

Overall Score:

57 - Very Weak

Legal Framework Score:

80 - Moderate

Actual Implementation Score:

33 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁶⁷Anti-Corruption Non-Governmental Organizations

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

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

In Nicaragua, the law allows the creation of nonprofit organizations and does not limit the scope of their work. There is no specific regulation about non-governmental organizations focused on anti-corruption/good governance.

References:

Article 49 of the Constitution, Chapter II (Political Rights) of Title IV (Rights, Duties and Guarantees of the Nicaraguan people, www.asamblea.gob.ni/opciones/constituciones/ConstitucionPolitica.pdf

General Law on Nonprofit Entities, Law 147

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/F16E39766C5C7AFE062570A100577C41?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/F16E39766C5C7AFE062570A100577C41?OpenDocument)

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

There is no direct authorization in the law, but the right appears to be implicit in Article 13 of Law 147, which requires legal entities

to inform the Ministry of the Interior and the Ministry of Foreign Cooperation about donations they receive from foreign sources.

References:

General Law on nonprofit judicial entities, Law 147, Article 13,
[http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/F16E39766C5C7AFE062570A100577C41?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/F16E39766C5C7AFE062570A100577C41?OpenDocument)

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | **No**

Comments:

It is not expressly provided in sub-paragraphs e and f of Article 13, Law 147:
"... The obligations of Legal Entities are the following: ... e) Comply with the legal requirements for donations from abroad and inform the Directorate of Associations of the Ministry of the Interior and the Ministry of Foreign Cooperation on donations they receive; f) Refer to the Interior Ministry account balances at the end of fiscal year."

One of the weaknesses of the control system in Nicaragua is the lack of publicity about the funds that manage and operate the NGOs, according to the Mutual Evaluation Report of the Financial Action Caribbean Task Force.

References:

Article 13 of Law 147.

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

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

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

58

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

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

Comments:

Although there are no explicit barriers, the fact that the request for authorization for a nonprofit organization is made to the National Assembly means that the process is subject to political forces. The Ministry of Interior, which responds to the political interest of the ruling party, has the potential to obstruct the registration, although Article 17 of Law 147 clearly states that "The Department of Registration and Control Association in the Ministry of Interior is limited to the registration of legal entities referred to in this law."

References:

Confidencial, Carlos Salinas Maldonado, Jan 25, 2011,
www.confidencial.com.ni/articulo/3001/ldquo-ley-talavera-rdquo-nueva-amenaza-a-las-ong-en-nicaragua

Alberto Novoa Espinoza, former solicitor general of Nicaragua and counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

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

Comments:

Although NGOs are funded to study and contribute to governing, the media close to the government characterize these agencies as funded to destabilize it. The government considers civil society agencies as opponents.

From the speech of President Daniel Ortega cited as a reference: "To those of the self-defined Civil Societies and Civil Coordinator, who will pay? The Empire. And it says the same empire, clearly, calmly admits in its report, one of such reports, that gave them a million dollars, and are upset because they are not doing their job, that is to subvert the order in Nicaragua."

References:

El Nuevo Diario, Leyla Jarquín, Feb. 10, 2011, "Quiéren Callar a la Coordinadora Civil," www.elnuevodiario.com.ni/politica/94475

Presidencia de la República de Nicaragua, Dec. 10, 2010, "Promoción de Cadetes del Ejército de Nicaragua, Discurso del Presidente Daniel Ortega," www.presidencia.gob.ni/index.php?option=com_content&view=article&id=342:promocion-de-cadetes-del-ejercito-de-nicaragua-&catid=80:diciembre-2010&Itemid=54&showall=1

Instituto de Investigaciones y Gestión Social, Omar A. García Palacios y Chantal A. Ulloa Morales, March 2010, "Las Relaciones del Gobierno de Nicaragua y la Sociedad Civil," <http://inges.org.ni/media/cedoc/paginas-internas-pdf-2010-03-12-14-11-18.pdf>

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

Although no such NGO has been closed, constant attacks by pro-government media aim to discredit civil society organizations in the eyes of the population.

References:

El Nuevo Diario, Rafael Lara, Sept. 15, 2010, "Bozal y Persecución," <http://archivo.elnuevodiario.com.ni/2010/09/15/nacionales/132075>

Centro Nicaragüense de Derechos Humanos, "Informe sobre Derechos Humanos 2010," www.cenidh.org/files/Informe%202010%20Web.pdf

Instituto de Investigaciones y Gestión Social, Omar A. García Palacios y Chantal A. Ulloa Morales, March 2010, "Las Relaciones del Gobierno de Nicaragua y la Sociedad Civil," <http://inges.org.ni/media/cedoc/paginas-internas-pdf-2010-03-12-14-11-18.pdf>

Yes: A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

Although no civil society activist has been arrested, the government and its related media exert constant pressure on the activities of activists.

References:

Centro Nicaragüense de Derechos Humanos, "Informe sobre Derechos Humanos 2010," www.cenidh.org/files/Informe%202010%20Web.pdf

Instituto de Investigaciones y Gestión Social, Omar A. García Palacios y Chantal A. Ulloa Morales, March 2010, "Las Relaciones del Gobierno de Nicaragua y la Sociedad Civil."

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

Comments:

The pressure and persecution are carried out by pro-government media and people close to the ruling party. A media campaign against civil society organizations is supported by the government and its officials at the highest level. Every time civil society has tried to demonstrate publicly, it has been suppressed by pro-government groups that have police support. No charge or complaint filed against the perpetrators has been successful.

References:

Centro Nicaragüense de Derechos Humanos, "Informe sobre Derechos Humanos 2010," www.cenidh.org/files/Informe%202010%20Web.pdf

Instituto de Investigaciones y Gestión Social, Omar A. García Palacios y Chantal A. Ulloa Morales, March 2010, "Las Relaciones del Gobierno de Nicaragua y la Sociedad Civil," <http://inges.org.ni/media/cedoc/paginas-internas-pdf-2010-03-12-14-11-18.pdf>

La Prensa, Elizabeth Romero, June 10, 2010, "Gobierno da 'Respuesta Cínica' en ONU," www.ni.laprensa.com.ni/2010/06/10/politica/27281#.TsBSh1ZJ9i8

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

There was no illegal detention or killing, but the CENIDH report for 2010 indicates a constant pressure and threat from pro-government media:

"President Ortega, using the official media, and their websites and the presidency of the Republic and its newspapers and digital magazines, (19, Voice of the Sandinistas, La Nueva Radio Ya, etc.), places a series of threats that endanger the life and safety of the defenders, especially the president of CENIDH, Dr. Vilma Núñez de Escorcía. The disqualification, insults and threats are expressed in various writings and cartoons published, one clearly expressing a death threat. CENIDH is concerned that, despite precautionary measures, that ... (these groups) consistently maintained a campaign of defamation and disqualification of the work of the president of CENIDH ... which is not only to discredit but to encourage fanatics who attack human rights defenders. These campaigns consist of the publication of opinion pieces that contain insults and defamation. ... These articles are reproduced by other Web pages such as Radio La Primerísima blog and website "tortilla con sal." Adding to these campaigns is the official radio station, La Nueva Ya, which repeatedly has referred in a derogatory manner to Dr. Núñez and other leaders of the movement of women demanding respect for women's rights and denouncing the manipulation ... by the powers of the state."

References:

Centro Nicaragüense de Derechos Humanos (CENIDH), "Informe sobre Derechos Humanos 2010," www.cenidh.org/files/Informe%202010%20Web.pdf

Instituto de Investigaciones y Gestión Social, Omar A. García Palacios y Chantal A. Ulloa Morales, March 2010, "Las Relaciones del Gobierno de Nicaragua y la Sociedad Civil," <http://inges.org.ni/media/cedoc/paginas-internas-pdf-2010-03-12-14-11-18.pdf>

Yes: A YES score is earned if there were no documented cases of NGO 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?

63

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

The trade unions are highly politicized in Nicaragua. Thus, workers are not interested in joining them.

References:

Article 87 of the Constitution, Labor Rights.

Articles 203 to 253 of the Labor Code,

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/FA251B3C54F5BAEF062571C40055736C?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/FA251B3C54F5BAEF062571C40055736C?OpenDocument)

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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

The most important trade unions in the country (FNT, ANDEN, CST, FETSALUD) are extensions of the Sandinista National Liberation Front, or FSLN party. The Labor Ministry has rejected the registration of some unions that are not related to that party and does not provide protection to trade unionists who are illegally fired from government institutions.

References:

Diario La Prensa, Roberto Morales A., March 3, 2010, "Mitrab No Dio Pase a Sindicato," www.laprensa.com.ni/2010/03/11/nacionales/18713#.ToYOGImRti8

El Nuevo Diario, Rafael Lara, April 30, 2011, "El Lado Oscuro en el Día de los Trabajadores," www.elnuevodiario.com.ni/nacionales/100858

El Nuevo Diario, Laura Rodríguez Rojas, July 27, 2011, "MTI Sin 'Puente' de Diálogo entre Titular y Sindicalistas," www.elnuevodiario.com.ni/nacionales/108973

El 19 Digital, Valeria Imhof, Feb. 25, 2011, "Trabajadores se Suman al Proyecto Cristiano, Socialista y Solidario que Impulsa el Presidente Daniel Ortega."

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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

Although the law clearly provides for freedom of expression and thought, the ruling party uses various methods to coerce the independent media, trying to provoke self-censorship. It has also acquired radio and TV media to use for propaganda and to attack the independent media.

Article 66 of the Constitution says Nicaraguans have the right to truthful information. This right includes freedom to seek, receive and impart information and ideas, either orally, in writing, graphically or by any other media of choice.

Article 30 says Nicaraguans have the right to freely express their thoughts in public or private, individually or collectively, and through oral, written or any other means.

References:

Article 66 of the Constitution, related to media, and Article 30, about free speech.

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.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

Article 30 of the Constitution states that "Nicaraguans have the right to freely express their thoughts in public or private, individually or collectively, in oral, written or any other means."

Every time that civil society has tried to demonstrate publicly, it has been suppressed by pro-government groups that have police support. No charge or complaint filed against the perpetrators has been successful. The public expression of thought has become dangerous in Nicaragua.

References:

Article 30 of the Constitution.

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?

88

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

The ruling party in various ways makes the existence of newspapers difficult. It denies state advertising to those not submitting to its dictates; maintains a smear campaign through its own media against those that are critical of it; hinders delivery of materials

required for printing, as in the case of El Nuevo Diario; besieges doors to prevent movement, as in the case of La Prensa; and uses the state apparatus by ordering tax assessments.

References:

Confidencial, Guillermo Rotschuch, Feb.12, 2011, "Silencio, Miedo y Negocios," www.confidencial.com.ni/articulo/3179/silencio-miedo-y-negocios

El Nuevo Diario, Roberto Collado, Feb. 7, 2011, "Varias Tenazas Contra Prensa en la Región," www.elnuevodiario.com.ni/nacionales/94256

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

No license is required.

References:

No license is required.

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.

06c. 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 required.

References:

"Report: Freedom of Expression in Nicaragua," Sofia Montenegro.

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No license is required.

References:

"Report: Freedom of Expression in Nicaragua," Sofia Montenegro.

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?

44

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

As a result of the Sandinista National Liberation Front's desire to control as many means of information delivery as possible, business operations outside the law have been allowed to acquire three television stations. At the same time, Evert Carcamo, an FSLN member sometimes at odds with the party, has lost his license for Channel 41.

References:

"Report: Freedom of Expression in Nicaragua," Sofia Montenegro.

Confidencial, Guillermo Rothschuh Villanueva, May 17, 2010, "El Nuevo Mapa de la TV," www.confidencial.com.ni/articulo/653/el-nuevo-mapa-de-la-tv

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.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

Decree 19-96 has several amendments, but the right of appeal remains.

References:

General Law of Telecommunications and Postal Services, Law No. 200

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/E19D0A4FF53C43320625715A00587598?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/E19D0A4FF53C43320625715A00587598?OpenDocument)

General Rules of the Law of Telecommunications and Postal Services, Decree No. 19-96

<http://legislacion.asamblea.gob.ni/normaweb.nsf/d0c69e2c91d9955906256a400077164a/35ac4e0d3c7e3cb1062570c0005b5a31?OpenDocument>

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.

07c. 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 main difficulty is the saturation of the radio spectrum. Because of a technical problem, licenses are scarce. Actually, the ruling party and relatives of its leaders have the rights to use the few spaces available in broadcast television.

Television channels with potential national coverage are 2 through 12. Channels 2 and 12 are independent, and Channels 4, 6, 8 and 10 are pro-government. Channel 6 is the state channel, and 4 and 8 belong to the Sandinista National Liberation Front and are managed by sons of Daniel Ortega and Rosario Murillo.

At a workshop conducted by the World Association of Community Radio Broadcasters in Nicaragua in July 2011, examples were presented of stations that took between eight months and 12 years to obtain licenses in Nicaragua.

References:

La brújula digital, Arturo Wallace, Jan. 27, 2011, "Radio, Televisión y Democracia," www.labrujula.com.ni/noticia/440

Confidencial, Guillermo Rotschuch Villanueva, May 17, 2010, "El Nuevo Mapa de la TV," www.confidencial.com.ni/articulo/653/el-nuevo-mapa-de-la-tv

La Prensa, Roberto Morales, Sept. 9, 2010, "Frenética Entrega de Frecuencias de Radio y TV," www.laprensa.com.ni/2010/11/09/nacionales/43091

SIMAS, Martín Cuadra and Roberto Vallecillo, July 14, 2011, "Memoria del Taller de AMARC."

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.

07d. 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 main difficulty is the saturation of Nicaragua's radio spectrum. This is a technical problem, and licenses are scarce. On the other hand, the Sandinista National Liberation Front has developed a strong monopoly on radio and TV media. The FSLN also controls the distribution of government advertising, a main source of revenue for the media.

Thus, operating licenses can be acquired only by purchase from entities that already have them, and the prices have reached levels too high for any person or private entity.

Law 670, approved in 2008, extended all existing licenses for radio and television until the issuance of a new communications law. In 2011, this law still was not forthcoming. The problem is not the actual cost of the licenses (we cannot know the price of something that is not for sale). It is that there are no licenses to purchase, unless from someone who already has one, which makes the price prohibitive.

During the period of this study, there were no publicly known applications for licenses for TV and radio channels, nor was there any kind of established fee. The allocations referred to by the sources occurred in total secrecy, though an allocation process legally should allow opposition from potential stakeholders.

References:

La Prensa, Roberto Morales, Nov. 9, 2010, "Frenética Entrega de Frecuencias de Radio y TV," www.laprensa.com.ni/2010/11/09/nacionales/43091#.TsBfblZJ9i8

CINCO, Guillermo Rotschuch, Dec. 10, 2010, "Las Telecomunicaciones y el Ente Regulador," www.cinco.org.ni/publicaciones/265

"Official Media," study conducted by the Center for Communications Research, or CINCO.

Ley de Prórroga a las Licencias de las Empresas, Personas Naturales o Jurídicas que Operan Radio, Televisión y Tele Cable, Ley 670, 2008, [http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/7EA3D1CE381CC5E8062574FF0061A3B6?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/7EA3D1CE381CC5E8062574FF0061A3B6?OpenDocument)

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?

75

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

There were no government restrictions on access to the Internet or Internet chat rooms; however, for the second year, several NGOs alleged that the government monitored their email. Individuals and groups did engage in the expression of views via the Internet, including by email. Internet access was available in the majority of the country's cities, and there were more than 23,500 Internet hosts in the country as of 2006, although the International Telecommunication Union reported that only about 3.5 percent of the country's inhabitants used the Internet in 2009, according to a 2010 country report by the U.S. State Department. Frequent power outages and infrastructure problems hampered citizen access to Internet and email services.

References:

Conexiones, www.conexiones.com.ni/articulo.php?id=68

U.S. Embassy, "2010 Human Rights Report: Nicaragua," http://nicaragua.usembassy.gov/rpt_2010_hrr.html

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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

There were no government restrictions on access to the Internet or Internet chat rooms; however, for the second year, several NGOs alleged that the government monitored their email, according to a 2010 country report by the U.S. State Department. Individuals and groups did engage in the expression of views via the Internet, including by email. Internet access was available in the majority of the country's cities, and there were more than 23,500 Internet hosts in the country as of 2006, although the International Telecommunication Union reported only about 3.5 percent of the country's inhabitants used the Internet in 2009. Frequent power outages and infrastructure problems hampered citizen access to Internet and email services.

References:

Geral Hernández, DISPESA (hosting provider), interviewed Sept. 8, 2011, in Managua.

"2010 Human Rights Report: Nicaragua," U.S. Embassy in Nicaragua. http://nicaragua.usembassy.gov/rpt_2010_hrr.html

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?

75

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

Article 67 of the Constitution states: "The right to inform is a social responsibility and exercised with strict respect for the principles stated in the Constitution. This right may not be subject to censorship, but to subsequent liability established by law."

Article 204 Penal Code: Exclusion of crime states that there is no criminal defamation where:

- a) The charge is true and is linked to the defense of current public interest.
- b) The information on news events has been made in accordance with journalistic ethics.
- c) There are unfavorable judgments of political criticism, literary, artistic, historical, scientific or professional, no offensive purpose.
- d) The expressions are directed against public officials or employees on the true facts concerning the performance of their duties.
- e) Whether the concept expressed unfavorable performance of a duty or exercising a right, provided that the course of action or lack of reserve, when it had any, not prove offensive purpose.
- f) The offenses contained in the submissions or demonstrations or speeches made by the litigants, attorneys or advocates before the courts, and concerning the subject of the trial. These will be subject only to appropriate disciplinary sanctions.

In recent years the government has used the judiciary to punish some media reports concerning public officials. The "2010 Human Rights Report" by the Nicaraguan Center for Human Rights contains examples of persecution of journalists for accurate news reports.

References:

Article 67 of the Constitution.

Article 204(a-f), Penal Code: "Exclusion of crime."

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

With various methods, the government has maintained pressure on the media, especially newspapers. Among its actions have been:

- 1) Limiting access to official sources of information.
- 2) Cutting out government advertising (the most important economic resource for the media in Nicaragua).
- 3) Creating obstacles to the import of raw material (in the case of El Nuevo Diario).
- 4) Manipulating lawsuits over employment (in the case of La Prensa).

In the case of La Prensa (referred to in the article by Edmundo Jarquin), dealers are physically constrained from bringing the newspaper into circulation. A group of former employees has the backing of Sandinistas labor unions in blocking the distribution of the newspaper. Repeatedly, the National Police have been called to avoid a confrontation.

References:

Institute for Strategic Studies and Public Policy, Félix Maradiaga, Feb. 18, 2011, "Ambiente Institucional y Político Actual de los Medios de Comunicación en Nicaragua: Otro Reto para la Libertad," www.iepp.org/index.php/ambiente-institucional-y-politico-actual-de-los-medios-de-comunicacion-en-nicaragua-otro-reto-para-la-libertad/

Centro Nicaragüense de Derechos Humanos (CENIDH), "Informe sobre Derechos Humanos 2010."

Radio La Primerísima, ACAN-EFE, Feb. 11, 2010, "Investigan Cédulas de Identidad a Proxetas," www.radiolaprimerisima.com/noticias/general/70478

El Nuevo Diario, Edmundo Jarquín, Aug. 31, 2010, "El Acoso a La Prensa," <http://impreso.elnuevodiario.com.ni/2010/08/31/opinion/131068>

El Nuevo Diario, Guillermo Rotschuch, Feb. 17 2011, "Medios y Agenda Pública," www.elnuevodiario.com.ni/opinion/94961

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

That has not happened since the 1980s.

References:

Institute for Strategic Studies and Public Policy, Félix Maradiaga, Feb. 18, 2011, "Ambiente Institucional y Político Actual de los Medios de Comunicación en Nicaragua: Otro Reto para la Libertad," www.iepp.org/index.php/ambiente-institucional-y-politico-actual-de-los-medios-de-comunicacion-en-nicaragua-otro-reto-para-la-libertad/

Centro Nicaragüense de Derechos Humanos, "Informe sobre Derechos Humanos 2010," www.cenidh.org/files/Informe%202010%20Web.pdf

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?

40

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

Yes | No

Comments:

There is no legal regulation for the print media.

References:

There is no legal regulation for the print media.

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 General Law of Telecommunications and Postal Services states:

The radio spectrum is a public property subject to state control (Article 4). Article 5 indicates that TELCOR, the telecommunications regulator, will be responsible for the allocation of radio frequencies and the granting of licenses for the installation and operation of transmitters and transceiver stations that use it. Article 29 states that licenses will be awarded only to Nicaraguan individuals or corporations. In the case of corporations, at least 51 percent of the capital must be from Nicaragua. This capital stock and its amendments should be reported to TELCOR. The shares will be registered, not allowing their free movement or encumbrances, and shall be recorded with TELCOR.

Further, Article 1 of the Law of Access to Information regulates, ensures and promotes the right of access to public information available in the documents, files and databases of entities or public institutions, joint ventures and state-subsidized and private entities that administer, manage or receive public funds, tax benefits or other benefits, allowances or benefits. Private information held by the state shall not be considered open to public access.

As a matter of national sovereignty, given the ban on capital companies primarily or entirely abroad, the citizen can research and request information under the Law on Access to Public Information.

References:

General Law of Telecommunications and Postal Services, Articles 4, 5 and 29, <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/e19d0a4ff53c43320625715a00587598?OpenDocument>

Law of Access to Information (Act No. 621), Article 1, [http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/675A94FF2EBFF9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/675A94FF2EBFF9106257331007476F2?OpenDocument)

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 types 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:

The pro-government media (radio, TV and websites) are openly used to distribute propaganda and to launch attacks on civil society organizations and opposition political figures. The political leanings of journalists in general call into question their level of professionalism and credibility. In the heat of political debate, journalistic professionalism and objectivity get lost.

The independent media — especially print — have come to represent opposing positions, notably as a result of the pressures and attacks by the government and its media and the lack of access to official sources. Pro-government media present a Nicaragua that progresses rapidly because they hide all signs of corruption and social problems. The independent media almost exclusively indicate government mistakes.

An example can be found through Radio "The Primerísima," one of the highest-rated radio stations. On its blog you can read a "story" in which journalist Marcio Vargas runs a "little postcard" to Carlos Fernando Chamorro (www.rjp.com.ni/noticias/86149): "Cowardly, hypocritical, mercenary, that's you, and you have the least and have never had a man's courage. You're a true political 'fag.' ... " This style and vocabulary are usually used on pro-Sandinista radio stations or TV news when referring to the opposition, civil society and independent media.

References:

Centro Nicaragüense de Derechos Humanos, "Informe sobre Derechos Humanos 2010."

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:

The situation is complicated because the official media do not provide space for opposition candidates. In general, the ruling party candidates avoid giving statements or interviews to national media and, in particular, to entities that do not support the ruling party. The independent press tries to cover all relevant activities, but its information seems to be biased.

References:

CINCO, Observatorio de Medios de Comunicación, Nov. 4, 2008, "Cobertura Electoral — Elecciones Municipales 2008."

El Nuevo Diario, Guillermo Rothschuh Villanueva, Dec. 22, 2008, "Aciertos y Equívocos en los Medios," <http://impreso.elnuevodiario.com.ni/2008/12/22/opinion/92040>

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:

In practice, the media acquired by people close to the government of President Daniel Ortega are parastatals, supported by funds obtained from government advertising and given preferential treatment in access to official information. That way, they reach audiences of higher political power and have the ability to influence the audience with propaganda. The opposition candidates not only have no coverage, but also are under constant attack from the pro-government media.

For example, in June 2011, after an obscure situation that occurred with the candidate for deputy of the Independent Liberal Party, Alejandro Solorzano, the Sandinista media began an aggressive campaign to discredit the presidential Gadea-Jarquín ticket.

The case of Alejandro Solorzano can be read here in English: www.huffingtonpost.com/huff-wires/20110615/us-nicaraguan-official-arrested/ (He was supposed to be processed in the United States on a 14-year-old Florida warrant that accused him of conspiracy to commit wire fraud and money laundering, but he was later released without further explanation.).

References:

CINCO, Observatorio de Medios de Comunicación, Eduardo Marengo, April 16, 2009, "INFORME: Los Medios Oficiales Durante la Gestión del Presidente Ortega."

La Prensa, ACAN-EFE, June 13, 2011, "Cenidh Preocupado por 'Gran Cantidad' de Medios Vinculados a Ortega," www.laprensa.com.ni/2011/06/13/nacionales/63569#.TqOcaXKHObU

La Prensa, June 17, 2011, Gloria Picón Duarte, "PLC Viola Ley con Campaña Sucia," www.laprensa.com.ni/2011/06/17/politica/63933

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?

67

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

Yes | No

Comments:

In the past year, no journalists investigating corruption have been imprisoned.

References:

Centro Nicaragüense de Derechos Humanos, "Informe sobre Derechos Humanos 2010."

U. S Embassy, "2010 Human Rights Report: Nicaragua," http://nicaragua.usembassy.gov/rpt_2010_hrr.html

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:

There is a known case, that of photojournalist Sergio Cruz. He was assaulted while photographing a group of citizens who erased a sign alluding to Arnoldo Alemán's candidacy. The subjects spotted the camera, spray-painted the lens, damaged his car and threw stones while the journalist fled.

References:

Centro Nicaragüense de Derechos Humanos, "Informe sobre Derechos Humanos 2010."

U.S. Embassy, "2010 Human Rights Report: Nicaragua,"

http://nicaragua.usembassy.gov/rpt_2010_hrr.html

El Nuevo Diario, Leonor Álvarez, Aug. 28, 2010, "Fanáticos Agreden a Periodista,"

<http://archivo.elnuevodiario.com.ni/2010/08/28/politica/130874>

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:

Although no deaths have occurred, journalists reportedly have been threatened with death. Channel 15 Condega Television stopped transmitting because of threats received by the owner, and more recently a reporter for El Nuevo Diario went into exile for the same reason.

References:

Centro Nicaragüense de Derechos Humanos, "Informe sobre Derechos Humanos 2010."

