

**References:**

Labor Code.

**YES:** A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

**NO:** A NO score is earned if no such mechanism exists.

37d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | **NO**

**Comments:**

Candidates for political office face a temporary ban from running for office if convicted of felonies, over and above the time served. No other rules exist for other cases, such as appointments.

**References:**

Law 331

**YES:** A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

**NO:** A NO score is earned if no such rules exist.

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### 38. Is the law governing the administration and civil service effective?

44

38a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | **25** | 0

**Comments:**

Because the law for civil service is still not applicable, generally civil service jobs are rewards for political work and clout. Therefore, they are usually terminated upon the change of administration or a change in political will.

**References:**

Interview with Pablo Ayon, president of Etica y Transparencia.

**100:** Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

**75:**

**50:** Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

**25:**

**0:** Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

38b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

**Comments:**

Posts that require technical expertise may be filled by those who also qualify politically. An important post, no matter how technical, is rarely given to an outsider. Lower ranking positions are even more a case of political rewards.

**References:**

Interview with Vice President of Supreme Court Rafael Solis.

**100:** Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

38c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | **25** | 0

**Comments:**

Nepotism is outlawed, so often one powerful person has his relatives hired by another agency and returns the favor. Cronyism and patronage are not outlawed and are common.

**References:**

Personal observation.

**100:** Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

**75:**

**50:** Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

**25:**

**0:** Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

38d. In practice, civil servants have clear job descriptions.

100 | 75 | **50** | 25 | 0

**Comments:**

Terms of reference and guidelines are common. However, the salaries for the top positions are unregulated and vary drastically from one administration to the next.

**References:**

Interview with former Chief of Staff Mario De Franco.

**100:** Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

**75:**

**50:** Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

**25:**

**0:** Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

38e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | **50** | 25 | 0

**Comments:**

Bonuses are not the norm in public service. Relatively hefty salaries, at the discretion of the president, are the norm.

**References:**

Interview with former Chief of Staff Mario De Franco.

**100:** Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

**75:**

**50:** Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

**25:**

**0:** Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

38f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | **25** | 0

**Comments:**

There are no such listings.

**References:**

Interview with former Chief of Staff Mario De Franco.

**100:** The government publishes such a list on a regular basis.

**75:**

**50:** The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

**25:**

**0:** The government rarely or never publishes such a list, or when it does it is wholly incomplete.

38g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | **0**

**Comments:**

No such mechanisms exist currently

**References:**

Interview with former Ombudsman Patricia Obregon.

**100:** The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

**75:**

**50:** The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

**25:**

**0:** The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

38h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

**Comments:**

At all levels of government, payments have been made on time and in full for many years now.

**References:**

Interview with Eduardo Montealegre, former minister of the Treasury

**100:** In the past year, no civil servants have been paid late.

**75:**

**50:** In the past year, some civil servants have been paid late.

**25:**

**0:** In the past year, civil servants have frequently been denied due pay.

38i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

**Comments:**

The law establishes a ban on civil service (for varying numbers of years) for convicted felons, particularly if the victim is the state.

**References:**

Probity Law, article 11. Penal Code (various articles).

**100:** A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

---

### 39. Are there regulations addressing conflicts of interest for civil servants?

46

39a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

#### References:

Constitution, article 130. Probity Law, article 7, et seq.

**YES:** A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

**NO:** A NO score exists if no such requirements exist in regulation or law.

39b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

#### Comments:

The limits and prohibitions in the law for civil servants are clearly limited to the time of their employment with government only.

#### References:

Probity Law, article 6.

**YES:** A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their

former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

39c. In law, there are regulations governing gifts and hospitality offered to civil servants.

**YES** | NO

**References:**

Probity law, articles 8 and 9.

**YES:** A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

**NO:** A NO score is earned if there are no such guidelines or regulations.

39d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | **0**

**Comments:**

There are no such laws.

**References:**

Interview with Guillermo Arguello Poessy, president of Comptroller's Office.

**100:** The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

Hospitality offered to public officials overseas is common and not strictly regulated. Gifts are less common and must be reported and turned over to the state, but this rarely happens.

**References:**

Interview with Guillermo Arguello Poessy, president of Comptroller's Office.

**100:** The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

39f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

The general feeling is that officials use privileged information and make policy decisions, without recusing themselves, but by circumventing the spirit of the law in other ways (third parties, etc).

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

**75:**

**50:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

**25:**

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

## 40. Can citizens access the asset disclosure records of senior civil servants?

83

40a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

### Comments:

The law establishes that a citizen may request asset disclosure forms, stating reasons. The Comptroller's Office will then inform the public official and rule if it has merits, then decide on what information to disclose and under what limits and conditions.

### References:

Probity Law, article 22.

**YES:** A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

**NO:** A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

40b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

Rarely are such records requested. Most recently, all presidential candidates (three of them present and former public employees) had their last forms released. However, for those who have continued in public office for many years (thus have not filled their exit declarations), the records are hopelessly out of date.

