

**Nicaragua: Report on Observance of Standards and Codes—
FATF Recommendations for Anti-Money Laundering and
Combating the Financing of Terrorism**

This Report on the Observance of Standards and Codes on the FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism for Nicaragua was prepared by the Caribbean Financial Action Task force (CFATF). The views expressed in this document as well as in the detailed assessment report, on which it is based, are those of the CFATF and do not necessarily reflect the views of the Government of Nicaragua or the Executive Board of the IMF.

A copy of the detailed assessment report can be found on the website of the CFATF at <http://www.cfatf-gafic.org>.

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CARIBBEAN FINANCIAL
ACTION TASK FORCE

Report on the Observance of Standards and Codes (AML/CFT)

Nicaragua

August 3, 2010

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Acronyms

AML	Anti-Money Laundering
CAF	Commission of Financial Analysis
CFATF	Caribbean Financial Action Task Force
CFT	Combating the Financing of Terrorism
CDD	Customer Due Diligence
CNDLCD	Consejo Nacional de Lucha Contra las Drogas (National Council to Combat Drugs)
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
INFOCOOP	Nicaraguan Cooperative Development Institute
ML	Money Laundering
MOU	Memorandum of Understanding
OSFL	Organización sin fines de lucro (non-profit organization, NPO)
PEP	Politically Exposed Person
PGR	Procuraduría General de la República
ROS/RTS	Suspicious transaction report (Reporte de Operación/Transacción Sospechosa)
SIBOIF	Superintendencia de Bancos y Otras Instituciones Financieras (financial regulator)
UN	United Nations
UNSCR	United Nations Security Council Resolution

A. Introduction

1. This Report on the Observance of Standards and Codes for the FATF 40 Recommendations for Anti-Money Laundering (AML) and 9 Special Recommendations on Combating the Financing of Terrorism (CFT) was prepared by the Caribbean Financial Action Task Force (CFATF). It provides a summary of the AML/CFT measures in place in Nicaragua, the level of compliance with the FATF 40+9 Recommendations, and contains recommendations on how the AML/CFT system could be strengthened. The assessment is based on the information available at the time of the onsite visit during October 5 to 17, 2008 and immediately thereafter, and was produced using the 2004 Assessment Methodology.¹ The views expressed in this document have been agreed by the CFATF and Nicaragua, but do not necessarily reflect the views of the Boards of the IMF or World Bank. The Mutual Evaluation Report (MER) on which this document is based was approved by the CFATF during its October 2009 plenary.

B. Key Findings

2. **In 2008, Nicaragua introduced legislation criminalizing money laundering (ML) and the financing of terrorism (FT) that is generally adequate except for some key deficiencies.** There are significant limitations in the law to require timely measures to be taken in FT cases, and the list of predicate offences for ML is incomplete. Shortly after the law came into force, the authorities initiated investigations and filed charges for ML offences, but effective implementation has been constrained by insufficient financial and human resources.

3. **The AML/CFT preventive measures for the regulated financial sector, including its supervision, is broadly in compliance with the international standard, but financial cooperative sector is not regulated.** Cooperatives, associations and non-profit organizations (NPOs) are key players in the financial system but are not subject to any regulation, supervision, and the AML/CFT legal obligations. Designated non-financial businesses and professions (DNFBPs) are also not covered by the preventive measures regime, except for casinos. Nonetheless, it is believed that they are not exposed to a high level of risk as unregulated financial institutions because of their relatively small size and volume of activities.

4. **Nicaragua does not have a financial intelligence unit (FIU) and generally lacks an adequate AML/CFT institutional framework.** It has not developed a comprehensive AML/CFT strategy and there is no effective policy coordination among the various AML/CFT institutions. Training of judges and prosecutors is inadequate although recent

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efforts have been made to address this shortcoming. In addition, the judicial system is not sufficiently independent. Being one of the poorest countries in the western hemisphere also restricts Nicaragua's ability to make available adequate resources to AML/CFT efforts.

5. **There was no evidence of FT risk and there have been no suspicious transaction reports or investigations in this regard.** Drug trafficking and corruption were identified as the two main sources of illicit proceeds and, according to authorities, the country is vulnerable to drug trafficking due to its geographical position as a transit point for drugs and related money between North and South America. The amount of cocaine seized is estimated to be lower than in other Central American countries.

C. Legal Systems and Related Institutional Measures

6. **A new Penal Code came into force in July 2008 that criminalized ML and FT broadly in line with the international standard, except for minor deficiencies.** Counterfeiting and piracy are not included as predicate offenses for ML, and it is uncertain whether acts of terrorism occurring outside of Nicaragua are covered by the legislation. Only financial institutions supervised by the Superintendency of Banks and Other Financial Institutions (SIBOIF), in their capacity as legal persons, are subject to criminal sanctions for ML or FT. For other legal persons, only ancillary sanctions can be imposed and only when the person responsible of the company (i.e. the officer) has been previously convicted. It is noted that ML had been criminalized in Nicaragua since 1997, but the law only applied to drug trafficking and it was unclear whether it was an autonomous offence. The new Penal Code rectified these shortcomings, among others. During that time there was only one conviction for ML which was against a former President and that was recently overturned.

7. **Four ML investigations were commenced and two indictments issued during the first six months of the new Code coming into force.** This indicates that the law has begun to be effectively implemented and it is expected that the authorities will continue to apply it to combat this crime. However, at the time of the assessment there had been no convictions for ML, and it was evident that judges and prosecutors were not familiar with the tools provided by the legislation to combat ML effectively. Significant training is required for detecting and combating organized financial crime in addition to the pursuit of money smugglers at borders which has been the recent focus. The latter has resulted in 24 investigations and 16 convictions.

