

Overall Score:

58 - Very Weak

Legal Framework Score:

76 - Moderate

Actual Implementation Score:

39 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁷⁸Civil Society Organizations

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

References:

Chapter II of the Constitution, arts. 47 et seq.
Citizen's Participation Law

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:

There is freedom to receive funds, although there are certain requirements.

References:

General Law for Non-Profit Organizations, (law 147), art. 13

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:

All national NGOs must file balances and accountings with Ministry of Governance. All internationals must file with the Ministry of External affairs, at the end of the fiscal year.

References:

General Law for Non-Profit Organizations, (law 147), art. 13

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.

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

58

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:

The consensus is that obtaining the legal standing and permits to operate as NGO in Niacragua is very accessible, as more than 3,000 registered NGOs would make it appear. There is talk from the government to tighten the regulations of this and other issues pertaining to the work of NGOs. Currently there is a campaign of legal persecution of civil society organizations that question, among other things, governmental corruption.

References:

Interview with Alta Hooker, president of Uraccan University and board of Directors of ET, Managua, Sept. 13, 2008

Interview with Emilio Alvarez M., founder of Fundemos and Etica y Transparencia, among other NGOs in Nicaragua, July 4, 2008

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:

While some formal and informal spaces exist for dialogue and input, with even greater opportunity through the media channels, the general conclusion is that very little of the NGOs agenda and policies are adopted as public policies.

References:

Interview with Alta Hooker, president of Uraccan University and board of Directors of ET, Managua, Sept. 13, 2008

Interview with Emilio Alvarez M., founder of Fundemos and Etica y Transparencia, among other NGOs in Nicaragua, July 4, 2008

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:

No NGO working on corruption issues has ever been shut down. However, the message from the government is that it will resort to technicalities or legal reform, which may change in the future for good governance NGOs that hold a critical view of government policy. There is a lesser degree of tolerance from this administration to criticism, but so far there is more smoke than fire.

References:

Interview with Alta Hooker, president of Uraccan University and board of Directors of ET, Managua, Sept. 13, 2008

Interview with Emilio Alvarez M., founder of Fundemos and Etica y Transparencia, among other NGOs in Nicaragua, July 4, 2008

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. YES is a positive score.

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.

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

Comments:

While no imprisonments have occurred, the government has spent a good portion of its two year tenure attacking the CSOs for being puppets of US imperialism" and other words to that effect, and initiating investigations as to the compliance of a number of NGOs with their governing law. Democracy and good governance CSOs have been targeted .

In its evaluation of the first year of the current administration, released on Jan. 21, 2008, ET criticized "the emergence of threatening and confrontational rhetoric" on the part of the government.

References:

La Prensa" and "El Nuevo Diario" are the two national daily newspapers. Both have a record of professional criticism and investigation of whatever government or party is in power. See <http://www.laprensa.com.ni>, <http://www.elnuevodiario.com.ni> Etica y Transparencia (ET) is the local chapter of Transparency International and has been evaluated in polls as the best known CSO, with the best ratio of positive evaluation by the citizens in nationwide surveys.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

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 person 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. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

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

YES | NO

Comments:

Small scuffles, rhetoric, threats and denial of access, still short of bodily harm, constitute thus far the full extent of the state of adversity faced by activists and critics of the government. In July 2008 a group of government supporters prevented an NGO from a peaceful activity designed to highlight government expenditures on roadside political propaganda.

References:

HUMAN RIGHTS IN NICARAGUA, 2007 annual report from CENIDH (Nicaraguan Center for Human Rights), January 2008
<http://www.cenidh.org>

Interview with Alta Hooker, president of Uraccan University and board of Directors of ET, Managua, Sept. 13, 2008

Interview with Emilio Alvarez M., founder of Fundemos and Etica y Transparencia, among other NGOs in Nicaragua, July 4, 2008

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. YES is a positive score.

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:

Small scuffles, rhetoric, threats and denial of access, still short of bodily harm, constitute thus far the full extent of the state of adversity faced by activists and critics of the government. In July 2008 a group of government supporters prevented an NGO from a peaceful activity designed to highlight government expenditures on roadside political propaganda.

References:

HUMAN RIGHTS IN NICARAGUA, 2007 annual report from CENIDH (Nicaraguan Center for Human Rights), January 2008
<http://www.cenidh.org>

Interview with Alta Hooker, president of Uraccan University and board of Directors of ET, Managua, Sept. 13, 2008

Interview with Emilio Alvarez M., founder of Fundemos and Etica y Transparencia, among other NGOs in Nicaragua, July 4, 2008

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

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.

4. Can citizens organize into trade unions?

88

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

YES | NO

Comments:

There is a great facility to establish unions. The major union coalitions tend to be closely aligned to political parties. Less than 10 percent of all workers are unionized.

References:

Art. 87, Constitution of Nicaragua

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:

While they alternatively lend support to the parties in power and extract social benefits for their members, their radius of action rarely goes beyond work and pay issues. There are no real formal or informal barriers to trade unions.

References:

HUMAN RIGHTS IN NICARAGUA, 2007 annual report from CENIDH (Nicaraguan Center for Human Rights), January 2008
<http://www.cenidh.org>

Interview with Alta Hooker, president of Uraçcan University and board of Directors of ET, Managua, Sept. 13, 2008

Interview with Emilio Alvarez M., founder of Fundemos and Etica y Transparencia, among other NGOs in Nicaragua, July 4, 2008

100: Trade unions are common and are an important part of 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.

I-2. Media

5. Are media and free speech protected?

100

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

YES | NO

Comments:

The constitutional provisions for political rights for citizens are well established and defined, with a long history of independent press in the country. Last censorships and close-downs took place in the early 1990s.

References:

Chapter I of the Constitution, art. 30, Chapter II, arts. 66 et seq.

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

NO: A NO score is earned if any specific publication relating to government affairs 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

Comments:

Art 30 reads: Nicaraguans have the right to express freely their thinking, in public or private, individually or collectively, in oral, written or any other form.”

References:

Constitution, art. 30

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to 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.

6. Are citizens able to form print media entities?

100

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

100 | 75 | 50 | 25 | 0

Comments:

While there are no restrictions other than those for regular business enterprises, the constitution even sets fiscal benefits and advantages for raw materials purchased by media outlets.

References:

Carlos Fernando Chamorro, president, Board of Directors of Confidencial, a weekly newspaper. Managua, Jan. 12, 2008
Danilo Aguirre S., founding director, El Nuevo Diario, newspaper of record in Nicaragua. Managua, May 17, 2008

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print 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.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

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

YES | NO

Comments:

No license is needed.

References:

Carlos Fernando Chamorro, president, Board of Directors of Confidencial, a weekly newspaper. Managua, Jan. 12, 2008
Danilo Aguirre S., founding director, El Nuevo Diario, newspaper of record in Nicaragua. Managua, May 17, 2008

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

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

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

100 | 75 | 50 | 25 | 0

Comments:

No license is needed.

References:

Carlos Fernando Chamorro, president, Board of Directors of Confidencial, a weekly newspaper. Managua, Jan. 12, 2008
Danilo Aguirre S., founding director, El Nuevo Diario, newspaper of record in Nicaragua. Managua, May 17, 2008

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 print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No license in needed.

References:

Carlos Fernando Chamorro, president, Board of Directors of Confidencial, a weekly newspaper. Managua, Jan. 12, 2008
Danilo Aguirre S., founding director, El Nuevo Diario, newspaper of record in Nicaragua. Managua, May 17, 2008

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.

7. Are citizens able to form broadcast (radio and TV) media entities?

56

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

The fact is that there are no political barriers or obstacles, just a technical and final situation: no new national media outlet in TV or radio has been established in the past eight years because the air space is saturated. So there are no barriers but there is no room either!

However, the licenses in existence expire and the Executive controls the agency in charge of licensing. At least two media outlets have received pressures to change their editorial line to secure such renewals. The legislative passed a law extending the validity of licenses indefinitely, until a new law is enacted.

References:

Carlos Fernando Chamorro, president, Board of Directors of Confidencial, and owner of ESTA SEMANA, a weekly newspaper and TV show, respectively. Managua, Jan. 12, 2008;
Plinio Suarez, owner, Channel 23, Managua. Sept. 16, 2008

100: Broadcast 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. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast 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: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

The aggrieved party can file an internal administrative appeal within 15 days of being notified of the denial or revoking of license. Afterwards the matter goes to court. In those first 15 days the party affected gets to challenge the reasons for the original denial before the regulating body rules again.

References:

General Law of Telecommunications and Postal Services, art. 63

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

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

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

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

Comments:

The issue is not the licensing but the lack of air space for new TV and radio media outlets, so none have not been formed nor requested licenses in many years. All existing ones were legalized many years ago and this score is based on their experience at those respective times.

References:

Carlos Fernando Chamorro, president, Board of Directors of Confidencial, and owner of ESTA SEMANA, a weekly newspaper and TV show, respectively. Managua, Jan. 12, 2008;
Plinio Suarez, owner, Channel 23, Managua. Sept. 16, 2008

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.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The issue is not the licensing but the lack of air space for new TV and radio media outlets, so none have not been formed nor requested licenses in many years. All existing ones were legalized many years ago and this score is based on their experience at those respective times.