### References:

Etica y Transparencia electoral reports.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

40c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Cost is not an obstacle.

**References:**

Interview with Guillermo Arguello Poessy, president of Comptroller's Office.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## IV-2. Whistle-blowing Measures

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41. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

13

41a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

**Comments:**

No whistle blower legislation exists.

**References:**

Answers of civil society to the questionnaire of the committee of experts of the OAS regarding compliance with the OAS Anti-Corruption Convention.

**YES:** A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for public-sector whistleblowers.

41b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | **25** | 0

**Comments:**

In the absence of protective legislation, extremely few cases are ever brought.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

41c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

**Comments:**

No such legislation exists.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**YES:** A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for private-sector whistleblowers.

41d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

**Comments:**

No cases have arisen recently, probably due to the lack of protections.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

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42. Is there an effective internal mechanism (i.e. phone hotline, e-mail address, local office) where civil servants can report corruption?

25

42a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

It has a limited staff and a limited mandate.

**References:**

Interview with the head of the Office of Public Ethics, Haydee Acosta.

**100:** The agency/entity has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

42b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

Funding has been regular but limited. During the past five years, the mandate has also been limited. An effort to set up a hot-line and an Office for Complaints of Corruption at the Procuraduria Genral de la Republica, has yielded little results.

**References:**

Interview with the head of the Office of Public Ethics, Haydee Acosta.

**100:** The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

42c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

There are very few complaints. To date no cases or investigations have been reported.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

42d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | **25** | 0

**Comments:**

The office of Public Ethics lacks in its mandate the power to conduct investigations. The Procuraduria General de la Republica has the power but exercises it very rarely due to lack of complaints

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

43. Is the public procurement process effective?

63

43a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

**References:**

Constitution, article 135. Procurement Law (Law 323) article 12.

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private gain for public procurement officials.

**NO:** A NO score is earned if no such rules exist.

43b. In law, there is mandatory professional training for public procurement officials.

YES | NO

**Comments:**

No such training is mandated by the law. As a matter of practice, all procurement departments in all purchasing entities of the central government receive various levels of training and the hiring is normally of qualified individuals.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**YES:** A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

**NO:** A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, or voluntary.

43c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

**Comments:**

The prohibitions are enforced rarely because often conflicts are not evident or investigated in depth.

**References:**

Law 323, Procurement Law. Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

**75:**

**50:** Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

**25:**

**0:** Conflict of interest regulations do not exist, or are consistently ineffective.

43d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

**Comments:**

No such legislation or mandate exists.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**YES:** A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

**NO:** A NO score is earned if no such mandate exists.

43e. In law, major procurements require competitive bidding.

**YES** | NO

**Comments:**

The higher the procurement award is,, the greater the competitive process requirements are. The law provides for exemptions from the requirements and those are sometimes abused.

**References:**

Procurement Law, chapter 5, article 25 et seq.

**YES:** A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

**NO:** A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

43f. In law, strict formal requirements limit the extent of sole sourcing.

**YES** | NO

**Comments:**

Some clauses of the article are overly broad and lead to abuses. For example, the argument of urgency, security and other public interest” leads to requests to the Comptroller’s Office to forgo the requirements. Often such requests are approved and the urgency stems from phony factors and poor planning.

**References:**

Procurement Law , article 3.

**YES:** A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

**NO:** A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

43g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

**YES** | NO

**References:**

Law 323, chapter11, article 144 et seq.

**YES:** A YES score is earned if there is a formal appeal process for unsuccessful bidders.

**NO:** A NO score is earned if no such process exists.

43h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | **NO**

**Comments:**

Challenges are brought before the Comptroller's Office, not the courts and its ruling is final.

**References:**

Procurement Law, article 109.

**YES:** A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

**NO:** A NO score is earned if no such process exists.

43i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

**YES** | NO

**Comments:**

Companies found guilty face up to five years of suspension from procurement bidding, plus other penalties under other laws. However, some procurement entities fail to report the wrongdoers so that no black listing" occurs.

**References:**

Procurement Law, chapter 7, articles. 83 et seq.

**YES:** A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

**NO:** A NO score is earned if no such process exists.

43j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | **75** | 50 | 25 | 0

**Comments:**

Sometimes contractors that under perform or violate the law are not reported to the registry at the Treasury Ministry. These companies only remain black listed at the government entity in which they failed their duties, not before the entire public procurement system.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

---

#### 44. Can citizens access the public procurement process?

54

44a. In law, citizens can access public procurement regulations.

YES | **NO**

**Comments:**

The principles of publicity and transparency under the law (art. 6) are limited to the providers vis a vis one another. The public is left only with an annual publication of the procurement schedule for each government entity.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**YES:** A YES score is earned if procurement rules are, by law, open to the public.

**NO:** A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

44b. In law, the government is required to publicly announce the results of procurement decisions.

**YES** | NO

**Comments:**

All adjudications must be published in the same media (the state official newspaper or two national newspapers) in which the bid was published.