8. **ML Law 285 provides a wide range of restraining measures which existed before the issuance of the new Penal Code.** These measures include the seizure and freezing of bank accounts, takeover of legal persons and preemptive blocking of property on an ex parte basis. However, the law enforcement agencies were unaware of these legal mechanisms and have not used them to combat ML.

9. **The restraining measures for ML are not available for FT.** The Code of Criminal Procedure is the only mechanism available for these measures but can only be used pursuant

to a Judge's order after formal criminal proceedings have commenced and notification to the affected party. There is also no procedure to immediately freeze the assets of persons designated by the UN Security Council of the United Nations (a situation that has not yet presented itself).

10. **Nicaragua does not have a financial intelligence unit.** A bill to establish an FIU has been presented before the National Assembly since 2004, which has been improved but not yet deliberated. Suspicious transaction reports (STRs) are submitted by the regulated institutions to the Financial Analysis Commission (CAF) which was established in 1999 as a technical arm of the National Council for Combating Drugs. It is an association of officials from various state agencies who meet irregularly and lacks autonomy for decision-making. The CAF does not have a formal structure, budget or staff, and is not authorized to share financial intelligence with foreign authorities.

11. **In practice, the STRs are analyzed by a National Police Directorate on order by the Attorney General of the Republic in his capacity as Chairman of the CAF.** The Police Directorate can independently decide to close a case or submit it to the CAF. If the Attorney General accepts the advice of the Police, he may open a formal investigation under the Code of Criminal Procedure.

12. **There are adequate investigative techniques for ML, but not for FT.** The legal provisions governing these techniques are contained in two separate laws and are confusing. They have resulted in conflicting judicial interpretations which can invalidate future criminal investigations and prosecutions. There are no measures in place to postpone or suspend the arrest of suspects, or to forfeit money in ML or FT cases, to facilitate effective investigations. In practice, special investigative techniques have not been used since 1997.

13. **The structure of the investigative agencies is adequate, but their resources are insufficient.** The National Police, the Public Ministry and the Attorney General's office do not have sufficient technical and financial resources to effectively carry out their responsibilities with respect to sophisticated crimes such as ML and FT.

14. **There is an obligation to declare at the borders the importation, but not exports, of cash exceeding US\$10,000.** There are no administrative penalties for failure to declare. The authorities can seize money when illicit activity is suspected. Since the mid 2004 through to mid 2008, US\$1,454,974 was seized at the airport in Managua and US\$11,734,737 at other borders. The authorities have not made any use of information contained in the currency declaration forms, and there is no coordination arrangement between the Customs Authority and other agencies for sharing such information.

D. Preventive Measures – Financial Institutions

15. **The AML/CFT regulations for financial institutions regulated by the SIBOIF are adequate.** The SIBOIF, based on powers conferred by the general ML law (Act 285 of 1999) and other laws governing the financial system, has issued mandatory regulations that specify the mechanisms for the prevention of ML and FT for each type of financial institution, largely in keeping with the FATF Recommendations. The covered institutions are the banks, finance companies, securities firms, insurance and general bonded warehouses. The financial system is relatively small, with the banking sector being the largest and more developed (US\$3,700 billion in assets). The stock market turnover is approximately US\$58 million per quarter. Total annual insurance premium is about US\$78 million and individual policies do not exceed \$200 per year. Most insurance is sold through intermediaries, which are also required to implement anti-money laundering controls based on the current SIBOIF regulations (March 2008).

16. **All financial activities covered by the FATF Recommendations are regulated institutions under the AML/CFT law, but associations and cooperatives are not subject to regulation and supervision.** Act 285 of 1999 and its Regulatory Decree 74 of 1999 provide some basic requirements (but not enough) on know your customer, recordkeeping and reporting of suspicious transactions. However, credit unions, microfinance associations, remittance companies and currency exchange houses are not aware of these obligations nor are they applying them in practice (except for one exchange house). Although CAF is technically empowered to monitor compliance, it does not have the resources or the experience to do so. There are no specific AML/ CFT regulations for these activities. It is very important that Nicaragua assigns the responsibility to authorities with the technical capacity to regulate and monitor microfinance and/or cooperative institutions, some of which offer services similar to those of banks and manage cash flows similar to financial institutions regulated by SIBOIF. The largest microfinance association has about 18,000 members, 30 offices and a portfolio of US\$71.7 million. The largest savings and credit cooperative has 26 branches and a portfolio of approximately US\$30 million. Although these amounts are small compared with the banking sector, they are also important in the Nicaraguan context, and this fact adversely affects the status of implementation of preventive measures.

17. **Banking secrecy does not prevent the implementation of FATF Recommendations.** Banking secrecy can always be lifted by judicial order. Moreover, in cases of inquiries originating from a STR, the Attorney General can obtain financial information directly from the entities supervised by the SIBOIF, without a judicial order. This does not apply to FT investigations, or to information from other regulated institutions. In the latter cases it is important that the Attorney General has the ability to obtain information directly from the source without a judicial order. The SIBOIF has unrestricted access to information and documentation necessary for its supervisory function. In terms of recordkeeping under the international standard, institutions regulated by SIBOIF should retain for five years all information and documentation obtained from the implementation of its AML/CFT policies, procedures and internal controls, including correspondence and

transactions. Such documentation should enable the authorities to reconstruct transactions and serve as evidence in criminal proceedings. However, for institutions not regulated by SIBOIF, the obligation to maintain records only applies to client identity and not to transactions, activities, correspondence, analysis of possible suspicious transactions, etc. While the Code of Commerce extends this obligation to some extent, there is no evidence that it is being implemented or that compliance is being monitored.

18. **The regulation and implementation of wire transfer requirements in the supervised sector are appropriate.** For wire transfers, the SIBOIF regulations require institutions to obtain, verify and retain in the electronic messages, the sender's details, including name, type and identification number, address, phone number and account number. Occasionally, transfers are received from abroad that do not contain complete information, in which case the Nicaraguan banks suspend payments while obtaining the missing information from the sending entity. When the required information is not received, the funds are returned. There are no requirements for institutions that are not regulated by the SIBOIF and which provide transfer services to obtain and transmit such minimum information.

