

The Nicaraguan Federation of NGOs Working with Children and Adolescents
Alternative report for the Universal Periodic Review (UPR) in Nicaragua,
Session 33, from May 6th to 17th, 2019

1. The Nicaraguan Federation of NGOs working with Children and Adolescents (CODENI), after a process of consultations and validation with ONG, cooperation agencies, specialists in the field and the children and adolescents (NNA) themselves, produced this report on the compliance with the rights of children and adolescence. Its content is divided into two moments. The first one, analyzes the level of compliance with the recommendations issued by the Human Rights Council, in its 14th period of sessions to the Nicaraguan State, whose period corresponds from January 2014 to March 2018. The second moment evidences and denounces the serious violations of the rights of NNA registered during the socio-political crisis lived in the country, from April to September 2018.

1ST MOMENT: PERIOD JANUARY 2014 TO MARCH 2018

I. Background and Legal Framework

a. International Commitments made by the Nicaraguan Government.

2. Nicaragua has not yet ratified the International Convention for the Protection of All Persons from Enforced Disappearance, The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, The Hague Convention on the Protection of Children from Cooperation in matters of International Adoption, The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and to sign the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (known as the Protocol III of the Child Rights Convention). In the case of the last two instruments, the State rejected the recommendations, arguing that in use of its sovereignty, it considered that it was not the right time to assume new international commitments, that this represented an additional administrative and budgetary burden for the country¹.

Recommendation

- i. The Nicaraguan State should ratify the commitments and obligations derivate from the recommendations of the United Nations Human Rights Council and the Committee on the Rights of the Child, in relation to the instruments pending to sign and ratify.*

b. Constitutional and Legal Framework

3. In this period it is noted the approval of the Family Code (2015), its content includes several laws, which with its entry into force were derogated. In the Family Code the minimum age for marriage was raised to 16 years (Article No.54). However, it is unknown of any analyses and judicial interpretation with other laws, that allows a comprehensive protection for girls and adolescents.
4. The approval in 2012 of Law No 779 - Integral Law against Violence towards Women and Amendments to the Criminal Code (Law No. 641), incorporates new punishing measures for violence against women, adolescents and children. However, the Law No 779 still has some gaps in relation to other instruments that protect NNA (CDN and CAN), because it violates their right to protection by limiting the violence to just only the family, without taking into consideration the scholar and community environment.

¹On September 2014, United Nations Human Rights Council elaborated the last Universal Periodic Report (UPR) to the State of Nicaragua and emitted recommendations about the protocols.

Recommendation

ii. *The State of Nicaragua should implement the Law No. 779 and Family Code in their entirety, including the administrative and budgetary measures to ensure effective application of both of these statutes.*

c. The Relationship between Legislation and the Bodies that Monitor Human Rights.

5. The Human Rights Procurator's Office (PPDDHH) lacks of autonomy, independence and impartiality for the fulfillment of its functions. This institution has remained silence at the most alarming cases of gender violence, whose main victims have been children, adolescents and women. It has not been pronounced in cases of killings of children involving the Army and National Police, during clashes occurred with armed groups in the north of the country, in 2017
6. The instances of citizen participation established in the Law No. 475 (Law of Citizen Participation) were eliminated. Failing that, the Government implemented a model of citizen participation where the public institutions and the organized population can participate only through the Family, Community and Life Cabinets, which have been institutionalized in the Family Code. With this, the government closed any openings to the Civil Society Organizations (OSC) that for years have been working in coordination with the central and municipal government institutions in favor of the children and adolescents rights.
7. Access to public information: the Government continues violating what is established in the Law No. 625 (Law for the Access to Public Information) by not providing statistical information. The yearly official statistics do not contain all the necessary information to develop more precise analysis. The lack of access to information hinders the follow up and the evaluation of the improvements or challenges in the execution of public policies related to children and adolescents.

