



Final report of answers of the Nicaraguan Civil Society III Round of review for the Inter-American Convention against Corruption (IACAC)



EXECUTIVE SUMMARY

In the frame of the III Round of review for the Inter-American Convention against Corruption (IACAC), Nicaragua registers some advances in the approval of anticorruption Laws regarding to the Convention.

Nevertheless, the new legal frame lacks an effective implementation, because the organs entrusted to make it possible are assigned with a limited budget, the technical and specializing staff is not sufficient, plus the fact, that those organs are extremely politicized and widely discredited.

According to the topics issued in the III round, Nicaragua is not provided with a legislation that explicitly denies, prevents or restricts tributary benefits for payments that any person or society does in violation of against-corruption laws, establishing the corresponding sanctions and classifying the issues that will be ruled under this law. The other way around, there exist some legal dispositions that indirectly prevent civil servants the securing of tributary benefits or any type of authorization on behalf of the State. In the presence of these problems, it is necessary to indicate the need of incorporating into the Nicaraguan legal frame a law that tackles this subject-matter.

On the other hand, the Penal Code (Law 641), prohibits clearly and sanctions the bribe of national or foreign civil servants, likewise, establishes the mechanisms to assure that the mercantile societies and other types of associations should keep records that reflect the assets acquisition and alienation and that establish sufficient countable internal control panel that allow his personnel to detect acts of corruption, 562 are contemplated in the Political Constitution, the Code of Commerce of the Republic of Nicaragua and the Law: Tributary code.

The crime of illicit enrichment is defined in the Nicaraguan legislation as a crime against the public administration (Penal Code, title XIX, chapter 5, article 448), but not as an independent/autonomous act of corruption. In this effect, the pertinent mechanism used to know the civil servants patrimony increasing are the probity declarations; nevertheless this mechanism has been slightly effective because the General Controller's office (CGR) does not give the due monitoring, not even to the denunciations released and sustained in the written mass media.

Objectively, Nicaraguan State does not demonstrate a proactive attitude to fight illicit enrichment, in sight that the formal denunciations made at the corresponding institutions (General Controller's office and public prosecutor's office) have not prospered so far.

On the other hand, there are no advances as for the definition of "fraudulent use" as an act of corruption specifically, although the Penal Code contemplates penal crimes linked to the catalogue of conducts described in the Article VI of the Convention, such as the bribery committed by authority, official or by individual, fraud, peculation, among other criminal precept.

The IACAC is not considered to be the juridical base for extradition because the Nicaraguan Constitution (Arto. 43 Cn) mandates not to extradite nationals; neither the Convention is invoked for whom are prosecuting this crime to make the right of the States Parts prevail. In this sense, it is necessary that the Nicaraguan State generates the necessary conditions to legally and effectively process, beyond not extradition to the responsible of crimes of penal order. Just as well, there arises the need to approve and homologates Criminal law rules related to the extradition.

As regards to the recommendations of the first and second round of review, Nicaragua has comply with the approval of some important laws: (Law 681): " Organic law of the General Controller's office"; (Law 438): Law of Probity for the Civil servants; (Law 621): Law of Access to the Public Information; (Law 476): Law of Civil Service and Administrative Career; (the Law 502): Law of Administrative Municipal Career; the Law 501, Law of Judicial Career and the Law 586: Law of career for



Final report of answers of the Nicaraguan Civil Society III Round of review for the Inter-American Convention against Corruption (IACAC)



government attorneys; and recently there was approved the Code of Ethical Conduct of the Public Servants of the Executive.

Nevertheless, mostly, the laws previously mentioned have represented in practical terms any guarantee of transparency, good governance not even democracy, if we consider that institutions as the General Controller's office of the Republic and the Supreme Court are politicized, lacking in autonomy, plus being devoid of the necessary budget to fulfill their responsibilities.

- The creation of a system that properly restored that guarantees of protection to the citizens and civil servants who denounce acts of corruption.
- To create mechanisms that limits the use and abuse of the form of exclusion of ordinary procedures and direct procurement contemplated in the Law 323: Law of Procurements of the State that have represented between 2007 and 2008, 359 million dollars.
- To generate the necessary conditions so that the efforts of reform to the normative frame of government procurements allow to guarantee a future regulative frame that expires both with the international standards and with the principles of Transparency, publicity, equality, free competition and efficiency.
- To publish the results of the evaluations to the system of state procurements to give place to possible contributions on behalf of such interested sectors as the Private sector, the Civil Society among others.
- To rule the Law 501 of Judicial Career facing the establishment of a system for public contest in order to select judicial officials, accordingly to the Article. 3 contended in the Law 501 and with rigorous fidelity at the principle of merit.
- To reform the Law of probity of the Public Servants (Law 438) in order to make obligatory the publication of the probity declarations based on the article 66 and 130 paragraph 2 of the Constitution of Nicaragua.
- To provide to all the institutions of the State with the budgetary and human resources for the functioning and immediate implementation of the Law of Access to the Public Information (Law 621) with emphasis on those institutions where has not being initiated the creation of the Offices of Access to the Public Information.
- To recapture the mechanisms and good practices of previous administrations as for the wide and effective participation of the Civil Society in the decision-making process of public politics for the sake of the development of the country.
- Likewise, it worth mentioning that the State of Nicaragua is hanging of expiring in some fundamental issues for the fulfillment of the existing legislation especially as for reforming the law of immunity, which covers the high-range civil servants and which reduces the impact of the anticorruption legislation. In similar circumstances the Electoral Law, keeps on supporting an important margin of discretionarily with regard to the finance of campaigns, internal democracy of the political parties and forms of deputies' selection.