U.S. Embassy, "2010 Human Rights Report: Nicaragua,"

http://nicaragua.usembassy.gov/rpt_2010_hrr.html

El Nuevo Diario, www.elnuevodiario.com.ni/nacionales/93202

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.

70
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

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

Yes | No

Comments:

There is the Law of Access to Information, but enforcement is generally partial and insufficient.

The Law of Access to Information, Article 1 states: "This act is to regulate, ensure and promote the right of access to public information available in the documents, files and databases entities or public institutions, joint ventures and state-subsidized and private entities that administer, manage or receive public funds, tax benefits or other benefits, allowances or benefits. Private information held by the state shall not be considered open to public access."

References:

Law of Access to Information, Article

1, [http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/675A94FF2EBFEE9106257331007476F2?OpenDocument)

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

Comments:

There is the Law of Access to Information, but enforcement is generally partial and insufficient.

Article 37 of the law says of the denial of a request: The applicant may file an appeal within a period of six days of notification to the Office for the Coordination of Access to Public Information of each branch of the state, the Regional Council of the Autonomous Regions of the Atlantic Coast, the Municipal Council, as appropriate.

The resolution shall be rendered within 30 days. The appeal process may be applied also in cases of administrative silence.

Applicants may also appeal directly to the Court of Administrative Litigation.

Article 38: If the authority rejects an appeal within the established deadlines, the applicant may appeal to the Administrative Chamber of the Supreme Court within the proper period. In this way, the applicant may request payment of costs and damages.

References:

Chapter VI of the Law 621, Articles 37 and 38,

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/675A94FF2EBFEE9106257331007476F2?OpenDocument)

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:

There is the Law of Access to Information, but enforcement is generally partial and insufficient.

References:

Chapter V, The Procedure for the Exercise of the Right of Access to Information of the Law 621, Articles 26 to 34.

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/675A94FF2EBFEE9106257331007476F2?OpenDocument)

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 to information requests effective?

21

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

100 | 75 | 50 | 25 | 0

Comments:

Most of the time, the information is delayed. When the institution considers what the information can affect — that it can be used against it — the agency usually will not offer the information but simply remain silent.

References:

Confidencial, Roberto Fonseca L., March 1, 2011, "Gobierno Viola Ley de Acceso a la Información Pública," www.confidencial.com.ni/articulo/3349/gobierno-viola-ley-de-acceso-a-la-informacion-publica

El Nuevo Diario, Leyla Jarquín, July 30, 2010, "Acceso a Información y Participación Ciudadana Anulados," <http://impreso.end.com.ni/2010/07/30/politica/129086>

"Access to Information Law," Massiel Hidalgo. April 2011, <http://massielhidalgo.blogspot.com/2011/04/ley-de-acceso-la-informacion-publica.html>

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Although by law the information must be posted on government websites, this is usually avoided by the institutions. The information simply is not published.

Citizens can request copies, which are not expensive (US\$ 0.05 one sheet), but often delayed. With all the mechanisms under the control of the ruling party, and with secretiveness being the quasi-official conduct, there is no way to force the government to fulfill the law.

References:

Confidencial, Roberto Fonseca L., March 1, 2011, "Gobierno Viola Ley de Acceso a la Información Pública," www.confidencial.com.ni/articulo/3349/gobierno-viola-ley-de-acceso-a-la-informacion-publica

El Nuevo Diario, Leyla Jarquín, July 30, 2010, "Acceso a Información y Participación Ciudadana Anulados," <http://impreso.end.com.ni/2010/07/30/politica/129086>

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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Most of the time, the information is delayed. When an institution considers what the information can affect — that it be used against it — the agency does not usually offer the information but simply remains silent.

References:

Confidencial, Roberto Fonseca L., March 1, 2011, "Gobierno Viola Ley de Acceso a la Información Pública," www.confidencial.com.ni/articulo/3349/gobierno-viola-ley-de-acceso-a-la-informacion-publica

El Nuevo Diario, Leyla Jarquín, July 30, 2010, "Acceso a Información y Participación Ciudadana Anulados," <http://impreso.end.com.ni/2010/07/30/politica/129086>

Fundación Violeta Barrios de Chamorro, July 29, 2010, "La Participación Ciudadana y el Acceso a la Información Pública," www.violetachamorro.org.ni/index.php?option=com_jdownloads&Itemid=4&view=finish&cid=7&catid=7

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

100 | 75 | 50 | 25 | 0

Comments:

In practice, the main problem is that an entity does not respond to a request and that does not constitute a denial. Thus, citizens don't have a response to appeal.

Article 35 of the Access to Information Law says: "The request shall be considered resolved negatively, if there is express answer in this regard. All denial of access to public information should motivate under penalty of nullity. Once the time limits set in this law expire without any resolution, it shall be deemed an acceptance of the order as long as the requested information cannot be characterized as reserved or confidential."

According to a study by Violeta Barrios de Chamorro Foundation, few people make use of this law.

References:

Confidencial, Roberto Fonseca L., March 1, 2011, "Gobierno Viola Ley de Acceso a la Información Pública," www.confidencial.com.ni/articulo/3349/gobierno-viola-ley-de-acceso-a-la-informacion-publica

El Nuevo Diario, Leyla Jarquín, July 30, 2010, "Acceso a Información y Participación Ciudadana Anulados," <http://impreso.end.com.ni/2010/07/30/politica/129086>

Fundación Violeta Barrios de Chamorro, July 29, 2010, "La Participación Ciudadana y el Acceso a la Información Pública," www.violetachamorro.org.ni/index.php?option=com_jdownloads&Itemid=4&view=finish&cid=7&catid=7

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.

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

100 | 75 | 50 | 25 | 0

Comments:

According to inquiries and investigation reports, there is little knowledge about legal procedures. That simple fact makes additional expenses necessary.

References:

Confidencial, Roberto Fonseca L., March 1, 2011, "Gobierno Viola Ley de Acceso a la Información Pública," www.confidencial.com.ni/articulo/3349/gobierno-viola-ley-de-acceso-a-la-informacion-publica

El Nuevo Diario, Leyla Jarquín, July 30, 2010, "Acceso a Información y Participación Ciudadana Anulados," <http://impreso.end.com.ni/2010/07/30/politica/129086>

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.

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

100 | 75 | 50 | 25 | 0

Comments:

The usual practice is silence, nothing more. It is important to note that Law 621 in Article 28 expressly relieves users of having to justify their requests. However, according to sources, this is not the case. That's why there is a perception that the institutions are on the defensive and that the officials are afraid.

References:

Confidencial, Roberto Fonseca L., March 1, 2011, "Gobierno Viola Ley de Acceso a la Información Pública," www.confidencial.com.ni/articulo/3349/gobierno-viola-ley-de-acceso-a-la-informacion-publica

El Nuevo Diario, Leyla Jarquín, July 30, 2010, "Acceso a Información y Participación Ciudadana Anulados," <http://impreso.end.com.ni/2010/07/30/politica/129086>

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 2. Elections

2.1. ⁴¹Voting and Party Formation

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:

Since the 2008 municipal elections faced difficulties with the citizen identity card, allegations have been made that the Supreme Electoral Council makes targeted delivery of the document. The council presumably discriminates against people who oppose the government.

References:

Article 51 of the Constitution.

Article 30 of the Electoral Law (Law 331).

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:

Municipal elections were suspended in some municipalities of the Atlantic Coast in 2008. This was the only time in 20 years that the election calendar was altered.

References:

Article 136 of the Constitution related to five-year period for the post of deputy.

Article 148 of the Constitution related to five-year periods for the posts of president and vice president.

Article 178 of the Constitution related to four-year period for the post of mayor.

Article 3 of the Electoral Law: The elections provided for in this act shall take place the first Sunday of the month of November preceding the date according to the law of the start of the period for those who were elected.

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?

50

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

100 | 75 | 50 | 25 | 0

Comments:

Thousands of people, targeted for not being Sandinistas, are politically discriminated against and have not received their identity cards. This way they would not be able to vote in the November elections, La Prensa reported in July 2011:

"Around 233,000 young people, who exercise their first vote in the presidential election next November, would be without an identity card, estimated Raul Obregon, general manager of the polling firm M & R.

"Details of the monitoring of public opinion, that M & R conducted nationwide every three months, indicate that 12.5 percent of citizens in general, lack an identity document that is granted by the Supreme Electoral Council (CSE) and is required to vote in elections.

"Taking into account that the potential universe of voters is 2,887,713 people, it follows that 420,422 people still have no card, said Obregon."

References:

Diario La Prensa, Tania Sirias, July 6, 2011, "50% de Electores Nuevos Sin Cédula," www.laprensa.com.ni/2011/07/06/politica/65825#.ToYiIFmRt8

Conexiones, Mauricio Miranda, Jan. 13, 2011, "Jóvenes Sin Cédula, Ciudadanos Sin Voz," www.conexiones.com.ni/articulo.php?id=179

El Nuevo Diario, Aug. 12, 2011, "Cosep Pide al CSE Entregar Cédulas de Identidad," www.elnuevodiario.com.ni/nacionales/110518

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:

It is difficult to get official information about election results in Nicaragua. The official website of the Supreme Electoral Council has pulled the data, and no one has access to an interview on the subject. The final result of 8 percent of the total votes in 2006 is unknown; in 2008 it was reported that the number of invalid votes experienced an exaggerated increase.

The decision to cancel a vote takes place in the polling station, which is run by people nominated by the big political parties. According to studies by different organizations and complaints from political parties, the Supreme Electoral Council did not publish all the results in 2008 but could see an increase of more than 6 percent in the number of invalid votes, which is move away from the tendency in Nicaragua elections of the past 20 years.

Canceled votes is one way to fake the will of the voter, but not the only one used.

References:

La Prensa, María José Uriarte, Nov. 18, 2008, "Raro Aumento de Votos Nulos," <http://archivo.laprensa.com.ni/archivo/2008/noviembre/18/noticias/politica/295514.shtml>

Instituto para el Desarrollo y la Democracia, "Elecciones 2008-2009, Informe Final," May 2009, www.ipade.org.ni/docs/elecciones/InformeFinalEleccMun2008-2009.pdf

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

Comments:

In 2008 municipal elections were suspended in some municipalities of the Atlantic Coast. This is the only case in 20 years in which the election calendar has been altered. National elections have always been held on time, as required by law.

References:

El Nuevo Diario, Matilde Córdoba, April 8, 2008, "Desconocen Resolución CSE," <http://impreso.elnuevodiario.com.ni/2008/04/08/politica/73743>

Confidencial, Lourdes Arróliga, April 6, 2008, "CSE Desata 'Crisis Institucional,'" www.confidencial.com.ni/archivo/2008-578/pdf/edicion578.pdf

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?

55

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

Yes | No

Comments:

Article 55 of the Constitution states: "Nicaraguan citizens have the right to organize or join political parties, in order to participate, exercise and opt to power."

Articles 62 to 71 of the Electoral Law are related to this right. While it is not impossible to form a political party, the conditions are very difficult for the general public.

References:

Article 55 of the Constitution.

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 states: "Nicaraguan citizens have the right to organize or join political parties, in order to participate, exercise and opt to power."

Art. 51 of the Constitution says: "Citizens have the right to elect and be elected at periodic elections and to hold public office, except for limitations provided in this Constitution. It is the duty of the citizen jury to hold the offices and other Concejil [Advisory] character, unless qualified by law excuse."

To participate, a citizen must be part of a political party or be nominated by a political party.

References:

Article 55 of the Constitution.

Article 51 of the Constitution.

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) 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 requirements are quite complicated and expensive. The majority parties from government institutions like the Supreme Court and the Supreme Electoral Council exert all kinds of measures to hinder the existence of other parties. The legal status of the Sandinista Renovation Movement was removed in 2008, and the PLI-UNE Alliance is currently under constant attack because of the general election of 2011.

References:

Observatorio Nacional de la Democracia y la Gobernabilidad, "Nicaragua: La Democracia a la Deriva, 2007, Primer Informe

Nacional sobre la Democracia y la Gobernabilidad.”

El Socialista Centroamericano, Sebastián Chavarría Domínguez, June 24, 2008, “Nicaragua: Nuevo Retroceso en el Régimen de Partidos Políticos,” www.elsoca.org/index.php/america-central/nicaragua/130-nicaragua-nuevo-retroceso-en-el-regimen-de-partidos-politicos

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:

Although the law does not expressly state that individuals are unable to register as candidates for elections, no mechanism in the law allows this possibility. Thus, a citizen who does not belong to a political party cannot exercise his/her right to be elected.

In addition to the above, the Supreme Electoral Council in 2008 withdrew the legal status of the Sandinista Renovation Movement. The electoral council has been consistently involved in internal discussions of the other political parties, helping to cause fractures and divisions.

For the election year 2011, the Supreme Electoral Council inhibited several candidates of the opposition alliance PLI-UNE, based on dubious reasons. For example, Nicaraguan law is silent about whether a citizen can change from one political party to another. However, in considering one of its resolutions, the CSE noted that “in comparative law exist laws that punish the political turncoat” and cited Article 107 of the Colombian constitution referring to the “prohibition of double political membership.” Thus, the CSE decided to cancel the candidacies of Joel Gross and Gustavo Lira, which the alliance PLI considered a “flagrant abuse and violation of human rights.” (www.elnuevodiario.com.ni/politica/109301)

The Supreme Electoral Council's activity makes it difficult for citizens to participate in elections as candidates. If a citizen is forced to join a political party that does not represent his/her ideology, we cannot say that there is freedom, as it fails to meet the universal right to be elected. Also, parties have their own internal rules that are not universal and equitable for all.

References:

La Prensa, María José Uriarte, April 27, 2011, “Se Amparó Contra Rivas Porque No Lo Dejó ser Candidato,” www.laprensa.com.ni/2011/04/27/politica/58822#.ToY9JFmRti8

Confidencial, May 1, 2011, “La Ley Electoral No Prohibe las Candidaturas a Título Personal,” www.confidencial.com.ni/articulo/3854/ldquo-la-ley-electoral-no-prohibe-las-candidaturas-a-titulo-personal-rdquo

Centro Nicaragüense de Derechos Humanos, “Informe Anual Derechos Humanos en Nicaragua 2010,” May 2011.

Resoluciones del Consejo Supremo Electoral, <http://cse.gob.ni>

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:

Some deputies elected by the people now vote with the Sandinista deputies, and thus we can say that the opposition in Nicaragua has been nullified. Hence, the Sandinista National Liberation Front was able to block the appointment of authorities to the Supreme Electoral Council and the Supreme Court, though the opposition — considering the election results of 2006 — should be capable of designating them.

The mechanisms that have been used to obtain the support of opposition deputies threaten to change political allegiances from the opposition to the ruling party.

References:

La Prensa, Ludwing Loáisiga, Dec. 22, 2010, "Oposición 2010: Entre el Interés, el Servilismo y la Ineficiencia," www.laprensa.com.ni/2010/12/22/politica/47087#.ToZgHlmRti8

El Nuevo Diario, Ramón H. Potosme, May 30, 2010, "La Nueva Correlación y el 'Péndulo ALN,'" <http://archivo.elnuevodiario.com.ni/2010/05/31/politica/125344>

El Nuevo Diario, Ary Neil Pantoja, June 26, 2010, "Sacados del PLC a 'Canonazos,'" www.elnuevodiario.com.ni/politica/77510

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.

2.2. Election Integrity

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

100

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

Yes | No

Comments:

In addition to the three traditional political powers, Nicaragua has a fourth. This is the electoral power, with the Supreme Electoral Council as its highest authority.

References:

Articles 168 to 174 of the Constitution.

Article 10 of the Electoral Law.

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.

18. Is the election monitoring agency effective?

30

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

Yes | No

Comments:

Article 7 of Nicaragua's Constitution established the existence of an electoral power. Article 129 of the Constitution establishes the independence (autonomy) of the different branches of government.

References:

Articles 7 and 129 of the Constitution.

Articles 168 to 173 of the Constitution.

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:

Acting against the law and violating the principle of separation of powers, Presidential Daniel Ortega issued Decree 03-2010. The decree allows officials for whom the National Assembly has not appointed successors to remain in office. Justices of the Supreme Court and the Supreme Electoral Council at this time are "de facto."

A second argument used to keep public officials whose terms have expired is a provisional article of the Constitution.

The fact is that the current authorities are in office for the sole interest of the president of Nicaragua, since the periods for which they were elected have already ended.

References:

El 19 Digital, Pedro Ortega Ramírez, June 18, 2010, "Períodos de Magistrados Electorales Siguen Vigentes, y Continuarán Amparados en Decreto Presidencial," www.el19digital.com/index.php?option=com_content&view=article&catid=21:politica&id=13566:periodos-de-magistrados-electorales-siguen-vigentes-y-continuaran-amparados-en-decreto-presidencial&Itemid=14

Confidencial, Carlos Salinas Maldonado, June 8, 2010, "El Ardid Legal del Artículo Cn. 201," www.confidencial.com.ni/articulo/827/el-ardid-legal-del-articulo-cn-201

El Nuevo Diario, José Adán Silva and Ary Neil Pantoja, May 12, 2010, "Decretazo o Cárcel," www.elnuevodiario.com.ni/nacionales/74229

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:

The main selection criterion is political, depending on party loyalty. The Supreme Electoral Council has become an entity that favors the major parties. Skills or training of personnel give in to any conflict of political interest.

References:

Article 138, number 8 of the Constitution.

Revista Envío, March 2009, "Informe Final de Ética y Transparencia: Ante las Ruinas de un Proceso Electoral Viciado," www.envio.org.ni/articulo/3974

3) La Prensa, Rosa Marina Zelaya (former president of the Supreme Electoral Council), Nov. 19, 2008, "Las Lecciones del CSE Partidarizado," <http://archivo.laprensa.com.ni/archivo/2008/noviembre/19/noticias/opinion/295657.shtml>

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:

Still unknown are the results of 8 percent of the votes in the elections of 2006 and 30 percent of the votes during the municipal elections of 2008.

References:

Instituto Para la Democracia, "Informe Final Elecciones Municipales 2009," www.ipade.org.ni/docs/elecciones/InformeFinalEleccMun2008-2009.pdf

Ética y Transparencia, "Informe Final Elecciones 2008."

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:

The ruling party has used state resources for political propaganda. This is forbidden by Nicaragua's laws but not punished or reproached by the Supreme Electoral Council, electoral prosecutor or judicial authorities.

References:

La Prensa, Tania Sirias, Jan. 28, 2011, "Propaganda FSLN ilegal y Sin Ética," www.laprensa.com.ni/2011/01/28/politica/50373#.TqLInLU9i8

Ipade, "Segundo Informe Elecciones 2011."

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?

25

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

100 | 75 | 50 | 25 | 0

Comments:

The content of the electoral roll has drawn many complaints. The last version of the roll was released by the Supreme Electoral Council to political parties participating in the 2011 elections. In an attempt to prevent observer organizations from having insight into the weaknesses, the rolls were released with copyrights. They cannot be released to the public. However, a recent study shows that about 74 percent of polling stations had errors. For example, the lists of those registered to vote contained the names of people who had died.

Each municipality sends the records of births and deaths to the Central Registry of Civil Status of Persons. Any citizen 16 years old automatically becomes part of the voter registry, and each citizen who dies is discharged.

On the other hand, proven allegations have been reported that even people younger than 16 (the minimum voting age in Nicaragua) receive the necessary identity cards if they promise to vote for the Sandinista National Liberation Front. The Supreme Electoral Council develops a school ID card project linked to the FSLN organizations. Roberto Rivas Reyes, president of the Supreme Electoral Council, denies that the council is giving cards to anyone younger than 16 but recognizes that the cards may have already been made.

References:

El Nuevo Diario, Carlos Tünermann Bernheim, March 10, 2010, "Elecciones Regionales Plagadas de Irregularidades,"

Ipade, "Segundo Informe Elecciones 2011."

El 19 Digital, Pedro Ortega Ramírez, June 3, 2011, "CSE Afirma que Cedulación Escolar Avanza," www.el19digital.com/index.php?option=com_content&view=article&id=25060:cse-afirma-que-cedulacion-escolar-avanza&catid=21:politica&Itemid=14

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:

On electoral matters, decisions of the Supreme Council are final.

Article 173 of the Constitution states: "5) To hear and resolve in the end the resolutions enacted by the subordinated electoral agencies about claims and appeals submitted by political parties."

Article 1 of the Electoral Law says: "This Act is constitutional and regulates: a) The electoral processes for the election of: 1). President and Vice-President of the Republic. 2) Deputies to the National Assembly. 3) Deputies to the Central American Parliament. 4) Members of the Councils of the Autonomous Regions of the Atlantic Coast. 5) Municipal Mayors and Deputy Mayors. 6) Members of the Municipal Councils. The resolutions issued on matters relating to any of the six preceding paragraphs shall not be subject to any appeal, ordinary or extraordinary."

References:

Article 173, Section 5, of the Constitution.

Article 1 of the Electoral Law.

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:

On electoral matters, decisions of the Supreme Council are final. In practice, the Supreme Court has intervened only when a request has favored the ruling party. But the nature of such intervention is entirely against the supreme Nicaraguan law.

The electoral power had the exclusive jurisdiction over whether Daniel Ortega's candidacy was illegal.

References:

La Prensa, María José Uriarte, April 8, 2011, "Rivas Escribe 'en Piedra' Ilegalidad,"

El Nuevo Diario, Leonor Álvarez, April 28, 2011, "Solo con Daniel Ortega CSJ Resolvió Materia Electoral," www.elnuevodiario.com.ni/politica/100633_solo-con-daniel-ortega-csj-resolvi%C3%B3-materia-electoral

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 military does not intervene in civil internal affairs. On the other hand, the National Police do not protect members of the opposition, civil society or independent citizens when they are attacked by members of pro-government organizations. The police agency also does not track complaints of aggression committed by pro-government citizens.

References:

La Prensa, Elizabeth Romero, March 13, 2010, "Policías Son 'Susceptibles' a Corrupción," www.laprensa.com.ni/2010/03/13/nacionales/18953#.TqLRTHLU9i8

Confidencial, Carlos Salinas Maldonado, May 1, 2011, "EEUU: Granera Perdió el Control de la Policía," www.confidencial.com.ni/articulo/3855/eeuu-ldquo-granera-perdio-el-control-de-la-policia-rdquo

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:

Article 10 of the Electoral Law states: "The Supreme Electoral Council has the following attributes ... [to] regulate the accreditation and participation of observers for the election process." Article 27 states: "The responsibilities of polling stations ... Allow throughout their activity the access to the place to accredited observers."

These articles of the Electoral Law imply that observers are allowed. However, during the 2008 election the Supreme Electoral Council neither established national observation teams nor invited international teams that traditionally observe elections in Nicaragua. The same was happening for the 2011 elections. The Supreme Electoral Council had refused the participation of some national observers.

References:

Articles 10 and 27 of the Electoral Law.

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:

The Supreme Electoral Council has chosen simply not to authorize the election observation organizations, which it defines as partisan. In preparation for the election of 2011, the CSE changed the term "observation" (referred to in the Electoral Law) to evade the existing agreements and arrangements. It replaced "observation" with the word "support."

References:

Ipade, "Informe Final Elecciones 2008,"
www.ipade.org.ni/docs/elecciones/InformeFinalEleccMun2008-2009.pdf

Revista Envío, Grupo Cívico Ética y Transparencia, March 2009, "Informe Final de Ética y Transparencia: Ante las Ruinas de un Proceso Electoral Viciado,"
www.envio.org.ni/articulo/3974

El Nuevo Diario, Leonor Álvarez, Jan. 21, 2010, "CSE Descalifica a Ética y Transparencia,"
<http://archivo.elnuevodiario.com.ni/2010/01/21/politica/117619>

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.

52
2.3. Political Financing Transparency

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

17

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

Yes | No

Comments:

The Electoral Law is the only system to regulate the functioning of political parties, and it does not include anything about limiting individual donations to political parties.

References:

Electoral Law.

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.

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

Yes | **No**

Comments:

The Electoral Law is the only system to regulate the functioning of political parties, and it does not include anything about this matter.

References:

Electoral Law.

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.

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

Yes | **No**

Comments:

The Electoral Law is the only system to regulate the functioning of political parties, and it does not include anything about this matter.

References:

Electoral Law.

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. 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 requirements for the disclosure of donations to political parties.

Yes | **No**

Comments:

The Electoral Law is the only system to regulate the functioning of political parties, and it does not include anything about this

matter.

References:
Electoral Law.

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

Comments:
The Electoral Law is the only system to regulate the functioning of political parties, and it does not include anything about this matter.

References:
Electoral Law.

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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 when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

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

Yes | No

Comments:
Article 63 of the Electoral Law states: "The duties of political parties: ... 3) Be transparent and honest in the administration of their economic assets, publish each year financial statements and sending copies to the Supreme Electoral Council."

The law says nothing more about the control over party finances.

References:
Article 63 of the Electoral Law.

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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

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

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

Yes | **No**

Comments:

The Electoral Law is the only system to regulate the functioning of political parties, and it does not include anything about this matter.

References:

Electoral Law.

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.

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

Yes | **No**

Comments:

The Electoral Law is the only system to regulate the functioning of political parties, and it does not include anything about this matter.

References:

Electoral Law.

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.

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

Yes | **No**

Comments:

The Electoral Law is the only system to regulate the functioning of political parties, and it does not include anything about this matter.

References:

Electoral Law.

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | **No**

Comments:

The Electoral Law is the only system to regulate the functioning of political parties, and it does not include anything about this matter.

References:

Electoral Law.

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 when financial irregularities are uncovered. 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 when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

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

Yes | **No**

Comments:

The Electoral Law is the only system to regulate the functioning of political parties, and it does not include anything about this matter.

References:

Electoral Law.

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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

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:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained during an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Politicos en

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:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained during the election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, “Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America),” coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México.

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:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained during the election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México.

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político."

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:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained during an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México.

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político."

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, 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:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained during an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México.

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político."

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

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

100 | 75 | 50 | 25 | 0

Comments:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained during an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing 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.

