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**INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS
IIHR**

**FINAL REPORT
PROJECT "ORGANIZATIONAL LAW OF THE
JUDICIARY OF NICARAGUA"**

**San Jose, Costa Rica
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**INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS
IIHR**

FINAL REPORT

ORGANIZATION

Inter-American Institute of Human Rights

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INSTITUTION FOR WHICH PROPOSAL IS INTENDED

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I INTRODUCTION

In accordance with the regulations of Grant No 524-A00-968-900044-00 of the United States Agency for International Development (USAID/Nicaragua) to the Inter-American Institute of Human Rights (IIHR or the Institute), the IIHR submits its final report on the activities that took place from September 16, 1996 to December 15, 1998 that were in whole or in part funded by USAID

II IIHR-BACKGROUND

The Inter-American Institute of Human Rights is an autonomous international institution of an academic nature devoted to human rights education, training, research and promotion. It was created in 1980 under an agreement between the Inter-American Court of Human Rights and the Republic of Costa Rica, where its headquarters are located.

The Institute's mission is to promote and strengthen democracy and respect for human rights throughout the Americas by means of specialized training, research, education, political mediation and technical assistance for governmental and civil society bodies and international organizations.

In its activities the IIHR treats human rights as independent and inter-related principles and believes that guarantees of civil and political rights must be accompanied by the full realization of economic, social and cultural rights. Its work is carried out by interdisciplinary teams, which permits specialists from different geographical and professional areas to make complementary contributions to the analysis and resolution of the principal problems confronting the region.

The IIHR's governing body is its Board of Directors, which is comprised of twenty-seven experts in the field of human rights, elected in their individual capacity, who come from sixteen countries of the Americas. The Executive Directorate and the technical and administrative staff of the IIHR are responsible for the execution of the programs adopted by the Board.

PROGRAM AREAS OF THE IIHR

a Education

This basic area of the Institute is comprised of the **Center for Educational Resources (CRE)**, which has a two-fold mission serve those outside the IIHR as well as the programs of the Institute itself through technical assistance with respect to teaching materials, methodology and educational projects in general, the **Educational Operations Program**, which designs, executes and evaluates the annual Interdisciplinary Course, principal academic activity of the IIHR, and the Specialized Regional Courses, the **Information Unit**, which administers the Joint Library and Documentation Center in coordination with its counterparts of the Inter-American Court of Human Rights, and the **Editorial Unit**, which produces and distributes IIHR publications

b Center for Electoral Promotion and Assistance (CAPEL)

Through its work with electoral tribunals, legislative bodies and political parties, this program helps to strengthen the effective exercise of political rights in the different countries of the hemisphere CAPEL carries out this work through three subprograms **Strengthening of Electoral Organizations**, which executes electoral technical assistance projects and observation missions on technical aspects of elections, **Strengthening of Democratic Governability**, which provides advisory assistance to political parties (in areas such as internal democracy and their role in training political leaders), and to legislative or deliberative bodies, helping them to translate the aspirations of the electorate into concrete actions (for example, through the formulation of practical and effective laws or by exercising control over the Executive Branch), and **Strengthening of the Right to Political Participation**, which executes projects aimed at constitutional and legal development It also organizes the *Inter-American Course on Elections and Democracy*, the purpose of which is to contribute to the promotion and strengthening of democratic electoral processes in Latin America

c Public Institutions

The work of the Area of Public Institutions is designed to contribute to the consolidation of democracy as a political system and national culture in the countries of the Americas Elections are a prerequisite for, but not sufficient to guarantee, democracy More than ever, the peoples of the hemisphere have a keen sense of the need for a strong institutional fabric to provide a framework for governability in the turbulent social conditions that have existed in the Region