References:

Carlos Fernando Chamorro, president, Board of Directors of Confidencial, and owner of ESTA SEMANA, a weekly newspaper and TV show, respectively. Managua, Jan. 12, 2008;
Plinio Suarez, owner, Channel 23, Managua. Sept. 16, 2008

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.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

No cases or controversies have arisen regarding access to any on-line material. The government does not restrict nor tries to restrict such access.

References:

Carlos Fernando Chamorro, president, Board of Directors of Confidencial, and owner of ESTA SEMANA, a weekly newspaper and TV show, respectively. Managua, Jan. 12, 2008;
Plinio Suarez, owner, Channel 23, Managua. Sept. 16, 2008

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

There is absolute political freedom to create on-line sites.

References:

Camilo De Castro, journalist and consultant for Esta Semana", Managua, April 15, 2008;
Plinio Suarez, owner, Channel 23, Managua. Sept. 16, 2008

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

Reporting the truth is the absolute defense, according to art. 204.

References:

Penal Code, arts. 202 to 204

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.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Recently there have been some serious attempts and pressures from the government on media owners and distributors to promote self-censorship. These included involvement by the State Attorney's office, which opened investigations for unspecified crimes. It is still too early to know how much self-censorship this will cause.

References:

Carlos Fernando Chamorro, president, Board of Directors of Confidencial, and owner of ESTA SEMANA, a weekly newspaper and TV show, respectively. Managua, Jan. 12, 2008;

Plinio Suarez, owner, Channel 23, Managua. Sept. 16, 2008

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.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

There is absolutely no prior censorship to any media, other than their own editorial line and board.

References:

Carlos Fernando Chamorro, president, Board of Directors of Confidencial, and owner of ESTA SEMANA, a weekly newspaper and TV show, respectively. Managua, Jan. 12, 2008;
Plinio Suarez, owner, Channel 23, Managua. Sept. 16, 2008

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. This score is appropriate if in countries where illiteracy is high, 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. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

30

10a. In law, print media companies are required to publicly disclose their ownership.

YES | **NO**

Comments:

The law contains no such requirements, so media outlets can operate as general enterprises, with the same public disclosure of ownership as any family or not-publicly traded corporation or business.

References:

General law for Telecommunications and Postal services, Chapter 2, generally

YES: A YES score is earned if print media companies are required by law to publicly 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 types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | **NO**

Comments:

The law set up no particular requirements for public disclosure of ownership for media outlets. However, this is generally known to some extent, as they traditionally tend to be family-run businesses.

References:

General Law for Telecommunications and Postal Services

YES: A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

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

Comments:

Meager funding allotted for training journalists accounts from some deviation from the highest standards of professionalism, particularly in smaller outlets. The government press is ruled by propaganda.

References:

Danilo Aguirre, founding director, El Nuevo Diario, Managua, June 15, 2008;
Plinio Suarez, owner, Channel 23, Managua. Sept.16, 2008

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.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

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

Comments:

Generally, all major outlets have an editorial line and political favoritisms that are evident in the reporting. However, they make some efforts to reduce biases and deficits in coverage and they sell publicity airtime to all sides. The state press, which is that of the party in power as its own business enterprise, does not even make an effort to appear fair.

References:

Final Report of the European Mission of electoral Observation, 2006:

<http://www.eueom-nic.org>

Interview with Mario Medal, chief of Electoral observation mission of Etica y Transparencia in 2006. Managua, Sept. 16, 2008

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.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

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

Comments:

The state does not own a TV station or newspapers. As for radio, access and times are regulated by law (law 331, arts. 90 to 93). The provision of equitable access is generally met.

References:

Pablo Ayon, former president of Etica y Transparencia, leading group of domestic electoral observers, Managua, Jan. 18, 2008.

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. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

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.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

No journalists were imprisoned. However, a libel/slander civil suit against two top newspaper editors for criticizing governance matters was thrown out on appeal in July 2008.

References:

Nicaraguan Center for Human Rights (CENIDH), Annual report 2007;
Interview with Ana Murillo Arguello, chief Communications officer for Etica y Transparencia, National Chapter of Transparency International,
Sept. 9, 2008. Managua

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

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. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

The greatest infringement on journalistic freedom (without bodily harm) involved Jaime Arellano, a political talk show hosts fired consecutively from two TV stations due to governmental pressures this year.

References:

Nicaraguan Center for Human Rights (CENIDH), Annual report 2007;
Interview with Ana Murillo Arguello, chief Communications officer for Etica y Transparencia, National Chapter of Transparency International,
Sept. 9, 2008. Managua

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. A YES score is positive.

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.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

Absolutely no journalists have been killed during the past two years. Some are denouncing current threats of bodily harm from, presumably, the government.

References:

Nicaraguan Center for Human Rights (CENIDH), Annual report 2007;
Interview with Ana Murillo Arguello, chief Communications officer for Etica y Transparencia, National Chapter of Transparency International,
Sept. 9, 2008. Managua

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. A YES score is positive.

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.

80
I-3. Public Access to Information

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

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

It is generally regarded as a state-of-the-art law, without stated or implied unreasonable denial of information in terms of corruption.

References:

Freedom of Information law, (Law 621), generally

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. 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.

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

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

Administrative appeals are the first step before matters go to court.

References:

Freedom of Information law, law 621, art 35 et seq.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

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

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

Access is widely available. For example, there is no need to show cause to request information. The law forces all state institutions to create offices to receive and process requests for information, as well as the archive to store such information and

publish some of it periodically, even without request.

There is a 15-day period to respond, which can be extended for an additional 10 days with proper cause. There is a three-day period after denial to notify the requesting party. After that follows a 30-day internal administrative appeal process, after which matters go to court. There are penal consequences for the state official in charge if he/she does not comply with the court's decision.

References:

Freedom of information law, law 621, art 5 et seq.

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.

13. Is the right of access to information effective?

35

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The law entered into force in January 2008. No systematic studies exist yet, so the rating is based on anecdotal impressions from the sources. Most entities have not even set up the respective access offices.

References:

Luis Aragón, coordinator Public Transparency and Etica y Transparencia, Managua, Sept. 16, 2008;
Camilo de Castro, award-winning investigative journalist, Managua, July 3, 2008

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.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The law entered into force in January 2008. No systematic studies exist yet, so the rating is based on anecdotal impressions from the sources. Most entities have not even set up the respective access offices.

References:

Luis Aragón, coordinator Public Transparency and Etica y Transparencia, Managua, Sept. 16, 2008;
Camilo de Castro, award-winning investigative journalist, Managua, July 3, 2008

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.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The law entered into force in January 2008. No systematic studies exist yet, so the rating is based on anecdotal impressions from the sources. Most entities have not even set up the respective access offices.

References:

Luis Aragón, coordinator Public Transparency and Etica y Transparencia, Managua, Sept. 16, 2008;
Camilo de Castro, award-winning investigative journalist, Managua, July 3, 2008

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.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The law entered into force in January 2008. No systematic studies exist yet, so the rating is based on anecdotal impressions from the sources. Most entities have not even set up the respective access offices.

References:

Luis Aragón, coordinator Public Transparency and Etica y Transparencia, Managua, Sept. 16, 2008;
Camilo de Castro, award-winning investigative journalist, Managua, July 3, 2008

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.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The law entered into force in January 2008. No systematic studies exist yet, so the rating is based on anecdotal impressions from the sources. Most entities have not even set up the respective access offices.

References:

Luis Aragón, coordinator Public Transparency and Etica y Transparencia, Managua, Sept. 16, 2008;
Camilo de Castro, award-winning investigative journalist, Managua, July 3, 2008

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.

Category II. Elections

II-1. ⁵⁰Voting & Citizen Participation

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

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

Art 50 of the constitution reads: Citizens have the right to elect or be elected in periodical elections.”

References:

Constitution, arts. 50 , 51.

Electoral law, (law 331), art. 30

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). 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.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

All elections have been held as scheduled for over 30 years.

References:

Constitution, arts. 136 for legislative elections; arts. 146 to 147 for presidential elections; art. 178 for municipal authorities

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.

15. Can all citizens exercise their right to vote?

75

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

More than 95 percent of the eligible citizens are registered and able to vote. Nicaragua has one of the largest turnouts for non-mandatory voting nations, historically above 90 percent in presidential elections.

References:

Audit of voter registry, Etica y Transparencia, October 2006. <http://www.eyt.org.ni>

Final Report, Elections 2006, Etica y Transparencia November 2006, <http://www.eyt.org.ni>

Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission, January 2007. <http://www.eueom-nic.org>

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.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Voting is secret by law and practice. However there are issues with counting of ballots.

References:

Audit of voter registry, Etica y Transparencia, October 2006. <http://www.eyt.org.ni>
Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission. January 2007. <http://www.eueom-nic.org>

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.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

Audit of voter registry, Etica y Transparencia, October 2006. <http://www.eyt.org.ni>
Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission. January 2007. <http://www.eueom-nic.org>

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.

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

80

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Art 55 of the constitution reads: Citizens have the right to organize or join political parties, so that they may participate or access power.”

References:

Constitution, art. 55.
Electoral law, (law 331), art. 64 et seq.

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.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

Art 55 of the constitution reads: Citizens have the right to organize or join political parties, so that they may participate or access power.”

References:

Constitution, arts. 50 , 51, 55
Electoral law, (law 331), art. 30

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.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

The law sets very high standards for a political party to enter and remain in the electoral system. For example, most parties present candidatures for all posts being elected or they may not participate in the election at all, losing in the process their legal

registry. Generally speaking, any new or established party must have a strong national presence or it may not exist. Parties that do not get 4 percent of the vote in an election lose their legal registry.