19. **There are many unsupervised money transfer businesses that have no requirements for their establishment, registration or operations.** Some are agents of large international money transfers firms which are required to apply operational controls for contractual reasons. The credit unions and microfinance associations also send and receive electronic payments and are subject to Law 285. However, they do not comply with the Law and are not supervised. In addition, there are many currency exchange businesses and other informal money transfer businesses that are not subject to regulation or supervision regarding AML/CFT. It is not known how many of these are in operation.

20. **In general, all of the preventive measures required by the FATF for financial institutions are adequately covered by the current SIBOIF regulations.** Many of these obligations were already included in previous legislation but with limitations that were corrected by the March 2008 regulations. Regulated institutions appear to comply reasonably well with the AML/CFT requirements, although the insurance industry insists that some of these obligations are excessive in relation to the nature and size of their business. The new regulations also introduced the obligation to apply risk-based controls for customers, which has proved a challenge for financial institutions which have applied for successive extensions of the implementation deadline in order to design appropriate risk matrices.²

21. **The SIBOIF regulations establishes very comprehensive customer due diligence requirements.** They require institutions to identify and know their customers, including the

² The new regulations were partially amended in March 2009, five months after the visit, and therefore was not included in this report. However, the evaluators found no changes in the articles relevant to this assessment. Some changes are to extend the term to define risk matrices for monitoring transactions and remove the requirement to know "the customer's customer".

final beneficiaries, before the establishment of business relationships³. The requirements vary for natural or legal persons. The information must be verified and updated periodically, and revised whenever the customer's activity does not match their predefined profile. Knowledge of pre-existing customers should also be updated based on the degree of risk. In all cases, enhanced due diligence is required where the customer is classified as high risk in accordance with the institution's internal processes, or as listed by the regulations. These include foreign and domestic PEPs, correspondent accounts for foreign institutions,⁴ electronic services such as ATMs, internet banking, business by telephone, or any other non-face-to-face service. If in any case the institution is unable to comply with the requirements for customer identification and verification, or fails to obtain satisfactory information about the purpose and nature of the business, the business relationship should end or not be started. The institution should also consider whether or not to submit a STR. Institutions supervised by the SIBOIF cannot delegate the task of conducting customer due diligence (CDD) and the use of intermediaries for this purpose is not allowed. There is a minor deficiency in the regulation of PEPs because it only requires source of "funds" information and not source of wealth or assets when entering such business relationships.

22. The requirement to detect, analyze and report operations covers both suspicious and unusual transactions with respect to ML and FT. The covered institutions not supervised by the SIBOIF are required by Law 285 to report to the competent authority any unusual operation that has no clear legal basis, without having to suspect association with illegal activity. While this implicitly satisfies the requirement of the FATF to report suspected FT, the team suggested that this requirement be expressly enshrined in law. Non-supervised institutions have not filed any STRs. Financial institutions regulated by SIBOIF, besides reporting unusual operations, are also explicitly required to report those they suspect of ML, FT or any other illegal activity. The reports are sent in sealed envelopes to the Superintendent, which then sends them unopened to the CAF. This procedure was identified as a waste of time and an unnecessary security risk. The institutions supervised by the SIBOIF, especially banks, send nearly 200 STRs year, a relatively low number given that the system is designed to capture not only suspicious but also unusual (a lower threshold of suspicion) operations. The team recommended that the authorities start enforcing compliance with the reporting requirement by the non-supervised sector and to strengthen compliance in the non-bank regulated financial sector. The statutory prohibition against customer tipping that applies to institutions not supervised by the SIBOIF, should be extended to cover suspected FT.

³ Except when it comes to insurance for pension plans, provided that the premium is not paid in cash and no payments are made to the beneficiary before completing the verification.

⁴ As is common in countries with highly developed financial systems, in Nicaragua banks do not provide correspondent services to foreign entities. Instead, they go to banks located abroad (usually U.S.) to make their international transactions.

23. **Banks and other supervised institutions are also required to report transactions exceeding US\$10,000.** This information is maintained by the SIBOIF in a computer database, but no authority accesses or makes use of these reports.

24. **Regulated institutions are required to have a program of internal and external audits but not by other institutions covered by the AML/CFT law.** The SIBOIF regulations require entities to implement a "*Comprehensive Program or System for the Prevention and Management of Risk Associated with the Laundering of Money, Property or Assets, and the Financing of Terrorism.*" This system should include policies, procedures, internal controls, risk matrices, monitoring systems and operational procedures to comply with the legal framework and to allow the entity to prevent, detect and report any suspicious activities. Among other features, entities must designate a ML/FT risk-prevention manager (Compliance Officer) and a policy of due diligence in order to know their employees.

25. **The SIBOIF has some specialized staff but their AML/CFT supervision should be more efficient.** The SIBOIF conducts comprehensive annual inspections of each of the 35 financial institutions under its jurisdiction. During such inspections, one to three officials reviews AML/CFT issues during 10 or 20 days, and draft conclusions shortly after the visit. However, the institution is not informed of weaknesses identified and the necessary corrective measures required until the completion of the comprehensive inspection report, which takes too long. In addition, the SIBOIF has no mechanism to follow up on inspection findings and corrective action except during next annual visit. The SIBOIF does not conduct consolidated AML/CFT supervision of financial groups, and AML/CFT supervisors need specific training for reviewing risk-based controls.

26. **It is important to issue AML/CFT regulations and implement a supervisory program for all other regulated entities.** Law 285 and its regulations contain very basic obligations that need to be supplemented and detailed by rules tailored to the nature of each activity. The team also recommended assigning AML/CFT regulation and supervision to the regulators of each of these sectors (for example, the INFOCOOP could oversee the AML/CFT regime for the financial cooperatives). The CAF should be responsible only for entities that do not have a specific industry regulator, such as casinos and bureaux de change, or alternatively designate a separate body to assume this role.