The Area of Public Institutions operates three different programs **Security, Human Rights and Democracy**, which holds seminars and conducts technical missions in order to integrate the subject of human rights and the principles of

democracy into the educational system of military and police schools, and to train officials who sometimes have to resort to the use of force to maintain social order, **Administration of Justice**, which provides advisory services to judiciary schools in Central and South America, training for judges on the practical application of international and constitutional human rights provisions in domestic law and the modernization of the structure, organization and functioning of the judicial branch, **Ombudsman Program**, which is devoted to the specialized training of governmental human rights officials, so that they might better perform their functions, and the establishment of the Office of Ombudsman in those countries where it does not exist

d Civil Society

This Area focuses its efforts on the study of the principal human rights problems that affect civil society and on strengthening the organizational and institutional capabilities of civil society organizations. It is made up of the following programs: **Program for the Strengthening of Civil Society Organizations**, which provides technical assistance and training to organized groups within civil society in order to strengthen their participation in the promotion and protection of human rights, **Gender and Human Rights Program**, which conducts research on the major issues involved in women's rights and contributes to the development of education, promotion and training mechanisms and actions that foster equality and respect for women's rights, **Program for Migrant Populations**, which contributes to the search for integrated legal solutions and to protection and assistance efforts for social groups whose human rights are affected by internal migration and emigration caused by political and social violence, **Indigenous Peoples Program**, which focuses its efforts on technical assistance for indigenous organizations and NGOs committed to the development and protection of the rights of these peoples, **Prevention of Torture and the Treatment of Victims of Torture**, which uses creative approaches to promote the reinsertion and rehabilitation of survivors of political and police violence. The **Integrated Projects Unit** coordinates projects in which several or all the civil society programs participate, given that its target population includes groups served by all of them, while at the same time articulating experiences, services and resources of the programs around a shared objective.

Finally, under the coordination of the Directorate of Research and Development, the Institute executes two projects that are politically sensitive: the **Integrated Plan for Guatemala** and the **Special Plan for Cuba**. They have two common characteristics in that both involve difficult social situations and both involve the IHR as a whole and not as compartmentalized programs.

III USAID/NICARAGUA FUNDED ACTIVITIES

In 1995, the Inter-American Institute of Human Rights conducted an assessment that pointed up the urgent need to modernize all aspects of justice administration in Nicaragua, inasmuch as it was a constant and major source of human rights violations. It was clear that a new Organizational Law of the Judiciary of Nicaragua was needed to correct this situation.¹ The assessment was validated at a number of academic activities implemented by the IIHR for judges and officials of the Judiciary of Nicaragua, and the decision was taken to seek an international agency to finance the efforts of the IIHR and the Judiciary of Nicaragua to draft and enact a new law.

The IIHR prepared a proposal and submitted it to several international agencies, and the Royal Embassy of the Netherlands agreed to finance the first stage of the effort.

At the initiative of the IIHR, this stage got under way with the setting up of a National Commission of Jurists, with representatives of all sectors of the country's legal community and national and international consultants provided by the Institute. The IIHR then organized a series of national seminars for the legal community, so that it could be informed of and discuss the project, and express an opinion on the bill that was to be drawn up. The preliminary draft was then published in a national daily newspaper.²

The IIHR also coordinated the presentation of the draft bill to the National Assembly with the Supreme Court of Justice. This marked the end of the first stage, and also of the financial cooperation of the Netherlands. Some days after the conclusion of this stage, the IIHR was contacted by USAID/Nicaragua,³ which expressed interest in funding the next steps in the process. The IIHR immediately drafted and submitted academic/financial proposal to USAID, which was used as the basis for negotiating the funding of the project.

Once the Institute had reached a consensus with USAID/Nicaragua, it recommenced its work and once again assumed responsibility for oversight of the entire process aimed at providing Nicaragua with a new Organizational Law for its Judiciary.

Chief Problems related to Human Rights

The IIHR's initial assessment made it quite clear that the justice administration

¹ The existing law had been enacted over 100 years previously.

² The preliminary draft of the bill was published in the *Nuevo Diario* to inform the people of Nicaragua of the draft legislation.