Recommendations

- iii. *The State of Nicaragua should return the autonomy to the PPDDHH and ensure the human, technical and financial resources to guarantee its full functioning in watching and defending the children and adolescents rights.*
- iv. *The State should comply with the established in the Law No 475 that insure the participation of all sectors of population in defense and promotion of the children and adolescents rights.*
- v. *The Government should comply with the established in the Law No. 621 that ease the access to information about childhood and adolescence for the proper monitoring in the fulfillment of their rights.*

II. Implementation of International and Human Rights Commitments.

a. Rights to freedom, integrity and safety of people.

8. *The sexual and intrafamily violence:* In the recent years, the situations has worsened by the absence of public intervention to prevent and address them. The Legal Medicine Institute (IML) reported during the period 2014-2014, that more than the 86% of the technical studies for sexual violence were practiced on NNA. Out of this, the 42% were practiced in girls under 13 years old. The 63% of these sexual abuses took place at home. The IML also reported that in this same period, that 42.2% of the technical studies for intrafamily violence were practiced on NNA in ages between 0 and 17 years old.

9. *The Femicide:* According to the Catholics OSC for the Right to Decide, during the 2014-2017 were recorded 224 femicides, from which 23 of the victims were under 17 years old. The State has not yet assumed a belligerent role to stop the femicides, nevertheless, with the regulation of the Law No 779 it typified it to the private sphere only, which effect disguised the crime and therefore reduced the number of femicides reported by the National Police.
10. The Law No. 779 mandates the implementation of an Integral Attention Model (MAI) for the care to the victims of violence. However, the Government does not make greater efforts to allocate financial, material nor human resources specialized to prevent and respond in this cases. In 2014, the Government regulated Law No 779, which generated several resources for unconstitutionality because itself changed the object of the Law. In addition, it mandated the creation of the Family Councils affiliated to the Ministry of Childhood and Adolescence (MIFAN) and it modified the route of access to justice, consequently left the victims of violence unprotected.
11. In 2015, the Government closed the Commissariats for Women and Children, its functions were undertaken by Judicial Assistance and its personnel was distributed among the different police units². The cases of victims of gender violence are investigated by police personnel without specialization, awareness nor experience, and the victims of gender violence (sexual, intrafamily, etc.) are not receiving a specialized attention, which represents a serious setback in the mechanisms of legal protection of the comprehensive protection system for children, adolescents and women.

Recommendation

- vi. *The State should ensure the implementation of the Integral Attention Model (MAI) for the attention to victims of violence, allocating budget, materials and specialized human resources.*
- vii. *The State should provide special protection against any form of violence towards women, guaranteeing the victims, access to justice and the restitution of their rights, and create the necessary mechanisms for the operational organs of justice apply the corresponding sanctions to the aggressor.*

b. Public Policies as a mechanism that contribute to reduce the levels of inequity and social exclusion

12. *Special protection policies for children and adolescents:* Budgets for special protection every year represents less than 0.5% of GDP and less than 2.3% of Social Spending. The Ministry of Family as ruling entity and guarantor of the protection policies is one of the entities that least budget is assigned to, with an average of US\$12 million per year, from this less than 50% is linked to programs aimed to children under six years old.
13. *NNA in orphanage,* as a consequence of femicide, 339 NNA were left in orphanage situation between 2014-2017. Public institutions do not present statistical information, nor information about the public intervention for the specialized therapeutic care for children and their families, as well as other institutional responses (MINED, MINSAs). It is unknown of cases in which the NNA receive a pension by the Social Security, whose mothers were quoting at the time of femicide.

Recommendation

²The Commissariats for Women and Children were specialized units in gender violence, with specialized personnel (investigators, police agents, forensic psychologists, social workers, legal advisers, etc.), in charge of guaranteeing access to justice for women, girls, boys and adolescents.

viii. *The State should set up a Children's National Protection System, to face the violence against boys, girls and adolescents, and to assign budget, material and specialized human resources.*

c. Right to Health

14. *Adolescent pregnancy:* from every 1,000 adolescent women (aged 15 to 19 years), 110 are mothers. In the rural area, three of every ten teenagers and young people aged between 15 and 19 years are pregnant, while in the urban area, two of every 10 are pregnant³. Most of the pregnant adolescents are poor, single, and with little or no education and have less opportunities to finish it. The situations of forced pregnancy becomes even more serious for children and adolescents under 14 years old. The Ministry of Health (MINSa) annually reports 1,600 births of girls "mothers" aged between 10 and 14 years and in the last decade this number has increased by 50% in this age group⁴.
15. The annual budgets of the Ministry of Health are not identified any programs linked to sexual and reproductive health, HIV prevention nor teenager pregnancy, which shows that the State of Nicaragua does not consider this as a serious public health problem that affects the adolescents. Similarly, the missing of statistic information about the situation of the health in adolescents, limits the analysis of the problem and therefore it also limits the response through interventions.