E. Preventive Measures – Designated Non-Financial Businesses and Professions

27. **Except for casinos, none of the DNFBPs required by the FATF are covered by the AML law.** The same general obligations contained in Law 285, which apply to financial institutions, apply to casinos that is: customer identification regardless of the amount of the transaction, maintenance of certain records, and detection of unusual transactions and the report of suspicious transactions to the CAF. However, only three casinos affiliated to multinational gaming corporations have established some AML/CFT controls. The casinos are not subject to licensing or regulation of any kind, and their operators are totally unaware

of their obligations under Law 285. The government has not issued regulations or guidelines for this sector, and there is no authority responsible for their regulation and supervision.

28. **There are no statistics on the other DNFBPs.** They all exist to some extent in Nicaragua (except trust services providers), but they may not be economically and legal significant. For example: (a) Nicaragua is not a shell company incorporation jurisdiction nor does it provide company management and representation services ("nominee directorship") or similar, nor does its tax regime makes it attractive as an offshore center; (b) the real estate brokerage market is fully de-regulated, but the service normally provided by intermediaries ("realtors") is restricted to bringing together buyers and sellers on a commission basis, without participating in the financial transaction; (c) the amount of bets in casinos is very small and there is a maximum of 15 "high rollers" (big money wagering and habitual gamblers) across Nicaragua, who are easily identifiable; and (d) notaries do not act as representatives of customers or make or receive payments on their behalf, and are limited to legal review of contracts and the preservation of public deeds.

29. **Notwithstanding the above view of inherent risks in the activities of DNFBPs, they will remain vulnerable to abuse so long as the authorities do not conduct a suitable study of these sectors and create a regulatory and institutional framework appropriate for each sector.**

30. **Law No. 285 apparently allows the CAF to supervise all entities that are not overseen by the SIBOIF, but implementation would not be realistic.** The CAF does not have the resources or the expertise to carry out this activity, nor does it constitute part of its core functions. Furthermore, no state institution (not even the CAF) has the power to issue circulars or regulations to implement the AML/CFT Law. Nicaragua should consider the circumstances of each of these sectors and introduce legislation that meets the international standard for the DNFBPs that operate in the country.

F. Legal Persons and Arrangements & Non-Profit Organizations

31. **The laws and the inadequacy of the Public Business Register do not provide access to adequate information about the beneficiary owners of legal persons.** According to the Commercial Code and Civil Code, the formation of legal entities require a public deed and registration in the Public Registry of Property. Therefore, it is possible to find some information in the Registry, in the deeds kept by public notaries and in the companies' internal records. However, the Registry only has data of natural persons acting at the time of initial registration, and companies are not required to register material changes such as in the Board of Directors. Registry information is divided into different zones of the country and computer systems are inadequate for conducting searches. Bearer shares are not frequently used but they are provided for in the law. No steps have been taken to understand and mitigate their inherent risks. The authorities did not provide statistical information on the

number and types of companies registered in the Public Registry of Companies, nor was it possible to determine the number of companies with bearer shares.

32. **Cooperatives and nonprofit organizations (NPOs) are required to register with a government authority that has the power to monitor and penalize them.** However, such monitoring is very limited and the information is not publicly available. This prevents financial institutions that deal with NPOs from verifying customer due diligence information. Cooperatives register with the Nicaraguan Institute of Cooperative (INFOCOOP). Associations register with the Department of Registration and Control of Nonprofit Associations (Ministry of Interior) upon prior approval by the National Assembly. There are 4,445 NPOs registered, of which 3,956 are domestic and 489 foreign. Most of them maintain active registration through a mandatory annual fee.

33. **There are legal mechanisms to monitor donations and the activities of NPOs.** Although there is a legal and institutional framework that could be used to reduce the risk of FT through these organizations, it has not yet been implemented. No study has been conducted on the characteristics and size of this sector, their exposure to FT risk and the adequacy of existing rules to reduce it. In practice, most fines are imposed for basic noncompliance such as delays in registration, presentation of financial statements or proper maintenance of books. The authorities have not conducted outreach activities or awareness to this area specifically for AML/CFT purposes.

G. National and International Co-operation

34. **Mutual legal assistance to other countries is operational and has adequate mechanisms, although it was not possible to assess the response times.** There are no legal impediments to assist with ML linked to tax offences, nor can the misapplication double jeopardy rules hinder cooperation. For ML, all the powers of the domestic judicial authorities may be used to respond to a request from a competent foreign authority, e.g. to carry out searches, take witness statements, gather evidence, documents and records, and take any other action allowed for by domestic legislation and treaties signed by the country.

35. **There are significant potential limitations to facilitate international cooperation relating to FT investigations.** There are no clear domestic law and procedures for international cooperation in cases related to FT, unless there is a treaty signed with the requesting country. Law 285 refers only to crimes related to drugs and ML activity, and the Criminal Procedure Code does not have provisions for the detection, seizure or confiscation of property linked to FT. The same legal limitations with respect to preemptive measures for domestic investigations of FT also apply which would prevent granting assistance to other countries as well as compliance with the UN Security Council resolutions for the freezing of terrorist assets.

36. **No national AML/CFT policy and priorities nor a national strategy have been formulated.** Domestic cooperation and coordination work reasonably well at the operational

level, but not at the policy level. Under current arrangements, the National Council for Combating Drugs, supported by CAF, is best suited to lead the creation of national plans and policies to combat these crimes, in coordination with the preventive and prosecutorial authorities. However, key risks and priorities have not yet been identified, nor have plans, indicators and mechanisms to monitor results been developed. It is also necessary to modernize the administration and sharing of assets seized. Finally, the lack of a formal FIU severely limits the ability to provide and receive cooperation on financial intelligence. It is hoped that the mutual evaluation report provide an important input for the authorities in their strategic planning.