References:

Electoral law (law 331), arts. 65, 82.

Final Report, Elections 2006, Etica y Transparencia November 2006. <http://www.eyt.org.ni>

Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission. January 2007. <http://www.eueom-nic.org>

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.

16d. In practice, all citizens can run for political office.

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

Comments:

Costs of running are not high, but winning has taken about US\$5-10 million in expenditures, as seen in the past two presidential races. The party system, with no independent candidates, generates and manages the number of candidates, holding it to a low number (for example, there have been between three and five presidential candidates in 2001 and 2006, respectively.)

References:

Final Report, Elections 2006, Etica y Transparencia November 2006. <http://www.eyt.org.ni>

Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission. January 2007. <http://www.eueom-nic.org>

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. A system of party lists may discourage or prevent independent 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.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Currently the party in power holds less than 40 percent of the legislative seats, with a similar percentage of legislative votes nationwide in 2006 (last elections.)

References:

Final Report, Elections 2006, Etica y Transparencia November 2006. <http://www.eyt.org.ni>
Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission. January 2007. <http://www.eueom-nic.org>

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.

II-2. Election Integrity

18. Is the election monitoring agency effective?

45

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

Although the Magistrates of the Supreme Electoral Council (CSE) that head the electoral branch of power are elected by the legislative, with a special majority vote, they have been questioned for their bipartisanship since 2000 by almost all qualified observers. The rest of the system, from polling stations to CSE state heads, is run by a bipartisan method, as established by law (the parties that finish first and second in one election run the system the following election.)

References:

Constitution, arts. 129, 173

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting 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 domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

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

Comments:

As proof of their biases and partisanship, try this example: of the current seven-member Electoral Council, five were legal representatives (or similar) of their parties, immediately before being elected by the legislative to head the agency.

References:

Electoral law (law 331), arts. 65, 82.

Final Report, Elections 2006, Etica y Transparencia November 2006, <http://www.eyt.org.ni>

Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission, January 2007. <http://www.eueom-nic.org>

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.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

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

Comments:

Staffing is not a problem, other than it is tightly partisan by law and that generates unfairness and biases of political-partisanship nature.

References:

Electoral law (law 331), arts. 65, 82.

Final Report, Elections 2006, Etica y Transparencia November 2006, <http://www.eyt.org.ni>

Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission, January 2007. <http://www.eueom-nic.org>

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.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

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

Comments:

In the final electoral reports of the last legislative elections, quite a sensitive issue was published: only 92 percent of the total electoral observers claimed that the failure to release the final 8 percent of the voter tally was done in order to try and mask the adjudication of one seat in Congress (with a total of 90 members) contrary to the votes cast.

References:

Electoral law (law 331), arts. 65, 82.

Final Report, Elections 2006, Etica y Transparencia November 2006, <http://www.eyt.org.ni>

Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission, January 2007. <http://www.eueom-nic.org>

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.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

While not in charge of penal proceedings, the Supreme Electoral Council has final say on administrative electoral matters. The criticism is that it never acts against the two main parties that control the agency and it uses its administrative powers against the other parties. A recent questionable ruling removed the registration of two parties that had obtained 6 percent in the presidential elections of 2006.

References:

La Prensa, caso MRS
EyT publicaciun re MRS

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.

19. Are elections systems transparent and effective?

50

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

Etica y Transparencia, a domestic electoral observer, has certified by audits the accuracy of the voter registry and its comprehensiveness prior to the last elections, finding them both up to international standards, as reflected by voter turnout and other observations mechanisms on election day. The less than perfect grade is due to delays and costs related to getting the voting cards.

References:

Electoral law (law 331) arts. 65, 82.
Final Report, Elections 2006, Etica y Transparencia November 2006. <http://www.eyt.org.ni>
Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission. January 2007. <http://www.eueom-nic.org>

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.

19b. In law, election results can be contested through the judicial system.

YES | **NO**

Comments:

Art 173 reads: The CSE will perform the final vote count in elections... making the final and definitive proclamation of results... from the resolutions of the CSE on electoral matters, there will be no ordinary or extraordinary further recourse."

References:

Constitution, art 173

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.

19c. In practice, election results can be effectively appealed through the judicial system.

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

Comments:

The law is clear: there are no further appeals. The decisions and findings of the Supreme Electoral Council on electoral matters are final.

References:

Electoral law (law 331) arts. 65, 82.

Final Report, Elections 2006, Etica y Transparencia November 2006. <http://www.eyt.org.ni>

Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission. January 2007. <http://www.eueom-nic.org>

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.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

The police and the military have the right to vote, but they have stayed clear of all partisanship or undue intervention in elections or government for the last 30 years.

References:

Electoral law (law 331) arts. 65, 82.

Final Report, Elections 2006, Etica y Transparencia November 2006. <http://www.eyt.org.ni>

Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission. January 2007. <http://www.eueom-nic.org>

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 overly 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.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

Art 10 reads: The CSE has the following duties to ...set up the rules for accreditation and corresponding participation of observers in the electoral processes.”

References:

Electoral law (law 331), art. 10

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.

19f. In practice, election observers are able to effectively monitor elections.

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

Comments:

National and international observers have managed to do their job in many elections. For example, during the 2006 presidential elections, the domestic observers of Etica y Transparencia alone were more than 12,000, and the organization conducted counts and audits as needed. There has been foot dragging and lack of openness from the electoral authorities, as well as some restricting or discriminatory rules especially in the 2008 elections. Still, Nicaragua has a good previous track record on this matter. Domestic observers are able to do their work effectively, even against the will of the electoral authority, as can be seen in the electoral fraud recently revealed.

References:

Electoral law (law 331) arts. 65, 82.

Final Report, Elections 2006, Etica y Transparencia November 2006. <http://www.eyt.org.ni>

Final Report, Legislative and Presidential Elections Nicaragua 2006, European Union Electoral Observation Mission. January 2007. <http://www.eueom-nic.org>

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.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

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

YES | NO

Comments:

The Supreme Electoral Council, a fourth branch of the government, is responsible for and has final say in all administrative electoral matters, from organizing elections to applying the electoral law in all regards, except prosecution for electoral crimes (left to the regular court system). It proclaims elected authorities.

References:

Constitution, art. 173.
Electoral law (law 331), arts. 2,3 and 4

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

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists 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, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

65
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

0

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

The law places no limits or regulations on all monies received outside the narrowly defined term of political electoral campaigns (75 days prior to election day) and then poses very soft disclosure requirements outside those terms.

References:

Electoral Law (law 331), arts. 50 et seq.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

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

20b. In law, there are limits on individual donations to political parties.

YES | **NO**

Comments:

Art. 103 mentions that there will be limits elsewhere in the law” but such are not found anywhere, thus there are no limits to what a person or entity may give or to what a party or candidate may get or spend.

References:

Electoral law, arts. 99 to 105

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | **NO**

Comments:

Art. 103 mentions that there will be limits elsewhere in the law” but such are not found anywhere, thus there are no limits to what a person or entity may give or to what a party or candidate may get or spend.

References:

Electoral law, art 103

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

20d. In law, there are limits on total political party expenditures.

YES | **NO**

Comments:

Art. 103 mentions that there will be limits elsewhere in the law” but such are not found anywhere, thus there are no limits to what a person or entity may give or to what a party or candidate may get or spend.

References:

Electoral law, arts. 99 to 105

YES: A YES score is earned if there are any limits in 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.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | **NO**

Comments:

The law allows anonymous donations, and it does not regulate monies received more than 75 days before the campaign begins.

References:

Electoral law, arts. 99 to 105

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

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

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | **NO**

Comments:

According to art. 63, parties have the duty to to publish, annually, their financial statements, send copies of the same to the Supreme Electoral Council.” There is no reference in any law for audits of political parties.

References:

Electoral law, art 63

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. 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' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | **NO**

Comments:

There is no such agency. As for public funding, some monitoring left to the Comptroller's Office.

References:

Electoral law, arts. 99 to 105

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

0

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | **NO**

Comments:

The regulations apply to funds received during the campaign period and are applicable only to political parties (not candidates or third parties). Private parties may donate even anonymously if they so wish. Only government or mixed entities (national or foreign) are forbidden to donate to parties or campaigns, but even then only during the formal duration of the campaign.

References:

Electoral law (law 331), arts. 99 to 105

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

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

21b. In law, there are limits on individual donations to political candidates.

YES | **NO**

Comments:

Art. 103 mentions that there will be limits elsewhere in the law” but such are not found anywhere, thus there are no limits to what a person or entity may give or to what a party or candidate may get or spend.

References:

Electoral law, art 103

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | **NO**

Comments:

Art. 103 mentions that there will be limits elsewhere in the law” but such are not found anywhere, thus there are no limits to what a person or entity may give or to what a party or candidate may get or spend.

References:

Electoral law, art 103

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | **NO**

Comments:

The law does not set up reporting requirements to candidates, only to parties, and only for funds received during the official campaign (75 days prior to the election). The law permits anonymous donations too.

References:

Electoral law, arts. 99 to 105

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

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

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | **NO**

Comments:

The Comptrollers Office will review" (not audit) the receipts submitted by parties seeking reimbursement for their share of public funds for elections. It will not even "review" all other funds or expenses. If this were a graded question it would get 25 percent.