**References:**

Procurement Law and its rules, article 84.

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

44c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | **50** | 25 | 0

**Comments:**

The national Chapter of Transparency International has been granted, by public agreement, blanket access to procurement at two ministries (health and education), as well as a few local governments. Some procurement information (expenditures) is available online as part of the SIGFA project lead by the Treasury Ministry. Offers to bid are published as a matter of law, above certain amount.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | **25** | 0

**Comments:**

Basic information is available through publications and online (offer terms and terms of adjudication), but little else.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

44e. In practice, major public procurements are widely advertised.

100 | 75 | 50 | 25 | 0

**Comments:**

Procurement is widely advertised, but if the Comptroller's Office grants an exception, the entire process may not be public, even the request for exemption and the granting of it.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** There is a formal process of advertising public procurements. This may include a government Web site, newspaper advertising, or other official announcements. All major procurements are advertised in this way.

**75:**

**50:** There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective.

**25:**

**0:** There is no formal process of advertising major public procurements or the process is superficial and ineffective.

44f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

**Comments:**

Newspaper publishings are the most common way for citizens to access information on procurement results.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** Records of public procurement results are publicly available through a formal process.

**75:**

**50:** Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

**25:**

**0:** This information is not available to the public through an official process.

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## IV-4. Privatization

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### 45. Is the privatization process effective?

83

45a. In law, all businesses are eligible to compete for privatized state assets.

**YES** | NO

**Comments:**

No privatizations have taken place in the past two years. Prior to that, power and telecommunications were privatized. Those processes were open to foreign companies, with only technical requirements and warranties required. There is no privatization law. A specific one is drafted each time a state asset is to be sold.

**References:**

Interview with Pablo Ayon, former head of TELCOR, last privatized industry in the country.

**YES:** A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

**NO:** A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

45b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

**YES** | NO

**References:**

Constitution, article. 130. Procurement Law article 92-97.

**YES:** A YES score is earned if there are formal regulations defining and regulating conflicts of interest for government officials involved in privatization.

**NO:** A NO score is earned if there are no such formal regulations.

45c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | **50** | 25 | 0

**Comments:**

No such issue has arisen in privatizations after 2000. Loopholes and legal maneuvering are considered responsible for the obvious fact that government officials have allegedly made off with substantial funds or shares of the enterprises sold.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

**75:**

**50:** Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

**25:**

**0:** Conflict of interest regulations do not exist, or are consistently ineffective.

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## 46. Can citizens access the terms and conditions of privatization bids?

69

46a. In law, citizens can access the terms and conditions of privatization bids.

**YES** | NO

**Comments:**

The bids are open and publicized, according to the law for each state asset sale.

**References:**

Interview with Pablo Ayon, former head of TELCOR, last privatized industry in the country.

**YES:** A YES score is earned if there is a formal process of publishing the details of privatization bids that makes information available to all citizens.

**NO:** A NO score is earned if there is no formal publication process, or if any citizens are excluded by law from accessing this information.

46b. In law, the government is required to publicly announce the results of privatization decisions.

**YES** | NO

**Comments:**

Results have been published, but there is little information beyond the sale conditions and amounts.

**References:**

Interview with Pablo Ayon, former head of TELCOR, last privatized industry in the country.

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

46c. In practice, citizens can access the terms and conditions of privatization bids within a reasonable time period.

100 | 75 | **50** | 25 | 0

**Comments:**

By law, basic information on the terms and conditions must be published in the newspapers. There is generally significant media follow up. However, there is a sense that significant information is left unpublished.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

46d. In practice, citizens can access the terms and conditions of privatization bids at a reasonable cost.

100 | 75 | 50 | **25** | 0

**Comments:**

As with other issues of citizen's access to information, cost is not the issue, secrecy and lack legal access are the typical barriers.

**References:**

Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## Category V. Oversight and Regulation

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### V-1. <sup>65</sup>National Ombudsman

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47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

**References:**

Law 212, Ombudsman Law.

**YES:** A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

**NO:** A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

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#### 48. Is the national ombudsman effective?

39

48a. In law, the ombudsman is protected from political interference.

YES | NO

**Comments:**

This a a difficult yes or no question. The ombudsman depends upon Congress for funding and personal appointments, as such it is plagued by political interference .

**References:**

Law 212, Ombudsman Law.

**YES:** A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

48b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

It is treated as a politically sensitive post and office. Its heads are named accordingly. There has been a recent tendency to lessen its independence.

**References:**

Interview with former Ombudsman Patricia Obregon.

**100:** This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

**75:**

**50:** This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

48c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

While no ombudsman has even been threatened with removal from office, the appointments to this and other posts is plagued by partisanship.

**References:**

Law 212, article 6 et seq.

**100:** The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

48d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Money and political problems limit its staff professionally.

**References:**

Interview with former Ombudsman Patricia Obregon.