H. Other Issues

37. **In general, all state agencies lack adequate resources for their efforts to prevent and combat ML/TF.** In the executive branch, except for the SIBOIF that derives its income from fees paid by financial institutions, no officials have been assigned responsibility for monitoring AML/CFT compliance by unregulated financial institutions, nor by the DNFBPs. While this responsibility is legally that of the CAF, since its creation in 1999 it has not been assigned staff or resources for its core analytical function, much less for supervision. In addition, it does not have the legal autonomy necessary to perform FIU duties.

38. **The deficiency of technical skills and training is particularly acute in the judicial system.** The judiciary has insufficient knowledge of the AML/CTF legislation and the conflicting interpretations of the law e.g. with respect to preemptive measures, indicates a need for extensive training for judges, prosecutors and the police.

39. **The collection and use of statistics is still inadequate.** The small number of ML cases initiated to date should make the collection of statistics still relatively simple. The information available on mutual legal assistance requests does not allow for an assessment of response times. The statistics maintained by the Police on STRs do not allow their classification in terms of their attributes or the basis for the reports, total amounts, trends and typologies. In summary, there is no system that allows the authorities to use data to review the effectiveness of its AML/CFT system in a comprehensive manner, to generate information to assess the circumstances of certain sectors, to analyze local trends and typologies, and to give guidance to regulated institutions.

I. Authorities' Response

The authorities chose not to provide any response.

Summary Table of Observance and Key Recommendations

<p>Compliant (C): the Recommendation is fully observed with respect to all essential criteria.</p> <p>Largely compliant (LC): there are only minor shortcomings, with a large majority of the essential criteria being fully met.</p> <p>Partially compliant (PC): the country has taken some substantive action and complies with some of the essential criteria.</p> <p>Non-compliant (NC): there are major shortcomings, with a large majority of the essential criteria not being met.</p> <p>Not applicable (NA): a requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country.</p>	
FATF 40+9 Recommendations and Ratings	Key Assessor Recommendations
Legal System and Related Institutional Measures	
<p>Criminalization of Money Laundering</p> <p>R.1 [LC] R.2 [PC]</p>	<ul style="list-style-type: none"> • The Criminal Code should be amended to include counterfeiting and piracy of products as predicate offences for money laundering. • It would be convenient to include ML in the list of offences which can be sanctioned under incitement and conspiracy. • Criminal or administrative sanctions should be made applicable to legal persons involved in money laundering (directly, not as ancillary to the penalty imposed on physical persons).
<p>Criminalization of Terrorist Financing</p> <p>SR.II [LC]</p>	<ul style="list-style-type: none"> • Provision should be specifically included in article 16 of the Criminal Code to enable financing of terrorism to be prosecuted in Nicaraguan jurisdiction regardless of whether the act occurred inside or outside Nicaraguan territory. • There should be administrative or civil sanctions for legal persons involved in the offence of financing of terrorism.
<p>Confiscation, freezing, and seizing of proceeds of crime</p> <p>R.3 [LC]</p>	<ul style="list-style-type: none"> • Establish effective mechanisms (freezing funds) to secure funds, property or rights to finance terrorism, not urgent measures envisaged in the Criminal Procedure Code. • Train law enforcement officials on the possibilities existing under the law for the adoption of asset freezing. • A minimum degree of uniformity of criteria for the adoption of precautionary measures in the offence of Money Laundering and Terrorist financing should be promoted among the members of the judiciary, judges, Prosecutor, Public Prosecutor and Police. • It should be disclosed and law enforcement officials trained in the scope and effect of Act 285 to remove uncertainty regarding the origin of precautionary measures provided for therein. • It is recommended to implement the provisions of Article 246 of the Criminal Procedure Code, which provides legislative jurisdiction of any Criminal District Judge to authorize investigative measures that restrict constitutional rights.
<p>Freezing of funds used for terrorist financing</p> <p>SR.III [NC]</p>	<ul style="list-style-type: none"> • Include in the Code of Criminal Procedure the freezing of assets as a matter of urgency in FT cases. • Establish procedures for freezing and unfreezing funds in accordance with UN Resolutions 1267 and 1373.
<p>The Financial Intelligence Unit and its functions</p> <p>R.26 [NC]</p>	<ul style="list-style-type: none"> • Create a Financial Intelligence Unit (FIU) in keeping with the principles of FATF Recommendation 26 and the 10 corresponding criteria regarding evaluation methodology. • Consider future membership of the FIU in Egmont Group. • Appoint all members of the CAF (except the auditor nominated by the Association of Accountants) and increase the frequency and number of meetings of that Commission. • Until the FIU is created, the CAF must have physical premises to operate securely, suitable staff appointed exclusively to it, operational independence and the other resources that will enable it to meet the