References:

Electoral law, arts 99 to 105

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. 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 an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | **NO**

Comments:

There is no such agency. The few articles of the law on political financing are applicable only to political parties, not candidates or third parties. As for public funding, some monitoring is left to the Comptroller's Office. Private funding received outside or within the formal campaign period goes unchecked.

References:

Electoral law, arts. 99 to 105

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The system allows for limitless anonymous contributions and does not regulate at all outside the campaign period. Even within the campaign it does not attempt to regulate candidates' funding and expenditures, only party finances. The only expenditures that get reported are those that seek state reimbursement.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparencia during the 2006 presidential elections.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

No such limits exist in law or practice.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparency during the 2006 presidential elections.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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:

No such limits exist in law or in practice.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparency during the 2006 presidential elections.

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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

It has never happened, for there are no regulations that can be broken. All is permitted in practical terms.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparencia during the 2006 presidential elections.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. 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.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

No such limits exist in law or in practice. There is no such agency.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
 Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparencia during the 2006 presidential elections.

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.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The state review is only of those expenditures subject to reimbursement, and then it is not an audit but a review.”

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
 Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparencia during the 2006 presidential elections.

100: Political party 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 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

No such limits exist in law or in practice.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparency during the 2006 presidential elections.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

The state review is only of those expenditures subject to reimbursement, and then it is not an audit but a review.”

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparency during the 2006 presidential elections.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Not only it has never happened, but the state review is only of those expenditures subject to reimbursement, and then it is not an audit but a review.”

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparency during the 2006 presidential elections.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. 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.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

Comments:

No such limits exist in law or in practice. There are no such audits or agencies responsible. Candidates face no reporting duties, only parties face some very weak ones.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparency during the 2006 presidential elections.

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.

23e. In practice, the finances of individual candidates' campaigns are audited.

Comments:

The law does not require any other entity than political parties to keep records. No such audits are mandatory.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparency during the 2006 presidential elections.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

0

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Parties divide the equivalent of 1 percent of the national budget for the year according to their share of electoral results, as a state reimbursement. The expenditure receipts for such share becomes public. The sums obtained through fund raising or the totality of expenditures need not be declared.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparency during the 2006 presidential elections.

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

75:

50: Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Parties divide the equivalent of 1 percent of the national budget for the year according to their share of electoral results, as a state reimbursement. The expenditure receipts for such share becomes public. The sums obtained through fund raising or the totality of expenditures need not be declared.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparency during the 2006 presidential elections.

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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Parties divide the equivalent of 1 percent of the national budget for the year according to their share of electoral results, as a state reimbursement. The expenditure receipts for such share becomes public. The sums obtained through fund raising or the totality of expenditures need not be declared.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparency during the 2006 presidential elections.

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.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Crinis project tested exactly this question with field studies of three different types, with zero rate of success by any means. Students, journalists and experts asked, by multiple means, the electoral authority, the bigger corporations, and the Comptroller's Office for information regarding campaign financing and did not receive one single response.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparencia during the 2006 presidential elections.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual 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: Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Crinis project tested exactly this question with field studies of three different types, with zero rate of success by any means. Students, journalists and experts asked, by multiple means, the electoral authority, the bigger corporations, and the Comptroller's Office for information regarding campaign financing and did not receive one single response.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparencia during the 2006 presidential elections.

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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Crinis project tested exactly this question with field studies of three different types, with zero rate of success by any means. Students, journalists and experts asked, by multiple means, the electoral authority, the bigger corporations, and the Comptroller's Office for information regarding campaign financing and did not receive one single response.

References:

Proyecto CRINIS, joint effort of Carter Center and Transparency International, to analyze, set up indicators, study and compare the issue of Political Financing in 10 Latin American countries, including Nicaragua. July 2007. <http://www.transparency.org>
Ana Murillo, chief researcher of Political Expenditures Study conducted by Etica y Transparency during the 2006 presidential elections.

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.

Category III. Government Accountability

III-1. ⁵⁴ Executive Accountability

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

50

27a. In practice, the chief executive gives reasons for his/her policy decisions.

Comments:

The pressures of the free press generally produce a reluctant or half-cooked response from public officials. The current administration has a sectarian and opaque strategy of communication.

References:

Human Rights in Nicaragua, 2007 annual report Centro Nicaraguense de derechos Humanos (Cenidh) Jan. 2008; <http://www.cenidh.org>

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.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The principle of judicial review is established in law. In practice it is a political issue and there is lack of independence between the branches of power.

References:

Constitution, art. 134

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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The practice in Nicaragua, where the law establishes judicial review, there have been no cases of the judiciary overturning decisions of the executive exist on recent record. It has been 10 years since the supreme court overturned some laws of an outgoing government.

References:

Human Rights in Nicaragua, 2007 annual report Centro Nicaraguense de derechos Humanos (Cenidh) Jan. 2008; <http://www.cenidh.org>

Etica y Transparencia, CPI reports from 2004 to 2007, stating the reasons for the ranking of Nicaragua in the Corruption Perception index of those years (average 2.6 over 10, for the period), and the recommendations for improvement. Oct. 2007; <http://www.eyt.org.ni>

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. It does not need to rely upon the executive to initiate a constitutional or legal review.

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.

27d. 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:

Recently, in order to promote the CPC (Consejos de Poder Ciudadano), opposed by the majority in Parliament, the executive has used executive orders. More recently, executive order have been used frequently to legislate around an opposition controlled (barely) congress

References:

Human Rights in Nicaragua, 2007 annual report Centro Nicaraguense de derechos Humanos (Cenidh) Jan. 2008; <http://www.cenidh.org>

Etica y Transparencia, CPI reports from 2004 to 2007, stating the reasons for the ranking of Nicaragua in the Corruption Perception index of those years (average 2.6 over 10, for the period), and the recommendations for improvement. Oct. 2007; <http://www.eyt.org.ni>

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.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

Art. 131 reads: All public officials, elected directly or indirectly... are personally responsible for violations of the constitution, lacks of administrative probity and any other crime or fault.”

References:

Constitution, art. 131

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

Constitution, art. 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.

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

38

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

The constitution reads: All public officials must render asset disclosures before taking office and upon departure.”

References:

Constitution, art. 130

Probity law (law 438), art. 20

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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Constitution, art. 130

Probity law (law 438), art. 20

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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

It is clearly prohibited.

References:

Probity law, art. 8

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.

29d. 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 provides for a process of verification” by the Comptroller’s Office, not for audits.

References:

Probity law, art. 23

Comptroller’s law

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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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.

29e. 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 are no post-employment restrictions of any nature.

References:

Probity law

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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

29f. 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. The OAS panel of experts analyzing the compliance of state parties with the Inter-American Convention against Corruption recommended it in 2006.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.

Expert Panel of OAS (Organization of American States) final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

No such case has ever been indicted or prosecuted, despite the prohibition in the law. The appearance is that it happens and goes almost unnoticed.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.
Expert Panel of OAS (Organization of American States) final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law does not call for audits. The stated verification process has never yielded major demands on public officials to comply with the reporting or accusations of falsehood.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (Organization of American States) final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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. Audits may be performed by entities known to be partisan or biased in their practices.

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

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

Citizen must provide detailed and supported motives” when asking the Comptroller’s Office for a copy of an asset disclosure form. The official gets three days to express an opinion and then the Comptroller’s Office decides if, and in what manner, with which contents and for what uses, the citizen gets the requested record or not .

References:

Probity law, art. 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.

30b. 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:

The Comptroller’s Office rarely chooses to disclose if the records of any official are contrary to the asset disclosure forms. In July 2008, the records of the head of the Electoral Body were requested by the media when it became known that he travels in his own plane. He opposed the release and the request was denied. The denial typically occurs within a month.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller’s office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Trasnparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (Organization of American States) final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

30c. 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:

Cost is not an issue, yet forms are hardly ever released. Costs are those related to filling the papers, for there is no charge to lodge the request itself.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (Organization of American States) final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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. Can citizens sue the government for infringement of their civil rights?

100

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

YES | NO

Comments:

Beyond habeas corpus and reviews of unconstitutionality, Nicaragua has a strong law of the contentious-administrative that precisely regulates this issue.

References:

Constitution, art. 164, sections 3 and 4, arts. 187, 188
Contentious-administrative law, art. 14

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.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

0

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

The mix between party and governmental actions and activities has become blurred, to the extent that the presidential office and residence goes unused while the executive dispatches are made from the party headquarters. A most frequent complaint is the extent to which party and government activities have become one and the same.

References:

Human Rights in Nicaragua, 2007 annual report Centro Nicaraguense de derechos Humanos (Cenidh), Jan. 2008, <http://www.cenidh.org>
Etica y Transparencia. Report on the first year of the new presidential administration, January 2008, Managua, <http://www.eyt.org.ni>

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 the 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 bureaucracy 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.

III-2. Legislative Accountability

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

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

Judicial review for constitutionality is the norm.

References:

Constitution, art. 164, sections 10 to 13

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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The independence of government branches is a pending issue, just a partisanship of judiciary authorities. For example the constitutionality of the abortion ban law, as many other politically sensitive, apparently unconstitutional cases, has not been ruled within the various time frames established by law. For judicial review, necessity is not the factor, political will is.