**100:** The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

48e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**Comments:**

Due to its lack of independence and extreme partisanship, donors have withdrawn political and financial support from the Ombudsman's Office since 2005. Likewise, all former special ombudsmen were fired or forced out by the new top authority in 2005. Clear party loyalty and personal relationships with individuals charged with corruption seems to be the current atmosphere of the institution.

**References:**

Interview with former Ombudsman Patricia Obregon.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

48f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

More than 50 percent of its operating budget previously came from international donors. The state budget varies and is always rather small (less than US\$2 million in 2005).

**References:**

Interview with former Ombudsman Patricia Obregon.

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

48g. In practice, the agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

**Comments:**

The legislature receives annual reports by law. The public receives reports on a case by case basis, with delays and selectivity involved.

**References:**

Constitution, article 138.

**100:** The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

48h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

Interview with former Ombudsman Benjamin Perez.

**100:** The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

**75:**

**50:** The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

48i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

The law does not allow the ombudsman to impose penalties.

**References:**

Interview with former Ombudsman Benjamin Perez.

**100:** When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

48j. In practice, the government acts on the findings of the agency (or agencies).

100 | 75 | 50 | 25 | 0

**Comments:**

A lack of binding resolution powers limits its effectiveness and importance.

**References:**

Interview with former Ombudsman Benjamin Perez.

**100:** Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

48k. In practice, the agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Due to staff, money and political issues, the time taken to act and report varies greatly.

**References:**

Interview with former Ombudsman Benjamin Perez.

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

---

## 49. Can citizens access the reports of the ombudsman?

83

49a. In law, citizens can access reports of the ombudsman(s).

YES | NO

**Comments:**

Generally, its reports are public and publicized.

**References:**

Law 212.

**YES:** A YES score is earned if all ombudsman reports are publicly available.

**NO:** A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

49b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Reports are made public. They are available at the ombudsman's office and are presented, in important cases, at press conferences. They are not available online.

**References:**

Interview with former Ombudsman Patricia Obregon.

**100:** Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Reports are free and readily available.

**References:**

Interview with former Ombudsman Benjamin Perez.

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## V-2. Supreme Audit Institution

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50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

**References:**

Constitution, article 154.

**YES:** A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

**NO:** A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

---

## 51. Is the supreme audit institution effective?

59

51a. In law, the supreme audit institution is protected from political interference.

YES | NO

### References:

Constitution, article 154, et seq.

**YES:** A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

51b. In practice, the head of the agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

### Comments:

Since the early 1990's no comptroller has been removed or has been attempted to be removed with or without cause.

### References:

Constitution, article 56.

**100:** The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the agency can be removed at the will of political leadership.

51c. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

It has a small, limited staff that is capable and professional.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

51d. In practice, agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

This office can also be used against politicians and parties for political reasons. Congress, however, ensures that this does not happen. As a result, citizens complain of a lack of independence.

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

51e. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

Budget cuts are a form of pressure.

**References:**

interview with Agustin Jarquin, former head of the Comptroller's Office.

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

51f. In practice, the agency makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

reports are sometimes withheld for years, even allowing for statute of limitations to expire in some cases

**References:**

Interview with Camillo de Castro, leading journalist.

**100:** The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

**25:**

**0:** The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

51g. In practice, the government acts on the findings of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

Administrative findings and fines are very seldom collected by other state institutions. Penal responsibility often encounters the issue of immunity, on top of a less willing and able to act comptroller's office

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

51h. In practice, the supreme audit institution is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

Currently, the comptroller's office has referred cases to the justice system of a former minister of transport, Pedro Solorzano, with a presumption of culpability, the most it can do based on its audits. Three other ministers and agency heads of the current government find themselves under similar investigations. The issue is not that the comptroller fails to start investigations, for it clearly does, but that it does not do so evenhandedly (political opponents seem to represent a greater percentage of its investigations).

**References:**

Constitution, article 156.

**100:** The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

**75:**

**50:** The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

**25:**

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

## 52. Can citizens access reports of the supreme audit institution?

92

52a. In law, citizens can access reports of the agency.

YES | NO

### Comments:

By law, results must be made public or the Comptroller's Office can be charged as an accessory to the crime. In practice, however, it can take all the time it wants to perform an audit or publish a report.

### References:

Constitution, article 156.

**YES:** A YES score is earned if all supreme auditor reports are available to the general public.

**NO:** A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

52b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

Printed copies of resolutions are available upon request. They are not yet available on the Internet.

### References:

interview with Camillo de Castro, leading journalist.

**100:** Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

The reports are free.

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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84

## V-3. Taxes and Customs

---

53. In law, is there a national tax collection agency?

100

53. In law, is there a national tax collection agency?

YES | NO

**Comments:**

This is the National Office for Income.

**References:**  
Law 243 and 339.

**YES:** A YES score is earned if there is a national agency formally mandated to collect taxes.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

---

## 54. Is the tax collection agency effective?

75

54a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Partisanship and political rewards” to unqualified party supporters ensure that each agency has its share of underqualified individuals.