	<p>technical requirements of the functions assigned to it by Act 285-1999.</p> <ul style="list-style-type: none"> • Issue guidelines and instructions to the financial institutions and other regulated entities, as well as to the Superintendency of Banks and Other Financial Institutions and other supervisory and control bodies that may be created in future, on trends or patterns of money laundering and financing terrorism that have been detected, as well as on the quality of STRs and other aspects relevant to the process of submission of STRs. • Explore alternatives to avoid the security risks arising out of the existence of copies of the STRs in the hands of various entities (Fiscalía and Police), and to avoid these reports having to pass through many state bodies before arriving at their destination. • It is recommended as soon as the FIU is created and begins work, it should consider joining the Egmont Group.
<p>Law enforcement, prosecution and other competent authorities</p> <p>R.27 [PC] R.28 [PC]</p>	<ul style="list-style-type: none"> • Consideration should be given to measures designed to defer prosecution, for example, while more evidence is collected or assets and people tracked, even without the investigation being linked to a collaborative program with the law. • It is recommended that the practice of legal outreach, such as training, workshops and conferences on the scope of the criminal law, criminal procedure, and related special laws relating to money laundering and terrorist financing. • Must designate an authority or jurisdiction for feedback on criminal trends in TF and ML between the authorities and law enforcement. • Mechanisms should be established or powers granted to law enforcement authorities to urgently freeze funds connected with the offence of TF.
<p>Cross Border Declaration or disclosure</p> <p>SR IX NC</p>	<ul style="list-style-type: none"> • Establish the obligation to declare cash and securities out of the country (not just upon entry). • Make arrangements and procedures that enable the customs authorities to impose administrative sanctions for failure to declare cash or by providing false or wrong cross-border declarations. • Scan the information obtained from the declarations, share and coordinate with national authorities for purposes of prevention of ML and TF. • Provide mechanisms for the DGA to exchange with foreign counterparts about suspicious movements of cash, securities or precious metals. • Strengthen the capacity of the customs authority for monitoring, tracking and detection at border posts on the basis of risk and using intelligence information to enable it to prioritize their efforts more efficiently. • Continue training efforts in the prevention of money laundering and terrorist financing to the staff in charge of Directorate General Customs Services.
Preventive Measures: Financial Institutions	
<p>Risk of money laundering or terrorist financing</p>	<ul style="list-style-type: none"> •
<p>Customer due diligence, including enhanced or reduced measures</p> <p>R.5 [PC] R.6 [PC] R.7 [PC] R.8 [PC]</p>	<ul style="list-style-type: none"> • Mechanisms and regulations should be established to ensure that institutions included in Act No.285 but not supervised by the SIBOIF comply with the obligations arising from that Act. • The SIBOIF Rules embody most of the aspects of the FATF recommendations, but it applies only to institutions supervised and monitored by the SIBOIF. • Regulations for the financial institutions should include measures to prevent and repress financing of terrorism. • Eliminate the uncertainty prevailing on the permanence of the SIBOIF

	<p>Rules, by prompt resolution of the constitutional appeal at present before the Supreme Court.</p> <ul style="list-style-type: none"> • Consider the possibility of assigning AML/CFT supervision of the financial institutions not falling under the SIBOIF to the respective regulatory bodies of each of them and assign to the CAF only those which lack a specific regulatory agency. • For institutions that are not under the supervision of the SIBOIF, risk management procedures should be required as well as enhanced CDD, including determination of the origin of the funds and approval of all commercial relationships by senior staff when a customer is classified as PEP. • Amend the Rules of the SIBOIF to require that financial institutions establish the source of wealth of foreign PEPs, and not only the source of funds. • The requirements of Recommendations 7 and 8 should be applied to all regulated institutions and not solely to one sector.
<p>Third parties and introduced business</p> <p>R.9 [PC]</p>	<ul style="list-style-type: none"> • Regulations should be issued on the use of third parties for customer due diligence and on customers presented by another institution, requiring CDD to be applied in any contractual relationship, or else make the obligation non-delegable as in the case of financial institutions governed by the SIBOIF.
<p>Financial institution secrecy or confidentiality</p> <p>R.4 [LC]</p>	<ul style="list-style-type: none"> • Bank secrecy is not an obstacle to the judicial authorities in collection of information on money laundering and FT. However the power of the Fiscal General (as President of the CAF) to obtain confidential information without any need for a Court Order in the case of money laundering STRs should be explicitly extended to financing of terrorism. • A method should be established for control of the orders for information sent by judges to the financial institutions on the request of the Public Ministry, and an office designated to be responsible for such control. • Consider legally authorizing the Attorney General (Fiscal General) to also access information from the institutions not supervised by SIBOIF without warrant.
<p>Record keeping and wire transfer rules</p> <p>R.10 [PC] SR.VII [PC]</p>	<ul style="list-style-type: none"> • R.10: For regulated institutions not supervised by the SIBOIF the record keeping requirement should be broadened to include information and documentation on transactions and activities of the customer, correspondence, analysis of possible suspect transactions, etc. (not only documentation on the customer's true identity). • SR.VII: The requirement for including complete information on the originator of a transfer should be extended to money transfer operators, savings cooperatives (credit unions) and microfinance associations which are outside the regulatory framework of the SIBOIF. • SR.VII: The informal remittance businesses should be required to register with some authority and implement all AML/CFT prevention measures. • SR.VII: A state agency should be designated to be responsible for the AML/CFT regulation and supervision of money transfer businesses, savings cooperatives and microfinance associations.
<p>Monitoring of transactions and relationships</p> <p>R.11 [PC] R.21 [PC]</p>	<ul style="list-style-type: none"> • R.11. Compliance with the monitoring requirements embodied in Act 285 should be demanded of all money remittance companies, financial cooperatives, Bureaux de Change and other financial activities not supervised by the SIBOIF. • R.11 The monitoring obligations of institutions not supervised by the SIBOIF should be set out in greater details and guidelines should be