References:

Human Rights in Nicaragua, 2007 annual report Centro Nicaraguense de derechos Humanos (Cenidh), Jan.

2008, <http://www.cenidh.org>

Etica y Transparencia, CPI reports from 2004 to 2007, stating the reasons for the ranking of Nicaragua in the Corruption Perception index of those years (average 2.6 over 10, for the period), and the recommendations for improvement. Oct.

2007, <http://www.eyt.org.ni>

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.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | **NO**

Comments:

Art. 131 reads: All public officials, elected directly or indirectly...are personally responsible for violations of the constitution, lacks of administrative probity and any other crime or fault." However, immunity is provided for all legislators by Law 83 of 1990. Blanket immunity law for high ranking public officials mean that congress has to strip them of their immunity, upon request from a judge, before they can be made to stand criminal trial. This is an almost impossible obstacle to overcome. Because the body responsible for removing immunity is the legislative body of which the accused is a member, the score must be NO. Most recent case, expresident Aleman in 2003.

References:

Constitution, art. 131
Law 83 of the year 1990

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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

29

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Constitution, art. 130
Probity law, art. 20

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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

No post-governmental employment restrictions exist.

References:

Probity law, generally

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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

It is clearly prohibited.

References:

Probity law, art. 8

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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

References:

The probity law provides for reviews" not audits.

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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (Organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no known cases.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (Organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

No audits are mandated by law.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (Organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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. Audits may be performed by entities known to be partisan or biased in their practices.

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

50

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

Comments:

Citizen must provide detailed and supported motives” when asking the Comptroller’s Office for a copy of an asset disclosure form. The official gets three days to express an opinion and then the Comptroller’s Office decides if, and in what manner, with which contents and for what uses, the citizen gets the requested record or not.

References:

Probity law, art.22

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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Generally this does not happen unless an official agrees to the release.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (Organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

Comments:

Costs and time are not the issue, political will is.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (Organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

35. Can citizens access legislative processes and documents?

83

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Proceedings, including voting, are public.

References:

National Assembly law, art. 23

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.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Costs and times are not issues, staffing is. Proceedings are public and some NGOs serve as observers and provide legislative reports too. Generally, it takes two to three weeks to get a response.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (Organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Cost is not an issue, for the formal request is free of charge. However, some transaction costs do occur.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (Organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

51
III-3. Judicial Accountability

36. Are judges appointed fairly?

42

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

Entry and promotion into the system is regulated by a merit based process to the Appellate Court level. However, the law itself has extraordinary” appointments, in which the process is old fashioned cronyism.

References:

Constitution, art. 159
Judiciary Organic Law, generally
Judiciary career law, art. 10 et seq.

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. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary career law was passed in 2004, however not until July 2008 was it regulated and applicable. Under its competitive regime, only family law judges have been appointed so far.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008
Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

No confirmation process exist or has existed, although the Legislative is in charge of selecting Supreme Court judges by a qualified majority vote. All other judges are selected by The Supreme Court or a portion thereof, without any other force reviewing the process or its outcome.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008
Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

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).

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

38

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

At district level and above, judges provide written reasoned sentences and decisions, available to all parties.

References:

Judiciary System Organic Law, generally

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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

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

Comments:

This is not a common law system, so the very limited value of precedent is what keeps this answer from being a 100 percent. Sentences are always written and reasoned. They also seem to follow a party line in political cases.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008

Rafael Solís, magistrate of the Supreme Court, Managua, June 23, 2008

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.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | **NO**

Comments:

This law leaves Supreme Court judges outside the scope of judiciary career law, as is typical of this legislation. There is no other law, forum or procedure, investigation, discipline or removal of Supreme court judges.

References:

Judiciary Career Law, art. 63 et seq.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency 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 disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | **NO**

Comments:

Supreme Court judges are in charge of disciplinary actions against judiciary system workers. Although the law claims their independence and they are selected by Congress, partisanship is a frequent charge, even among themselves. As for National level judges, or supreme court magistrates, there is no disciplinary agency or it equivalent with power over them.

References:

Constitution, art. 165

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

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

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

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

Comments:

In the past, and still under the new rules of the judiciary, career law disciplinary proceedings and actions are a pending issue for the system, still largely based on forms of partisanship and sponsorship. Some low level judge dismissal or transfer is as far as discipline among the judiciary system has gone.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008
Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Since judges are appointed by the Supreme Court magistrates they are rarely disciplined, in a form of deference to each other. Very ugly situations cause, at most, a transfer of the questioned judge. No one has been fired" in many years. Partisanship reigns supreme.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008
Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

32

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

They file asset disclosures upon entry and exit from public employment.

References:

Constitution, art. 130

Probity Law

YES: A YES score is earned if all members of the national-level judiciary 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 national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Probity law, art. 8

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

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

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

Comments:

There are no mandatory audits.

References:

Probity law, art. 17 provides for review" not audits

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary 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 national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

Comments:

No post-employment restrictions of any sort exist for former judges.

References:

Probity Law, generally

YES: A YES score is earned if there are regulations restricting national-level judges' 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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

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

Comments:

No such restrictions exist.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008

Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges 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 cases, judges 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. Judges 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.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

It happens, but such cases are hardly made public or punished. No cases are known for that very same reason.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008

Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges 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 national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Auditing is not mandatory.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008

Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary 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: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

50

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

It is the same situation as with other public officials.

References:

Probity law, art. 22

YES: A YES score is earned if members of the national-level judiciary 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-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

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

Comments:

It is the same situation as with legislative and executive officials.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Trasparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

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

Comments:

Cost is not an issue, but access to information is practically non-existent for those not well-connected. On the issue of asset disclosure, none has ever been made.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

III-4. Budget Processes

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

67

40a. In law, the legislature can amend the budget.

YES | NO

Comments:

The Legislature approves the annual budget presented by the Executive and all amends to it.

References:

Constitution, art. 138

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

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

There is some controversy over funds received and used from cooperation with Venezuela being outside the budget and taking the form of private funds managed at least in part by the party in government, but generally all expenditures are now in the budget

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

Comments:

The Executive traditionally underestimates revenues, thus expenses, among other reasons to low ball constitutionally mandated percentages of the budget for universities and other entities. It can therefore use those excesses or surpluses" later on, always with Congress approvals.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

41. Can citizens access the national budgetary process?

42

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

Comments:

The draft budget presented to the Legislature is known and debated in advance, particularly in the media, for many months, formally and informally.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

41b. In practice, citizens provide input at budget hearings.

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

Comments:

This happens rarely in the case of the national budget but much more so at municipal levels.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

41c. In practice, citizens can access itemized budget allocations.

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

Comments:

The budget and its execution is accessible on-line, but not to the itemized level.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

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.

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

67

43a. In practice, department heads regularly submit reports to this committee.

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

Comments:

Generally public officials submit reports when any legislative commission requires so.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

43b. 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:

It is not rare that the opposition heads this committee.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

Generally is the Probity Commission that starts these investigations, but it happens extremely rarely for budget related matters.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

42. Is there a separate legislative committee which provides oversight of public funds?

100

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

YES | NO

Comments:

The Budget Commission does follow up.

References:

National Assembly Organic law, generally

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 within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ~~29~~ Civil Service Regulations

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

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The law was passed in 2003. It is not much applied for higher level servants.

References:

Civil Service and Administrative Career Law, generally

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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

Its loopholes are exploited in all administrations. the current administration simply violates this express prohibitions with the unsupported claim that family of the president works for the current administration in otherwise prohibited posts, because they do not receive a salary.

References:

Constitution, art. 130
Probity law. arts 10 and 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.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

The administrative process has a tripartite commission that includes the civil servant advocate and another from the labor ministry. Afterwards matters are examined in an appeal process. After that, and even along the way (with a writ of habeas corpus) the servant has access to regular courts for redress.

References:

Civil Service and Administrative Career Law, art. 56 et seq.

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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

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

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Probity law, art. 11

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 or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

44

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Civil Service law keeps out of its regime many important posts. As for securing a career, it still occurs that any change of party in government brings a substantial turnover of public employees at all levels — about 4,000 since the new administration took office in January 2007.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Party connections are probably a top requirement for most public employment today, together or above technical requirements, experience or other qualifications.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

45c. 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:

Starting with the first lady in charge of a ministry of the executive, in open defiance of the law, many such acts of nepotism and similar wrongs are done with artful or blunt mechanisms, such as trading hiring favors, so that superiors hire each others' families, not their own, as prohibited by law.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

45d. In practice, civil servants have clear job descriptions.

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

Comments:

Most governmental offices have established rate pays, functions and seniority processes, etc. However, most changes of administration generate a vast turnover of public employees. For example, when the FSLN came to power in 2007, the firings in the first three month-period were estimated at about 3,000 to 5,000 presumptively protected by the civil law" servants.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Wages, not bonuses, are what the majority of public employees take home, and the largest share of their incomes.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

45f. 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:

No such listing occurs with any regularity.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

45g. In practice, the independent redress mechanism for the civil service is effective.

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

Comments:

Typically the most it yields is greater compensation, hardly ever rehiring.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

45h. In practice, in the past year, the government has paid civil servants on time.

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

Comments:

Timely payment is the norm, sometime a 5 percent share is taken voluntarily" for the party in power.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.