Comments:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained during an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

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.

Comments:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained in an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

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:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained in an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

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

100 | 75 | 50 | 25 | 0

Comments:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained in an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

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

100 | 75 | 50 | 25 | 0

Comments:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained in an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

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:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained in an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

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:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained in an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

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:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained in an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

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 NGOs. 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 NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained in an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

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:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of distribution depends on the results obtained in an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

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:

Nicaragua does not have regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained in an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

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:

Nicaragua does not have regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained in an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

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 NGOs. 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 NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Nicaragua has no regulations governing the political financing of parties. The only economic issue is associated with the budget allocation, and the shape of the distribution depends on the results obtained in an election.

References:

International Institute for Democracy and Electoral Assistance, July 1, 2011, "Financiamientos de los Partidos Políticos en América Latina (Funding of Political Parties in Latin America)," coordinators: Pablo Gutiérrez and Daniel Zovatto, co-publishers: Organization of American States, Universidad Nacional Autónoma de México, www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf

Fundación Violeta Barrios de Chamorro, September 2006, "Foros sobre Financiamiento Político," www.violetachamorro.org.ni

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

43
3.1. Conflicts of Interest Safeguards & Checks and Balances:
Executive Branch

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

100

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

Yes | No

Comments:

Article 131 of the Constitution states: The State, in accordance with law, shall be liable for injuries materially that result from the acts or omissions of public officials in the exercise of office, suffered by individuals in their property, rights and interests, except in cases of force majeure. The State may proceed against the public official or employee causing the injury.

References:

Article 131 of the Constitution.

Ley de Amparo, Ley 49 (Amparo Law, Law 49).

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.

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

38

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

100 | 75 | 50 | 25 | 0

Comments:

From the president to the lowest-ranking official, the current government avoids giving interviews or making statements to the media. Even government supporters dare not speak publicly. The president has never given a press conference in which the media are allowed to ask questions.

References:

Confidencial, Andrés Pérez Baltodano, Sept. 6, 2010, "Carta a la Juventud Sandinista y No Sandinista," www.confidencial.com.ni/articulo/1711/carta-a-la-juventud-sandinista-y-no-sandinista

"¿Por qué nos Odian Tanto?," Centro de Competencia en Comunicación para América Latina, Eduardo Marengo, May 29, 2010, "Nicaragua: Conviviendo con el Enemigo."

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:

In all cases that involve the use of the amparo remedy, the officer is required to report and expose the facts from his perspective to the judicial authority.

Article 15 (Appeal by Unconstitutionality) of Law 49, or the Amparo Law, states: "Once admitted to the administrative appeal for unconstitutionality, the Supreme court of Justice will obtain information from the public official against the petitioner. The public official must return any information in his/her defense within 15 days of receiving the notice. A written copy must be kept by the Court and the Prosecutor General."

Article 37 (Amparo): "The competent Court asked those listed, send report to the Supreme Court directing office by certified mail piece, return receipt requested, or by any other means deemed by the Court be more expeditious. The report must be filed within a period of ten days from the date they receive at the appropriate office. With it will be sent if necessary, the taking of the proceeding."

Article 58 (Habeas Corpus): "Introduced as the Writ of Habeas Corpus by threat, the Court will ask the authority against whom the writ is directed to give up report within twenty-four hours, with the report or not, the Court shall admit or deny the appeal. In the event that it allows, any steps should be taken in accordance with Article 56 as applicable. In the event the Court rejects the appeal, the aggrieved may bring a complaint before the Supreme Court and what resolved will not be eligible for appeal."

References:

Law 49 (Amparo Law), Articles 15 (Appeal by Unconstitutionality), 37 (Amparo) and 58 (Habeas Corpus), <http://www.poderjudicial.gob.ni/arc-pdf/leyamparo.pdf>

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 Supreme Court's situation is the same as that of the Supreme Electoral Council: Magistrates are illegally occupying the office by an illegal decree of President Daniel Ortega. The Supreme Court at this moment is politically partisan and not impartial. The first example of complicity in the illegal actions of the executive branch is the very appointment of its judges.

For example, the appeal of Daniel Ortega and Sandinista mayors was settled in 2009 and decided within close to 48 hours after the Supreme Electoral Council rejected Ortega's request to be a presidential candidate in the 2011 election. The Court of Appeals of Managua allowed the appeal, and Ortega and the mayors got a favorable ruling from the Constitutional Chamber of the Supreme Court, abnormally formed by Sandinista judges to consider the matter. By contrast, the Autonomous Women's Movement introduced an amparo against Law 630, which penalizes therapeutic abortion, and has been waiting more than five years for results.

Currently, the Supreme Court is handling a request for a political party that seeks to weaken the alliance that polls indicated could stand up to Ortega in the presidential election in November 2011.

References:

La Prensa, Eduardo Cruz and María Haydeé Brenes, March 13, 2011, "El Candidato Ilegal," www.laprensa.com.ni/2011/03/13/politica/54686#.TqSLs3JJ9PU

El Nuevo Diario, Martha Vasquez Larios, June 14, 2011, "Una Lección Desde España a Magistrados de Facto en Nicaragua," www.elnuevodiario.com.ni/nacionales/104948

Amnistía Internacional, Nov. 6, 2009, "La Corte Suprema Debe Decidir sobre la Legalidad de la Nueva Legislación Relativa al Aborto," www.amnesty.org/es/for-media/press-releases/nicaragua-corte-suprema-debe-decidir-sobre-aborto-20091106

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.

Comments:

The best example is Decree 03-2010, which was issued in violation of the National Assembly's power to designate magistrates for the judiciary and the electoral branch, as well as other officials, such as in the Comptroller Office and the Office of Human Rights. More recently, the president has ordered that Commissioner Aminta Granera remain as chief of the National Police. This violates Law 228, the Law of the National Police, which establishes a five-year fixed term for the position.

References:

Confidencial, July 21, 2011, Álvaro Navarro, "Ortega Intenta Hacer Cómplice a Jefa Policial," www.confidencial.com.ni/articulo/4438/ortega-intenta-hacer-complice-a-jefa-policial

El Nuevo Diario, Ary Pantoja, May 6, 2010, "Ortega No llega y da Órdenes a la Asamblea," <http://impreso.elnuevodiario.com.ni/2010/05/06/politica/123778>

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?

0

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

Yes | No

Comments:

Article 1 of the Law of Immunity states:
"Enjoys immunity while in performance of their duties:

- a) Presidents and Vice Presidents of the Republic.
 - b) Representatives and alternates to the National Assembly.
 - c) Judges of the Supreme Court.
 - d) Magistrates and Deputy Supreme Electoral Council.
 - e) Judges of the Courts of Appeals.
 - f) Comptroller General of the Republic.
 - g) Ministers and Deputy Ministers of State.
 - h) Commander in Chief of the Army and the Chief of General Staff.
 - i) Presidents, Directors Central Government autonomous entities.
- Such officers shall not be liable to any action or ruling in the courts of the Republic, while in the exercise of his office..."

Article 5 states: "The people who consider themselves affected by the performance, in the exercise of office or in the capacity as individuals, officials who enjoy immunity in accordance with the Constitution and in Art. 1 of this Act, may refer the complaint to the National Assembly. In cases of complaint against the Ministers and Vice Ministers of State, President or Director of Governmental autonomous entities, the complaint must be filed before the president who, within eight days of working, forwards it to the National Assembly for its information and Resolution..."

References:

Law of Immunity (Law 83).

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/67A9468A267B2A9E062570A100577D31?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/67A9468A267B2A9E062570A100577D31?OpenDocument)

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**

Comments:

Article 1 of the Law of Immunity states:
"Enjoys immunity while in performance of their duties:

- a) Presidents and Vice Presidents of the Republic.
 - b) Representatives and alternates to the National Assembly.
 - c) Judges of the Supreme Court.
 - d) Magistrates and Deputy Supreme Electoral Council.
 - e) Judges of the Courts of Appeals.
 - f) Comptroller General of the Republic.
 - g) Ministers and Deputy Ministers of State.
 - h) Commander in Chief of the Army and the Chief of General Staff.
 - i) Presidents, Directors Central Government autonomous entities.
- Such officers shall not be liable to any action or ruling in the courts of the Republic, while in the exercise of his office..."

Article 5 states: "The people who consider themselves affected by the performance, in the exercise of office or in the capacity as individuals, officials who enjoy immunity in accordance with the Constitution and in Art. 1 of this Act, may refer the complaint to the National Assembly. In cases of complaint against the Ministers and Vice Ministers of State, President or Director of Governmental autonomous entities, the complaint must be filed before the president who, within eight days of working, forwards it to the National Assembly for its information and Resolution..."

References:

Law of Immunity (Law 83).
[http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/67A9468A267B2A9E062570A100577D31?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/67A9468A267B2A9E062570A100577D31?OpenDocument)

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:

Article 20 of the Probity Law states: "Subject to Present Declaration Sheet. All public servants of the state must be held accountable for their assets before taking office and after deliver ..."

References:

Probity Law (Law 438).
www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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

Comments:

Article 20 of the Probity Law states: "Subject to Present Declaration Sheet. All public servants of the state must be held accountable for their assets before taking office and after deliver ..."

References:

Probity Law (Law 438).

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:

Article 8 of the Probity Law says: "Prohibitions. It is forbidden for public servants: ... h) Solicit or accept gifts or profits directly or indirectly from a private or other public servant, involving acts or omissions ... in carrying out functions of his tenure."

References:

Probity Law (Law 438).

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:

According to Article 23 of the Probity Law, the comptroller can check the data of the statements of officials. An audit is not required.

References:

Probity Law (Law 438).

www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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**

References:

Probity Law (Law 438).

www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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:

Nicaragua has no regulations restricting post-government private sector employment for heads of state and government and for ministers.

References:

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.iepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

El Nuevo Diario, Luis Galeano, Aug. 31, 2010, "Probidad Estorba,"

<http://impreso.elnuevodiario.com.ni/2010/08/31/nacionales/131112>

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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

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

Comments:

Since the beginning of May 2010 Daniel Ortega announced the implementation of a salary bonus of 529 cordobas (about US\$21) for all government workers with wages lower than 5,500 cordobas (about \$250) per month. The bonus pay is actually a massive gift made by companies of the Bolivarian Alliance for the Americas, or ALBA, through the government, because it bypasses budgetary controls and is not considered a wage increase.

Government officials have said publicly that the bonus is paid directly with money from Venezuela. Among recipients of this gift are members of the National Police and the Nicaragua army. (See this link: www.el19digital.com/index.php?option=com_content&view=article&id=12995:miembros-del-ejercito-ya-recibieron-su-bono-solidario&catid=23:nacionales&Itemid=12)

References:

La Prensa, Gisella Canales Ewest, June 27, 2010, "Ya Inició la Entrega del Bono 'Solidario,'" www.laprensa.com.ni/2010/06/27/economia/29370#.TqTAvnJJ9PU

Envío, Equipo Nittlapán-Envío, May 2010, "Brochazos y Pinceladas," www.envio.org.ni/articulo/4172

El 19 Digital, Valeria Imhof, June 3, 2010, "Trabajadores Marchan Contra el FMI y en Defensa del Bono Cristiano, Socialista y Solidario," www.el19digital.com/index.php?option=com_content&view=article&catid=20:poder-ciudadano&id=13130:trabajadores-marchan-contra-el-fmi-y-en-defensa-del-bono-cristiano-socialista-y-solidario&Itemid=11

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.

Comments:

As stated in [125] of the Organization of American States report, "While the CGR's new Organic Law – Law No. 681, 'Organic Law of the Comptrollership General of the Republic and of the Control System for the Public Administration and Oversight of State Assets and Resources' – does give the Comptroller's Office greater capacity for investigation and prosecution, as provided in Arts. 92 and 105, that does not explicitly and practically resolve the lack of financial and human resources, which is one of the major obstacles that the agency faces in discharging its functions. This has been confirmed by the oversight agency's top authority, Dr. Guillermo Arguello Poessy, who said that: 'The oversight agency's new Organic Law imposes additional responsibilities on the institution while, incongruously, the General Budget of the Republic does not guarantee it the human or material resources for the faithful discharge of its mandate.' An example of this situation is the fact that for checking more than 4,000 probity declarations, there are only four inspectors for the entire country." http://www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

References:

La Prensa, Moisés Martínez, Feb. 2, 2011, "Ortega Mezcla Recursos Públicos con los Suyos," www.laprensa.com.ni/2011/02/02/nacionales/50848#.TqTHqHJJ9PU

El Nuevo Diario, José Adán Silva and Luis Galeano, Feb. 24, 2011, "CGR: 'Nos Engañaron,'" www.elnuevodiario.com.ni/nacionales/95512

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

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?

44

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

Yes | No

Comments:

Article 22 of the Probity Law states grants access to civil servants' asset declarations. The problem is that the officer may prevent public access to his statement of probity.

References:

Probity Law (Law 438),
www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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 main problem regarding financial asset disclosures is that the officer may prevent the public from gaining access to his statement of probity. The process is conducted through the Comptroller's Office and requires several visits.

Although by law a citizen can obtain the information in a short time (a week or two), public servants often refuse the request and the comptroller confirms it. In practice, the sources quoted show that officials usually reject requests, and their records are kept private.

From a story in La Prensa: "For the former comptroller and currently allied deputy of the Sandinista Front, Agustin Jarquin Anaya, the ideal is that the declarations of integrity of public officials were open to the public. But Jarquin Anaya, handling the media giving this information, provides arguments to officials so that they are not public. ..."

References:

La Prensa, Moisés Martínez, Feb. 2, 2011, "Ortega Mezcla Recursos Públicos con los Suyos,"
www.laprensa.com.ni/2011/02/02/nacionales/50848#.TqTHqHJJ9PU

InterAmerican Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report,"
www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

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:

The process requires several trips to the comptroller's office, as can be determined from the reading of Article 22 of the law on access to public information. The costs depend more on the number of visits that may be necessary, since the issuance of the order is free. According to research conducted and sources, the process is often cumbersome and fruitless because the public official can prevent the issuance of complete information.

It is impossible to determine even approximate costs because they depend on many factors, including the number of pages of documents involved, the original location of the applicant, whether public or private transportation is used and the number of times one has to go to the appropriate office. The cost is irrelevant in most cases because under the law most of the required data should be on websites of the institutions. If one needs to obtain a hard copy, a photocopy costs about 5 cents for one sheet.

References:

La Prensa, Moisés Martínez, Feb. 2, 2011, "Ortega Mezcla Recursos Públicos con los Suyos," www.laprensa.com.ni/2011/02/02/nacionales/50848#.TqTHqHJJ9PU

Interamerican Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

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 NGOs. 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 NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The applicant obtains only part of the Declaration of Probity of a public official, depending on the reasons stated, the official response and the decision of the comptroller.

The decisions to reject an application usually state: "Required public servant, using his rights, responded promptly to this request stating that if not explicitly required by rule of law to make public disclosure of assets, there is no reason to provide his declaration to the applicant ... when there is no legal cause or suspected criminal irregularities in government."

References:

La Prensa, Moisés Martínez, Feb. 2, 2011, "Ortega Mezcla Recursos Públicos con los Suyos," www.laprensa.com.ni/2011/02/02/nacionales/50848#.TqTHqHJJ9PU

Interamerican Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

0

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

100 | 75 | 50 | 25 | 0

Comments:

In order to assess the existing confusion, it is enough to say that the presidential house is the Sandinista Front's party headquarters.

During the electoral process, the FSLN made indiscriminate use of state resources to promote the re-election of Daniel Ortega (re-election is unconstitutional). In many cases, officials of government institutions are under orders from members of the FSLN who do not even work in those institutions.

References:

Instituto Para el Desarrollo y la Democracia, May 2011, "Primer Informe de Observación Electoral," www.ipade.org.ni/Documentos/PRIMER%20INFORME%20DE%20OBSERVACION%20ELECTORAL%20ENERO-ABRIL%202011%2005%2004%2011.pdf

La Prensa, Tania Sirias, Jan. 28, 2011, "Propaganda FSLN Ilegal y Sin Ética," www.laprensa.com.ni/2011/01/28/politica/50373#.TqTm1HJJ9PU

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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:

In Nicaragua, this has become a weakness. The Sandinista Front maintains control over the Supreme Court and thus blocks laws that would limit or control its actions from the executive. The most notable case is one that allows President Daniel Ortega's re-election by declaring unconstitutional a constitutional article that has existed for 16 years.

The Constitution says:

"Arto. 187 Establish the recourse of unconstitutionality against any law, ordinance or regulation that opposes prescribed by the Constitution, which may be brought by any citizen.

Arto. 188 Establish the recourse of amparo against any provision, act or resolution and in general against any act or omission of any official authority or agent thereof who violates or attempts to violate the rights and guarantees enshrined in the Constitution policy.

Arto. 189 Establish the writ of habeas corpus in behalf of those whose liberty, physical integrity and security are violated or are at risk of violence.

Arto. 190 The Amparo Law regulate the remedies in this chapter."

References:

Constitution, Article 187 (recourse of unconstitutionality), Article 188 (recourse of amparo), Article 189 (writ of habeas corpus), Article 190 (remedies).

Amparo Law (Law 40).

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 judiciary in Nicaragua is illegally constituted and partisan. This is because of Decree 3-2010 issued by the president, Daniel Ortega. The decree is the best example of how the judiciary is allied with the executive to neutralize the legislature, which has the exclusive legal authority to appoint and remove judges of the Supreme Court.

References:

Nueva Sociedad, José Luis Rocha Gómez, August 2010, "Crisis Institucional en Nicaragua: Entre un Estado Privatizado y un Estado Monarquizado," www.nuso.org/upload/articulos/3702_1.pdf

El Nuevo Diario, Roberto Martínez, Dec. 20, 2010, "Justicia Raptada," <http://impreso.elnuevodiario.com.ni/2010/12/20/nacionales/138098>

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:

Although the law clearly states that immunity can be stopped if the officer is in the act of committing a crime, police and judicial authorities have never made that possibility a reality. The legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

Immunity Law (Law 83), Article 1, states: "Are immune while in performance of their duties: ... b) Representatives and alternates to the National Assembly;... Such officers shall not be liable to any action or ruling in the courts of the Republic, while in the exercise of his office."

Article 5 states: "The people who consider themselves affected by the actions of the officials mentioned in Articles 2 and 4, whether in nature or particular public, they may use to complain:

1) To the President in cases of:

1. 1. Deputy Ministers and Ministers of State;
1. 2. Comptroller General of the Republic;
1. 3. President, Directors and Central Government Autonomous Entities;
1. 4. Commander in Chief of the Sandinista Popular Army and Chief of General Staff.

2) In the National Assembly in the following cases:

2. 1. President and Vice-President of the Republic;
2. 2. Former President and ex-Vice President;
2. 3. Representatives and Deputy to the National Assembly;
2. 4. Ex-Representatives to the National Assembly;
2. 5. Judges (and alternates) of the Supreme Electoral Council;
2. 6. Magistrates Courts of Appeals."

Article 6 states: "When this complaint to the President of the Republic, that through the Ministry of the Presidency collect the necessary information and send it to the National Assembly, it will continue processing the complaint in accordance with the procedure set out in this Act."

Article 13 states: "If the National Assembly with 60 percent of the votes of its members confirmed the complaint against the officer or officers, will proceed to lift the immunity. In the event that the complaint be dismissed, it can not be brought back on the same facts."

References:

Immunity Law (Law 83), Articles 1, 5, 6 and 13.

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

Comments:

Article 20 states: "Subject to Present Declaration Sheet. All public servants of the state must be held accountable for their assets before taking office and after delivery. ..."

References:

Probit Law, Article 20,
www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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:

There are no restrictions.

References:

Probity Law.

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:

Article 8 of the Probity Law says: "Prohibitions. It is forbidden for public servants: ... h) Solicit or accept gifts or profits directly or indirectly from a private or other public servant, involving acts or omissions ... in carrying out functions of his tenure."

References:

Probity Law,
www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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**

Comments:

There are no legal or regulatory requirements for the independent auditing of asset disclosures by legislative branch members.

References:

Probity Law,
www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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

Comments:

There are no restrictions on this in Nicaragua's Law.

References:

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.iepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

El Nuevo Diario, Luis Galeano, Aug. 31, 2010, Probidad Estorba," <http://impreso.elnuevodiario.com.ni/2010/08/31/nacionales/131112>

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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

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

100 | 75 | 50 | 25 | 0

Comments:

No known cases were formally investigated. The media have collected statements claiming that the FSLN often provides gifts (gunshots or "cañonazos") in exchange for votes from the opposition's deputies in the National Assembly.

One case is that of the energy company, Natural Gas Company. The opposition party's deputies said that National Gas Company made payments for the passage of a law.

The most famous case occurred in February 2009, after a 2008 recording revealed Alberto Guevara (Minister of Finance of the FSLN) acknowledging that the National Assembly FSLN must pay to get votes from the opposition.

References:

Conexiones, Mauricio Miranda, Oct. 27, 2010, "Nicaragua Entre los Más Corruptos de América Latina," www.conexiones.com.ni/articulo.php?id=121

El Nuevo Diario, Ary Neil Pantoja, June 26, 2010, "Sacados del PLC a 'Cañonazos,'" <http://impreso.elnuevodiario.com.ni/2010/06/26/politica/126977>

El Nuevo Diario, July 16, 2010, "Penosa Reyerta por Supuestas Coimas," www.elnuevodiario.com.ni/politica/79065

El Nuevo Diario, Feb. 26, 2009, "Parlamentarios Pierden el Pudor," www.elnuevodiario.com.ni/politica/41270

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 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.

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

100 | 75 | 50 | 25 | 0

Comments:

According to Probity Law, there is no set audit.

References:

Interamerican Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.iepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

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: 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.

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:

The problem is that the officer may prevent public access to his statement of probity:

Article 22 of the Probity Law says: "Access to Civil Servants Asset Declaration. Any natural or legal person, with detailed expression of the reasons, may request from the Comptroller the disclosure of assets of any public servant, under his own civil or criminal liability. Such request must make known to the public servant who the Declaration Sheet is requested, to argue it to be good in a term of three days. The Comptroller Council following a review of the reasons underlying the request and the arguments of the public servant should have made use of his transfer, establish whether this lends merit or not. If merit pay with the declared place, pointing in the resolution that the declaration can be used and relevant information that must contain, which

will extend certified copy to the applicant, and communicated that decision to a public servant referred to. In the event that either the prosecutor or the Attorney General's Office, who in the course of their duties, powers and authority, to request a copy of the Declaration of the public servant Heritage, it will proceed immediately."

References:

Probity Law,
www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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, non-governmental 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:

By law, an applicant can obtain the information in a short time (a week or two). The process requires several visits to the comptroller's office. Also, the comptroller must consider whether there is a good reason for the request. In practice, the sources for this report indicate, the targeted officials usually reject requests and their records are kept private.

The real problem is that the public officer may prevent public access to his statement of probity by refusing to fulfill the request.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report,"
www.oas.org/Juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.ieepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

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.

100 | 75 | 50 | 25 | 0

Comments:

The process involves the comptroller and requires several visits to his office, as can be determined from reading Article 22 of the law on access to public information. The costs depend more on the number of visits that may be necessary, since the issuance of the order is free. According to research conducted and the sources for this report, the process is often cumbersome and fruitless because the public official can prevent the issuance of complete information.

It is impossible to determine approximate costs because of many factors, including the number of photocopies made, the original location of the applicant, whether travel is by public or private transportation and the number of trips to the appropriate office.

The cost is apparently irrelevant in most cases because, under the law, most of the required data should be on the websites of institutions. If hard copies are needed, a photocopy costs about 5 cents. But if you're in the Atlantic Coast area (for example, Bluefields) and have to make about three trips to the capital, or stay in a hotel during the pending resolution of your request,

which can be at best about 20 days, this implies at least \$400. The same procedural request by someone in Managua might not exceed \$2 for bus fare.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.ieepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

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 NGOs. 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 NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

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

Comments:

The applicant obtains only part of the Declaration of Probity of a public official, depending on the reasons stated, the official response and the decision of the comptroller.

The decisions to reject usually state: "Required public servant, using his rights, responded promptly to this request, stating that if not explicitly required by rule of law to make public disclosure of assets, there is no reason to consider providing his declaration to the applicant ... while there is no legal cause or suspected criminal irregularities."

If the response is positive, the applicant will get a copy of the declaration of probity and possibly annexes that may be of interest.

References:

Interamerican Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.ieepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

92

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

Yes | No

Comments:

The Organic Law of the Legislature (Act 606), Article 10, says National Assembly sessions are public and citizens may attend by requests made at the Secretariat, except when the board agrees to a session involving only the deputies, special guests and staff.

There is also a Journal of Debates the public may consult, either physically or online (http://www.asamblea.gob.ni/index.php?option=com_wrapper&view=wrapper&Itemid=326).

References:

Organic Law of the Legislature (Act 606), Article 10.

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 are 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:

Many documents are available online for free through the website of the National Assembly. To obtain these documents physically may take about two weeks, and the cost is low.

References:

Alberto Novoa Espinoza, lawyer and former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

Asamblea Nacional de Nicaragua, www.asamblea.gob.ni

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:

Through the website of the National Assembly, citizens have free access to many documents online. To obtain these documents physically may take about two weeks, and the cost is low.

References:

Alberto Novoa Espinoza, lawyer and former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

Asamblea Nacional de Nicaragua, www.asamblea.gob.ni

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 NGOs. 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 NGOs trying to access this information.

51
3.3. Conflicts of Interest Safeguards & Checks and Balances:
Judicial Branch

36. Are judges appointed fairly?

0

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

Yes

No

Comments:

Until January 2010, the process of choosing judges for the Supreme Court was clear. In late 2009 the Sandinista Front impeded the appointment of new judges in the judiciary and the electoral power. President Daniel Ortega issued Decree No. 3-2010, which ordered that the magistrates could continue indefinitely until new judges were elected. Later, in the National Assembly, the FSLN "resurrected" a transitory article of the Constitution, Article 201, which lost its viability in the early 1990s.