	<p>provided for the various regulated institutions on how to apply them, in accordance with the nature of their business.</p> <ul style="list-style-type: none"> • R.11 The provision of Act 285 and its Regulatory Decree on conservation of documents and information should be broadened beyond the simple conservation of “information on the true identity of persons” to include supporting documents of the suspicious transaction analysis. • R.21. The same control over operations with high risk countries should be applied to financial institutions not under SIBOIF supervision.
<p>Suspicious transaction reports and other reporting</p> <p>R.13 [PC] R.14 [PC] R.19 [C] R.25 [PC] SR.IV [PC]</p>	<ul style="list-style-type: none"> • R.13: The necessary institutional and regulatory measures should be taken to ensure that the financial institutions not supervised by the SIBOIF comply with their suspicious transaction reporting obligations. • R.13: The SIBOIF should speed up the conclusion of its inspection reports in order to be able to act more promptly and severely when failure to comply with unusual and suspect operation reports is discovered, particularly in the public banking sector. • R.13: Compliance with the reporting requirement by non-bank institutions supervised by the SIBOIF should be strengthened. • R.13: It is suggested that the STRs from institutions supervised by the SIBOIF be sent by secure electronic means to avoid waste of time and loss of information. • R.14: The prohibition to warn a customer and other people applicable to institutions not supervised by the SIBOIF when a suspicious transaction report on that customer is made, should be updated to include explicitly cases related with terrorist financing. • R.25: The CAF, while no FIU exists, must provide the reporting institutions with appropriate feedback to enable them to improve the quality of their reports and to be abreast of the most relevant trends and typologies. • SR.IV: It is suggested that the requirement for reporting transactions in which there is a suspicion of financing of terrorism be set out expressly in the law and not just implicit in the reporting of unusual transactions (however, this does not affect the categorization of SR.IV).
<p>Internal controls, compliance, audit and foreign branches</p> <p>R.15 [PC] R.22 [PC]</p>	<ul style="list-style-type: none"> • Regulations should be issued requiring the other financial institutions to establish internal procedures, policies and controls to prevent ML/FT, and these should be made known to all their officials and employees; to include a post of Compliance Officer in their administrative structures; and to have external and internal audits to verify compliance with the anti-ML/FT regulations. In addition, that they should have procedures to ensure that their employees maintain a high level of integrity. • Regulations should be issued to ensure that all sectors that have branches and subsidiaries should observe ML/FT measures and that there should be effective supervision by both the host country and the home country. • SIBOIF should have procedures for consolidated supervision of financial groups, since the regulations in force give it the power to do so.
<p>Shell banks</p> <p>R.18 [C]</p>	
<p>Supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions)</p> <p>R.17 [PC] R.23 [PC]</p>	<ul style="list-style-type: none"> • A scale for proportionate and dissuasive sanctions for non-compliance with Act No.285 and its Regulations should be issued. • Fines for directors, managers, officials and compliance officers, as responsible for the application of ML/FT rules, should be considered. • Regulations should be issued to give the competent authority or the supervisory bodies’ power to revoke, restrict or suspend licenses of financial institutions which re-offend in non-compliance with their duties

<p>R.25 [PC] R.29 [PC]</p>	<p>under the ML/FT regulations in force.</p> <ul style="list-style-type: none"> • Financial institutions should be made subject to effective ML/FT supervision by the competent authority or the supervisory or regulatory body. • The CAF should be provided with the human, financial and technical resources to enable it to carry out supervision over the financial institutions, to verify compliance with ML/FT rules in force. • Regulations should be issued to prevent criminals or their associates obtaining or becoming beneficiaries of a significant or majority part of, or occupying administrative functions within, a financial institution. • There should be a body to regulate, license and supervise money transfer firms and Bureaux de Change. • Guidelines should be issued to help financial institutions to implement and comply with requirements of ML/FT rules. For example, typologies, warning signals, instructions, etc. • Steps should be taken to ensure that the reports on SIBOIF inspections are sent in a timely fashion to supervised institutions to enable them to correct the deficiencies detected. • The number of persons responsible for SIBOIF inspections, as well as for following up the deficiencies detected in these inspections, should be increased.
<p>Money value transfer services SR.VI [NC]</p>	<ul style="list-style-type: none"> • Make it mandatory for money transfer businesses to register with some government agency with the capacity to manage this information. • Issue a regulation empowering the CAF or an agency with the necessary expertise to issue regulations and guidelines for money transfer operators, and to impose the penalties for non-compliance embodied in Act 285-99. • While the above takes place, the CAF should start raising awareness and overseeing compliance of ML controls by money transfer businesses, making use of the limited powers that it has in this respect.
Preventive Measures: Non-Financial Businesses and Professions	
<p>Customer due diligence and record-keeping R.12 [NC]</p>	<ul style="list-style-type: none"> • Except casinos, which are already obligated, all other categories of DNFBPs should be included for under the law for prevention of ML / TF. • Issue the necessary regulations, sectioned, so that NPNFD comply with the FATF Recommendations. • Designate a competent authority and adequate resources for the regulation and supervision of these obligations. • Prepare statistics showing the proportion of the financial system represented by each of the NPNFD with a view to giving priority to those representing the greatest risk.
<p>Suspicious transaction reporting R.16 [NC]</p>	<ul style="list-style-type: none"> • Regulate and monitor the implementation of the obligations AML / CTF of casinos. • Include as obligated all other categories of NPNFD under recommendations 12 and 16 of the FATF. • Designate an authority responsible for licensing or registration, regulation, supervision and punishment of the individual categories of NPNFD. • Take the necessary steps to include the minimum requirements for establishing NPNFD Recommendations 13-15 and 21 and apply them appropriately to these. • The CAF, in partnership with other relevant authorities, should make an effort to raise awareness among NPNFD to educate them about their obligations.
<p>Regulation, supervision,</p>	<ul style="list-style-type: none"> • Nicaragua should take all necessary steps to ensure that DNFBPs are