³ Through Mrs. Susan Reichle of Democratic Initiatives.

system in Nicaragua was outdated and inadequate, and, above all, the main cause of many human rights violations, especially in the following fields

- a Access to justice
- b Transparency in judicial procedures
- c Equality before the law
- d Job security for judicial officials
- e Exercise of the right to a legal defense

f Obsolescence of the applicable parts of the Organizational Law of the Judiciary of 1898 ⁴

In view of the above, the IIHR contacted the Supreme Court of Justice of Nicaragua and made it aware of how important it was to strengthen the Rule of Law and the democratic system by reforming the Organizational Law and replacing it with a modern and effective legal instrument

Strategy and Methodology Developed

Designation of the IIHR team

Given the complexity of the country and the IIHR's extensive experience in Nicaragua,⁵ for this stage of the project the Institute designated an Area Director (quarter-time), a Program Coordinator (half-time), a Program Officer (full-time) and an accountant (full-time) In addition, capitalizing on the close ties that already existed, the IIHR strengthened its day-to-day contacts with the National Assembly of Nicaragua⁶ The personnel assigned immediately set about strengthening relations with other members of the local social fabric, such as the Executive Branch and civil society

This cordial relationship and constant contact proved to be a key at certain particularly crucial moments of the project, and for persuading the parties involved on vital aspects of project⁷ Thus, it is fair to say that dialogue was one of the strategic instruments used most often during the almost three years of the project

⁴ The Organizational Law was so old that it was a hodgepodge of legal provisions and as a result, difficult to apply and no longer effective

⁵ The IIHR began its work in Nicaragua in 1986 with universities and NGOs

⁶ The IIHR has long-standing cordial relations with the Parliament of Nicaragua

⁷ For example when the Organizational Law was declared unconstitutional and President Aleman's veto

National seminars were also used to provide the internal legal community (Supreme Court of Justice) and civil society with information on a continuous and permanent basis, and obtain their input for incorporation into the products⁸ of the project. One of the key methods used to inform the general public was the printing and distribution of 5000 copies of the Organizational Law,⁹ through which the entire country was made aware of the existence and content of the new legislation.

The information and communications strategy yielded short, medium and long-term benefits for the project. Firstly, it was a focus of constant public attention, with articles and interviews being published in the press and extensive radio and TV coverage. This made the public aware of all the important aspects of the new legislation. At a later stage in the project,¹⁰ radio spots were also broadcast to inform the people of Nicaragua of the creation of important institutions such as the Public Defender's Office, and of the exercise of the right to a legal defense. This campaign (designed, coordinated and executed entirely by the IIHR) was carried out in Spanish, Misquito and English, in order to reach all the country's ethnic groups.

Part of the IIHR's methodology was to ensure that the country's judicial community played a proactive role throughout the project. The sector's involvement can be divided into at least two stages. The first was the inclusion of the contributions made by judicial officials, members of civil society and the legal community during the seminars held for the drafting of the bill. The second -much broader in scope- involved the participation of 800 Nicaraguans in training seminars in all parts of the country, where they studied and discussed the text of the Organizational Law of the Judiciary once it had passed into law. The IIHR kept a detailed record of all these academic activities, and the input obtained was systematized and presented to the Supreme Court of Justice for its consideration and eventual incorporation.

With regard to the Office of the Public Defender, the IIHR used the methodology of guided visits to familiarize Nicaraguan officials with other experiences¹¹ in the same field. Visits were made to important public defender's offices in the Americas, with a balanced program of activities that included visits to the Office of the Public Defender of Dade County, Miami, Mr. Bennett Brummer, the Directorate of Public Defenders of San Jose, Costa Rica, and the public defender's offices of Valparaiso, Chile, and Buenos Aires, Argentina. These visits included activities involving leading members of congress¹² and of the legal systems¹³ of the

⁸ Draft Organizational Law, Draft Regulations on the Permanent Career Structure of the Judiciary, Regulations of the Office of the Public Defender.

⁹ One of the country's most serious problems is the NON-publication of the law.