The Constitution's Article 138 states that the National Assembly has the power to elect the judges of the Supreme Court from separate lists proposed by the president of Nicaragua and National Assembly deputies, in consultation with relevant civil associations. The deadline for submitting the lists is 15 days from the convening of the National Assembly for election. If no lists are submitted by the president, proposals by National Assembly deputies will suffice, the Constitution says. Each judge will be elected by an affirmative vote of at least 60 percent of National Assembly deputies. The assembly will also elect an equal number of associate judges using the same requirements and procedures as in appointing judges for the Supreme Court.

Thus, the current justices could remain in office for as long as the National Assembly is unable to agree on the majority (56 deputies) required for the appointment.

References:

Constitution, Article 138.

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:

Because of Decree 3-2010, issued by President Daniel Ortega, the process of how to choose judges became uncertain. Supreme Court judges are mostly chosen for their personal and partisan loyalties rather than merit. Judges publicly recognize their party affiliations and the distribution of party power.

From 2000 the FSLN established agreements with the Constitutionalist Liberal Party associated with specific participation quotas in the Supreme Court and the Supreme Electoral Council.

As stated by the Council of Hemispheric Affairs: "Although a grave institutional crisis has emerged out of a series of reforms during Ortega's current presidency, its seeds were sown in 1999 by a power-sharing deal between the two largest political parties, the Partido Liberal Constitucional (PLC) and the FSLN. Infamously known in Nicaragua as "el pacto," this arrangement sought to establish a duopoly within state institutions. It has largely achieved its goal of reducing the clout of splinter parties and pushing Nicaragua towards a two-party political system. Today the pact continues to benefit long-ruling party leaders Arnoldo Alemán and Ortega, both of whom have served as presidents in the past. Indeed, the pact set the stage for the reforms that have slowly whittled Nicaraguan institutions from independent bodies into politicized tools at the mercy of the nation's reigning caudillos."

References:

Nueva Sociedad, José Luis Rocha, August 2010, "Crisis Institucional en Nicaragua: Entre un Estado Privatizado y un Estado Monarquizado," www.nuso.org/upload/articulos/3702_1.pdf

Council on Hemispheric Affairs, Brendan Riley, June 16, 2010, "This Ongoing Institutional Crisis Brought to You by Nicaragua's Daniel Ortega," www.coha.org/this-ongoing-institutional-crisis-brought-to-you-by-nicaragua%E2%80%99s-daniel-ortega/

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:

By constitutional law, the legislative branch selects Supreme Court judges by a qualified majority vote for five-year terms.

The relevant constitutional provision is Article 138. It lists the positions that the National Assembly is to fill through a 60 percent affirmative vote, from separate lists of candidates proposed by the Nicaraguan president and Assembly deputies, in consultation with relevant civil partnerships.

References:

Constitution, Article 138.

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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

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

Yes | No

Comments:

The Organic Law of Judicial Power applies at any level of the judiciary, which is obliged to give reasons for decisions.

Article 13 of the law says: Under penalty of nullity, any court order, except for purely procedural orders, must clearly state the grounds on which it is based, in accordance with the facts and policy involved in each particular case and the analysis of the arguments expressed by the parties to defend their rights.

Judges and magistrates must resolve the issues according to previous court decisions and may amend only giving full reasons for the change of interpretation."

References:

Organic Law of Judicial Power (Law 260), Article 13.

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:

Although in some cases the reasons are foolish or politically motivated, the fact is that judgments are always reasoned.

References:

Poder Judicial,
www.poderjudicial.gob.ni/bijun2/sentencias.asp

Alberto Novoa Espinoza, lawyer and former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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:

There is no specific mandate for a disciplinary mechanism for the national-level judiciary.

References:

Constitutional Law.

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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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:

No agency or mechanism is specifically required to act as a disciplinary mechanism for the national-level judiciary.

References:

Constitutional Law.

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 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:

No agency or mechanism is specifically required to act as a disciplinary mechanism for the national-level judiciary.

References:

Alberto Novoa Espinoza, lawyer and former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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:

No agency or mechanism is specifically required to act as a disciplinary mechanism for the national-level judiciary.

References:

Alberto Novoa Espinoza, lawyer and former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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?

29

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

Yes | No

Comments:

Article 20 states: "Subject to Present Declaration Sheet. All public servants of the state must held accountable for their assets before taking office and after delivery."

References:

Probit Law (Law 438),
www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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

Comments:

Article 8 of the Probity Law says: "It is forbidden for public servants: ... h) Solicit or accept gifts or profits directly or indirectly from a private or other public servant, involving acts or omissions ... in carrying out functions of his tenure."

References:

Probity Law (Law 438),

www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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:

According to Article 23 of the Probity Law, the comptroller can check the data of the statements of officials. An audit is not required.

References:

Probity Law (Law 438),

www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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:

There are not these kind of restrictions.

References:

Probity Law (Law 438),

www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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:

There are not these kind of restrictions.

References:

Interamerican Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.iepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

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:

Officially, there are no known cases.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.iepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

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 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.

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

100 | 75 | 50 | 25 | 0

Comments:

According to Article 23 of the Probiy Law, the comptroller can check the data of the statements of officials. An audit is not required.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.ieepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

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: 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.

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

56

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

Yes | No

Comments:

Article 22 of the Probiy Law addresses access to civil servants' asset declarations. The public official who filed his or her declaration must approve the release of the requested information. A decision is made by the comptroller.

References:

Probiy Law (Law 438), Article 22, www.admicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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:

The real problem is that the officer may prevent public access to his statement of probity. The process requires several trips to the comptroller's office, as can be determined from the reading of Article 22 of the law on access to public information.

By law, the applicant can obtain the information in a week or two. That is if the public servant does not refuse the request, and the comptroller considers the reasons for the request to have merit.

In practice, the sources quoted show that the officials usually reject requests and their records are kept private. This is generally the case with respect to judicial authorities. There were no known cases of application during the investigation period.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.ieepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

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:

The process requires several visits to the comptroller's office, as can be determined from the reading of Article 22 of the law on access to public information. The costs depend more on the number of visits that may be necessary, since the issuance of the order is free. According to research and sources, the process is often cumbersome and fruitless because the public official who submitted the disclosure can prevent issuance of complete information.

The cost depends on many factors, including the number of photocopies, the original location of the applicant, whether travel is by public or private transportation and the number of visits to the appropriate office. A photocopy costs 5 cents for one sheet. But if the person who seeks information lives in Bluefields, for example, costs can mount to \$400 because of travel to Managua two or three times, or a two-week stay in a hotel.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.ieepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

Comments:

The applicant obtains only part of the Declaration of Probity of a public official, depending on the reasons stated for the request, the official's response and the decision of the comptroller.

The decisions to reject usually state: "Required public servant, using his rights, responded promptly to this request stating that if not explicitly required by rule of law to make public disclosure of assets, there is no reason to provide his declaration to the applicant ... while there is no legal cause or suspected criminal irregularities in government. ..."

In the case of a positive response, the person seeking the information gets a single sheet containing the abstract, or financial statement submitted by the officer.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.ieepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

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

33

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

Yes | No

Comments:

The law expressly authorizes the National Assembly to make reforms or amendments to the budget.

Article 112 of the Constitution says: "The General Law of Budget of the Republic has annual validity and its purpose is to regulate the income and expenses, ordinary and extraordinary of public administration. The law determines the spending limits of the State organs and shall show the different sources and destinations of all income and expenses, which will be concordant. The National Assembly may amend the draft budget submitted by the President of the Republic, but cannot create any extra spending but by law and by creating and setting at the same time, the resources to finance them. The Budget System Law shall regulate this matter. Any change to the general budget of the Republic which involves an increase or decrease in the credits, a decrease in income or transfers between institutions requires the approval of the National Assembly. The Annual Budget Law may not impose taxes."

References:

Constitution, Article 112, The General Law of Budget of the Republic.

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:

President Daniel Ortega manages and controls a parallel budget. The National Assembly has also failed to prevent discretionary use of surplus tax revenues.

References:

El Nuevo Diario, Sept. 20, 2010, "Ortega Reformó 'De Facto' el Presupuesto," impreso.elnuevodiario.com.ni/2010/09/20/politica/132342

Confidencial, Carlos Salinas Maldonado, www.confidencial.com.ni/articulo/2250/nicaragua-segundo-pais-mas-corrup-to-de-ca

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.

100 | 75 | 50 | 25 | 0

Comments:

It is usual for the government to present a budget with income below what is expected. This is done to avoid legal assignments, such as budgeting 6 percent to the university, for example. Then budget changes can be requested (and are usually requested). The National Assembly does not have the technical capacity to monitor all these movements.

References:

El Nuevo Diario, Sept. 20, 2010, "Ortega Reformó 'De Facto' el Presupuesto," impreso.elnuevodiario.com.ni/2010/09/20/politica/132342

Confidencial, Carlos Salinas Maldonado, www.confidencial.com.ni/articulo/2250/nicaragua-segundo-pais-mas-corrup-to-de-ca

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?

33

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

100 | 75 | 50 | 25 | 0

Comments:

Budget negotiations are conducted in private, and the opinions of National Assembly deputies are expressed in private. According to the Open Budget Initiative report, Nicaragua is in the range of countries that provide minimal information about their budgets.

References:

El Nuevo Diario, Sept. 20, 2010, "Ortega Reformó 'De Facto' el Presupuesto," <http://impreso.elnuevodiario.com.ni/2010/09/20/politica/132342>

Confidencial, Carlos Salinas Maldonado, www.confidencial.com.ni/articulo/2250/nicaragua-segundo-pais-mas-corrup-to-de-ca

International Budget Partnership Annual Report 2010, http://internationalbudget.org/wp-content/uploads/2011/06/2010_Full_Report-Spanish.pdf

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:

Nongovernmental organizations and private citizens have sought increases in the budget related to health and education. Although Nicaragua is trying to reach the Millennium Development Goals, citizen proposals are not supported. The Open Budget Initiative report by the International Budget Partnership ranked Nicaragua among the weakest countries for citizen participation in the budget process.

References:

Conexiones, Nery García, March 31, 2011, "Nicaragua Se Aleja de los Objetivos del Milenio," www.conexiones.com.ni/articulo.php?id=247

Instituto de Estudios Estratégicos y Políticas Públicas (IEEPP), Departamento de Comunicación, Sept. 16, 2010, "Estudio de IEEPP Confirma Disminución de la Cooperación Externa hacia Nicaragua," www.ieepp.org/index.php/estudio-de-ieepp-confirma-disminucion-de-la-cooperacion-externa-hacia-nicaragua/

IEEPP, March 11, 2010, "Misión Finlandia Se Reúne con Programa de Gestión Pública IEEPP," www.ieepp.org/index.php/mision-finlandia-se-reune-con-programa-de-gestion-publica-ieepp/

International Budget Partnership Annual Report 2010, http://internationalbudget.org/wp-content/uploads/2011/06/2010_Full_Report-Spanish.pdf

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs 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 Central Bank of Nicaragua provides access to a large amount of statistical information, but it is not itemized. According to the International Budget Partnership's Open Budget Initiative report, Nicaragua is in the range of countries that provide minimal information about their budgets.

References:

Banco Central de Nicaragua,
www.bcn.gob.ni/estadisticas/

International Budget Partnership Annual Report 2010, Nicaragua,
http://internationalbudget.org/wp-content/uploads/2011/06/2010_Full_Report-Spanish.pdf

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

75:

50: Citizens, journalists and NGOs 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.

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

100

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

Yes | No

Comments:

The General Directorate of Analysis and Public Expenditure Tracking serves as liaison between the Ministry of Finance and the National Assembly and is, in fact, the body of budgetary control.

Article 61 of the Organic Law of the Legislature states: "The Standing Committees of the National Assembly are: ... 4) Commission of Production, Economy and Budget ... Matters within its competence are : ... 2) the regulation of economic activity in the country, 3) the General Budget of the Republic. ... The General Directorate of Analysis and Public Expenditure Tracking of the National Assembly will be coordinated by the Commission of Production, Economy and Budget of the National Assembly."

References:

Organic Law of the Legislature, Article 61, Section 67.

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).

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

50

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

100 | 75 | 50 | 25 | 0

Comments:

According to analysis in the framework of the UNDP project developed by the National Assembly of Nicaragua, the General Directorate of Analysis and Public Expenditure Tracking performs the functions for which it was created. The project of the United Nations Program for Development, or UNDP, aims to provide the directorate with a series of evaluation indicators that will help improve the design of public policies based on the evaluation of democratic governance.

References:

PNUD, June 2009, "Proyecto: 'Sistema de Indicadores en Gobernabilidad para Fortalecer las Políticas Públicas en Nicaragua,'" www.undp.org.ni/files/proyecto/1259342199_PRODUC%20FIRMADO%20Jakko.pdf

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:

The Sandinista National Liberation Front has managed to take control of this commission so that the majority opinion always favors its interests.

References:

El Nuevo Diario, Ramón H. Potosme and Leyla Jarquín, Jan. 12, 2011, "Oficialismo Controlará Comisiones en Asamblea," <http://impreso.elnuevodiario.com.ni/2011/01/12/politica/139359>

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:

There is a special commission called the Integrity and Transparency Committee. According to Article 76 of the Organic Law of Legislative Power:

"These are matters within its competence:

- 1) To determine and investigate the acts of public officials or individuals who collude with them, to the detriment of state assets;
- 2) Any violation of the Probity Law of Public Servants;
- 3) To rule laws relating to monitoring, control and monitoring, and sanctioning the use of state assets, and
- 4) Rulings and know the issues related to the Comptroller General of the Republic."

The commission has very limited effectiveness. For example, in May 2011, it called for a hearing with the comptrollers. According to sources, the comptrollers simply left the meeting site. The commission has no mechanism to enforce its decisions, or even compel the attendance of officials who are being investigated.

References:

El Nuevo Diario, Ramón H. Potosme and Leyla Jarquín, Jan. 12, 2011, "Oficialismo Controlará Comisiones en Asamblea," <http://impreso.elnuevodiario.com.ni/2011/01/12/politica/139359>

La Prensa, Ludwin Loáisiga López, Jan. 14, 2011, "FSLN Estrena 'Estabilidad' en la Asamblea Nacional," www.laprensa.com.ni/2011/01/14/politica/49015

La Prensa, May 25, 2011, "Contralores Abandonan Reunión con Comisión de Probidad del Parlamento," www.laprensa.com.ni/2011/05/25/nacionales/61556

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.

Category 4. Public Administration and Professionalism

4.1. ⁶⁸Civil Service: Conflicts of Interest Safeguards and Political Independence

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

75

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

Yes | No

Comments:

Unfortunately, the Civil Service and Administrative Career Law is not very useful because party loyalty still outweighs professional qualification.

References:

Civil Service and Administrative Career Law (Law 476),
www.casc.gob.ni/docs/ley476.pdf

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:

Relatives of the president and other politicians who work in different branches of government hold positions "on the recommendation." It is assumed that the president's children are not paid by the state.

Article 130 of the Constitution says: "In all branches of government and its agencies, as well as the institutions established under this Constitution, not be able to shift appointments to people who have close relationship with the authority making the appointment and, where applicable, the person from which request is made by this authority. For appointments of principal officers, it will govern the prohibition of the fourth degree of consanguinity or second degree of affinity. The law will regulate this matter. This prohibition does not include the case of appointments that correspond to compliance with the Civil Service Law and the Civil Service, the Teaching Career, the Judicial Career, Career Foreign Service, and other similar laws enacted."

The Probity Law, Law 438, Article 11, states: "... are unfit for the exercise of public service: a) The spouse or companion in stable de facto union, relatives within the fourth degree of consanguinity or affinity up to the second, the public servant who makes the appointment or hiring or the person from which request is made by this authority. b) Persons who are current or subscribe by himself or by his legal representative, contracts or bonds, with the respective body of the public. Nor can do those who have outstanding disputes with the institution concerned. c) the directors, administrators, representatives and shareholders holding shares or rights of any class of society, if it has current contracts or pending lawsuits with the state institution whose income eligible. "

References:

Constitution, Article 130.

Probity Law (Law 438), Article 11,
www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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:

This commission has not worked for thousands of public employees dismissed by the FSLN.

Article 16 of the Civil Service and Administrative Career Law established the Commission on Civil Service Appeals. The commission is responsible for hearing and deciding on administrative appeals of decisions issued by institutions.
www.casc.gob.ni/docs/ley476.pdf

References:

Civil Service and Administrative Career Law (Law 476), Article 16,
www.casc.gob.ni/docs/ley476.pdf

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, or if the only recourse civil servants have is directly through the courts.

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

Yes | **No**

Comments:

No provision expressly refers to a conviction for corruption.

References:

Constitution.

Civil Service and Administrative Career Law (Law 476),
www.casc.gob.ni/docs/ley476.pdf

Probity Law (Law 438)
www.admnicaragua.org/resource/items/L/E/LEY%20DE%20PROBIDAD%20DE%20LOS%20SERVIDORES%20PUBLICOS.pdf

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?

22

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

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

Comments:

Thousands of state employees and public officials were removed when the Sandinista National Liberation Front took power. They were replaced by party members.

Some workers fired at the Ministry of Transport and Infrastructure (MTI) were protected by trade union laws, and labor courts ruled in their favor. The minister simply refused to execute the judgments, and no authority forced him to comply.

This situation created pressure for state employees because it showed what could happen if they refused to accept conditions that supported the FSLN (wave flags at roundabouts, attend demonstrations to confront the opposition, serve at polling stations, etc.).

References:

El Nuevo Diario, Leyla Jarquín and Rafael Lara, Aug. 24, 2010, "Interpelarán a Ministros por Ex Trabajadores del MTI en Huelga de Hambre,"
www.elnuevodiario.com.ni/nacionales/81926

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:

Government workers and lower-ranking officials have been pressured to become members of the FSLN. Being an FSLN member is the fundamental requirement to preserving a job.

From a Confidential report, "No official data exist on the (FSLN party's) 'identity cards.' But monitoring of official publications such as '19,' 'El Pueblo Presidente' and 'The Voice of the Sandinistas' reflects only the period from March 3 to May 20, 2008, during which were given 24,519 cards, of which 4,572 (18.6%) are state employees.

"Anonymous employees from different institutions stated that the Sandinistas conducted a mass 'carnetización' (affiliation). Many registered on the Sandinistas' list of registered party members in order to keep their jobs.

"The procedure starts at the offices of human resources of the state institutions, since the forms are prepared cards with their photographs. Delivery started in March this year and intensified in April with solemn acts of state institutions.

"Who does not hold there, the next day is fired," said a former employee of the Department of Revenue. 'Rolando.' as he prefers to be identified, says his dismissal was because he did not accept the card of the FSLN."

The mechanism described in the report of 2009 is still practiced today and has been corroborated through interviews with state employees who asked that their identities be omitted because they feared reprisals.

References:

La Prensa, Elizabeth Romero, March 26, 2011, "Magistrado Justifica a Ortega ante la CIDH," www.laprensa.com.ni/2011/03/26/nacionales/55966#.TqWJ2nJJ9PU

El Nuevo Diario, Ary Pantoja, Sept. 16, 2011, "Los 'Hijos del Poder,'" www.elnuevodiario.com.ni/politica/113965-hijos-del

Confidencial, Valeria Dávila and Lourdes Arróliga, June 28, 2009, "Empleados Públicos Denuncian 'Carnetización,'" www.confidencial.com.ni/archivo/

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:

The Councils of Citizen Power are organizations established by the FSLN. In practice, they are political organizations, and supporters are used to encourage patronage and cronyism. There are persistent denunciations of the state institutions for calling for a CPC "endorsement" for various activities, including employment or obtaining the citizen identity card.

As stated by Dora Maria Tellez and reported in the Confidencial article: "I think the choice is already polarized. The way Daniel Ortega has led the country has been social polarization: If you want to find work here and you have no letter from the CPC, you are 'gum'. There are hospitals that, in order to serve you, they ask you for a letter from the CPC. Daniel Ortega has made a big social and political polarization, as has brought gang members to hit the streets of opposition demonstrations. This polarization is there and will manifest in the November election."

As written by Sofia Montenegro in an opinion piece printed by El Nuevo Diario: "Leaving nothing to chance, the political police constituted by the 'Sandinista leadership committee' is responsible for checking state workers compulsorily affiliated by the CPC to work in the campaign and vote for the Commander-president, under penalty of dismissal or removal of 'benefits' patronage. .. nowadays people are praying under their breath, to receive the letter of CPC that will provide the desired card, since the only way to be a citizen is impersonating a follower of Ortega!"

References:

Red Nicaragüense por la Democracia y el Desarrollo Local, Dr. Luis Serra, March 2010, "La Sociedad Civil en la Construcción de la Democracia en Nicaragua," www.redlocalnicaragua.org/doc/71

La Prensa, Elizabeth Romero, May 10, 2010, "CPC Controlan Acceso a Empleo," www.laprensa.com.ni/2010/05/10/politica/24170#.TqXeqHJJ9PU

Centro Nicaragüense de Derechos Humanos, "Informe Derechos Humanos 2010," www.cenidh.org/files/Informe%202010%20Web.pdf

Viva el Voto, June 10, 2011, "Exigen Carta Aval para Cedulación," www.vivaelvoto.com/node/200

El Nuevo Diario, Sofia Montenegro, Opinion, Jan. 28, 2011, www.elnuevodiario.com.ni/opinion/93402

Confidencial, Carlos Salinas Maldonado, Feb. 16, 2011, "Candidatura de Ortega: 'Primer Acto del Fraude Electoral,'" www.confidencial.com.ni/articulo/3218/candidatura-de-ortega-ldquo-primer-acto-del-fraude-electoral-rdquo

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:

Manuals define functions of public servants in general, but the main problem is extracurricular partisan activity. Public servants are constantly asked to proselytize for the ruling party.

References:

La Prensa, Elizabeth Romero, April 15, 2011, "Llevan Ante OIT Abuso Orteguista con Trabajadores," www.laprensa.com.ni/2011/04/15/nacionales/57968#.TqXoKnJJ9PU

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:

Nicaragua has no formal bonus system. Wages are paid according to the budget for the work performed. This is quite rigid and does not even consider the possibility of working overtime. Moreover, workers are commanded to rest on holidays, and holiday hours cannot be accumulated or exchanged for cash payment.

References:

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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:

The law on access to public information sets this obligation. State institutions must publish the list of public servants and their salaries and other information of interest. However, there is not full compliance with this provision.

References:

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

Confidencial, Roberto Fonseca L., March 1, 2011, "Gobierno Viola Ley de Acceso a la Información Pública,"
www.confidencial.com.ni/articulo/3349/gobierno-viola-ley-de-acceso-a-la-informacion-publica

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:

By law, the worker has up to two years after the end of the employment relationship to exhaust administrative remedies (one year) and start a lawsuit (one year). The judicial process lasts two to three years, so the legal consequences of arbitrary dismissal may occur at four or five years. Figures expressed in the various sources reflect the number of complaints from workers at different procedural stages, administrative or judicial, who did not get answers to their requests. No formal analysis exists of the general data of complaints involving thousands of government workers who were dismissed during the past five years.

As reported in El Nuevo Diario, "END (El Nuevo Diario) requested a meeting with Minister Paul Fernando Martínez for the reason of his refusal to reinstate (workers), but we were informed that he was in a meeting and could not receive us.

"Jose Espinoza, secretary-general of the Confederation of Trade Unions, CUS, said that the case of MTI workers, is emblematic. 'This is a terrible union case of violation. These workers have used everything humanly possible, hunger strikes, peaceful protests, no courts. Here they are violating the agreements signed ... to the ILO, so we have opened a complaint before this international forum (the ILO),' said Espinoza.

"For his part, Deputy Carlos Noguera, president of the Committee on Labor and Union of the National Assembly, said he felt 'powerless' because despite repeated meetings with (Minister) Pablo Fernando Martínez, he continues to refuse to comply with the reinstatement. 'This is something that is responsible to the president, who must intervene to ensure that his ministers do not continue to violate at will and whim of the laws that protect workers, leaving them completely defenseless,' said the deputy." (<http://www.elnuevodiario.com.ni/nacionales/108973>)

References:

La Prensa, Moisés Martínez, Oct. 2, 2010, "Orteguismo Convirtió Ley de Servicio Civil en Papel Mojado," www.laprensa.com.ni/2010/10/02/nacionales/39431#.TqXpw3JJ9PU

El Nuevo Diario, Rafael Lara, Jan. 10, 2011, "Orteguismo Ha Destruído 116 Sindicatos," www.elnuevodiario.com.ni/nacionales/92117

La Prensa, Sept. 9, 2010, "Régimen Impune en Materia Laboral," www.laprensa.com.ni/2010/09/13/nacionales/37606#.TqXrQnJJ9PU

El Nuevo Diario, Carlos Larios, July 27, 2010, "Despedidos del MTI en Huelga de Hambre," www.elnuevodiario.com.ni/nacionales/79819

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:

To evaluate this item it needs to be noted that the government has a debt of close to 700 million cordobas, with public employees who have been fired.

References:

La Prensa, Elizabeth Romero, Sept. 13, 2010, "Régimen Impune en Materia Laboral," www.laprensa.com.ni/2010/09/13/nacionales/37606#.TqXrQnJJ9PU

El Nuevo Diario, Rafael Lara, Jan. 10, 2011, "Orteguismo Ha Destruído 116 Sindicatos," www.elnuevodiario.com.ni/nacionales/92117

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:

This is not covered by legislation.

References:

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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?

36

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

Yes | No

Comments:

Any member of the civil service is required by Article 7(e) to "[p]rovide the disclosure of assets and any explanation ... as provided in this Act."

References:
Probity Law (Law 438), Article 7.

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:
Article 38 of the Civil Service and Administrative Career (Law 476) expressly says:
"Officials and employees of the Civil Service and Administrative Careers Act shall observe the following duties ... inhibited in matters within their competence when personal interest or the interest in the matter, are linked to it in the fourth degree of consanguinity or second degree."

References:
Civil Service and Administrative Career (Law 476), Article 38.