**References:**

Interview with Melvin Estrada, program director at the tax agency.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

54b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The budget allocation for the tax agency has remained stabled or grown during the past five years. As all agencies do, it requests more money each year, but it never gets all of the funding it requests.

**References:**

Teodulo Baez, author of All about taxes in Nicaragua.” National budget analysis 2000-2005.

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

---

55. In practice, are tax laws enforced uniformly and without discrimination?

75

55. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

In recent years, the practice of using the tax collection agency as a shield or sword against political foes and or for friends has diminished drastically. Some discrimination still exists, however.

**References:**

Teodulo Baez, author of All about taxes in Nicaragua.” National budget analysis 2000-2005.

**100:** Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

**75:**

**50:** Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

**25:**

**0:** Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

---

56. In law, is there a national customs and excise agency?

100

56. In law, is there a national customs and excise agency?

YES | NO

**References:**

Law 339.

**YES:** A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist.

---

57. Is the customs and excise agency effective?

75

57a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Customs in Nicaragua, like other agencies, are plagued by its share of underqualified individuals that receive their posts not on professional merit but because of political affiliation.

**References:**

Interview with Julio Perez, former customs inspector.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

57b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

While more funding is always needed, there are relatively few ups and downs in the budget.

**References:**

Interview with Ricardo Vega, former customs chief.

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

---

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

Groups with more financial clout get special treatment, especially in cuts of time and red tape.

**References:**

Interview with Julio Perez, former customs inspector.

**100:** Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

**75:**

**50:** Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

**25:**

**0:** Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

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## V-4. Financial Sector Regulation

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59. In law, is there a financial regulatory agency overseeing publicly listed companies?

0

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

YES | **NO**

**Comments:**

There are no public companies.

**References:**

Law 552, General Law of Banks, Non Banking Financial institutions and Financial Groups” see also laws 316 and 564, and decree 18-24

**YES:** A YES score is earned if there is an agency tasked with overseeing publicly listed companies in the public interest and ensuring that disclosure rules are met.

**NO:** A NO score is earned if this function is spread over several agencies or does not exist.

---

60. Is the financial regulatory agency effective?

0

60a. In law, the financial regulatory agency is protected from political interference.

YES | **NO**

**Comments:**

No such agency exists.

**References:**

interview with Angel Navarro, former superintendent of banks.

**YES:** A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

60b. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The market is extremely small in terms of trading companies and the numbers of dollars and investors. No such agency exists.

**References:**

Interview with Gabriel Solorzano.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

60c. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

no such agency exists

**References:**

interview with Orlando Tardencilla, legislator.

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

60d. In practice, when necessary, the financial regulatory agency independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

Another agency, Superintendencia de Bancos, has the right to intervene with banking institutions if there is sufficient cause, forcing a sale or liquidation.

**References:**

Law 316 and 552.

**100:** When irregularities are discovered, the agency is aggressive in investigating and/or in cooperating with other investigative bodies.

**75:**

**50:** The agency starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

60e. In practice, when necessary, the financial regulatory agency imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

Between 1999 and 2002 there were seven the bank failures, which yielded plenty of allegations of unjust enrichment, windfalls for politicians, etc. But only one person went to jail in the matter. On the other hand, the system paid every single depositor for all their money deposited in the failed banks.

**References:**

Media monitoring.

**100:** When rules violations are discovered, the agency is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

**75:**

**50:** The agency enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partis

---

## 61. Can citizens access the financial records of publicly listed companies?

0

61a. In law, citizens can access the financial records of publicly listed companies.

YES | **NO**

**Comments:**

No such companies exist. All are privately held.

**References:**

Laws,561, 552, article 87.

**YES:** A YES score is earned if the financial information of all publicly traded companies is required by law to be public.

**NO:** A NO score is earned if any category of publicly- owned or publicly-traded company is exempt from this rule, or no such rules exist.

61b. In practice, the financial records of publicly listed companies are regularly updated.

100 | 75 | 50 | 25 | **0**

**Comments:**

Because there is no active market or public companies, there is no listing for the public. Only banks and financial institutions have duties to report to the authority, and such reports are not public.

**References:**

Interview with Tim Roberts, investor/ money manager.

**100:** Publicly traded companies always disclose financial data, which is generally accurate and up to date.

**75:**

**50:** Publicly traded companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

**25:**

**0:** Financial data is not available, or is consistently superficial or otherwise of no value to investors.

61c. In practice, the financial records of publicly listed companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

**Comments:**

No such companies exist. Auditors using international standards do practice, but only for private companies. The results of their work are not public.

**References:**

Interview with Tim Roberts, investor/money manager. Interview with Luis Aragon, coordinator of civil society response to OAS Anti-Corruption Convention questionnaire.

**100:** Financial records of all public companies are regularly audited by a trained third party auditor using accepted international standards.

**75:**

**50:** Financial records of public companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

**25:**

**0:** Publicly traded companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

61d. In practice, citizens can access the records of disciplinary decisions imposed by the government on publicly-listed companies.