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.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

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

Comments:

The judgment must specify the blacklisting. Most corruption penalties carry this punishment. however most recently it has been the media casting unwanted light on unfit appointees that has denied them the posts. in the end there is no black list because almost nobody ever gets convicted of anything

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller´s Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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. Some bans are only temporary.

25:

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

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

28

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

Constitution, art. 130

YES: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | **NO**

Comments:

The law defines this type of conflict of interest more narrowly (it prohibits a servant to enter into contracts with entities in which he/she holds a share of ownership, for example.)

References:

Constitution, art. 130

Probity law, art. 8, 12

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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

Comments:

There are no job restrictions.

References:

Probity law, generally

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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Probity law, arts. 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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

Comments:

They must submit disclosure forms, but they are not audited.

References:

Probity law, art. 20

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. 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 restrictions.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

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

Comments:

No cases have ever arisen, but the general sense is that it is due to lack of enforcement, not lack of occurrences. After all, in a country that depends on foreign assistance, most servants get all sorts of expenses covered, such as paid trips, generating a sense among all that gratuities are OK.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

No cases are known, and the laws are very lax. In a case a few years back, the head of the Telecommunications Commission in Congress had his wife hired to lobby for cellular companies, requesting a change in the laws that his commission, with him in it, promptly approved. It was not illegal to do so.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law provides for review, not audits, a far less effort to establish accuracy. It has never led to any cases or controversies.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service 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: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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

17

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

Comments:

It is possible, but there are many barriers and it seldom happens. The barriers include giving the public official the right to deny public access. If the official denies the request the comptroller's office may release the info, anyway. But it is a barrier upon barrier with one effect: it is never overcome.

References:

Probity law, art. 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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

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

Comments:

Time is not the barrier, but records are hardly ever released for other reasons. No cases of requests or denials are known in the recent past.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (Organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

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

Comments:

Money is not the barrier, political sensitivity is. As the official has a final say about the release, requests are almost never made.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

IV-2. Whistle-blowing Measures

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

0

48a. 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:

There are some articles in the law which establish duties to report or cooperate with investigations, but none offer protection to whistle blowers.

References:

Probity law, generally

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.

48b. 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:

More than cases of reprisals, there is a lack of whistle blowing due to lack of incentives and protection.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

48c. 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:

There are no protections nor benefits for whistle blowers anywhere in our legislation, period.

References:

Penal Code, generally

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.

48d. 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:

Hardly any whistle blowing ever occurs, other than anonymously.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Small offices, understaffed and paid by specific duration of projects are all there is.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Small offices, understaffed and paid by specific duration of projects are all there is.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Such offices are relatively new and their effectiveness is not yet known or studied.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

If cases become public demands, the Comptroller's Office normally initiates investigations, with mixed results.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

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

0

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | **NO**

Comments:

While it is not a law, the state Prosecutor's Office has set up reporting facilities such as hot lines. The Comptroller's Office also has an office where it receives reports.

References:

Organic law of the Comptroller's Office

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

8
IV-3. Procurement

51. Is the public procurement process effective?

45

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

Among other prohibitions, it is illegal to use the position for benefit of any party if it causes losses to the state. Cronyism and nepotism are illegal, and so are the use of state property for things other than their intended use and the receipt of any additional benefits from any source other than the state for doing or not doing officially appointed tasks.

References:

Probity law, arts. 8, 14 and 15

Procurement law, arts. 3, 12 and 13

Constitution, art. 130

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

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

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

There are no mandatory training provisions, although there are procedures and duties to follow.

References:

Procurement law, generally

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

Comments:

Regulations exist but are largely ineffective and avoidable, due to immunity exemptions that limit the reach of investigations or other legal recourses that stalemate investigations or proceedings.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

Comments:

No such mechanism exists.

References:

Procurement law, generally

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.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

The threshold for open public bidding is slightly over US\$100,000, with lesser competitive bidding for lower amounts.

References:

Procurement law, art. 25 and its rules, art 51.

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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | **NO**

Comments:

No single provider restrictions exist. The amount in question established the procurement processes available, even if there is only one single offer.

References:

Procurement law, arts. 25 to 58

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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Procurement law, arts. 106 to 113

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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | **NO**

Comments:

The highest reach for an unsuccessful bidder is the Comptroller's Office. Only from there may a case reach the courts.

References:

Procurement law, art. 133

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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

There are sanctions that include blacklisting, upon conviction or not.

References:

Procurement law, arts. 97 et seq.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. 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:

It occurs that the blacklisting is incomplete, or not all entities are informed of the blacklisting, or some that merit inclusion on the list are not listed. No cases of blacklisted companies competing or winning bids are known.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

52. Can citizens access the public procurement process?

79

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

Procurement law and rules are widely available, clear and accessible to citizens.

References:

Procurement law, generally

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Procurement law, art. 25

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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Rules and regulations are accessible, records of a particular bid less so.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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. These records are defined here as the rules governing the competitive procurement process.

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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The OAS expert report determines that Nicaragua must implement greater access to information for all stages of its procurement process. At this point only insiders get access to bidding results, but money is not the deterrent, lack of access is.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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. These records are defined here as the rules governing the competitive procurement process.

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.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Request for bids are to be published in papers and placed in a calendar available to providers. Some internet access exists. Usually requirements to obtain bidding papers are not onerous.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

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. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The SIGFA system allows for access. Major contracts are generally publicly announced.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006; <http://www.oas.org>

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.

IV-4. Privatization

53. Is the privatization process effective?

75

53a. In law, all businesses are eligible to compete for privatized state assets.

YES

NO

Comments:

The legislative, by specific law, sets off privatization processes, with all fitting businesses eligible to compete (requirements of competence and posting bonds and securities are not uncommon.)

References:

The constitution, by omission, establishes the possibility of selling state enterprises, limited only by services that the state MUST provide, such as water services. The budget approval process determines that privatizations must get specific laws in each case.

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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

It is the same as with any other public function performance.

References:

Constitution, art. 130
Probity law, arts. 13 to 15

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Rarely enforced, apparent enrichment of public officials involved in privatizing state assets is not uncommon.

References:

Guillermo Arguello Poessy, member of Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.

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.

54. Can citizens access the terms and conditions of privatization bids?

54a. In law, citizens can access privatization regulations.

YES | **NO**

Comments:

The issue is largely moot now. There have been no privatizations for 10 years, and, what is worse, there is nothing left for the state to privatize.

References:

Constitution, art. 130

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

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

Comments:

Advertising was proper. Generally the process was marred by serious corruption, mostly as kick backs. The last central government held property privatization occurred in 1997. Currently, some local councils and majors privatize land without any for of publicity or bidding

References:

Interview with Pablo Ayon, former minister of Telecommunications when the state started the privatization process in 1997. Managua, July 20, 2007

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | **NO**

Comments:

As for former, major privatizations, each asset to be privatized had its own law stating procedure. Publicity was always a must. For the type of current land privatizations at local level, there is no publicity at all.

References:

No applicable law

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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

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

Comments:

Last central government privatizations occurred with little transparency, back in early 1990s up to 1997. Current land privatizing occurs without any form of transparency.

References:

Interview with Pablo Ayon, former minister of Telecommunications when the state started the privatization process in 1997. Managua, July 20, 2007

100: Records (defined here as the rules governing the competitive privatization process) 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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

Comments:

Costs are not an issue, lack of availability of information is.

References:

Interview with Pablo Ayon, former minister of Telecommunications when the state started the privatization process in 1997. Managua, July 20, 2007

100: Records (defined here as the rules governing the competitive privatization process) 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.

Category V. Oversight and Regulation

V-1. ⁵⁴National Ombudsman

56. Is the national ombudsman effective?

30

56a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

Selected by qualified vote of Congress, and formally independent of all other branches, its non binding powers include the right to oversee all public administration acts to check for human rights violations. Selected for a 5-year term, he is not removable without cause.

References:

Constitution, art. 138
Ombudsman law, art. 1

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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Elected for a 5-year term, since 1999, the chief ombudsman and the second in command have come from the two parties that control Congress. They were former or acting congressmen at the time of the selection.

References:

Digna Zamora, board member of CPDH (Permanent Human Rights Commission) Managua, Oct. 6, 2007
Vilma Núñez, president CENIDH (Nicaraguan Human Rights Center), Managua, Jan. 8, 2008

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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

It has never happened, and there is no procedure for it in any law. But the impression is that if it were ever wanted by the party in power, it would be done.

References:

Digna Zamora, board member of CPDH (Permanant Human Rights Commission), Managua, Oct. 6, 2007
Vilma Núñez, president CENIDH (Nicaraguan Human Rights Center), Managua, Jan. 8, 2008

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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Understaffed, politically dependent and a haven for party activists are some characteristics of the Ombudsman office in Nicaragua.

References:

Digna Zamora, board member of CPDH (Permanant Human Rights Commission), Managua, Oct. 6, 2007
Vilma Núñez, president CENIDH (Nicaraguan Human Rights Center), Managua, Jan. 8, 2008

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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Just as the criteria for 0" specifies, party loyalty is dominant.

References:

Digna Zamora, board member of CPDH (Permanant Human Rights Commission), Managua, Oct. 6, 2007
Vilma Núñez, president CENIDH (Nicaraguan Human Rights Center), Managua, Jan. 8, 2008

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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Generally underfunded, the agency has also lost some of its glamor as recipient of foreign aid, as it has shown little independence or real purpose.