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 is no such restriction.

References:
Probity Law.

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

Comments:
Article 8 of the Probity Law states: "It is forbidden for public servants: ... h) Solicit or accept gifts or profits directly or indirectly from a private or other public servant, involving acts or omissions committed in carrying out functions of his tenure."

Article 9 of the same law governs "Exceptions":
"Exceptions to the prohibitions contained in the preceding article (are) the following: a) Gifts ... from other states or international

organizations, which will be state property. Once received by the public servant, shall inform the General Directorate of State Property of the Ministry of Finance and the Comptroller within a period of seventy-two hours. b) The expenses of travel and subsistence received from Governments, international organizations, academic institutions or nonprofit entities for participation in events, conferences, cultural scholar, provided this is not incompatible with the function of the position or prohibited by special rules. c) The awards or honors awarded to a public servant.”

References:

Probity Law (Law 438), Articles 8 and 9.

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

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

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:

There are no legal or regulatory requirements for the independent auditing of civil service asset disclosures.

References:

Probity Law.

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:

In Nicaragua no regulations exist that restrict post-government private sector employment for civil servants.

References:

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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:

Public officials are accused of openly receiving gifts, but without a punishment.

For example, the Sandinista businessman Erick Chavarria Herrera, who was jailed seven days, said in an interview with the press that managers linked to the ruling Sandinista Front called for “kickbacks” for Daniel Ortega’s election campaign in return for faster refunds of Value Added Tax in the Department of Revenue.

In November 2010, the liberal councilor Leonel Teller introduced a complaint to the prosecutor about 259 specific and documented cases of bribery at the Municipal Transportation Regulatory Institute in Managua. This area of public services seems to generate ongoing complaints of bribery and cronyism, basically because the taxis and public buses are allowed to work through concessions.

References:

El Nuevo Diario, Carlos Larios, Jan. 29, 2010, “Transportistas de Carga Pagan Coimas en Básculas,” <http://impreso.end.com.ni/2010/01/29/nacionales/118117>

La Prensa, Eduardo Cruz, May 14, 2011, “Pedían ‘Coima’ para Campaña de Ortega,” www.laprensa.com.ni/2011/05/14/nacionales/60483#.TsCQRVZJ9i8

El Nuevo Diario, Ary Pantoja, July 16, 2010, “Penosa Reyerta por Supuestas Coimas,” www.elnuevodiario.com.ni/politica/79065

El Nuevo Diario, Jessie Ampie, Nov. 26, 2010, “No Son Inventos, las Coimas Estan Notariadas,” www.elnuevodiario.com.ni/nacionales/88869

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:

Little interest is assigned, and not appreciated as a common practice.

References:

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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:

This is not covered by the law.

References:

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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?

50

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

Yes | No

Comments:

Article 22 of the Probity Law governs "Access to Civil Servants Asset Declaration."
The problem is that the officer who filed the assets disclosure may prevent public access to his statement of probity.

References:

Probity Law, Article 22, Access to Civil Servants Asset Declaration.

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:

The problem is that an officer may prevent public access to his statement of probity. The process requires several visits to the comptroller's office, as can be determined from the reading of Article 22 of the law on access to public information:

"By law the applicant can obtain the information in a short time (a week or two), if the public servant doesn't refuse the request and the Comptroller considers there are good reasons to accept it."

The sources quoted indicate that officials usually reject requests for their asset disclosure statements, and their records are kept private.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.ieepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

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:

The process requires several trips to the comptroller's office, as can be determined from the reading of Article 22 of the law on access to public information. The costs depend more on the number of visits that may be necessary, since the issuance of the order is free. According to research and sources, the process is often cumbersome and fruitless because public officials can prevent the issuance of complete information from their disclosure forms.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.ieepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

Comments:

The applicant obtains only part of the Declaration of Probity of a public official, depending on the reasons for the request, the official's response and the decision of the comptroller.

The decisions to reject usually state: "Required public servant, using his rights, responded promptly to this request stating that if not explicitly required by rule of law to make public disclosure of assets, there is no reason to provide his declaration to the applicant ... while there is no legal cause or suspected criminal irregularities in government. ..."

If an applicant gets a positive answer, he/she can access just a page containing the official form fulfilled by the officer from whom the information is required.

During the researched period there were no known applications.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.ieepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

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

6

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**

References:

Probity Law.

Ethical Code of Conduct for Public Servants of the Executive, Executive Decree No. 35-2009.

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:

Most public servants depend on political loyalty rather than their personal qualities. Reporting a friend of high rank within the party can be dangerous for the complainant.

As sources cited for this report indicate, this applies even to senior officials like councilors of the Municipality of Managua and the director of a company of the state (ENACAL). Those from the Municipality of Managua were prosecuted for specific acts of corruption reporting, and the director of ENACAL was forced to resign under pressure from his party in defense of specific individuals.

References:

Confidencial, Alvaro Navarro, June 29, 2011, "Concejales Reiteran: Juicios Son un Acto de Intimidación del FSLN," www.confidencial.com.ni/articulo/4326/concejales-reiteran-juicios-son-un-acto-de-intimidacion-del-fsln

El Nuevo Diario, Oliver Gómez, April 9, 2010, "Cae Ruth Herrera," <http://impreso.elnuevodiario.com.ni/2010/04/09/nacionales/122142>

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

References:

Labor Code (Amendments, Additions and Authentic Interpretation) (Law No. 185).

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:

There are very few publicly known cases of this kind. Although criminal law requires citizens to report suspected crimes, Nicaragua does not have a culture of whistle-blowing. Usually people are afraid of being affected by or involved in investigations.

References:

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

Isaí Zeledón Ortuño, lawyer, specialist in labor law, interviewed Sept. 15, 2011.

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.

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

100

49a. 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:

The Public Ethics Office works in prevention training programs by state officials and can make public audits at state institutions.

The Office of Citizen Complaints of the Comptroller's Office should be the ideal agency to investigate corruption cases. However, the law requires complainants to identify themselves. Although Article 6 mandates confidentiality, few people file a complaint for fear of being discovered by the accused. A report shows that only four complaints were received during that period. The complaints were resolved negatively, the files were sent to be archived or the complainant was referred to appear before other state institutions.

References:

Public Ethics Office created by Executive Decree No. 67-2002 and attached to the Attorney General's Office by Decree No. 49-2009, <http://legislacion.asamblea.gob.ni/Normaweb.nsf/0/33E82C835EC7CCAE062570A1005853C3?OpenDocument>

Citizen Complaints Office of the Comptroller General of the Republic, [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/12217735064004CD06257567005AEAE9?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/12217735064004CD06257567005AEAE9?OpenDocument)

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.

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

38

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

100 | 75 | 50 | 25 | 0

Comments:

This responsibility is now assigned to the Attorney General's Office. It has a permanent, but insufficient staff.

References:

Joint Donor Fund for the Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti-Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un Caso Exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

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:

The funds are fixed but insufficient.

References:

Joint Donor Fund for the Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti-Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un Caso Exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

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:

Because of the Public Ethics Office's minimal resources, its role in some cases was to transmit the complaint to the appropriate authorities. It is now more dedicated to training issues, as a preventive measure.

By law, the deadline to file a report (with the comptroller) can be extended up to 30 days. In practice, it may take twice that long because of the terms granted to the parties to submit reports or proofs or to improve the same complaint.

References:

Joint Donor Fund for the Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti-Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un Caso Exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

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:

Currently, the main problem is the strong partisanship of state institutions. For that reason, usually, no investigation is initiated without a complaint.

An example is the case in which a claim for misappropriation of funds within the Municipality of Managua was rejected by the comptroller under the pretext of no jurisdiction to investigate, which is an obvious absurdity in accordance with the law.

In a report of July 2011, the comptroller expressly refused to investigate the irregular issuing of 150 checks from the mayor of Managua, just leaving the case as "pending to resolve."

References:

Joint Donor Fund for Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti-Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un Caso Exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

La Prensa, Anne Pérez Rivera, June 14, 2011, "Contraloría se Declara Incompetente con Alcaldía," www.laprensa.com.ni/2011/06/14/nacionales/63611

"Informes Emitidos por la Contraloría General de la República (CGR) Durante los Años 2010 y 2011," www.cgr.gob.ni/cgr/index.php?option=com_docman&task=cat_view&Itemid=81&gid=459&orderby=dmdate_published

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.

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

78

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

Yes | No

Comments:

Article 13 of the former law on this, the State Contracting Law (Law No. 323), governed Prohibition of Officials. It stated: "Cannot participate in any stage of the bidding process, the public servant who has an interest in this personal, family or business, including those bids that may be of some benefit to the aforementioned public servant, his spouse or relatives within the third degree of consanguinity or second degree by affinity. This prohibition applies even if incompatibilities lift."

In October 2010, the Law of Contract of the Public Sector (Law 737) was enacted (see: www.nicaraguacompra.gob.ni/difusion-consulta-portlet/resources/boletinesDGCE/BoletinDicimbre2010.zip). The law was supposed to take effect in February 2011, but as of fall 2011 it had not been fully implemented. See: www.elnuevodiario.com.ni/economia/230557_instituciones-se-resisten-a-aplicar-la-ley-de-contrataciones.

Article 18 of the new law, the Law of Contract of the Public Sector (Law 737), governs Prohibition for Bidder. It states that the following people may not be providers to the state, or contracts with agencies and public sector entities: "a) Public officials, during the term of office, elected directly or indirectly and b) Legal persons whose capital involves public officials."

The law also states that there may not be bidders or contracts with the respective entity or its dependencies: "a) The officials referred to in sub-paragraph a) of the preceding paragraph within one year following their retirement; b) The spouse, the couple in stable de facto union and relatives to the fourth degree of consanguinity or second degree of public officials and public servants covered by the prohibitions provided in this Act; c) The public employees as defined by Act No. 476, Civil Service Law and the Civil Service having interference in the government contracting process. For purposes of this Act, individuals who provide professional consulting services to a body or public sector entity will not be taken as public servants; d) Persons who have acted as advisors or participated in the development of specifications, designs, construction plans and budgets for recruitment."

The law also refers to "Providers who are registered as sanctioned in the corresponding module registry information in accordance with this Act and during the lifetime of it. In the case of legal persons this prohibition extends to their partners or associates. Corresponds to the agencies and public sector entities that verify compliance with the regime of prohibitions. Regulation of this Law, establish the procedure for lifting information and verification as well as the need to stock up for the assignment of the contract or its termination. ..."

References:

Article 13 of the former law, the State Contracting Law (Law No. 323), governed Prohibition of Officials.

Article 18 of the new law, the Law of Contract of the Public Sector (Law 737), governs Prohibition for Bidder.

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:

State Contracting Law (Law 323) states: "Provide technical assistance to various departments and agencies in the establishment and development of acquisition units, such as specialized departments, including the preparation of manuals of organization, internal control functions and procedures and staff training."

References:

State Contracting Law (Law 32), (b).

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.

100 | 75 | 50 | 25 | 0

Comments:

The Comptroller General's Office usually allows "exclusion of procedures" for the executive, and this makes the law unnecessary because their implementing regulations are obviated.

References:

La Prensa, Editorial, Oct. 20, 2010, "Nueva Ley de Contrataciones y Corrupción," www.laprensa.com.ni/2010/10/20/opinion/41163#.Tqm1tnJJ9PU

El Nuevo Diario, Luis Galeano, July 20, 2010, "Amplio Portón a Corrupción en Contrataciones," www.elnuevodiario.com.ni/especiales/79713

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:

By examining the different laws regarding the matter, one finds no relevant legal measure.

References:

Laws.

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:

Article 27 of the new law (Law 737) on contracting procedures states:

"Depending on the amount of the contract or contractual special circumstances prescribed by law, the Public Sector contracts held by one of the following processes:

1. For Tender: The types of tendering procedures are as follows:

a) Competitive Bidding: The procedure to be followed for the selection of private contractor for contracts in excess of 3 million cordobas (C\$3,000,000.00). The number of bidders or bidders is unlimited, since she can attend all natural or legal persons who, according to the rules, are able to bid.

b) Selective Tendering: The procedure to be followed for the selection of private contractor in those contracts whose amounts exceed five hundred thousand cordobas (C\$500,000) and up to 3 million cordobas (C\$3,000,000).

2. Simplified Procurement: This is the procedure, regardless of amount, that must be observed for the selection of private contractor in situations exhaustively identified by this Law, whose occurrence will be recorded in the administrative act of onset of a reasoned declaration of the respective merits of the cause. In any case the respective contracts will be in market conditions, what shall be recorded in writing and signed by the head of the entity. The contracts are public in the terms specified in the regulations of this Law. The characteristics of Simplified Procurement that you want to perform, will be published as otherwise established by the Regulations of this Law

3. Hiring Minors: The administrative procedure to be followed for the selection of private contractor for contracts for works, goods or general services not exceeding the amount of five hundred thousand cordobas (C\$500,000), the procedure for this kind to be established by the Regulation of this Act."

Before this new Law 737, the highest hiring minor was C\$100.000 cordobas.

References:

Law 737, Article 27, Contracting Procedures.

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:

Article 58 of the Government Procurement Law (Law 737), recently amended in 2010, states:

"Admissibility of Simplified Procurement. Exceptionally, agencies and institutions governed by this Act may enter into administrative contracts by contracting simplified through resolution of its highest administrative authority in the following specific cases: ... 4. When there is a single supplier on the market and the good or service cannot be replaced by another, without loss of quality, price, warranties or any other relevant circumstances. The Regulations of this Law shall determine the scope of this literal."

Article 152 of the Regulations (Decree No. 75-2010) says: "Single Provider. In the case of the existence of a single supplier on the market and the good or service cannot be replaced by another in accordance with the provisions of Article 58, paragraph 4 of the Act be incorporated into the record the technical report that supports the need for the good or service, and proof regarding the condition of single supplier."

In the former law, there was no such clause.

References:

Government Procurement Law (Law 737), amended in 2010, Article 58.

Regulations (Decree No. 75-2010), Article 152.

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

Comments:

Article 110, Eligibility of Resources:

"The resources referred to in this Act shall be filed by providers who demonstrate a legitimate interest, by letter filed with the competent authority and within the time limits, specifically noting the precise violations of the contested act. The admission of the appeal by the appropriate authority shall have suspensive effect.

"For reasons of judicial economy and legal certainty in the administrative process of recruitment suppliers to participate therein shall make timely resources that are actionable steps. The transition to the next stage of the recruitment process, which has been formulated without the corresponding resource will be had, by operation of law, a waiver of the participating bidders and all claims incurred caused by alleged defects in the stage that precluded.

Article 111, Appeal for Clarification:

"During the period for assessment of the tenders the Evaluation Committee shall disclose the results of the evaluation no later than three (3) days before the expiration date, so that participants can ask bidders clarifications considered relevant in a date no later than two (2) days that must be addressed by the Committee in the Assessment Act and Recommendation of Award to be notified to the highest administrative authority and all participating bidders, as provided in Regulation of this Law.

Article 112, Refutation:

"In the process of recruitment through public tender, selective tender, bidders can challenge the award decision and declare the desert, where the appellant considers that irregularities occurred at the stage of evaluation of bids or proposals.

"The appeal must be filed with the Attorney General's Office with a copy to the highest administrative authority of the contracting entity, within three working days from the notification of the decision.

"When the bidding terms and conditions contained partial awards and items being contested or specific lots will not stop the award of the items or lots uncontested."

Article 113, Resource Admission Challenge:

"After the appeal is filed, the Attorney General's Office, the next business day will request the record of the procurement, the contracting entity having a business day for transmission, and once receives it, within a maximum period of two (2) days determines its admissibility. The Attorney General's Office declares the application admissible and summons the parties that within three (3) business days of the last notice to appear before it to make use of their rights. The Attorney General's Office resolves the appeal under the rules of the procurement process and based on the administrative record contained within a maximum period of ten (10) working days from the order of placement, in answer to the points under appeal. If within this period, the Attorney General's Office fails to resolve the appeal, the appellant files the appeal for annulment before the Comptroller General of the Republic. The decision of the appeal must be notified to all bidders participating in the process and the highest administrative authority of the contracting entity."

Article 114, Resource Attrition:

"If the appellant fails to appear in the specified period, the Attorney General's Office officially declares void the application and returns the dossier to the agency or contracting entity to proceed according to the award decision under appeal.

"If the contracting agency or entity fails to appear, it shall be declared in default and the Attorney General of the Republic shall hear and decide the appeal."

Article 115, Actions for Nullity:

"In the bidding process, Selective Contest, when the Attorney General's Office dismisses the appeal or it has not been resolved within the prescribed period, the offeror may appeal before the Comptroller General of the Republic during the ten (10) business days following the notification of the decision to resolve the appeal. Besides the challenge appealed by the bidder, any other bidder has a legitimate interest in the process to bring the motion for nullity."

Section 116. Entitlement to Appeal for Revocation:

"An action for annulment may be filed by any bidder to participate in the hiring process, accurately indicating the substantial infringement of administrative law is alleged as grounds for annulment.

"When there are differences over valuations or appraisals of scientific techniques that serve as grounds for the award, the appellant must rebut with a reasoned background.

The Action for Nullity must be resolved within twenty working days after filing. During the first three (3) business days of this period, the Comptroller General of the Republic shall establish the admissibility of the appeal.

If allowed the process, we require the file to the acquiring entity or body and summoned the parties concerned to within three (3) working days to express their allegations.

The Order issued by the Comptroller General of the Republic may order the total or partial annulment of the procurement process.

With the decision of the Comptroller General of the Republic, is exhausted administrative remedies."

References:

Law 737, Articles 110 to 116.

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:

Administrative Litigation Law states that an appeal is permitted after exhausting administrative remedies.

References:

Administrative Litigation Law.

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:

Government Procurement Law (Law 737, amended in 2010), Article 105, Penalty of Suspension for Three Years states:
"The private contractor breach of contract, breach of which it has been determined following the procedure established in the preceding articles, shall be punished with administrative responsibility consisting of the suspension to participate in government contracting process for a period of three (3) years, when the private contractor:

1. Having been sanctioned, incurred again breach of contract.
2. Illegally obtained confidential information that places him in a position of advantage, directly or through a third party with respect to other potential competitors.
3. Gave gifts, directly or through another person, to officials involved in administrative recruitment procedures.
4. Provided an object, service or work of inferior quality or condition offered.
5. Participated directly or indirectly in a procurement procedure, despite being covered by the system of prohibitions of this Act.

Article 106, Penalty of Suspension for One Year:

"The private contractor whose contractual breach or violation shall have been determined following the procedure established in the preceding articles, shall be punished with administrative responsibility consisting of the suspension to participate in government contracting process for a year, when the private contractor: 1. Has breached or defective or late compliance with the contract, without prejudice to the execution of the contract performance guarantees and any other security which has been set up for the contracting entity. 2. Invokes or enters false or unfounded facts in recruiting procedures or appeals against the award ceremony. 3. Breaches the guarantee scheme regulated for the respective recruitment process.

Article 107, Limitation of Penalties:

"Sanctions will not have retroactive effect and therefore will not affect contracts that are in course of action at the time of their application. No penalties may be imposed after the lapse of a year from the date on which the infringement occurred.

Article 108, Registration and Publication of Sanctions:

"The Governing Body of Management System of the Public Sector Procurement shall register in the Register of Information and publish the sanctions imposed on officers and /or private providers in accordance with the provisions of this Act.

Section 109, the Criminal and Civil:

"The application of administrative or disciplinary sanctions provided in this chapter does not preclude enforcement of any penalties by the competent judicial authorities for conduct incurred by public officials or private contractors. Nor does it preclude the possibility of requiring liability for damages caused to the organ or contracting entity."

References:

Law 737: Article 105, Penalty of Suspension for Three Years.

Article 106, Penalty of Suspension for One Year.

Article 107, Limitation of Penalties.

Article 108, Registration and Publication of Sanctions.

Section 109, Criminal and Civil.

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:

At the moment there are no data on the implementation of the newly amended Government Procurement Law (Law 737). Under the former version of the law, there were no known cases in the period investigated.

References:

La Prensa, Editorial, Oct. 20, 2010, "Nueva Ley de Contrataciones y Corrupción," www.laprensa.com.ni/2010/10/20/opinion/41163#.Tqm1tnJJ9PU

El Nuevo Diario, Luis Galeano, July 20, 2010, "Amplio Portón a Corrupción en Contrataciones," www.elnuevodiario.com.ni/especiales/79713

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?

100

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

Yes | No

Comments:

Article 6 of the Government Procurement Law (Law 737) governs public procurement principles. It states: "Administrative contracts, subject to general principles of administrative law and common law, are governed by ... Principle of Advertising. Agencies and public sector entities in order to ensure transparency of administrative activity should publish procedures for the procurement process and allow public access to information related to these processes."

References:

Government Procurement Law (Law 737), amended 2010, Article 6.

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

Comments:

Law 737, Article 48: "Highest administrative authority of the entity or agency bidder shall issue a reasoned decision to award all or part of the tender, declare void or cancel in accordance with the provisions of this Act. The award resolution shall be issued within a maximum period of three business days after receiving the opinion of recommendation from the Evaluation Committee. The requirements and fundamentals that should be contained in this resolution shall be established in the Regulations of this Act. Once issued, the decision shall be notified to bidders within a maximum period of two business days. If they do not appeal against it, it shall be established and published. "

References:

Government Procurement Law 2010 (Law 737), Article 48.

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:

The mechanisms are known and can be downloaded from the official website of the entity.

References:

Official site of the DGCE, www.nicaraguacompra.gob.ni/siscaefportal/difusion/boletines_dgce

DGCE, March 2011, Boletín I Trimestre 2011, www.nicaraguacompra.gob.ni/difusion-consulta-portlet/resources/boletinesDGCE/Boletin_I_Triemstre_2011.pdf.zip

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 mechanisms are known and can be downloaded from the official website of the entity.

References:

Official site of the DGCE, www.nicaraguacompra.gob.ni/siscaefportal/difusion/boletines_dgce

DGCE, March 2011, Boletín I Trimestre 2011, www.nicaraguacompra.gob.ni/difusion-consulta-portlet/resources/boletinesDGCE/Boletin_I_Triemstre_2011.pdf.zip

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 NGOs. 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 NGOs trying to access this information.

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

100 | 75 | 50 | 25 | 0

Comments:

Yes, they can be downloaded from the official website of the entity.

References:

Official site of the DGCE, www.nicaraguacompra.gob.ni/siscaefportal/difusion/boletines_dgce

DGCE, March 2011, Boletín I Trimestre 2011, www.nicaraguacompra.gob.ni/difusion-consulta-portlet/resources/boletinesDGCE/Boletin_I_Triemstre_2011.pdf.zip

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 website of the Directorate General of State Procurement, or DGCE, shows broad and detailed information about existing processes [as of fall 2010, the time of this research].

References:

Official site of the DGCE, www.nicaraguacompra.gob.ni/siscaefportal/difusion/boletines_dgce

DGCE, March 2011, Boletín I Trimestre 2011, www.nicaraguacompra.gob.ni/difusion-consulta-portlet/resources/boletinesDGCE/Boletin_I_Triemstre_2011.pdf.zip

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

75

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

Yes | No

Comments:

According to Nicaraguan law, privatization is case-based and authorized by a law passed by the National Assembly. One cannot mention a specific situation as an example, because no generalization is possible.

References:

Law of Disposition of State Property and Regulators of Public Services, Law No. 169,
<http://legislacion.asamblea.gob.ni/normaweb.nsf/d0c69e2c91d9955906256a400077164a/a1519dc94dac86be0625711d00558560?OpenDocument>

Law of Disposition of State Property and Regulators of Public Services, Law No. 204,
[http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/3D8A90223A21560706257122005962D2?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/3D8A90223A21560706257122005962D2?OpenDocument)

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:

The applicable law is the same as for any official or public servant.

Article 38 of the Civil Service and Administrative Career (Law 476) states: "Officials and employees of the Civil Service and Administrative Careers Act shall observe the following duties: ... 13. inhibited in matters within their competence when personal interest or the interest in the matter, are linked to it in the fourth degree of consanguinity or second degree."

References:

Civil Service and Administrative Career (Law 476), Article 38.

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:

It is hard to legally determine who is behind a seemingly correct business. It is customary to use intermediate persons (proxies).

References:

El Nuevo Diario, Lesber Quintero, Feb. 17, 2009, "Aparece Ola de Testaferros en Playa Amarillo," <http://admin-reporting2.eueom-sv.org/2009/02/17/nacionales/95744>

La Prensa, Moisés Martínez and others, Oct. 4, 2010, "Quién Está Detrás del Proyecto Brito," www.laprensa.com.ni/2010/10/04/nacionales/39649#.Tqn3uXJJ9PU

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?

100

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

Yes | No

Comments:

That depends on what determines the law that provides privatization. In some cases, for example, there have been orders to privatize any state company for the workers, and this is not bid.

References:

Law of Disposition of State Property and Regulators of Public Services, Law No. 169, <http://legislacion.asamblea.gob.ni/normaweb.nsf/d0c69e2c91d9955906256a400077164a/a1519dc94dac86be0625711d00558560?OpenDocument>

Law of Disposition of State Property and Regulators of Public Services, Law No. 204, [http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/3D8A90223A21560706257122005962D2?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/3D8A90223A21560706257122005962D2?OpenDocument)

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:

As the sale is necessarily authorized by a law, it has all the publicity requirements set for the issuance of laws. If the law requires completion of the sale by auction or tender, obviously this is widely advertised.

References:

La Prensa, Moisés Martínez, March 7, 2003, "En Venta Acciones Estatales de Enitel," <http://archivo.laprensa.com.ni/archivo/2003/marzo/07/nacionales/>

ElSalvador.com, ACAN-EFE, July 7, 2003, Nicaragua Avanza en la Privatización de la Telefonía," www.elsalvador.com/noticias/2003/07/07/negocios/negoc5.html

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:

Article 20 requires public entities to disclose (d) calls for tender or tender for works, acquisitions, leases, services, concessions, permits, authorizations and career recruitment; (e) studies, assessments and experiences accredited, as well as guarantees and end fundamentals contained in administrative records that justify the granting of permits, franchises or licenses, career staffing, temporary, trust and advisory and consultative external granted under the law, and the results of recruitment, tendering and procurement processes for goods or services; and (g) recipients and authorized use of any delivery of public resources regardless of their destiny.