¹⁰ Specifically when the new Organizational Law had already been approved.

¹¹ In view of the fact that the country had no Public Defender's Office.

¹² Deputy Noel Cafferatta Nores and Deputy Eugenio Zaffaroni, both of Argentina.

¹³ Dr. Julio Maier of Argentina and Dr. Jorge Abbott of Chile.

countries visited. The delegation was led by the Vice President of the Nicaraguan Court, who was accompanied by at least one Supreme Court judge and other judges or advisors.

These activities culminated with a seminar in Managua attended by 50 people who had the opportunity to learn of the experiences of the members of the delegation and the knowledge that they acquired during their visits to the countries mentioned. The panel members for this activity were Dr. Brummer of the United States, Mrs. Marta Muñoz of Costa Rica and Dr. Abbott of Chile. The results of the activity were compiled and systematized by the IIHR and used as the basis for what was presented to the Supreme Court of Justice as the Regulations governing the Operation of the Office of the Public Defender in Nicaragua.

With regard to the permanent career structure, the IIHR expressed its desire to hold a seminar for 50 judicial officials.¹⁴ However, the Supreme Court of Justice said that it preferred to organize a "retreat" exclusively for the judges of the Court. The IIHR reiterated its position and explained the reasons why the seminar should be held, but the Court finally decided to go ahead with the activity only with the judges. The IIHR then systematized the results and presented them to the Court in the form of a draft bill of the Law on the Judicial Career Structure.

Obstacles encountered in implementing the project

The project was subject to major delays. It is worth recalling that the Organizational Law of the Judiciary was presented to parliament and passed into law in the last year of the administration of Mrs. Violeta Barrios de Chamorro,¹⁵ when the President of the Nicaraguan parliament was Dr. Cairo Manuel Lopez. This piece of legislation formed part of a package that was subsequently declared unconstitutional -paradoxically by the Supreme Court of Justice itself. As a result, the IIHR was obliged to reinitiate the entire process when the government of Dr. Arnoldo Aleman took office. Contacts were made with the new National Assembly and the President of the Justice Commission, Dr. Noel Vidaurre Arguello, and the work and the parliamentary lobbying continued until the Commission issued its opinion on the Organizational Law and it was presented to the National Assembly. At that point the IIHR used every weapon at its disposal and supported procedures for its rapid passage through parliament. The IIHR convened many meetings, which involved Dr. Ivan Escobar Fornos, President of the National Assembly, Dr. Guillermo Vargas Sandino, President of the Supreme Court of Justice, Deputy Noel Vidaurre, President of the Justice Commission and representatives of the IIHR and USAID/Nicaragua, to resolve contentious issues and build bridges for the rapid enactment of the Organizational Law. For reasons beyond the control of the IIHR, these efforts progressed very slowly. The law was eventually approved by

¹⁴ As envisaged in the IIHR/USAID/Court Agreement

¹⁵ Thanks to the support of USAID/Nicaragua

parliament with changes of form and substance Surprisingly, President Aleman used his powers to veto the Organizational Law

The Justice Commission studied the presidential veto and issued its opinion, with the IIHR once again involved in the entire process ¹⁶ The bill was then returned to the National Assembly and the Organizational Law of the Judiciary of Nicaragua was finally enacted and published

The project activities obviously had to be reprogrammed throughout this process Provision should be made for contingencies of this kind in countries such as Nicaragua A program may be planned and presented and its implementation approved by the branches of government, but this does not necessarily mean that it will be possible to carry it out as anticipated

Another key factor was USAID's understanding of the political situation in Nicaragua and, undoubtedly, the IIHR's flexibility and ability to adapt to the constantly changing situation Negative developments were seized on as opportunities for positive action The Organizational Law of the Judiciary was finally approved, and is an instrument that will benefit all the men and women of Nicaragua who seek justice from their Judiciary

Results obtained at the end of the project

The results obtained were as follows

A new Organizational Law of the Judiciary of Nicaragua

Printing and distribution of 5000 copies of the new instrument

Eight hundred¹⁷ people trained in the use of the new legislation throughout the country