References:

Digna Zamora, board member of CPDH (Permanant Human Rights Commission), Managua, Oct. 6, 2007
Vilma Núñez, president CENIDH (Nicaraguan Human Rights Center), Managua, Jan. 8, 2008

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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

It generally makes its important findings public, but it also sits on some cases and issues forever, without reports on the status of

investigations. Recently the agency has been criticized for turning a blind eye to questionable repressive actions from the state attorney and the police to political dissidents, such as Carlos Fernando Chamorro, as well as for not acting when two political parties were eliminated from the registry without cause. On the contrary, the agency frequently blesses such actions.

References:

Digna Zamora, board member of CPDH (Permanant Human Rights Commission), Managua, Oct. 6, 2007
Vilma Núñez, president CENIDH (Nicaraguan Human Rights Center), Managua, Jan. 8, 2008

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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

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

Comments:

This happens only when politics is not an obstacle. Currently, it even blesses and dismisses without investigations acts of questionable nature on the part of government forces. See above cases of Carlos Fernando Chamorro, NGO state persecution and unlawful elimination of two opposition parties, all in the past three months.

References:

Digna Zamora, board member of CPDH (Permanant Human Rights Commission), Managua, Oct. 6, 2007
Vilma Núñez, president CENIDH (Nicaraguan Human Rights Center), Managua, Jan. 8, 2008

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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Selective investigation is the norm, according to that old Latin tradition Silver for friends, stones for foes." The ombudsman office does not have the power to punish in any form, only to make recommendations.

References:

Digna Zamora, board member of CPDH (Permanant Human Rights Commission), Managua, Oct. 6, 2007
Vilma Núñez, president CENIDH (Nicaraguan Human Rights Center), Managua, Jan. 8, 2008

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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

As there is generally a party line aligned with the executive, the Ombudsman's findings are acted upon by other authorities, as part of a chain against foes. As for non-political findings, they are normally ignored or get lip service, at best. The general efficiency and thoroughness of investigations is also quite low.

References:

Digna Zamora, board member of CPDH (Permanant Human Rights Commission), Managua, Oct. 6, 2007
Vilma Núñez, president CENIDH (Nicaraguan Human Rights Center), Managua, Jan. 8, 2008

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

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

Comments:

Politics determines the pace, to a large extent. When the issue is not political, speed is generally slow. Partisanship, and finding nothing wrong with anything the government does, is the frequent criticism one hears these days. In a recent interview, the ombudsman said that the government is too soft" on the opposition.

References:

Digna Zamora, board member of CPDH (Permanant Human Rights Commission), Managua, Oct. 6, 2007
Vilma Núñez, president CENIDH (Nicaraguan Human Rights Center), Managua, Jan. 8, 2008

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.

57. Can citizens access the reports of the ombudsman?

0

57a. In law, citizens can access reports of the ombudsman(s).

YES | **NO**

Comments:

The law provides for notifying the parties affected only. Yet, in cases of media interest, resolutions are presented publicly.

References:

Ombudsman law, art. 43

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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In a recent, non-political case of a Nicaraguan man killed by guard dogs in Costa Rica, it took the office more than a year to investigate. Again, the issue is that partisanship and closeness to the government are such that non-political cases are not even brought up to his office.

References:

Digna Zamora, board member of CPDH (Permanant Human Rights Commission), Managua, Oct. 6, 2007

Vilma Núñez, president CENIDH (Nicaraguan Human Rights Center), Managua, Jan. 8, 2008

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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Costs are not the issue. The barriers are not financial, but of a political nature instead.

References:

Digna Zamora, board member of CPDH (Permanant Human Rights Commission), Managua, Oct. 6, 2007

Vilma Núñez, president CENIDH (Nicaraguan Human Rights Center), Managua, Jan. 8, 2008

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.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

Comments:

The name of the agency is Procuraduria de Derechos Humanos, currently headed by Omar Cabezas, elected by Congress to a five-year term in 2004.

References:

Ombudsman Law, law 212, generally
Constitution, art. 138

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.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

47

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

Art 156 reads: The Comptroller's Office is independent, subjected only to the fulfillment of the constitution and the laws. It will enjoy functional and administrative autonomy.

References:

Constitution, art. 156

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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Last time it was removed in 1993. There is no procedure for it in any law. But the impression is that if it was ever wanted by the party line, it would be done. In 2000, for example, Congress passed constitutional reforms to expand the head of the Comptroller's Office from one person to five.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Politics is also a big part of the staffing criteria.

References:

Guillermo Arguello Poesy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Politics plays a big role, but the staff is generally made of trustworthy professionals.

References:

Guillermo Arguello Poesy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funding is low. International cooperation represents a 15 percent of the typical budget or more. For example, the program for municipal audits is financed mostly from abroad.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The constitution orders so, in art. 156. However, delays are very common, and sensitive cases languish for years.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Most high level officials enjoy immunity. Generally not even the fines are ever collected.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

It responds promptly with audits to almost all cases unveiled in the media. However, afterwards it moves according to political will, so it hardly ever reaches the publishing results and refer cases to justice.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

60. Can citizens access reports of the supreme audit institution?

58

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

The constitution itself orders that findings be made public.

References:

Constitution, art. 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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All is secret about audits, until the CGR publishes the results. The published reports (a small proportion of all cases/audits done) become available promptly, upon request. Most cases are never referred to justice, even after three or five years when they have prescribed.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

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

Comments:

Cost is not an issue.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

It is named General Comptroller's Office for the Republic (CGR).

References:

Constitution, art. 154 et seq.
Law 86 and its reforms, Comptroller's law
Probity law (law 438), arts. 1, 2 and 3

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.

68
V-3. Taxes and Customs

62. Is the tax collection agency effective?

75

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is proper staffing, far less political than in other entities.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.

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.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funding is not as big an issue as with many other institutions. It comes from the annual budget and it is stable.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Experts point at the professional nature of the employees, but low wages, high turnover at the lower level plus discretion at the top generate unequal treatment in some cases.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Its funding comes from the annual budget law. It is stable and sufficient, although a bit spartan, as it is often the case in a poor country.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

It is the same law as the customs law, although they are separate entities.

References:

Organic law of the Dirección General de Ingresos ((National Revenue and Tax Collection agency), law 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.

63. Are tax laws enforced uniformly and without discrimination?

50

63. In practice, are tax laws enforced uniformly and without discrimination?

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

Comments:

Formerly an instrument against political opposition, it is far less so now, but some leniency for the well-connected is still possible. Nothing other than anecdotal evidence is available.

A frequently used loophole was tourism investment exceptions, in which many nice office buildings received such status, for making the city nicer” at the turn of this century.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller’s Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

Dirección nacional de aduanas, or DGA, (National Customs Office)

References:

Law 339, arts. 2 to 5, generally

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.

66. Are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

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

Comments:

Less professional, and with more discretion than the tax collection agency, the customs authority is more prone to indulge in leniency to the well-connected. No cases have been recently reported, but discretion and broadly defined exemptions are the gateway to abuses and unequal treatment.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006, <http://www.oas.org>

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.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

0

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

No such agency exists.

References:

Constitution

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

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

Comments:

No such agency exists.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Such an agency does not exist.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.

100: The agency, series of agencies, or equivalent mechanism 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, series of agencies, or equivalent mechanism 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is no such agency.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no such agency.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

Freedom of Information law, art. 20 (i)

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

Most fully or partially owned enterprises act as fully private enterprises when it comes to releasing data.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

Comments:

The Comptroller's Office would be in charge of such audits. Its standards are short of international level. However, nothing is known about such audits ever taking place or their results.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned 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: State-owned 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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

Comments:

The information is not on-line, and the freedom of information act has not been tested in this regard yet.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.

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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The information is not on-line, and the freedom of information act has not been tested in this regard yet.

References:

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008.

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.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

0

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

Only the water company is left in the hands of the state. There is no overseeing authority.

References:

Constitution
ENACAL law (ENACAL was the last state-owned company)

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

8 V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

75

70a. In law, anyone may apply for a business license.

YES | NO

Comments:

In Nicaragua, unless for banking or utilities, there is no such thing as a business license, only a number or requisite, and steps that cannot be denied.

References:

Constitution, arts. 27, 86

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

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

Many laws, regulations and procedures are required for opening a business, but there is no such thing as a business license." Depending on the nature of the business, the procedures multiply. Nicaragua is one of the lowest ranked countries in competitiveness for this reason alone. There is no known case or complaint of denial of the ability and permits to operate as a business. There is no process to request, thus no process to deny, but if the paperwork (taxes primarily) were for some reason denied, the court system would be available to receive an appeal.

References:

Constitution, arts. 27, 32

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.

70c. 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:

Although no business license is required, the average time for the paperwork to be completed is one to three months. Most paperwork consists of filing for tax payments for the enterprise with local and national tax authorities, and registrations with local governments, so they can extract a fee.

References:

Gabriel Solorzano, business owner (Budget, Holiday Inn), Managua, Sept. 17, 2008
Rafaela Cerda, business owner, Managua, Aug. 23, 2008

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.

70d. 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:

Costs are low, primarily for paperwork for national and local tax authorities.

References:

Gabriel Solorzano, business owner (Budget, Holiday Inn), Managua, Sept. 17, 2008
Rafaela Cerda, business owner, Managua, Aug. 23, 2008

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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

No such standards are set for ordinary businesses, for those that deal with food and lodging. The Ministry of Health has regulations. There are regulations also for risky businesses (factories, etc.)