References:

Law of Access to Public Information (Law 621), Article 20 (d), (e) and (g), [http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/675A94FF2EBFEE9106257331007476F2?OpenDocument)

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:

As the process is necessarily authorized by a law, it has all the publicity requirements set for the issuance of laws. If the law requires completion of the sale by auction or tender, obviously this is widely advertised.

Records are available online, or can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

References:

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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.

100 | 75 | 50 | 25 | 0

Comments:

As the process is necessarily authorized by a law, it has all the publicity requirements set for the issuance of laws. If the law requires completion of the sale by auction or tender, obviously this is widely advertised.

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 online.

References:

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁶⁰National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

Comments:

Law 212 creates an attorney for the defense of human rights.

References:

Procuraduría para la Defensa de los Derechos Humanos
(Attorney for the Defense of Human Rights).

Created by Law 212: Law of the Attorney for the Defense of Human Rights.

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/29360A59FBB47A5406257116005385EB?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/29360A59FBB47A5406257116005385EB?OpenDocument)

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.

56. Is the national ombudsman effective?

41

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

Article 2 of Law 212 states: "This Act is to regulate the functions, nature, objectives, scope and powers of Attorney and Attorney for the Defense of Human Rights, who henceforth will be referred to the Attorney and Solicitor. The Attorney and Attorney for the Defense of Human Rights, in its activity, independent, are not subject to any authority and act subject only to the Constitution and the laws "

References:

Law 212, Article 2.

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:

Although Law 212 clearly states that the National Assembly has the power to appoint the ombudsman for human rights, President Daniel Ortega assigned Omar Cabezas to the office because the period for which he had been appointed expired. Thus it is clear that the human rights ombudsman is not subject to the mandate of the supreme law, but merely reflects a partisan interest.

Cabezas, attorney for the defense of human rights, criticized the protests of civil society and said they were financed by the "international right wing." He also said that "as mothers say to children, 'You do not let yourself be hit,' explaining that if the "'right' harass young Sandinistas, they are not going to permit it." (www.elnuevodiario.com.ni/politica/98424)

The attorney categorizes people by their political ideology, and what he considers "the right" has no right to protest and the people close to the government (which he assumes are "left") have the right to confront them and to "defend" themselves against an alleged provocation.

References:

La Prensa, Martha Solano, March 28, 2010, "El Encanto del 'Decretazo,'" www.laprensa.com.ni/2010/03/28/politica/20456#.TqoJmHJJ9PU

El Nuevo Diario, Rafael Lara, Jan. 11, 2010, "Omar Cabezas Estrena Golpe a la Constitución," www.elnuevodiario.com.ni/nacionales/65916

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:

The ombudsman at the Office of Human Rights has never been removed.

References:

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011 in Managua.

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:

According to the last known formal study, the Office of Human Rights is the least effective link inside the Nicaraguan justice system. The office's staff is small but handles an average load of about 30 cases per officer per year.

References:

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011 in Managua.

Centro de Estudio de la Justicia en América, Reporte 2008-2009, www.cejamericas.org/reporte/2008-2009/muestra_pais35470.html?idioma=espanol&pais=NICARAGU&tipereport=REPORTE4&seccion=PDDH

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:

The appointment of the current human rights ombudsman was based on his relationship with the Sandinista Front. In early 2010, the Decree 03-2010 from President Daniel Ortega kept the ombudsman in his role past the expiration of his five-year term. The ombudsman is Cmdr. Omar Cabezas, a known member of the guerrilla and revolutionary government of the 1980s.

References:

El 19 Digital, Juan José Lacayo, Nov. 7, 2009, "Omar Cabezas: 'Conozco al Monstruo por Dentro,'" www.el19digital.com/index.php?option=com_content&task=view&id=7646&Itemid=14

El Nuevo Diario, Silvia Carrillo, Oct. 30, 2005, "PDDH No Es Más que una Inmensa Champa," <http://archivo.elnuevodiario.com.ni/2005/10/30/nacionales/4570>

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:

After a budget of just more than \$3 million dollars in 2007, the Office of Human Rights has received an annual allocation the past three years of around \$1.4 million. This amount is claimed to be insufficient to meet the operational demands of the institution. In fact, the reduction may be linked to a history of bad management (see: <http://impreso.end.com.ni/2007/10/23/nacionales/62181>).

References:

Centro de Estudio de la Justicia en América, Reporte 2008-2009, www.cejamericas.org/reporte/2008-2009/muestra_pais35470.html?idioma=espanol&pais=NICARAGU&tipereport=REPORTE4&seccion=PDDH

Luis Galeano, El Nuevo Diario, March 23, 2007, "Auditoria Revela Enorme Despilfarro en la PDDH," <http://impreso.end.com.ni/2007/10/23/nacionales/62181>

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:

The latest report on the website of the entity is from the year 2007.

References:

Procuraduría Defensa Derechos Humanos, Sitio Oficial, Documentos, <http://www.procuraduriaddh.gob.ni/informes.asp>

El Nuevo Diario, Rafael Lara, Dec. 26, 2009, "Se Extinguen 2009 y Derechos Humanos de los Nicaragüenses," www.elnuevodiario.com.ni/especiales/64854

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:

The work of the office is selective and strongly influenced by the partisan tilt of the attorney general (ombudsman).

El Nuevo Diario reported that "Attorney for the Defense of Human Rights Omar Cabezas yesterday criticized the march of civil society, and said it is financed 'by the international right wing.'" Cabezas also said that "as mothers say to children: 'You do not let yourself be hit,' explaining that if the "right' harass young Sandinistas, they are not going to permit it."

References:

El Nuevo Diario, Rafael Lara, April 15, 2011, "Víctimas de Cabezas Piden Sea Investigado," www.elnuevodiario.com.ni/nacionales/99776

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:

The ombudsman has no power to punish. He issues resolutions that determine whether a complaint is valid and whether a human right is violated, and then makes recommendations to the government entity involved. He may also refer allegations to the respective authorities if he believes more specialized competence is needed.

References:

Centro Nicaragüense de Derechos Humanos, "Informe Derechos Humanos 2010,"
www.cenidh.org/files/Informe%202010%20Web.pdf

U.S. Embassy, "2010 Human Rights Report: Nicaragua,"
http://nicaragua.usembassy.gov/rpt_2010_hrr.html

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:

Because the attorney general's annual report is not issued publicly, little data are available to help make a more accurate assessment. But the selectivity and partisan inclination of the ombudsman mean that his work is perceived as inadequate.

References:

Centro Nicaragüense de Derechos Humanos, "Informe Derechos Humanos 2010,"
www.cenidh.org/files/Informe%202010%20Web.pdf

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:

The effectiveness in resolving complaints is low. This may indicate that it takes too long to issue a response to a complainant.

In February 2011, Omar Cabezas (ombudsman) commented to media that there was a lot of bureaucracy to comply with the rights of people in Nicaragua..

Since early February 2011, various media and civil society organizations have denounced the use of children in the Sandinista Front's electoral propaganda, without the Human Rights Office initiating an investigation or devising a response.

References:

UNFPA, "Información por País. Nicaragua,"
www.unfpa.org/derechos/nicaragua.htm#historial

El Nuevo Diario, Rafael Lara, Feb. 9, 2011, "Resoluciones de PDDH no las Acata el Estado,"
www.elnuevodiario.com.ni/contactoend/94415

El Nuevo Diario, Feb. 8, 2011, "Instituciones Copadas por Orteguismo Hacen Caso Omiso Inmoral Usar a Niños,"
www.elnuevodiario.com.ni/politica/94317

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:

Results for individual cases are reported only to the applicants. The annual report is sent to the National Assembly, which will not release it. On the official website, no reports have been published since 2007.

Article 43 of the Law of the Attorney for Defense of Human Rights states: "The attorney shall inform the person of the results of his research and efforts, as well as the response he gave to the administration or officials involved, except if (the reports), by their nature, were considered restricted or declared secret."

Article 46 of the same law states: "The Attorney General shall submit to the National Assembly, on December 10 of each year, a regular annual report. Also, special reports shall be submitted when the seriousness of the case warrants it, or upon request of the National Assembly."

References:

Law of the Attorney for the Defense of Human Rights (Law 212), Articles 43 and 46.

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:

Results of individual cases are reported only to the applicants. The annual report is sent to the National Assembly, which will not release it. On the official website, no reports have been published since 2007.

References:

National Assemble of the Government of Nicaragua, www.asamblea.gob.ni/

Attorney of the Office of Human Rights, Reports, www.procuraduriaddhh.gob.ni/informes.asp

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:

Results of individual cases are reported only to the applicants. The annual report is sent to the National Assembly, which will not release it. On the official website, no reports have been published since 2007.

References:

National Assembly of the Government of Nicaragua, www.asamblea.gob.ni/

Attorney of the Office of Human Rights, Reports, www.procuraduriaddhh.gob.ni/informes.asp

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

According to Article 154 of the Constitution, the comptroller general is in charge of the control system of public administration and the control of public resources. The comptroller general's performance is governed by the principles of autonomy and independence in the interests of transparent public function.

References:

Constitution, Article 154.

Yes: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

No: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

59. Is the supreme audit institution effective?

50

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

Article 4 of the Organic Law of the Comptroller General of the Republic and System Control of the Public Administration and Control of the State Property and Resources states:

"The following principles are established which shall be mandatory for public servants whose functions are regulated by this Law: ... b). Independence: The Comptroller General of the Republic is an independent body subject only to compliance with the Constitution of the Republic of Nicaragua and the law. The Supreme Council of the Comptroller General of the Republic and public servants who exercise audit work should operate free from political influence of any kind. The criterion should be independent, free from prejudice or interest, in order to preserve the impartiality and objectivity required of the institution."

References:

Organic Law of the Comptroller General of the Republic and System Control of the Public Administration and Control of the State Property and Resources, (Law 681), Article 4.

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:

In practice the comptrollers are now protected from removal because of Decree 03-2010 issued by President Daniel Ortega, to the detriment of the National Assembly's exclusive power to appoint the comptroller.

References:

El Nuevo Diario, Máximo Rugama, April 6, 2010, "Montenegro Quiere Seguir Siendo Contralor," <http://impreso.elnuevodiario.com.ni/2010/04/06/politica/121947>

La Prensa, Moisés Martínez, May 25, 2011, "Contralores Abandonan Reunión con Comisión de Probidad del Parlamento," www.laprensa.com.ni/2011/05/25/nacionales/61556#.TqwRoXJJ9PU

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:

The comptroller's staff is too small to cover all areas of work that by law the agency must perform.

At the end of 2010, the comptroller general had a 470-member active staff, of which 245 employees were dedicated to the tasks of the comptroller. According to the 2010 annual report, 291 audits were conducted representing coverage of 40.34 percent of the institutions of the state. The office verified 135 integrity statements of the 2,946 it received (4 percent). Of the internal control recommendations issued, 16.89 per cent were implemented.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.iepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

Joint Donor Fund for Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un Caso Exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

Contraloría General de la República, "Informe de Gestión Año 2010," www.cgr.gob.ni/cgr/index.php?option=com_docman&task=doc_download&gid=2184&Itemid=53

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:

In practice, the selection criteria are related to partisanship of the branches of the government. The distribution of political affinity positions on the upper level is reflected in the lower levels.

Appointments are made once every five years. The current controllers have already served that time. As of fall 2011, they were still in office under a decree from President Daniel Ortega. The decree was issued in January 2010 and is illegal because the National Assembly has the exclusive authority to appoint comptrollers. During the research period for this report, there have been no new appointments.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.iepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

Joint Donor Fund for Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un Caso Exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

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:

Although there is no budget allocation of a fixed amount, the Comptroller's Office receives funds from the national budget. The allocated funds are considered insufficient for the development of work relating to the entity.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.iepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

Joint Donor Fund for Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti-Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un Caso Exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

Contraloría General de la República, "Informe de Gestión Año 2010," www.cgr.gob.ni/cgr/index.php?option=com_docman&task=doc_download&gid=2184&Itemid=53

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:

Although the work done by the Comptroller General may be considered inadequate and insufficient, the office is maintaining a lot of information available for public research. Often the authorities have given interviews to the media.

References:

Contraloría General de la República, Sitio Web, Sección de Descargas, www.cgr.gob.ni/cgr/index.php?option=com_docman&Itemid=101

La Prensa, Octavio Enriquez, Jan. 14, 2010, "Argüello Poessy: 'No Sean Babosos,'" www.laprensa.com.ni/2010/01/14/nacionales/13146#.Tq3wJ3JJ9PU

El Nuevo Diario, José Adán Silva and Luis Galeano, Feb. 24, 2011, "CGR: 'Nos engañaron,'" www.elnuevodiario.com.ni/nacionales/95512

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.

Comments:

The control is hindered by mechanisms such as the legal protection against decisions of the comptroller. There are also political and personal interests. From 2000 to date, 611 investigations against public officials were suspended by appeals that the Supreme Court has not resolved (see: www.elnuevodiario.com.ni/nacionales/230945).

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.ieepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

Joint Donor Fund for Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti-Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un Caso Exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

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.

Comments:

In practice, as required by the law, the comptroller has the authority to initiate any informal investigation. The problem is that situations occur in which one expects the office to intervene, but it does not. The only explanation for this selectivity is party political composition, the main defect of this state agency.

References:

Inter-American Convention Against Corruption (OAS), Sept. 16, 2010, "Republic of Nicaragua Final Report," www.oas.org/juridico/english/mesicic_III_rep_nic.pdf

Instituto de Estudios Estratégicos y Políticas Públicas, Departamento de Comunicación, July 27, 2011, "Declaraciones Patrimoniales en Nicaragua 'en Pañales,'" www.ieepp.org/index.php/declaraciones-patrimoniales-en-nicaragua-en-panales/

Joint Donor Fund for Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un Caso Exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

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:

Article 156 of the Constitution states, "The Comptroller's Office shall make public the results of their research and when the same criminal liability shall be presumed to send your inquiry to the Courts of Justice, under penalty of concealer if they did not, the crimes committed subsequently determined the investigation."

References:

Constitution, Article 156.

Yes: A YES score is earned if all supreme auditor reports are available to the general public.

No: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Law on Access to Public Information provides the ease of the procedure and there is an obligation to publish the reports on the website, but information remains outdated and direct physical access to the reports must be obtained in the Comptroller's office — where no response will be forthcoming within a reasonable time if the case is of political interest (obviously when it comes to public officials there is always political interest).

References:

Comptroller's Office, official website,
www.cgr.gob.ni

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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.

Comments:

The cost is limited to the number of photocopies needed.

The problem is that research and results are not published, so citizens must wait for the comptroller's investigation and visit the office to obtain a copy. The cost is not a problem; the problem is the access.

References:

Comptroller's Office, official website, www.cgr.gob.ni

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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 NGOs. 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 NGOs trying to access this information.

69 5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

Article 1 of Law 339 states: "This Act is to organize and redefine the nature, functions, scope jurisdiction of the Department of Revenue (DGI), created by Decree No. 243, published in the Official Gazette No. 144 of June 29, 1957 and the creation of the Directorate General of Customs (DGA). Both institutions are succeeding without interruption of the current Internal Revenue Service and the Directorate General of Customs, respectively, with new features and functions deriving from the present law."

References:

Law Creating the Department of Customs and Reform Law Creator of the Department of Revenue (Law 339): www.dgi.gob.ni/documentos/Ley%20Creadora%20DGSA%20y%20Reforma%20a%20Ley%20DGI%20Ley%20No.%20339.pdf

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.

62. Is the tax collection agency effective?

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Until 2008, there was a certain stability and maintenance of the quality of the institution's technical staff. According to investigative reports, about 700 public servants were dismissed from 2008 to 2009, to be replaced by friends of the new authorities or those with political affiliations with the ruling party. The level of professionalism of the institution has been seriously affected by the politicization of its structure.

References:

Confidencial, Iván Olivares, April 30, 2011, "Se Cierra el Círculo DGI-Gestores," www.confidencial.com.ni/articulo/3852/se-cierra-el-circulo-dgi-gestores

El Nuevo Diario, Luis Galeano, May 12, 2011, "DGI Era "Finca" de Walter Porras," www.elnuevodiario.com.ni/nacionales/102000

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:

Regular funds are guaranteed by law, and correspond to 2.5 percent of the annual budget of the republic. The office also get resources from grants or state funds through specific programs. For 2010, the allocation of nearly 289 million cordobas was executed almost in its entirety (99.7 percent).

References:

Ministerio de Hacienda, "Informe de Liquidación Presupuestaria 2010," www.hacienda.gob.ni/documentos/presupuesto/informes/2010/INFORME%20DE%20LIQUIDACION%20DEL%20PRESUPUESTO%20GENERAL%20DE

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.

63. In practice, are tax laws enforced uniformly and without discrimination?

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Many scattered laws establish different treatment for different economic sectors. Thus, there are discretionary exemptions for specific economic groups. Moreover, there is illegal trafficking. Walter Porras of the Directorate General of Income explained it in this link: www.envio.org.ni/articulo/4341 (in English).

According to economist José Luis Medal, "[A] profound tax reform should install a system of global income. Today exists in Nicaragua a system schedular income or dual. a passive income (dividends and interest) is applied to a rate of income tax of 10%, which discriminates against the income of employees, subject to marginal rates ranging from 10% to 30%. discriminate also against the income of active entrepreneurs (30% IR rate for corporations.) discriminates against medium businesses also subject to the rate of 30% of the IR, which is equal to that of large companies ... "

On the other hand, private companies associated with the business of the FSLN as those operating in Venezuelan oil, and the proceeds of their sales (ALBANISA, Albalinisa, ALBA-Caruna, etc.) They simply say they do not perceive gains and thus do not pay any tax, thereby handling hundreds of millions of dollars without any legal restriction or supervision.

A number of business documents of ALBA in Nicaragua, were leaked to the newspaper Confidencial. These documents and expert commentary about them, can be found at this link: <http://www.confidencial.com.ni/albaleaks> (in Spanish).

References:

Instituto de Estudios Estratégicos y Políticas Públicas, "Apuntes Sobre Exoneraciones Fiscales en Nicaragua," www.estimacionestributarias.com/archivos/apuntes_exoneraciones_fiscales_nicaragua.pdf

Revista Envio, May 2011, "A Storm Hit When The Sky Seemed Calm," www.envio.org.ni/articulo/4381

La Prensa, Moises Martinez and Gisella Canales Ewest, March 8, 2011, "Albanisa ya Debe Pagar Impuestos," www.laprensa.com.ni/2011/03/08/nacionales/54191

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. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

Law 339, Article 1, states, "This Act is to organize and redefine the nature, functions, scope jurisdiction of the Department of Revenue (DGI), created by Decree No. 243, published in the Official Gazette No. 144 of June 29, 1957 and the creation of the Directorate General of Customs (DGA). Both institutions are succeeding without interruption of the current Internal Revenue Service and the Directorate General of Customs, respectively, with new features and functions deriving from the present law."

References:

Law Creating the Department of Customs and Reform Law Creator of the Department of Revenue (Law 339), www.dgi.gob.ni/documentos/Ley%20Creadora%20DGSA%20y%20Reforma%20a%20Ley%20DGI%20Ley%20No.%20339.pdf

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.

65. Is the customs and excise agency effective?

63

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Until 2008, there was a certain stability and maintenance of the quality of the institution's technical staff. But from 2008 to 2009, about 470 public servants were dismissed, to be replaced by friends of the new authorities or those who were politically affiliated with the ruling party. The level of professionalism of the institution has been seriously affected by the politicization of its structure.

References:

El Nuevo Diario, Rafael Lara, Oct. 15, 2009, "Casi 12 Mil Despedidos en 'Unidad y Reconciliación,'" <http://archivo.end.com.ni/imprimir/2009-10-15/111624>

El Nuevo Diario, Laura Rodríguez, June 18, 2011, "128 Sindicatos Descabezados y 21 Mil Echados," www.elnuevodiario.com.ni/nacionales/105307

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:

Regular funds are guaranteed by law and correspond to 2.5 percent of the annual budget of the republic. The office also gets resources that come from abandoned goods at auction. For 2010, the allocation was 243 million cordobas.

References:

Ministerio de Hacienda, "Informe de Liquidación Presupuestaria del 2010," www.hacienda.gob.ni/documentos/presupuesto/informes/2010/INFORME%20DE%20LIQUIDACION%20DEL%20PRESUPUESTO%20GENERAL%20DE

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

An irregular handling of exemptions and exceptions to benefit economic groups linked to the Sandinista National Liberation Front became evident when police investigations determined the existence of a network within the Department of Revenue (DGI) that dealt in tax refunds: "The ongoing police investigation, which has so far included declarations from over a dozen officials and some businesspeople, shows that Walter Porras (as Director of DGI) was directing an entangled network of loyal officials organized to peddle influences and receive kickbacks through manipulation of the legal mechanism of tax refunds. This mechanism obliges the DGI to return to businesses any overage they have paid in taxes, such as the purchase of tax exempt goods and services. This network of promoters run by officials at Porras' orders, negotiated with the businesses that they would rapidly refund part of the taxes with little review in exchange for keeping another part as under-the-table commissions, which ranged from 2 percent to 60 percent of the total amount. The investigation indicates that some businesspeople participated in this illicit operation because they were delighted to cooperate with the governing party's (FSLN's) electoral campaign, while others were extorted." (<http://www.envio.org.ni/articulo/4341>).

We also know that businesses related to Venezuelan oil companies that manage people linked to the FSLN failed to declare and pay taxes on the grounds of not receiving profits. A list of these companies can be founded here: www.confidencial.com.ni/articulo/3395/las-empresas-del-grupo-alba Among these companies, we find another characteristic example of an irregular tax situation, that of ALBA-CARUNA, a company that handles billions of cordobas (approx. US\$378 million in 2011, about 6.3 percent of gross domestic product) to credits that are granted to the state and individuals under the guise a nonprofit organization (cooperative).

References:

Instituto de Estudios Estratégicos y Políticas Públicas, "Apuntes Sobre Exoneraciones Fiscales en Nicaragua," www.estimacionestributarias.com/archivos/apuntes_exoneraciones_fiscales_nicaragua.pdf

La Prensa, Lucydalia Baca, March 2, 2011, "Callahan Denuncia 'Trabas' en Aduana para Donaciones de Estadounidenses," www.laprensa.com.ni/2011/03/02/nacionales/53682#.Tq5pmHJJ9PU

El Nuevo Diario, Amparo Aguilera, Feb. 10, 2011, "Ley No Vale en Aduana," www.elnuevodiario.com.ni/nacionales/94491

Confidencial, Ivan Olivares, March 1, 2011, "Alba-Caruna Moverá C\$8,700 Millones en 2011 Sin Supervisión," www.confidencial.com.ni/articulo/3347/alba-caruna-movera-c-8-700-millones-en-2011-sin-supervision

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

Comments:

Nicaraguan companies have been created by different laws governing the organization and specific dependency, there is not a single or uniform pattern.

Law No. 662 states: "Purpose of the Act by operation of this Law and in accordance with other provisions relating to financial management and budgeting system of the Republic of Nicaragua, establishes the legal obligation to public sector entities, including State enterprises or joint ventures, to give an account in a clear, unrestricted and expeditious way to the National Assembly and in particular to the Commission on Production, Economics and Budget, on financial management, accounting, budgetary and contractual subjects these public institutions under the terms, emphasis, and special requirements have requested. This accountability is to ensure transparency in commercial or civil contracts that these institutions hold, as well as recruitment, performance and accountability of resources from both the domestic tax effort as incurred by virtue of credits, loans and grants in any form and any other type of general budget revenues granted, captured and executed by the State of Nicaragua and its dependencies."

References:

Transparency Law Firms and Companies for the Nicaraguan State (Law 662), Article 1

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/C34AD5893B7AFF9E06257508005C5EB6?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/C34AD5893B7AFF9E06257508005C5EB6?OpenDocument)

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.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

15

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

Comments:

The various state enterprises are under the sectoral control of different ministries (like ENATREL, ENABAS, etc.), or the presidency of the republic (for example, Nicaraguan Water and Sewer ENACAL).

References:

Law of Organization, Jurisdiction and Procedure of the Executive (Law 290), Article 3: "The Executive comprises the President, the Vice-President of the Republic, Ministers of States, Governmental Bodies, Banks and State Enterprises and the better performance of its functions can be organized in a decentralized way or devolved."
<http://www.infocoop.gob.ni/images/Documentos/NormasJuridicas/Ley%20290.pdf>

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.

Comments:

Nicaragua has no specific entity dedicated to control of state enterprises. These functions are spread within institutions such as the Comptroller General and National Assembly. Thus, the overall system deficiencies are reflected in this subsystem of the state enterprises.

The weakness in the mechanisms of control over state enterprises has been exposed with the incursion of huge investments made with Venezuelan funds through ALBA companies and with the intervention of state officials who are active members of the FSLN.

There is no dedicated staff established to control the state companies. They must submit reports to a committee of the National Assembly and are subject to the same global regulations as all of the state institutions.

References:

El Nuevo Diario, José Adán Silva and Luis Galeano, Feb. 8, 2010, "Albanisa No Es Feudo Privado," www.elnuevodiario.com.ni/nacionales/67902

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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.

Comments:

No specific funds are established for ministries related to the supervision of state enterprises. Budget funds are related to investment and operational costs, such as payroll and other payments.

References:

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

"Informe de Liquidación del Presupuesto General de la República 2010," <http://hacienda.gob.ni>

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:

No, investigations were not usually conducted. Sometimes the authorities conduct an administrative investigation. In such cases investigated officials make use of the appeal and evade justice. From July 2010 to February 2011, the comptroller reports having 22 Resources Amparo answered by officials under investigation.

The administrative authorities have no legal instruments to enable them to coerce or punish misconduct. The current government officials have devoted their efforts to conduct research that tend to discredit previous governments.