100 | 75 | 50 | 25 | 0

**References:**

Law 552, 316.

**100:** These records are freely available to all citizens through a formal official process.

**75:**

**50:** These records are available to all citizens, with some exceptions.

**25:**

**0:** These records are generally not available through official processes.

61e. In practice, citizens can access the financial records of publicly listed companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

No such companies exist.

**References:**

interview with Angel Navarro, former superintendent of banks.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

61f. In practice, citizens can access the financial records of publicly listed companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

No such companies exist.

**References:**

interview with Angel Navarro, former superintendent of banks.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 0 V-5. Business Licensing and Regulation

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62. Are business licenses available to all citizens?

88

62a. In law, anyone may apply for a business license.

**YES** | NO

**References:**

Constitution, Title 4.

**YES:** A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

**NO:** A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

62b. In law, a complaint mechanism exists if a business license request is denied.

**YES** | NO

**Comments:**

There is an administrative procedure, followed by access to the court under the Administrative-Litigious Law.

**References:**

Administrative-Litigious Law

**YES:** A YES score is earned if there is a formal process for appealing a rejected license.

**NO:** A NO score is earned if no such mechanism exists.

62c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The procedures become faster and more streamlined all the time.

**References:**

Rafaela Cerda, medium-sized, multi-business owner.

**100:** Licenses are not required, or licenses can be obtained within roughly one week.

**75:**

**50:** Licensing is required and takes around one month. Some groups may be delayed up to a three months.

**25:**

**0:** Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

62d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

The procedures become faster and more streamlined all the time. However, the taxes are relatively high.

**References:**

Rafaela Cerda, medium-sized, multi-business owner.

**100:** Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

---

### 63. Do businesses receive equitable regulatory treatment from the government?

88

63a. In law, basic business regulatory requirements for meeting health, safety, and environmental standards are transparent and publicly available.

YES | NO

**Comments:**

The standards are set in different laws, and are published. Rarely are these known by businesses, even less by the general public.

A good example is the general environmental law, 1996, which has constitutional equivalence (all former and subsequent laws on environmental matters must fit within constitutional mandates or are considered unconstitutional). With respect to implementation of the law's regulatory requirements, there are staffing problems and few inspections are carried out.

**References:**

Rafaela Cerda, medium-sized, multi-business owner.

**YES:** A YES score is earned if basic regulatory requirements for meeting health, safety, and environmental standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

63b. In practice, business inspections by the government are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

A good example is the general environmental law, 1996, which has constitutional equivalence (all former and subsequent laws on environmental matters must fit within constitutional mandates or are considered unconstitutional). With respect to implementation of the law's regulatory requirements, there are staffing problems and few inspections are carried out.

**References:**

Rafaela Cerda, medium-sized, multi-business owner.

**100:** Business inspections by the government (i.e. health, safety, or environmental inspections) are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government (i.e. health, safety, or environmental inspections) are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections (i.e. health, safety, or environmental inspections) are routinely carried out by the government in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

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## Category VI. Anti-Corruption and Rule of Law

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### VI-1. <sup>74</sup>Anti-Corruption Law

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#### 64. Is there legislation criminalizing corruption?

89

64a. In law, attempted corruption is illegal.

YES | **NO**

**Comments:**

An attempt is not enough.

**References:**

Penal Code, Title 7.

**YES:** A YES score is earned if corruption laws include attempted acts.

**NO:** A NO score is earned if this is not illegal.

64b. In law, extortion is illegal.

**YES** | NO

**References:**

Penal Code, Titles 3 and 7.

**YES:** A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

**NO:** A NO score is earned if this is not illegal.

64c. In law, offering a bribe (i.e. active corruption) is illegal.

**YES** | NO

**References:**

Penal Code, articles 421-427.

**YES:** A YES score is earned if offering a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

64d. In law, receiving a bribe (i.e. passive corruption) is illegal.

**YES** | NO

**References:**

Penal Code, article 421.

**YES:** A YES score is earned if receiving a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

64e. In law, bribing a foreign official is illegal.

**YES** | NO

**References:**

Penal Code, article 422.

**YES:** A YES score is earned if bribing a foreign official is illegal.

**NO:** A NO score is earned if this is not illegal.

64f. In law, using public resources for private gain is illegal.

**YES** | NO

**References:**

Penal Code, title 7, chapter 10.

**YES:** A YES score is earned if using public resources for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

64g. In law, using confidential state information for private gain is illegal.

**YES** | NO

**References:**

Penal Code, article 428.

**YES:** A YES score is earned if using confidential state information for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

64h. In law, money laundering is illegal.

**YES** | NO

**References:**

Law 85. Law 177 (drug trafficking and money laundering laws).

**YES:** A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

**NO:** A NO score is earned if this is not illegal.

64i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

**References:**

Penal Code , article 493 et seq.