References:

MINSA regulations are applicable to some types of businesses.

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

Most businesses that have emissions or use of soil, etc., must perform an environmental impact study, showing the impact (adverse and otherwise) and the mitigation that will be needed, time frames etc. The regulating body adds its considerations and that becomes the blueprint of what and how the enterprise may operate. Cases deal with authority under performing in vigilance and zealously.

References:

Marena rules

YES: A YES score is earned if basic regulatory requirements for meeting public 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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

Safety standards and requirements exist and are easily available. Building permits depend upon types of constructions, sites etc., given the seismic nature of the country. Rules are clear and available for interested parties.

References:

Police and Firemen rules

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

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

Comments:

Lack of oversight is far more common than overzealousness for bribes.

References:

Gabriel Solorzano, business owner (Budget, Holiday Inn), Managua, Sept. 17, 2008

Rafaela Cerda, business owner, Managua, Aug. 23, 2008

100: Business inspections by the government to ensure that public health standards are being met 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 to ensure public health standards are met 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 to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

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

Comments:

Lack of oversight is far more common than overzealousness for bribes.

References:

Gabriel Solorzano, business owner (Budget, Holiday Inn), Managua, Sept. 17, 2008

Rafaela Cerda, business owner, Managua, Aug. 23, 2008

100: Business inspections by the government to ensure that public environmental standards are being met 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 to ensure public environmental standards are met 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 to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

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

Comments:

Lack of oversight is far more common than overzealousness for bribes.

References:

Gabriel Solorzano, business owner (Budget, Holiday Inn), Managua, Sept. 17, 2008
Rafaela Cerda, business owner, Managua, Aug. 23, 2008

100: Business inspections by the government to ensure that public safety standards are being met 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 to ensure public safety standards are met 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 to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁷³Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

Attempts, even failed, at committing a crime are punishable.

References:

Penal Code, chapter 1.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

Penal Code, art. 228

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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Penal Code, arts. 447, 449

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Penal Code, arts. 447, 449

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

References:

Penal Code , arts. 445 to 450

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

Penal Code, arts. 451, 452

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.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Penal Code, arts. 450, 458

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.

73h. In law, money laundering is illegal.

YES | NO

References:

Penal Code, art. 282

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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Penal Code

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

47

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

Some agencies, at least in law, are more independent. Others are appointed by the executive. The Comptroller's Office and the State Attorney's Office are formally independent. Public ethics office is an executive, at will, employee.

References:

The Comptroller's law. It may investigate, fine and refer for prosecution.

The Public Ethics, created by executive decree 67-2002. Mostly for training and follow up, it has no power to investigate or prosecute.

State Attorney's Office, Procuraduria General (law 411)

Constitution, art. 130 et seq.

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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The general sense is that all anti-corruption agencies and actors are very far from being free of political interference.

Furthermore, they often act as a form of political and legal pressure on political foes of the parties and leaders that secure anti-corruption officials their posts.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Given the lack of independence from those political actors they are supposed to keep an eye on, it is hardly a possibility that these officials would be removed. In 1994 and 1999 the comptroller was effectively removed from office, setting up the current system that lessens the independence and likelihood of need for removal.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The majority have strong professional qualifications, as well as proper party credentials.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006
Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008
Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

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

Comments:

Strong credentials of a professional and partisan nature are the norm.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

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

Comments:

Generally underfunded by the state, agencies receive allocations sufficient to secure good personnel and facilities, but have somewhat limited reach. The comptroller's funding has been steady even if that funding is dependent on political influence.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

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

Comments:

The Comptroller's Office is well known for being slow to deliver its obligatory public findings on audits performed. Affected parties may promote the delays and even the freezing of investigations through the available legal means.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

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

Comments:

The Comptroller's Office has broad powers, short of arrests. However, those affected by its work have many available means to make the comptroller's actions against them ineffective. The office has not effectively sent a public official to trial in many years.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

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

Comments:

The criteria set for the 50 percent state the situation in Nicaragua.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

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.

76. Can citizens access the anti-corruption agency?

13

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

Comments:

The best indicator of time is the political nature of the case. If it is persecution against political foes, speed is obvious. The contrary is true if the case involves important figures of the two parties that control these institutions by legal design and practice.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

Comments:

Under present conditions, especially the lack of protection for whistle blowers, they are an extinguished species, so no reprisals against them are known .

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

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.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

The Comptroller's law. It may investigate, fine and refer for prosecution.

The Public Ethics, created by executive decree 67-2002. Mostly for training and follow up, it has no power to investigate or prosecute.

State Attorney's Office, Procuraduria General (law 411)

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.

53
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

YES | NO

References:

Constitution, art. 34 (4)

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.

77b. In practice, appeals are resolved within a reasonable time period.

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

Comments:

Magistrates point to an average appeal process on civil matters of between one and two years on average. The same goes for Supreme Court appeals. Politically sensitive cases have a generally larger window –for example, the corruption case brought against former President Aleman has languished in appeals for over six years.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008

Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

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

Comments:

As it is true in many places, good lawyering comes at a price, so poor citizens exercise such right less than others.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

50

78. In practice, do judgments in the criminal system follow written law?

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

Comments:

Good lawyers, all of them at the Supreme Court, are never short of an arguable legal point of support for what may have been decided for other reasons. When something is indefensible, the system generally produces a travesty of justice at the lower level, and the higher levels never rule upon the matter, to freeze the status quo, cover their positions and not undue the harm.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

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.

79. Are judicial decisions enforced by the state?

50

79. In practice, are judicial decisions enforced by the state?

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

Comments:

Sentences are vastly enforced, primarily on criminal matters. In civil matters sometimes there are conflicting rulings and maneuvers that impede executions of judgments.

References:

Guillermo Arguello Poessy, member of the Superior Council of the Comptroller's Office, Managua, July 2006

Luis Aragon, coordinator, Transparency area at Etica y Transparencia, Managua, Sept. 11, 2008

Expert Panel of OAS (organization of American States), final report regarding compliance by the state of Nicaragua with the mandates of the Convention against Corruption, Dec. 16, 2006 <http://www.oas.org>

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.

80. Is the judiciary able to act independently?

81

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitution, arts. 162, 165

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.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Supreme Court judges still divide the country among themselves for areas in which supervision of the system means the right to appoint judges, and all ratify what each does in his/her own area of influence. The judiciary career law is not applicable yet, plus it doesn't change this by much.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008
Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

A system of supposedly random assignment of cases is in place, matching cases as they are filed with judges. Many attorneys deny that the randomness is always so.

References:

Civil and Criminal Procedure Codes

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.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Constitution, arts 162, 165,
Judiciary career law, art. 69 et seq.

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.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008
Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

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. YES is a positive score.

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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008
Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

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. YES is a positive score.

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.

82. Do citizens have equal access to the justice system?

64

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Politics, and to a lesser extent gender, may affect outcomes.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008

Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Poverty and tradition somewhat limit access to women, especially in family violence cases.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008
Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Constitution, art. 34 (4,5)

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Overworked and underpaid, as in most places, characterizes public defender's offices. They are not available throughout the country. In such cases, judges appoint them ad hoc.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished 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 impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

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

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008

Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

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. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

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

Comments:

Many small business owners are not even middle class. For those the burden may be too high.

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Significant improvement has been made in this regard over the past few years. However, in rural areas other alternatives to the court system are often used (mediation, etc.)

References:

Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008
Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

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

83. Is the law enforcement agency (i.e. the police) effective?

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The policy and army laws establish procedures to move up the ranks, but the president, as civil commander, has a final pick among limited choices of very professional people with career records, from whom he selects without giving reasons.

References:

Institute for Strategic Studies and Public Policy, First Report on Defense, Public Security and Foreign Policy, Managua May, 2007
Sergio Cuarezma, magistrate of the Supreme Court, Managua, Sept. 12, 2008
Rafael Solis, magistrate of the Supreme Court, Managua, June 23, 2008

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

It is a yearly outcry how the approved budget covers about 60 percent of the police authorities requests.

References:

Aminta Granera, chief of police, Managua, Oct. 28, 2206
Sergio Cuarezma, Supreme Court magistrate, Managua, Sept. 16, 2008

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.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The police falls under the Ministry of Governance, and its command is selected by the executive. However, there is some room for respectful independence, and the institution has made great strides to become apolitical.

References:

La Prensa, Sept. 12, 2002

Sergio Cuarezma, Supreme Court magistrate, Managua, Sept. 16, 2008

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.

84. Can law enforcement officials be held accountable for their actions?

71

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

One may lodge a complaint at the police, which may or may not follow up on it (the law does not force them to). The court system is open if one chooses, for there is no immunity for police officers.

References:

Law 290

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No such commission exists, nor any obligation to handle complaints at the administrative level. The only sure recourse is through the court system.

References:

Annuary of the Police, 2007

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.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

The disciplinary code sets authority, typifies offenses and sanctions for corruption by any police officer. Drug cases have generated dishonorable discharges at many levels of the police authority.

References:

Law 290, Decree 26-96, and 27-96

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 may be internal to the police department (provided it has a degree of independence,

such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

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

References:

Police annuary, 2007

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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

There is no immunity.

References:

Law 290

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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

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

Comments:

Generally, police authorities have no immunity. Line of duty” is a mitigating factor only.

References:

Cenidh, Human Rights Annuary, 2007

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.