References:

El 19 Digital, La Primerísima, July 26, 2010, "54 Casos de Corrupción Más Emblemáticos de Neoliberales," www.el19digital.com/index.php?option=com_content&view=article&id=14739:54-casos-de-corrupcion-mas-emblematicos-de-neoliberales&catid=21:politica&Itemid=14

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

Contraloría General de la República.

www.cgr.gob.ni/cgr/index.php?option=com_docman&task=cat_view&gid=140&Itemid=106

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:

The entities responsible for overseeing the management of state enterprises lack the coercive power and are highly partisan.

References:

El Nuevo Diario, Luis Galeano, Jan. 31, 2010, "Visión imperial ALBA," www.elnuevodiario.com.ni/nacionales/67303

Alberto Novoa Espinoza, lawyer, former solicitor general of Nicaragua and actually counsel to members of the Sandinista Renovation Movement in the National Assembly, interviewed Sept. 10, 2011, in Managua.

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.

69. Can citizens access the financial records of state-owned companies?

30

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

Comments:

Law 662, Article 8, gives information on the provision and content of official information by electronic media. It states:

"On the basis and without prejudice to the provisions of Law No. 621 'Law of Access to Public Information' all institutions and state enterprises, or joint ventures should create and update their respective official information website of the institution, which shall contain, among other information, mission and objectives, terms and conditions of the international agreements it signs, commercial and civil contracts entered into, as well as a report on the implementation of its budget, the use and execution of operations performed, all with the purpose of transparency in the exercise of public management.

"The publication of the information referred to in the preceding paragraph shall be updated at least every thirty days, in order that the Nicaraguan people know and can keep track of transactions between institutions and state enterprises do.

"The Web page must contain at least:

- Information officer of the institution.
- Services provided.
- Structure organization.
- Programs, projects and commercial and civil contracts, among others: (Use, destination and use of these)
- Base Legal.
- Newsletter official information.
- Reports of official annual external and internal audits.
- Consultations for citizens."

References:

Law 662, Article 8, Provision and Content of Official Information by Electronic Media, [http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/C34AD5893B7AFF9E06257508005C5EB6?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/C34AD5893B7AFF9E06257508005C5EB6?OpenDocument)

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:

State enterprises do not comply with Articles 8 and 9 of Law 622, which establishes the obligation to make publicly available the information relating to internal and external audits that are performed. Of all the state enterprises, only International Airports Management Company (EAAI) has on its website the audited financial statements for 2009 (see: www.eaai.com.ni).

References:

Confidencial, Iván Olivares, Feb. 23, 2011, "Ley 622: Una Burla a la Transparencia," www.confidencial.com.ni/articulo/3292/ley-662-una-burla-a-la-transparencia

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.

100 | 75 | 50 | 25 | 0

Comments:

According to the deputy Liberal Francisco Aguirre Sacasa, state enterprises do not comply with the obligation to submit reports.

References:

Radio La Primerísima, May 13, 2010, "Nueva Estrategia de ENACAL para Corregir Sus Políticas," www.rlp.com.ni/noticias/general/76472

Confidencial, Iván Olivares, Feb. 23, 2011, "Ley 622: Una Burla a la Transparencia," www.confidencial.com.ni/articulo/3292/ley-662-una-burla-a-la-transparencia

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.

100 | 75 | 50 | 25 | 0

Comments:

Upon conclusion of this research, none of the companies of the state had updated financial information. Even the comptroller has been unable to conduct research on companies such as Petronic, linked to the provision of Venezuelan oil, where there are interests of ALBA.

References:

Confidencial, Iván Olivares, Feb. 23, 2011, "Ley 622: Una Burla a la Transparencia," www.confidencial.com.ni/articulo/3292/ley-662-una-burla-a-la-transparencia

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

75:

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

25:

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

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Upon conclusion of this research, none of the companies of the state had updated financial information. Even the comptroller has been unable to conduct research on companies such as Petronic, linked to the provision of Venezuelan oil, where there are interests of ALBA.

References:

Confidencial, Iván Olivares, Feb. 23, 2011, "Ley 622: Una Burla a la Transparencia," www.confidencial.com.ni/articulo/3292/ley-662-una-burla-a-la-transparencia

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 NGOs. 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 NGOs trying to access this information.

48

5.5. 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:

The Constitution says in Article 103, "The State shall guarantee the democratic coexistence of forms of public, private, cooperative, voluntary and community associations; they are all part of the mixed economy, are subject to best interests of the nation and fulfill a social function."

Further, Article 104 states, "The companies organized under any of the forms of property established in this Constitution, are equal before law and state economic policies. The economic initiative is free. It guarantees the full exercise of economic activities without further limitations. ... "

References:

Constitution, Articles 103 and 104.

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:

The Amparo law establishes how to proceed against the state official or institution that is harming a civil right. It should be noted that the denial of a business license is not a common case in Nicaragua.

References:

Law of Amparo (Law 49).

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:

According to Doing Business, the time required is between 24 and 40 days for the entire licensing process. There are entities like ProNicaragua (<http://pronicaragua.org/index.php?lang=en>) that facilitate the process for foreign investors. There is also a single-window system at the Ministry of Development, Industry and Trade to ease the process and provide information to users.

References:

Doing Business 2010, magazine issued by the American Chamber of Commerce and the Ministry of Development, Industry and Trade.

World Bank, "Doing Business in Nicaragua," www.doingbusiness.org/data/exploreeconomies/nicaragua/#starting-a-business

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:

The costs are reasonable, and the process can be done personally. But it is best to hire professional assistance, given a certain complexity in specific cases or areas of investment.

According to the Doing Business Report prepared by the World Bank, costs are approximately equal to 107 percent of annual per capita income, which is far above the average for Latin America, of 37.3 percent.

References:

Doing Business 2010, magazine issued by the American Chamber of Commerce and the Ministry of Development, Industry and Trade.

World Bank, "Doing Business in Nicaragua,"

www.doingbusiness.org/data/exploreeconomies/nicaragua/#starting-a-business

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:

The Health Law and corresponding regulations establish the requirements for any facility that seeks to start or has already begun operations in Nicaragua, detailing the specific requirements for each type of economic activity and the procedure for obtaining licenses and permits.

References:

Law 423, Health Law and its Regulations (Decree 01-2003).

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:

Law 217, Article 12, states: "The planning of national development, regional and municipal in the country must integrate environmental elements into their plans, programs and economic and social projects, respecting the principles of openness and citizen participation. Within the scope of its jurisdiction, all government agencies, decentralized agencies and municipal authorities should anticipate and plan for involvement not irreversible and the protection and restoration of natural resources and environment to prevent deterioration and extinction."

Article 25 of the same law states that projects, construction, industry, or any other activity which by its nature can cause damage to the environment or natural resources must obtain, prior to its execution, the Environmental Permit issued by the Ministry of Environment and Natural Resources. The regulations shall establish the specific list of such works and projects. Projects not referred to in the specific list will be required to submit to the municipality the environmental form from the Ministry of Environment and Natural Resources established as a requirement for the respective permit.

References:

General Law of the Environment and Natural Resources (Law 217), Articles 12 and 25, [http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/1B5EFB1E58D7618A0625711600561572?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/1B5EFB1E58D7618A0625711600561572?OpenDocument)

Law on Amendments and Additions to Law 217 (Law 647), [http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/3931522956B885A30625744E00548B32?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/3931522956B885A30625744E00548B32?OpenDocument)

Decree 9-96: Regulation of the Law 217, [http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/29B81609B8726F49062570BC005FBB2C?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/29B81609B8726F49062570BC005FBB2C?OpenDocument)

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:

The law establishes the creation of joint committees (or commissions) of Hygiene and Occupational Safety for each work center. Such committees are formed by representatives of workers, and the employer must register with the Ministry of Labor. The functions of the commission are:

- a. Cooperate with the company or work in the evaluation and determination of the occupational hazards of the enterprise or workplace to which they belong.
- b. Assist in monitoring and verifying compliance with the provisions adopted in the prevention of occupational hazards.
- c. Propose adoption of preventive measures aimed at improving levels of protection and preventing occupational risks.
- d. Promote and encourage the cooperation of workers in the implementation of the measures of protection and prevention of occupational risks.
- e. Report on the decisions made in the prevention of occupational hazards.
- f. Understand and analyze the damage to the health of workers, in order to assess the causes and propose appropriate action.
- g. Inform the employer, if necessary agree to the suspension of activities involving an immediate and serious occupational hazard for health workers.
- h. Participate and be informed of the proceedings that the competent authority for employment or business carried out in workplaces to which they belong, on hygiene and safety.
- i. Know reports on occupational health and safety available to the company that are relevant to the performance of their duties.
- j. Perform such other functions entrusted to them by the company or work in the field of competence.
- k. Assist, develop and propose the health and safety culture of work.

References:

General Law of Health and Safety, the Employer's Liability (Law 618), Article 18.

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 and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Periodic inspections are the norm in companies engaged in production or marketing of food, also in the case of medicines.

However, there are too many small and informal businesses that are not strictly controlled. According to authorities, the last operation in Nicaragua was 10 years ago in the "Eastern Market" (Mercado Oriental) to confiscate fake medicine. It involved the

Ministry of Health, the National Police, Local Integrated Health Care of Managua, the Interior Ministry and the Directorate General of Customs. The Eastern Market has become an impenetrable fortress for drug regulatory authorities. Authorities reportedly only come when there is a complaint.

References:

Infocarne, MAGFOR, April 13, 2011, "Sistemas de Inocuidad Son Auditados Permanentemente," www.infocarne.com/noticias/2011/4/3801_sistemas_inocuidad_son_auditados_permanentemente.asp

La Prensa, July 27, 2010, "Funestas Fábricas de 'Medicinas,'" www.laprensa.com.ni/2010/07/27/nacionales/32753#.TsBHtIzJ9i8

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:

Media and environmental organizations dedicated to the monitoring of good manufacturing practices in environmental issues consistently report disrespect for the laws, breach of resolution and other weaknesses in the regulatory system in Nicaragua.

For example, in the Lake of Granada, an important source of water, the city does not have the resources to maintain environment-related inspections, and an annual fee of less than \$25 is considered excessive by those who use the lake for navigational purposes. High levels of poverty, lack of environmental awareness, and lack of foresight created deterioration.

There are specific protocols that are fulfilled in most cases seen; however, as explained in the example above, there is a lack of coverage because of insufficient funds in institutions. This leads to establishment of fees or payments, which in turn produces the real possibility of default or evasion.

References:

La Prensa, Lucía Vargas, June 18, 2011, "Lancheros Afligidos por Nuevo Impuesto," www.laprensa.com.ni/2011/06/18/departamentos/64016#.TsBlrVZJ9i8

Confidencial, Carlos Lucas, June 6, 2010, "Nicaragua Es una Mina de Oro," www.confidencial.com.ni/articulo/941/nicaragua-es-una-mina-de-oro

"2010: Annual Report of Centro Humboldt."

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:

Business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner at the request of the employer, when required to operate. Also in cases of accidents or complaints, they do not take place regularly.

In every workplace there should be a multiparty committee formed by representatives of employer and employee, which is why regular inspections are not set. However, it is possible that some of these committees work erratically or simply do not exist, so the evaluation does not reach the maximum score on this item.

References:

Ministerio del Trabajo, "Dirección General de Higiene y Seguridad del Trabajo," www.mitrab.gob.ni/servicios/higiene-y-seguridad-del-trabajo

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 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ~~Anti~~ Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes | No

Comments:

Penal Code Article 27 on "Offense, Frustrated and Attempted Are Punishable" states: "The offense, the offense and attempted crime. The offenses, except those against persons and property, shall be punished only when they have been accomplished."

Article 28 on "Completion, Frustration and Attempted" states:

"a) It is considered finished when the author makes all the elements of the offense in question.

b) There is frustration when the person with the will to carry out a crime, practices all acts of execution which should produce results objectively, and yet this does not occur for reasons independent or outside the subject's will.

c) An attempt when the subject, with the intention of making a criminal offense, gives life to his execution directly by external events, but only implements part of the acts that objectively may produce the consummation, for any reason other than his own and volunteering discontinuance."

References:

Penal Code, Articles 27 and 28.

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

Comments:

Article 228 of the Penal Code covers extortion. It states: "Whoever for the purpose of obtaining an illicit gain, obliges another by force or intimidation to perform or omit an act or legal business, to the detriment of its assets or a third party, shall be punished with imprisonment two to five years."

References:

Penal Code, Article 228, Extortion.

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

Comments:

Section 446 of the Penal Code covers bribery. It states: "Whoever by himself or by third parties to offer or grant to an authority, official or public employee a gift, money, favors, promises, benefits or anything of monetary value to that authority, public employee or official or other person or entity, in exchange for the performance, slowing, speeding or omission of any act in the exercise of his functions shall be punished with three to six years in prison and three hundred to five hundred days fine."

References:

Penal Code, Section 446, Bribery.

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

Comments:

Article 445 of the Penal Code criminalizes bribery. It states: "Bribery committed by authority, official or public employee: The authority, officer or employee who is required or accepted by themselves or through third a gift, money, favor, promise or advantage, or anything of monetary value for himself or for another person or entity, in exchange for the performance, slowing, speeding or omission of any act in the exercise of public functions, shall be punished with four to six years imprisonment and disqualification for the same period, employment or exercising public office."

References:

Penal Code, Article 445, Bribery Committed by Authority, Official or Public Employee.

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

Comments:

Penal Code Article 449 covers international bribery. It states: "The nonresident alien who offers, promises, gives or grants to an authority, public employee or official national or foreign national or resident, who makes the same behavior with respect to officials of another state or international organization or entity directly or, person or entity filed, any article of monetary value or other benefits, such as gifts, money, favor, promise or advantage, in exchange for what the authority, official or public employee has done, or omitted, or to perform any act or omission in the exercise of their functions related to a business or international trade, will be sentenced from four to eight years in prison and fined five hundred to one thousand days.

"The authority, officer or employee who requires or accepts from a nonresident alien, directly or indirectly, a gift, money, favor, promise or advantage or anything of monetary value, for himself or for another person or entity, in exchange omit to do or for having done or omitted any act, in the exercise of their functions related to a business or international trade, will be sentenced from four to eight years imprisonment and disqualification for the same period to hold office or public employment."

References:

Penal Code, Article 449, International Bribery.

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

Comments:

Penal Code Article 452 discusses embezzlement of public funds:

"Authority, official or public employee to give a different destination specified by law for public funds, real or personal property, money or securities belonging to any government, organs, agencies, entities devolved, decentralized, autonomous or enterprises state, municipality and autonomous regions or agencies dependent on some of them, whose administration, possession or custody have been entrusted by virtue of their position or functions of government, shall be punishable with two to five years in prison and disqualification for the same period, to exercise public office."

References:

Penal Code, Article 452, Embezzlement of Public Funds.

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

Comments:

Penal Code Article 458 discusses the use of confidential information:

"The authority, official or public employee who uses any confidential information which has been obtained because of or in connection with the role with the intention of obtaining an economic benefit to himself or a third party, shall incur the penalty of two to six years imprisonment and disqualification for the same period to exercise public office. If he effectively obtains desired economic benefit, the penalty shall be in the top half.

If it causes serious damage to the public or to third, the punishment shall be imprisonment of three to seven years and disqualification for the same period to exercise public office."

References:

Penal Code, Article 458, Use of Confidential Information.

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

Comments:

Penal Code Article 282 discusses laundering of money, property or assets:

"Whoever knowingly or should have known, personally or through another person, do any of the following activities:

- a) acquire, use, convert, hide, move, lock, custody, manage, capture, shelter, procure, sell, impose taxes, donate, simulate or extinguish obligations, invest, deposit or transfer money, property or assets or surrogates originating from illegal activities or any other act with the purpose of concealing or disguising the illicit origin, whether in a single act or the recurrence of events linked, regardless of whether any of these occurred within or outside the country;
- b) Prevent in any way the actual determination of the nature, source, origin or attachment of money, property, assets, securities or interests earned from illegal activities or consulting, management, finance, organizing companies and shell companies or performing acts with the purpose of concealing or disguising the illicit origin, whether in a single act or the recurrence of events linked, whether that occurred within or outside the country;
- c) Provide false or incomplete information to or from financial institutions and non-bank bank, insurance, securities, exchange, remittances, commercial or any other nature with the purpose of contracting services, opening accounts, making deposits, obtaining credit, business transactions or property, assets or other resources, when they come from or are derived from unlawful activity in order to conceal or disguise the illicit origin;
- d) Provide or provide identifiable information or the name or trade name of the partnership, corporation or other legal entity which is a partner or shareholder or to have any connection, whether or not legally constituted, regardless of spin the same, for the crime of money laundering, property or assets or perform any other activity of front men;
- e) Enter the country or remove property or assets derived from illegal activities using the customs posts or migration: land, sea or air, or anywhere in the country;
- f) seriously breaching duties of his office to facilitate the conduct described in the previous paragraphs.

"The above behaviors are constitutive of the crime when they have such illegal activity above those that are enacted as upper limit penalty of five or more years in prison.

"The laundering of money, property or assets is autonomous from the predicate offense and will be prevented, investigated, prosecuted, judged and sentenced by the authorities as such, in relation to illegal activities that might arise, for which no be required to establish that prior criminal proceeding in relation to previous illegal activity. For trial sufficient to demonstrate their link to that from which it came.

"These behaviors will be punished by imprisonment from five to seven years and disqualification for the same period for the exercise of the profession, trade or position, and a fine of one to three times the value of money, goods or assets in question."

References:

Penal Code, Article 282, Laundering of Money, Property or Assets.

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

Comments:

Penal Code Article 31 discusses conspiracy and proposal:

"There is conspiracy when two or more persons conspire for the commission of a crime and resolve on. There is proposal when it has solved a crime invites another person or persons to run it. The conspiracy and incitement to commit a crime punishable only in special cases expressly provided for by law."

Moreover, Section 393 discusses organized crime:

"Who is part of an organized criminal group or national or international structured band, two or more persons, existing for some time and acting in concert in order to obtain, directly or indirectly, a financial or any other reason, in order of committing one or more serious crimes will be punished with imprisonment from five to seven years."

"The penalty will increase its minimum and maximum extremes:

- a) In the third, if the author holds a position of superiority over the other people involved in the criminal organization, or if the offense is wholly or partially at the international level.
- b) twice if the offense is made punishable with less than fifteen years in prison.

The provocation conspiracy and proposal to commit the crime, shall be punishable by one to five years in prison."

References:

Penal Code, Article 31, Conspiracy and Proposal.

Organized Crime, Section 393.

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

Comments:

In September 2010, by Decree 227-2010, the president declared the creation of the National Commission for the Integral Development of the Good Governance. The intention in creating this entity was to comply with recommendations of the Anti-Corruption Fund. However, the new commission excluded the Comptroller General of the Republic as a permanent member. Also no funding source or available resources were established for the commission to perform its duties. Hence, it is seen simply as a measure to preserve appearances. (See: www.elnuevodiario.com.ni/nacionales/84933)

In a report submitted to the Organization of American States, Nicaragua outlined these legal advances against corruption:

- 1.1. Law No. 641, "Criminal Code of the Republic of Nicaragua," published in the Official Gazette, No. 83, 84, 85, 86 and 87 of 5, 6, 7, 8 and May 9, 2008.
- 1.2. Act No. 681, "Organic Law of the Comptroller General of the Republic and the System of Control of Public Administration and Supervision of State Property," published in the Official Gazette No. 113 of June 18, 2009.
- 1.3. Law No. 662, "Transparency Law and Business Entities of the Nicaraguan State," published in the Official Gazette No. 190 of Oct. 3, 2008.
- 1.4. Law No. 691, "Procedures Simplification Act and the Public Services," published in the Official Gazette No. 144 of Aug. 3, 2009.
- 1.5. Law No. 735, "Law on Prevention, Investigation and Prosecution of Organized Crime and the Administration of Seized, Forfeited and Abandoned Goods."
- 1.6. Law No. 737, "Administrative Contracting Law Public Sector," published in the Official Gazette No. 213 of Nov. 8, 2010.
- 1.7. Executive Decree No. 35-2009, "Code of Ethical Conduct for Public Servants of the Executive Branch," published in the

Official Gazette No. 113 of June 18, 2009.

1.8. Decree No. 70-2010, "Regulations for the Prevention, Research and Prosecution of Organized Crime and the Administration of Seized, Forfeited and Abandoned Goods," published in the Official Gazette No. 223 of Nov. 22, 2010.

1.9. Manual of Organization and Functions of the Special Committee to Investigate and Prosecute Crimes of Corruption.

1.10. Adoption of the rules of the judiciary, by agreement number 51 of the Supreme Court, according to the powers conferred by Article 164 of the Constitution and the Organic Law of Judicial Power, which aims to develop standards law contained in Law 501, "Judicial Career Law," and specifically, the administrative and financial management of the judiciary and entry systems, promotion and filling vacancies in the judiciary, in accordance with the principles of merit, responsibility, equality, publicity, stability, fairness, independence and expertise.

(See: www.oas.org/juridico/spanish/inf_prog1.pdf)

References:

Comptroller General of the Republic (Law 681).

National Police (Law 228).

Attorney General's Office (Law 411).

Public Prosecutor or Attorney (Law 346).

National Assembly through the Commission on Integrity (Law 606).

Judicial Branch by the Supreme Court of Justice (Law 260).

National Council for Combating Drugs (Law 177).

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.

75. Is the anti-corruption agency effective?

25

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | **No**

Comments:

It has already been explained that appointments to the branches of government are tied to the distribution of power between the major parties. Additionally, the Attorney General's Office is under the executive branch, like the National Police and the Ministry of Interior. Thus the main agencies responsible for investigating corruption are politically dependent.

References:

Comptroller General of the Republic (Law 681).

National Police (Law 228).

Attorney General's Office (Law 411).

Public Prosecutor or Attorney (Law 346).

National Assembly through the Commission on Integrity (Law 606).

Judicial Branch by the Supreme Court of Justice (Law 260).

National Council for Combating Drugs (Law 177).

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 various bodies (agencies) that form the anti-corruption system in Nicaragua cannot be free from political interference

because of the way they were structured. It was thought to be controlled by the two major political parties for the years 1999-2000 (PLC and FSLN). The Comptroller General of the Republic, the Supreme Court and the Supreme Electoral Council were organized under the same concept of power sharing that exists in the National Assembly, with party representation, such as parliamentary groups, to negotiate all the activities and possible resolutions.

Corruption in Nicaragua has a systemic character. There are two reasons for this: The interpenetration of political and economic interests subverted autonomy and neutrality of the state, which is reflected in the prebendary and permanent use of the institutions by political parties (majority) for the benefit private. Second, the weight of corruption is found mainly in the influence peddling, abuse of functions and illicit enrichment. These forms of corruption are related and mutually reinforcing, encouraged by a traditional context of low risk of punishment for corruption, forming a system that feeds on itself and reproduces itself.

The best example of this whole corrupt system is how the FSLN handled funds from companies ALBA. These funds are supposed to represent cooperation on the part of Venezuela with Nicaragua. However, the FSLN has been creating private companies and acquiring businesses (Seminole's Hotel, TV Channels, etc.) that are managed by the family Ortega-Murillo and people close to their political party. A known Sandinista savings and credit cooperative (Caruna) has moved to manage huge amounts of money (about 6.3 percent of GDP) from the alleged Venezuelan cooperation and with that money make loans to the state without any controls on the part of state institutions. (see: www.confidencial.com.ni/articulo/3347/alba-caruna-movera-c-8-700-millones-en-2011-sin-supervision)

There was also the case of Walter Porras, a prominent member of the FSLN. As reported in Revista ENvivo, "El Nuevo Diario published a long and detailed list of the corrupt acts of Walter Porras, general director of Nicaragua's tax office (DGI) and an Ortega yes man. The information was leaked by DGI officials, after which Porras fired a long list of people on suspicion of having reported his offences. A month after such overwhelming, scandalous information, Porras was still ensconced in his post."

Then there is Managua city hall, where National Police discovered up to 150 checks issued without support or accounting justification. Millions of cordobas have been extracted from the state treasury without the anti-corruption bodies able even to carry out thorough research.

These are the best examples of the inability of anti-corruption bodies to operate and their partisan pitch.

References:

Joint Donor Fund for Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti-Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un Caso Exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

Confidencial, Albaleaks, March 2011, <http://www.confidencial.com.ni/albadocs/3>

Confidencial, Ivan Olivares, April 30, 2011, "Walter-gate en DGI," www.confidencial.com.ni/articulo/3851/descubren-lidquo-walter-gate-rdquo-en-dgi

Revista Envio, January 2011, "Nicaragua Briefs, Zero Corruption?" www.envio.org.ni/articulo/4297

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:

With Decree 03-2010, President Daniel Ortega exercised his executive power to override the authority of the National Assembly to appoint the justices of the Supreme Court and members of the Comptroller General of the Republic. Similarly, Aminta Granera was appointed chief of the National Police, in violation of Law 228 (Law of the National Police). These examples demonstrate the fragility of the system, which can be disrupted without consequence to the highest level because of political and personal interests of the chief executive.

Transparency International's joint 2010 study with Nicaraguan national NGO Ethics and Transparency reflects these realities, as do reports by other international organizations like the Organization of American States and donor countries.

References:

La Prensa, Lucydalia Baca and Lucía Navas, Oct. 27, 2010, "Nicaragua Entre Países Más Corruptos del Continente," www.laprensa.com.ni/2010/10/27/politica/41875

Joint Donor Fund for Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti-Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un caso exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

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 appointments depend critically on the correlation of political forces. More important than professional qualities are the partisan loyalties, friendships and influences that someone may have within his party.

The national director of the National Police, Aminta Granera, could remain in office, even against the special law of the institution, through appointment by Daniel Ortega. Others who remain in office the same way are judges of the Supreme Court (Rafael Solís and Armengol Cuadra, Sandinistas) and controllers (Guillermo Arguello Poessy, Luis Angel Montenegro, Fulvio Palma, Jose Pasos and Lino Hernandez) whose terms of office had ended by law.