**YES:** A YES score is earned if organized crime is illegal.

**NO:** A NO score is earned if this is not illegal.

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## VI-2. Anti-Corruption Agency

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65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

**References:**

Law 86, Comptroller's Law. Law 411, Prosecutor's Office Law. Decree 67-2002, which created the Office of Public Ethics.

**YES:** A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

**NO:** A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

## 66. Is the anti-corruption agency effective?

72

66a. In law, the agency (or agencies) is protected from political interference.

YES | NO

### Comments:

In fact, little of this nominal independence is true.

### References:

Comptroller's Law, Law 86. Constitution, article 156.

**YES:** A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

66b. In practice, the agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

### Comments:

The National Congress selects people who would be unlikely to use the posts against those who named them, their parties or leaders.

### References:

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

**75:**

**50:** This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or

other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

66c. In practice, the head of the agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

This exists as a measure of last resort for high crimes. In fact, no comptroller has been removed from office for doing (or not doing) his job since 1993.

**References:**

Comptroller's Law.

**100:** The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director(s) can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director(s) can be removed at the will of political leadership.

66d. In practice, appointments to the agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

The resumes of all five members of the presidency of the Comptroller's Office show of sufficient qualifications. Party membership and loyalty is also evident in many of those resumes

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

66e. In practice, the agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Like the tax and customs agencies, the agency has a professional staff that is mixed with underqualified political appointees, ensuring that politically sensitive cases can be handled according to prevailing political interests.

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** The agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

66f. In practice, the agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

Although the funding is regular and subjected to few changes, it almost always is insufficient to do all activities for which the Comptroller's Office is responsible.

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66g. In practice, the agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

Besides constitutionally mandated publicity for all its findings, the Comptroller's Office issues annual reports to the public and Congress. The timeliness (and contents) of these reports are sometimes questioned.

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

66h. In practice, the agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

**Comments:**

The law only provides limited powers, which are broader when it comes to civil findings and setting fines. For penal issues, its findings are useful for proceeding to trial.

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

**75:**

**50:** The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

**25:**

**0:** The agency (or agencies) lacks significant powers which limit its effectiveness.

66i. In practice, when necessary, the agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

The agency has the power to act independently, but must often it responds to requests from institutions, individuals or media on particular cases.

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

**75:**

**50:** The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

---

## 67. Can citizens access the anti-corruption agency?

50

67a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pablo Ayon, President of Etica y Transparencia.

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

67b. In practice, citizens can complain to the agency (or agencies) without fear of retribution.

100 | 75 | 50 | 25 | 0

**Comments:**

The Comptroller's Office takes citizens' complaints, and depending on their merits and importance, proceeds. There are no whistle blower protections in the law, yet the Comptroller's Office does not play any role in possible retributions to those who file complaints.

**References:**

Interview with Guillermo Arguello Poessy, president of the Comptroller's Office.

**100:** Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

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68. Is there an appeals mechanism for challenging criminal judgments?

83

68a. In law, there is a general right of appeal.

YES | NO

**References:**

Constitution, article 159.

**YES:** A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

**NO:** A NO score is earned if there is no such process.

68b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Study carried out by Etica y Transparencia

**100:** Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

**25:**

**0:** Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

68c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Under the stated criteria of affordability of appeals for the middle class, the answer is yes. For the majority, the poor, the answer is probably, no.

**References:**

interview with Rafael Solis, Vice President of the Supreme Court.

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

**25:**

**0:** The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

---

## 69. In practice, do judgments in the criminal system follow written law?

50

69. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

**Comments:**

Cases of the politically connected, as well as cases involving large sums of money (especially big drugs and contraband cases), are often criticized as unsupported by law and/or facts. There have even been cases in which funds seized by the authorities in the custody of the Supreme Court have disappeared

**References:**

Reports of judiciary observation by Etica y Transparencia, Media Monitoring. Annual report by CENIDH (human rights group), among multiple other sources.

**100:** Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

**75:**

**50:** Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

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## 70. In practice, are judicial decisions enforced by the state?

75

70. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

### Comments:

The executive and police carry out the judiciary's decision in a timely fashion, even against its obvious preferences sometimes.

### References:

interview with Rafael Solis, Vice President of the Supreme Court.

**100:** Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

**75:**

**50:** Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

**25:**

**0:** Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

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## 71. Is the judiciary able to act independently?

81

71a. In law, the independence of the judiciary is guaranteed.

YES | NO

### Comments:

There is a constitutionally allocated percentage of the national budget (4 percent) that is given to the judiciary for the administration of the system.

**References:**

Constitution, articles, 158-167

**YES:** A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation and managing the budget of the courts ).

**NO:** A NO score is earned if there are no formal rules establishing an independent judiciary.

71b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | **25** | 0

**Comments:**

The issue of the lack of internal and external independence of the members of the judiciary has been alleged and documented by many sources. Currently, the procedures for naming and promoting judges are under the control of magistrates of the Supreme Court.