monitoring, and sanctions R.24 [NC] R.25 [PC]	regulated within the ML/FT Prevention regime, by passing a law to include all the international obligations in this sector. The rules should guarantee inclusion of the minimum requirements for DNFBPs described in Recommendations 24 and 25, and apply them adequately and efficiently to the sector.
Other designated non-financial businesses and professions R.20 [LC]	<ul style="list-style-type: none"> • Greater efforts should be made to reduce the use of cash in the economy and modernize financial transactions. • It is suggested that an authority be designated to regulate and control pawnshops and other regulated entities that may be designated as such in the future, with a view to ensuring that they comply effectively with AML/CFT obligations. An anti-money laundering regulation should be issued in accordance with the nature of their business (this does not affect the listing).
Legal Persons and Arrangements & Nonprofit Organizations	
Legal Persons–Access to beneficial ownership and control information R.33 [NC]	<ul style="list-style-type: none"> • The Property Registration Authority should be modernized and its procedures computerized, to streamline consultation by users and issue of certificates, and better security should be provided for the historical information that it holds in its records. • It is suggested that information held by the Register should be centralized at the national level and not independently for each Department of the country. This would simplify access to data on companies from any geographical location in the country and without delays for the authorities and the public. • Regarding bearer shares, the country should take steps to enable speedy location of reliable information on beneficial ownership. For example, each company issuing bearer shares should have a single representative of the holders of bearer shares, domiciled in Nicaragua and required to keep a register of transfers or such shares.
Legal Arrangements–Access to beneficial ownership and control information R.34 [N/A]	<ul style="list-style-type: none"> • If the law authorizing Trusts is passed, measures should be taken to ensure access by the authorities to adequate and timely information on the beneficial owners and all parties involved in this type of contract. Some of these measures are suggested in the OECD 2001 report entitled “Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes”.
Nonprofit organizations SR.VIII [PC]	<ul style="list-style-type: none"> • Nicaragua should carry out a study on the characteristics and dimensions of the non-profit sector, its level of exposure to risk of being used for financing of terrorism, and to what extent the regulations in force are adequate for reducing that risk. • Efforts should be made to inform and raise awareness in the NPO sector on risks and preventive measures in this area. • Make better use of (and possibly increase) the resources of the Department for Registration and Control of Associations of the Ministry of Public Administration to monitor compliance with the substantive obligations of the biggest and internationally most active NPOs, not simply for penalizing late renewal of registration or other formal violations. • Make it possible for the public and foreign authorities to have access to information on NPOs held in the Ministry of Public Administration (as is the case for commercial companies), particularly with regard to the objectives and activities of the organizations, and the identity of the persons who exercise control over them, including senior staff, members of the Board of Directors and confidential posts. • Establish a requirement for detailed record-keeping on international and

	<p>domestic operations and money transfer.</p> <ul style="list-style-type: none"> • Create channels for rapid coordination of activities and exchange of information among national authorities to enable them to take quick action in the case of suspected FT through an NPO. • Designate specific contact points and procedures for response to foreign requests for information on a particular NPO. • Consider the possibility of increasing the staff assigned to monitoring and supervision of non-profit organizations, because of the large number of such entities registered. • Train staff of the Department for Registration and Control of Associations in prevention and detection of the use of NPOs in money laundering and/or terrorist financing operations. • Adopt regulations or guidelines to prevent money laundering and financing of terrorism for NPOs.
National and International Cooperation	
<p>National cooperation and coordination</p> <p>R.31 NC</p>	<ul style="list-style-type: none"> • More frequent CAF meetings and meetings of the National Council Against Drugs (CNDLCD) to deal with matters concerning definition and follow up the action plan and policy of the country to combat these offences. • Periodic interaction and coordination between the CAF and authorities related to prevention and prosecution of these offences. • Define AML/CFT policy objectives and a national strategy with an identification of risks, priorities and performance indicators, and monitor the results.
<p>The Conventions and UN Special Resolutions</p> <p>R.35 [LC] SR.I [PC]</p>	<ul style="list-style-type: none"> • Even acknowledging the efforts made by the Republic of Nicaragua, it should continue with the approval and implementation of domestic laws incorporating the provisions of the International Conventions mentioned herein and to which the country is a party. • Set out the domestic procedure for compliance with the UN Security Council Resolutions, as well as the responsibilities of each body or competent authority of the country in relation to such compliance. • Amend Act No.285 of 15th April 1999 (on Narcotics, Psychotropic Drugs and Other Controlled Substances, Laundering of Money and Proceeds of Unlawful Activities) to make it applicable to the prevention of money laundering in all its forms and to the financing of terrorism. Only the SIBOIF has a set of regulations that applies to regulated entities under its supervision, and these establish mechanisms for prevention, control, detection and suspicious transaction reports on money laundering and terrorist financing.
<p>Mutual Legal Assistance</p> <p>R.36 [LC] R.37 [C] R.38 [PC] SR.V [PC]</p>	<ul style="list-style-type: none"> • Power should be granted to freeze and confiscate property related to ML and FT without a corresponding prosecution, when another State requests it. • International assistance in matters concerning financing of terrorism should be explicitly provided for in the law for acts committed outside the territory of Nicaragua. • It is recommended that a special fund be created from confiscated property to assist the law enforcement authorities to fulfill their objectives in the area of ML and FT. • Mechanisms should be created to share with the law enforcement authorities of other countries confiscated property arising from coordinated activities.
<p>Extradition</p>	<ul style="list-style-type: none"> • It would be desirable for the country to include within its domestic extradition legislation the possibility of applying a simplified extradition

R.39 [C] R.37 [C] SR.V [PC]	procedure for persons who consent to the suspension of the formal procedures.
Other Forms of Cooperation R.40 [PC] SR.V [PC]	<ul style="list-style-type: none"> • An agency should be created, or some state agency empowered, to exchange financial intelligence information with the FIUs of other countries.
Other Issues	
Resources & Statistics R.30 [PC] R.32 [PC]	<ul style="list-style-type: none"> • Provide for the CAF staff and resources to manage the information it receives, while establishing a FIU. • Train judges, prosecutors and police about new laws and issued to combat ML and TF. • Standardize interpretation by judges, prosecutors and police on the precautionary measures that the law makes available. • Create a system that allows the authorities to use available data to review the effectiveness of its system AML / CFT comprehensive manner. • Produce information on the response times of requests for mutual legal assistance and monitor their effectiveness. • Facilitate the sorting and analyzing reports of suspicious transactions according to their characteristics, case reports, amounts of money, etc. to assess trends and typologies.
Other relevant AML/CFT measures or issues	
General framework – structural issues	