References:

El Nuevo Diario, José Adán Silva, May 26, 2011, "Show y Boicot en Comisión de Probidad," www.elnuevodiario.com.ni/nacionales/103257

Joint Donor Fund for Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti-Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un caso exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

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.

Comments:

In Nicaragua various entities make up an anti-corruption system, including the National Police and the Comptroller General of the Republic, together with the Public Ministry. But also within the Attorney General's offices are links to the system.

Appointments depend critically on the correlation of political forces. This is true for the Comptroller's Office and the General Attorney or Prosecutor, where partisan loyalties and friendships, and influences within a political party are more important than professional qualities. This is a little less so with the National Police, which has a legal mechanism for promotion. But as has been demonstrated with the appointment of the police's current national director, it may be mocked.

Note also that the most important changes in the National Police Headquarters have been established for five years and have not coincided with the period of this review. However, there have been cases such as changing the spokesperson that drew media attention because it involved the appointment of an officer close to Francisco Díaz, who is Sub Director of the National Police and legal relative of Daniel Ortega. (See: www.laprensa.com.ni/2011/04/12/nacionales/57724)

The period under investigation also highlighted the shortfall that prevents wage adjustments for the National Police or expansion of the quantity and quality of the police. (See: <http://www.elnuevodiario.com.ni/nacionales/87722>)

Each of the entities in the anti-corruption system faces budget problems and does not have sufficient and well-trained staff to conduct the proper performance of its activities.

References:

Francisco Javier Bautista Lara, July 2011, "Evolución de la Policía de Nicaragua," www.franciscobautista.com/download.php?i=245

Joint Donor Fund for Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti-Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un caso exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

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.

Comments:

All entities related to the activities are funded by the State Anti-Corruption. There are even support programs such as the Anti-Corruption Fund that integrate different cooperating countries and international organizations. Different studies show that the funds allocated to organizations like the National Police and the Comptroller's Office are insufficient.

References:

Joint Donor Fund for Anti-Corruption, Miguel Peñailillo and others, November 2009, "Diagnóstico de la Corrupción en Nicaragua," www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf

U4Anti-Corruption Resource Centre (www.U4.no), Maria Luisa Babini, 2009, "Fondo Anticorrupción en Nicaragua (FAC): ¿Un caso exitoso?" www.cmi.no/publications/file/3511-fondo-anticorrupcion-en-nicaragua-fac.pdf

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:

Each entity involved issues annual reports of its activity, but does not delve into the details of its research. The Comptroller's Office, being obliged by law, maintains much information available on its website, but often the site is down or does not reflect the most important cases.

References:

Official websites of each related entity:

Management reports of the Comptroller,
www.cgr.gob.ni/cgr/index.php?option=com_docman&task=cat_view&gid=61&Itemid=53

Citizen complaints office of the Attorney General's Office,
http://pgr.gob.ni/index.php?option=com_content&view=article&id=1104&Itemid=253

Statistical Yearbook National Police,
www.policia.gob.ni/cedoc/sector/estd/fich.htm

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 does not have capacity to coerce and even its resolutions can be evaded via the Amparo, which is what usually happens. Many of its resolutions are based in the Supreme Court, sometimes for many years. The National Police have no power to sanction or prosecute. Criminal action is exercised exclusively by the Justice Department, and the authority to judge and execute judgments corresponds to the judiciary. Instead of a harmonious system, there is a set of entities that hinders their working together.

References:

El Nuevo Diario, Luis Galeano, Nov. 14, 2010, "¿Glosas para qué?"
www.elnuevodiario.com.ni/nacionales/87989

La Prensa, Elizabeth Romero, Aug. 8, 2011, "Policía 'echa tierra' a Corrupción Estatal,"
www.laprensa.com.ni/2011/08/08/nacionales/69207#.Tsc0-FZJ9i8

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:

Investigative journalists have shown that although the authorities responsible for combating corruption are aware of crimes against the state of Nicaragua, they do not act against the officials because of pressure and partisan interests. For example, the Comptroller's Office did not investigate the case of Empresa Nicaraguense de Petroleo (PETRONIC), a Nicaraguan oil company, because the state officials involved would not permit it.

Any of the entities that form the anti-corruption system may initiate investigations independently, except the Supreme Court. However, it is becoming a tradition to refer cases to the Comptroller officials. A case that was not investigated was that of Walter Porras from the Department of Revenue.

References:

Confidencial, Iván Olivares, May 8, 2011, "Contraloría Auditará a Porras en la DGI," www.confidencial.com.ni/articulo/3918/contraloria-auditara-a-porras-en-la-dgi

La Prensa, Octavio Enríquez, Jan. 20, 2010, "Contraloría Dice que No la Dejan Investigar Petronic," www.laprensa.com.ni/2010/01/20/nacionales/13639#.TsAMO1ZJ9i8

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.

100 | 75 | 50 | 25 | 0

Comments:

Some complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Sometimes complainants are referred from one office to another, despite the fact that the Comptroller, the Attorney General, the Police or the Prosecutor each can initiate its own investigations independently of one another. Political will of the ruling party affects whether the Comptroller initiates investigations.

References:

Confidencial, Iván Olivares, May 8, 2011, "Contraloría Auditará a Porras en la DGI," www.confidencial.com.ni/articulo/3918/contraloria-auditara-a-porras-en-la-dgi

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.

100 | 75 | 50 | 25 | 0

Comments:

After the case in which a forgery and fraud against the mayor of Managua was investigated, the news came to light that the official in charge of the Citizen Complaints Office of the Comptroller has family ties to one of the City Hall officials who was mentioned by the accused but never investigated by the authorities. The public does not trust the authorities, and citizens have no real protection if they make complaints. Two councilors have been tried and convicted of libel as a result of this case.

References:

La Prensa, Anne Pérez Rivera, May 21, 2011, "Concejales: CGR 'infiltrada' con Hija de Loyda García,"
www.laprensa.com.ni/2011/05/21/nacionales/61095#.TsAN4FZJ9i8

El Nuevo Diario, Jessy Ampié, April 19, 2011, "Autoridades de ALMA Amenazan a Concejales y Medios Escritos,"
www.elnuevodiario.com.ni/nacionales/100092

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.

46
6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

Yes | No

Comments:

Article 34 of the Constitution states: "Each defendant is entitled, on equal terms to the following minimum guarantees: ... 9) In proceedings before a higher court to have his case reviewed if it had been convicted of any offense ... "

References:

Constitution, Article 34.

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:

The delay of justice is a fairly widespread problem in Nicaragua. Many prisoners spend years awaiting response to its resources. Partisan influence is also visible in many cases.

References:

Report for 2010 of the Nicaraguan Human Rights Center.

Report of the Nicaraguan Permanent Human Rights Commission 2010 (In Spanish), www.cpdh.org.ni/Pdf/informeacceso2010/INFORME2010CPDH.pdf

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:

The levels of corruption within the judiciary increase the costs of many cases. In some cases, lawyers linked to the ruling party make requests for extra money to expedite the process. That money rarely comes to the staff, and those who are scammed in such a manner have no mechanism to defend themselves.

References:

Report for 2010 of the Nicaraguan Human Rights Center.

Report of the Nicaraguan Permanent Human Rights Commission 2010 (In Spanish), www.cpdh.org.ni/Pdf/informeacceso2010/INFORME2010CPDH.pdf

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney 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. Attorney 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. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

50

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Judgments in the criminal system usually follow the protocols of written law. There are exceptions when political concerns, corruption or other flaws in the system decide outcomes. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

Although formal political investigations have demonstrated a link between public officials and openly criminal acts, none has been processed during the Sandinista government.

References:

Confidencial, Carlos Salinas Maldonado, May 9, 2011, "U.S. Accuses Supreme Court Justices in the Case Narcos," www.confidencial.com.ni/articulo/3925/ee-uu-acusa-a-magistrados-csj-en-caso-narcos

El Nuevo Diario, Ernesto García, March 10, 2011, "ALMA: Rivas Method," www.elnuevodiario.com.ni/nacionales/96665

La Prensa, Eduardo Cruz, May 29, 2011, "Walter Porras Amador: 'Salí Más Pobre de la DGI,'" www.laprensa.com.ni/2011/05/29/entrevista/61873#.Tr8relZJ9i8

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. In practice, are judicial decisions enforced by the state?

50

79a. In practice, are judicial decisions enforced by the state?

Comments:

Not all judgments are enforced by the state. Certain areas of law may be ignored, and certain parties appearing before the courts may evade or delay enforcement. Sometimes the state lacks the will to consistently enforce decisions.

It is unlikely that a sentence would be issued against a known member of the ruling party. The possibility of hiring a lawyer associated with the party avoids or minimizes consequences.

The most visible and relevant cases in which the government openly violates the sentences are in the field of labor rights. The case of workers in the Ministry of Transport and Infrastructure is the most prominent of them.

References:

Report for 2010 of the Nicaraguan Human Rights Center.

Report of the Nicaraguan Permanent Human Rights Commission 2010 (In Spanish), www.cpdh.org.ni/Pdf/informeacceso2010/INFORME2010CPDH.pdf

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?

75

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

Comments:

The Constitution, Article 129, states: "The Legislative, Executive, Judicial and Electoral independent of each other and coordinate harmoniously, subject only to the supreme interests of the nation and the provisions of this Constitution."

Article 159 states: "Courts of Justice form a unitary system whose highest body is the Supreme Court. The Judiciary will receive no less than 4% of the General Budget of the Republic. There are Courts of Appeals, District judges, local judges, whose organization and operation will be determined by law. The judiciary is established to be regulated by law. The judicial power to judge and execute judgments corresponds exclusively to the judiciary. The military courts know only the strictly military crimes and misdemeanors, subject to the instances and appeals to the Supreme Court."

References:

Constitution, Articles 129 and 159.

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 includes 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.

Comments:

The Nicaraguan judicial system has been quite partisan, and the Supreme Court works as a partisan parliament or congress. The magistrates have established regional routes in which each exercises control over the appointed judges. Rulings depend on the political interest or personal ties of the parties, in most cases.

Judges, rather than authorities of a state power, act as political activists: "Two Supreme Court justices appointed by Ortega led a violent demonstration outside a Managua hotel where opposition members of Congress were trying to meet. The legislators are seeking to overturn a decree by Ortega illegally extending the judges' terms. As Justices Rafael Solis and Armengol Cuadra headed a mob outside the Holiday Inn hotel, photographs taken by the Associated Press showed masked militants firing homemade mortars and rockets. Reporters on the scene asked Solis about the criminal mischief he was overseeing. Opined the justice: "The owners have insurance."..." (Quoted from: http://voices.washingtonpost.com/postpartisan/2010/04/leftist_thugocracy_in_nicaragu.html)

In October 2010, Judge Ana Molina reported being the victim of personal anger from the Sandinista judge of the Supreme Court of Justice Alba Luz Ramos. On the occasion of the alleged personal feud, Molina was suspended, and the suspension order was signed by the Sandinista magistrates Rafael Solis and Armengol Cuadra. Molina claims to have been the victim of a robbery at his home and says the National Police discovered the perpetrators of the robbery but did not continue the case because the thieves had links with high-ranked judicial officials. (www.elnuevodiario.com.ni/nacionales/86106)

In February 2011, Judge Melvin Vargas was moved from the city of Rivas to Managua, to protect him from a confrontation and threats expressed by justices of the Court of Appeal in Granada. According to the information, Vargas refused to suspend execution of the sentence of a convict. Then, in a judgment from the Court of Appeals in Granada, the defendant was granted freedom, and Vargas was warned that he could be prosecuted and convicted for his decision. (<http://www.elnuevodiario.com.ni/nacionales/93931>)

References:

Report for 2010 of the Nicaraguan Human Rights Center.

Report of the Nicaraguan Permanent Human Rights Commission 2010 (In Spanish), www.cpdh.org.ni/Pdf/informeacceso2010/INFORME2010CPDH.pdf

El Nuevo Diario, Lesber Quintero, Feb. 3, 2011, "Trasladan a Managua a Juez Amenazado por TAG," www.elnuevodiario.com.ni/nacionales/93931

El Nuevo Diario, Carlos Larios and Martha Vasquez, Oct. 20, 2010, "Jueza Acusa de Corrupto el Sistema Judicial," www.elnuevodiario.com.ni/nacionales/86106

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:

The system is supposed to make a random selection; however, it has been evident in cases of political significance that cases will be decided by the same one or two judges (out of eight possible).

References:

Organic Law of the Judicial Power (Law 260), Articles 177 and 182.

Decree 63-99, Articles 82 to 84, Regulation of Law 260.

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

Comments:

Judicial Career Law (Law 501) , Chapter V

Independence, Stability and Transfer

"Article 33: Independence and Obligation to Respect the Constitution. As security for citizens, judges and magistrates are independent in the exercise of their judicial duties and are subject only to the Constitution and the law, with strict respect for the principle of hierarchy.

All citizens, without exception, are obliged to respect the dignity and independence of judges and magistrates.

Article 34: Internal Independence. Judges and magistrates are not subject to any authority in the exercise of its jurisdiction, and shall comply with the provisions of the Constitution and laws.

Higher judicial authorities cannot, acting individually or collectively, give directions or make recommendations to their inferiors on the application or interpretation of the legal order on matters submitted to it, without prejudice to the power of judicial review of decisions by resources legally established.

For purposes of administration of justice to ensure that it is prompt and complete, you can rotate the superior general instructions of a procedural nature.

Article 35: Protection of Judicial Independence.

When a judge or magistrate in the exercise of their judicial functions, are considered to be disturbed in their independence, report to the Supreme Court.

This, once checked the reported terms, take all necessary measures for the cessation of the disturbance and the requirement of the liabilities incurred by the author instead of them.

Article 36 : Job Stability. Judicial race officials enjoy job security as a guarantee of its independence and may only be suspended or dismissed from their posts for reasons specified in this Law

When you rise to the suspension or removal from office or any other disciplinary action, it would take effect by the bodies established by law, respecting the right to due process, and especially hearing, defense, contradiction and remedies that apply, and as accrued employee benefits due to him.

Article 37: Internal stability. The guarantee of stability of judge extends to transfers, promotions and advancement, which requires the free consent.

In exceptional and limited time may be set the possibility of promotion or transfer of the judicial officer for service or modification needs of the judicial organization. For the same reasons, to enforce a court, the agreement shall state the reason and duration. After the time return to their jobs. ..."

References:

Judicial Career Law (Law 501), Chapter V, Independence, Stability and Transfer.

Article 33, Independence and Obligation to Respect the Constitution.

Article 34, Internal Independence.

Article 35, Protection of Judicial Independence.

Article 36, Job stability.

Article 37, Internal stability.

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

Comments:

The main institutions of human rights in Nicaragua have no reported cases in the investigation period.

References:

Report for 2010 of the Nicaraguan Human Rights Center.

Report of the Nicaraguan Permanent Human Rights Commission 2010 (In Spanish),
www.cpdh.org.ni/Pdf/informeacceso2010/INFORME2010CPDH.pdf

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

Comments:

The main institutions of human rights in Nicaragua have no reported cases in the investigation period.

References:

Report for 2010 of the Nicaraguan Human Rights Center.

Report of the Nicaraguan Permanent Human Rights Commission 2010 (In Spanish),
www.cpdh.org.ni/Pdf/informeacceso2010/INFORME2010CPDH.pdf

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?

61

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

The main institutions of human rights in Nicaragua have no reported cases in the investigation period.

References:

Report for 2010 of the Nicaraguan Human Rights Center.

Report of the Nicaraguan Permanent Human Rights Commission 2010 (In Spanish),
www.cpdh.org.ni/Pdf/informeacceso2010/INFORME2010CPDH.pdf

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:

Cases have been reported in terms of domestic violence, in which the victim receives poor care by the police and/or judicial proceedings. With the recent criminalization of therapeutic abortion in 2010, IACHR had to provide protection to a woman who is not subject to chemotherapy treatment because of pregnancy. It was also known in the media a rape case involving a citizen allegedly linked to the ruling party and the difficulties of access to justice faced by the victim.

References:

Confidencial, Roberto Fonseca, Nov. 1, 2010, "Nicaragua Rehúye Firmar y Ratificar Protocolo CEDAW,"
www.confidencial.com.ni/articulo/2252/nicaragua-rehuye-firmar-y-ratificar-protocolo-cedaw

El Nuevo Diario, Francis Bustos, Aug. 15 2010, "Mujer Nica Enfrenta 'las Siete Plagas,'" www.elnuevodiario.com.ni/especiales/81266

Comisión Permanente de Derechos Humanos de Nicaragua, "Access to Justice, for 2010," www.cpdh.org.ni/Pdf/informeacceso2010/INFORME2010CPDH.pdf

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

Comments:

Law 260, Article 212, states: "The Directorate will provide a public defender when requested verbally or in writing for those who do not have the economic capacity previously checked for the cost of a private attorney and that they be charged or prosecuted criminally, as well as a counsel to the supply or the claimants or litigants in civil, commercial, family law and workers in agriculture or labor."

Article 218 of the same law states: "Where there is no public defender assistance of the accused or the prosecution will take counsel."

"The office of Public Defender is free, and is appointed by rotation among the lawyers of the town, and failing that, among graduates of law schools."

"A proposal from the Public Defender's Office, the Supreme Court, authorize the exercise of the Public Defender by interns or those understood in law in those places that need it."

References:

Law 260, Articles 212 and 218.

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:

The main problem is the number of available attorneys and territorial coverage. The professional quality of the existing lawyers is good, but the workload is often limited to a defense or rebuttal evidence.

References:

El Nuevo Diario, Fátima Torrez González, Oct. 30, 2010, "Delinquir Tiene su Precio, Defenderse También," www.elnuevodiario.com.ni/sucesos/86866

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

Comments:

The average annual income in Nicaragua in 2010 was US\$1,118, and the cost of a criminal case is between \$100 and \$ 5,000. Civil cases are considered more expensive and depend on the value of what is discussed. There is a code of judicial duties, but it has fallen into disuse. Prices are negotiated between client and lawyer with no fees, references or preset parameters.

References:

El Nuevo Diario, Fátima Torrez González, Oct. 30, 2010, "Delinquir Tiene su Precio, Defenderse También," www.elnuevodiario.com.ni/sucesos/86866

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney 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. Attorney 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. Attorney 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:

The average annual income in Nicaragua in 2010 was US\$1,118. and the cost of a criminal case is between \$100 and \$ 5,000. Civil cases are considered more expensive and depend on the value of what is discussed. There is a code of judicial duties, but it has fallen into disuse. Prices are negotiated between client and lawyer with no fees, references or preset parameters.

References:

El Nuevo Diario, Fátima Torrez González, Oct. 30, 2010, "Delinquir Tiene su Precio, Defenderse También," www.elnuevodiario.com.ni/sucesos/86866

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. Attorney 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. Attorney 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:

The greatest difficulty lies in the rural areas. However, the efforts made by staff volunteers in a program of judicial facilitators have been recognized internationally. The facilitators have a presence in 87 municipalities (of 153, for a coverage of 57 percent). Although its capabilities are limited to mediation and counseling, the work helps to partially satisfy the needs of the population in those territories. The facilitators judicial system, a program of the Supreme Court, allows access to justice in remote locations.

References:

El Nuevo Diario, Róger Olivas, Feb. 22, 2010, "80 Facilitadores Judiciales Se Capacitan en Chinandega," <http://archivo.end.com.ni/2010/02/22/departamentales/119558>

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

33

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Currently, Nicaragua's president has violated Law 228, Law of the National Police, to allow the National Police chief to remain in office despite the chief's having served the established five years. Until the Sandinistas came to power, the National Police force was seen as a professional institution that worked according to its own law. This law (228) regulates the manner in which the entity is accessed and in which police grades climb.

References:

La Prensa, Editorial, Aug., 19 2011,
www.laprensa.com.ni/2011/08/19/opinion/70320#.Tr9_nVZJ9i8

Confidencial, Álvaro Navarro, July 22, 2011, "Ortega Colocó a Jefa de Policía en el Filo de la Ilegalidad,"
www.confidencial.com.ni/articulo/4447/ortega-coloco-a-jefa-de-policia-en-el-filo-de-la-ilegalidad

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:

For 2010, the budget was around 4 percent of the total budget. Traditionally it does not cover everything requested by the police to develop their activities and improve some structural conditions that are required.

References:

El Nuevo Diario, Carlos Larios, Oct. 24, 2010, "MINGOB Castigado con Presupuesto," <http://archivo.elnuevodiario.com.ni/2010/10/24/nacionales/134570>

La Prensa, Elizabeth Romero, Oct. 23, 2010, "Más Jóvenes Dejan Filas de las Pandillas," www.laprensa.com.ni/2010/10/23/nacionales/41500#.Tr-HKFZJ9i8

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 National Police have been brought under increasing political control. In March 2011, the National Police authorized a protest march against the government. The police also authorized for the Sandinista Youth a march to confront the opposition on the same day at the same time. Subsequently, the National Police established a barrier that prevented the opponents from completing their march. This procedure has occurred every time the opposition has expressed its intention to act in the streets.

References:

La Prensa, Lucydalia Baca, April 2, 2011, "Sociedad Civil Marchó a Pesar de Represión Policial," www.laprensa.com.ni/2011/04/02/politica/56700#.Tr-Is1ZJ9i8

Confidencial, Carlos Salinas Maldonado, May 1, 2011, "EEUU: 'Granera Perdió el Control de la Policía,'" www.confidencial.com.ni/articulo/3855/eeuu-ldquo-granera-perdio-el-control-de-la-policia-rdquo

Confidencial, Carlos Salinas Maldonado, Feb. 4, 2011, "Policía Bloquea Marcha Opositora," www.confidencial.com.ni/articulo/3645/policia-bloquea-marcha-opositora

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?

63

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

Regulation of Law of the National Police, Decree No.26-96, Article 160, states: "The citizen complaints made in respect to the conduct of police personnel should be presented orally to the body of Internal Affairs, who will investigate, draw conclusions and solve the corresponding measures on their level of competence."

Article 161 of the same law states: "The people who are related or involved as witnesses by appointment will be required to contain: Name of the city, address, date and time of the appointment, shall specify the purpose of it and should be brought to Affairs."

Article 162 of the same law states: "They shall inform the citizens who makes a report or complaint investigation results and actions were applied on their case. The body of Internal Affairs may act ex officio, for guidance of the Director General or the Inspector General to the assumption of a crime committed by members of the National Police."

References:

Regulation of Law of the National Police, Decree No. 26-96, Articles 160 to 162.

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:

The best-known cases of complaints to Internal Affairs, including those when human rights organizations accompanied complainants, have not been resolved. The human rights ombudsman acknowledges that the National Police agency is the entity against which more complaints about human rights violations are filed. At the same time, the attorney stated that the National Police usually receive their recommendations and put them into practice.

Eliecer Marin was injured in 2008, and his case was never investigated by the National Police. The young man said that in July 2010 he was taken from a hospital with treatment stopped because he was not a Sandinista. Similarly, there are reports of injuries caused by Sandinista party members to citizens opponents, and the cases were never investigated or clarified despite having the data from the aggressors.

References:

Nicaraguan Human Rights Center, report for 2010.

El Nuevo Diario, Tiara Sánchez, April 12 2011, "Cabezas: 'La Policía Es la Principal Violadora de Derechos Humanos,'" www.elnuevodiario.com.ni/nacionales/99543

La Prensa, July 28, 2010, www.laprensa.com.ni/2010/07/28/nacionales/32851

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:

Law 228, Article 19, states: "The Inspector General reports directly to the Director General and his powers are as follows:

- 1) Ensure full compliance with the Constitution, laws, regulations and other legislative provisions affecting the police, caring for the timely and fair correction of faults incurred by its members.
- 2) Ensure the continued respect for human rights.
- 3) Conduct inspections of various units and the police in order to determine the operation of these and the good service of members.
- 4) Care for the prestige of the institution by providing the necessary investigations before claims are formulated by authorities or individuals in reaction to police conduct, or violation of the rights and guarantees enshrined in the Constitution by its members.
- 5) Verify compliance with the instructions and orders of the Director General.
- 6) Respond to human rights organizations both nationally and internationally.
- 7) Any other as assigned by the Director General."

References:

Law 228, Article 19.

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

Comments:

Although most cases do not receive publicity, we know that the Internal Affairs Directorate of the National Police initiated inquiries that ended with penalties for violators.

For example, a video shared on social media platforms showed two Nicaraguan police officers accepting a bribe from foreign motorcycle riders. The National Police Headquarters reported that they officially initiated an investigation and gave those involved a dishonorable discharge. The public does not know whether the Nicaraguan police officers were tried and convicted of the crime. Similarly, in August 2010, an officer of the National Police was dishonorably discharged for sexual abuse.

References:

El Nuevo Diario, Carlos Larios, May 24 2011, "Baja Deshonrosa a Tres Policías de Bluefields," www.elnuevodiario.com.ni/nacionales/103022

Canal 100% Noticias, July 2011, www.canal15.com.ni/videos/2992

El Nuevo Diario, www.elnuevodiario.com.ni/sucesos/80534

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:

The Immunity Law does not cover any level of police officers.

Law 228, Article 54, states: "The members of the police are personally and directly responsible for the acts in the exercise of their professional duties carried out and that infringe or violate the laws and regulations governing them."

Article 55 states: "The authorities when they become aware that one or more of its members acted contrary to the Fundamental Principles of Performance, (will) subject (them) to the disciplinary regime in the case of administrative errors, or to the order of the competent court if it were misconduct or crime."

Article 56 states: "Members for acts or omissions arising from the service were accused, arrested during the process remain in police units."

References:

Law 228, Articles 54 to 56.

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:

Although many reported cases by citizens against the National Police through the Directorate of Internal Affairs are real crimes, few of these complaints go to the attention of judicial authorities.

References:

Nicaraguan Human Rights Center, Report for 2010.

La Prensa, Aug. 7, 2010, "Policías de Ometepe Serán Procesados."
www.laprensa.com.ni/2010/08/07/nacionales/33899#.Tr_4dVZJ9i8

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.