Multilingual, national radio campaign to inform the public of the existence of the new Organizational Law

2 Creation of a Public Defender's Office in Nicaragua

Guided missions to familiarize senior judicial officials with experiences in North, Central and South America in regard to the creation and operation of public defender's offices

Seminar, with 50 participants, on the Office of the Public Defender

¹⁶ This work delayed implementation of the project for 12 months in real time

¹⁷ Under the original project the plan was to train only 400 but the IIHR made optimum use of the resources and trained twice that number

Preparation, by the IIHR, of the preliminary draft of the Regulations governing the Operation of the Office of the Public Defender

Presentation to the Supreme Court of the preliminary draft of the Regulations governing the Operation of the Office of the Public Defender in Nicaragua

Radio campaign providing information on and supporting the creation of the Office of the Public Defender as a permanent institution within the structure of the Supreme Court

Preparation, by the IIHR, of the preliminary draft of the Law on the Judicial Career Structure

Retreat, with the twelve judges of the Judiciary, to discuss the preliminary draft (two sessions)

Incorporation of the judges' contributions into the final version of the preliminary draft

Presentation to the Supreme Court of the preliminary draft of the ***“Law on the Judicial Career Structure”*** of Nicaragua

Radio campaign to support the concept of job security in the Judiciary, and the advantages this offers

Conclusions

For the IIHR, it is especially important to point up the role that the Organizational Law of the Judiciary is playing in all judicial processes in Nicaragua. We can state that, after a wait of more than 100 years, justice in this country is being administered more efficiently and responds more effectively to the needs of its people, who, ultimately, are either the beneficiaries of the system or suffer as a result of weaknesses in the administration of justice. The Organizational Law of the Judiciary is undoubtedly strengthening the Rule of Law and democracy in Nicaragua.

This Law includes concepts that are truly revolutionary compared to the situation that existed previously in Nicaragua vis-a-vis the administration of justice. One of the most important is the creation of the Office of the Public Defender as a permanent institution funded by the Supreme Court. Its predecessor, the system of court-appointed defense attorneys, was never effective in defending the country's most vulnerable citizens, the purpose for which it was created. In fact, this system did nothing to improve access to justice and equality before the law. The creation of the Office of the Public Defender, funded by the State, offers the underprivileged in Nicaragua the opportunity to exercise, among other rights, their

right to a proper defense

The Institute wishes to add that, based on its experience, it is imperative that follow up be provided to the Law on the Judicial Career Structure¹⁸ to ensure that, once the preliminary draft is delivered to the National Assembly, it does not disappear for ever in the legislative labyrinth. This would dash all hopes of ensuring that the rights of judicial employees are protected and that they enjoy a degree of job security that allows them to perform their duties without fear of arbitrary dismissal, at the whim of the powers that be

It should also be pointed out that the incorporation of methods of active communication throughout the life of the project made it possible to involve public opinion and generate a great deal of public debate. This spurred the branches of government to take action and commit themselves to following through with the process for the enactment of the Organizational Law

One of the most important strategies implemented by the IIHR was the inclusion, from the outset, of all sectors of society in Nicaragua, namely civil society, the judicial, legislative and executive branches, and hundreds of judicial employees and trial lawyers, who made contributions and felt that their opinions were taken into account for a law that was so important for the democratic development of their country. The importance of including all these actors must not be overlooked

For the IIHR, the approval of this law was a very challenging, but particularly satisfying, academic experience. This was the first time that in an exercise of this kind the Institute was able to use its academic mechanisms to overcome flagrant violations of human rights

It is also the first time that the IIHR, as part of its academic and professional activities, has produced, with an entire country, legislation that will benefit and improve the quality of life for the four million inhabitants of Nicaragua

As this project concludes, the IIHR wishes to express its appreciation to the United States Agency for International Development and to the Supreme Court and the National Assembly of Nicaragua

¹⁸ Until it becomes law