**References:**

Interview with Alejandro Serrano, former President of the Supreme Court

**100:** National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

**75:**

**50:** National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

**25:**

**0:** National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

71c. In law, there is a transparent and objective system for distributing cases to national-level judges.

**YES** | NO

**Comments:**

There is a random process for case allocation. However, critics say that because all judges lack independence, this makes little difference.

**References:**

Interview with Supreme Court Judge Alba Luz Ramos.

**YES:** A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

**NO:** A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

71d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

**References:**

Constitution, article 162.

**YES:** A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

**NO:** A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

---

## 72. Are judges safe when adjudicating corruption cases?

100

72a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

**References:**

interview with Rafael Solis, Vice President of the Supreme Court.

**YES:** A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period.

**NO:** A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

72b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

**References:**

interview with Rafael Solis, Vice President of the Supreme Court.

**YES:** A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period.

**NO:** A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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### 73. Do citizens have equal access to the justice system?

67

73a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

**Comments:**

There are access to justice issues based on gender, and the ethnic minorities of the Atlantic coast suffer discriminatory practices. However, racially motivated decisions do not appear to be a problem.

**References:**

Interview with Vilma Nunez, 2005 CENIDH Report.

**100:** Judicial decisions are not affected by racial or ethnic bias.

**75:**

**50:** Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

**25:**

**0:** Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

73b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

**References:**

CENIDH, Annual Report 2005, page 147.

**100:** Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system.

**75:**

**50:** Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes.

**25:**

**0:** Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence.

73c. In practice, the state provides legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

**Comments:**

Legal counsel is appointed to those who cannot afford it. The quality of such counsel is a different matter. The Public Defender's Office is understaffed and overworked, generally.

**References:**

Constitution, article 34.

**100:** State-provided legal aid is basic, but well trained and effective in representing the rights of indigent defendants.

**75:**

**50:** State-provided legal aid is available, but flawed. Legal aid may be unavailable to some indigent defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

**25:**

**0:** State-provided legal aid is unavailable to most indigent defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

73d. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**Comments:**

Middle class citizens can afford to bring lawsuits almost always.

**References:**

Interview with Julio Perez, litigation attorney.

**100:** In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

**75:**

**50:** In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

**25:**

**0:** The cost of engaging the legal system prevents middle class citizens from filing suits.

73e. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Julio Perez, litigation attorney.

**100:** In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

**75:**

**50:** In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

**25:**

**0:** The cost of engaging the legal system prevents small businesses from filing suits.

73f. In practice, all citizens have access to a court of law, regardless of geographic location.

**Comments:**

Over the past eight years, staffed courthouses have been built and are operating in all municipalities.

**References:**

interview with Rafael Solis, Vice President of the Supreme Court.

**100:** Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

**75:**

**50:** Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

**25:**

**0:** Courts are unavailable to some regions without significant travel on the part of citizens.

## VI-4. Law Enforcement

### 74. Is the law enforcement agency (i.e. the police) effective?

67

74a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

**Comments:**

The law establishes that an advance in rank must be based on established criteria (record, experience, etc). The top post is picked by the president from a list presented by a committee of the police.

**References:**

Law 228, National Police Law (and its related rules in decree 26-96).

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

74b. In practice, the agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | **50** | 25 | 0

**Comments:**

While steady, the police agency is critically underfunded.

**References:**

interview with Francisco Cordero, national police chief.

**100:** The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

74c. In practice, the agency is protected from political interference.

100 | **75** | 50 | 25 | 0

**Comments:**

While the general answer is yes, in the case of conflicts between branches of government in 2005, the police had to navigate political interference and conflicting mandates from the executive and the judiciary.

**References:**

2005 CENIDH (Nicaraguan Center for Human rights), Annual Report, page 52.

**100:** The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

**75:**

**50:** The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

---

## 75. Can law enforcement officials be held accountable for their actions?

50

75a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

### References:

Constitution, Title 4.

**YES:** A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions.

**NO:** A NO score is earned if there is no such mechanism.

75b. In practice, the independent reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

### Comments:

Human rights groups, like CENIDH, as well as the Ombudsman's Office, receive complaints and release their findings on this issues rapidly. They are not binding, but force a response from the police in most cases.

### References:

Interview with Vilma Nunez, president, CENIDH.

**100:** The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

75c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | **NO**

**References:**

Interview with Vilma Nunez, president, CENIDH.

**YES:** A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity is separate from the regular police department.

**NO:** A NO score is earned if no such agency/entity exists.

75d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | **0**

**Comments:**

No such agency exists.

**References:**

Interview with Vilma Nunez, president, CENIDH.

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

75e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

**Comments:**

The lists of immune state officials and posts does not include any level of the police authorities.

**References:**

Constitution, Title 4.

**YES:** A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

**NO:** A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

75f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

**Comments:**

No cases that merited criminal proceedings against the police were reported.

**References:**

CENIDH, Annual Report 2005, pages 29-33.

**100:** Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

**75:**

**50:** Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

**25:**

**0:** Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.