Recommendation

- ix. *Through social institutions and justice operator the State should guarantee an integral attention to children and pregnant adolescents and the access to justice for the victims.*
- x. *Through its Ministry of Health, the government should provide the necessary resources for programs about sexual and reproductive health, reduction of adolescent pregnancy and cases of HIV.*

2ND MOMENT: VIOLATION OF RIGHTS TO GIRLS, CHILDREN AND ADOLESCENTS - PERIOD FROM APRIL TO SEPTEMBER, 2018

16. From April 18, 2018 to the date this report was produced, Nicaragua faces one of the most severe sociopolitical crisis in its history, as result of the governmental repression through the use of police and paramilitary forces, that have left as balance between 318 and 512 people killed, +4,062 injured, 103 injured with permanent damage, +800 arrested and +1,428 disappeared⁵. Besides, the repression and intimidation of the citizens in their homes, work centers and public roads, for having exercised their right to protest and demand justice, democracy and the exit of the power of the ruler in the face of so many human rights violations.
17. In the last two months have increased the illegal detentions and kidnappings of approximately 720 people, of which between 204 (official numbers) and 350 (Human rights organizations) face a flawed judicial process that does not comply with laws and procedures. From the start of the crisis, CODENI has been evidencing and denouncing before international human rights bodies, the severe and constant

³ *More teenager's pregnancy* <http://www.laprensa.com.ni/2016/10/21/nacionales/2120952-masembarazos-en-adolescentes>

⁴ *Ministry of Health Statistic, period: 2010-2016.*

⁵ *Figures taken from the reports from CIDH y ANPDH* (<https://www.laprensa.com.ni/2018/09/24/nacionales/2476294-anpdh-eleva-512-la-cifra-de-asesinados-por-la-represion-orteguista-en-nicaragua>).

violations of human rights, committed by the State against the Nicaraguan people, especially against children and adolescents⁶.

18. Similarly, we denounce the siege and persecution that suffer the OSC promoters and defenders of the rights of children adolescents. During the crisis, four of the OSC (La Asociación de Niñas y Niños el Fortín, Centro Cultural Batahola Norte, SOS Children's Villages and the Scouts Association of Nicaragua) were victims of looting, damage in their infrastructure and aggression to the NNA under special protection and to their personnel by paramilitary groups, which operates with impunity.

a. Right to Life

19. Governmental repression, has left as consequence the killing of at least 29 NNA, between 5 months and 17 years, five of them had less than 12 years and 24 were adolescents, between 13 and 17 years old. The 90% of the cases were male. Most of the victims presented gunshots to the head (5), neck and chest (15), chest or abdomen (5), calcined (2) and for medical malpractice and injuries (2)⁷.
20. Since the end of April 2018, the fiscally announced the beginning of an investigation oriented to determine the circumstances of these "deaths" and the correspondent responsibilities. However, the Police, Fiscally and Supreme Court of Justice have focused their efforts on prosecuting the people who participated in the protests, and to date they have not clarified the 29 deaths of NNA.

b. Right to Physical and Emotional Integrity

21. The preliminary report of the Truth, Justice and Peace Commission (created on April 2018 by the Parliament), reported that from the beginning of the crisis until the beginning of July 2018, 66 NNA between 0 and 15 years old resulted wounded or/and injured, from which 13 were aged about 0 and 5 years, and 53 has between 6 and 15 years old. It is unknown the amount of adolescents between 16 and 18 years, because the Commission's report includes them in the age range between 16 and 25 years old⁸.
22. The refusal of the authorities of the Ministry of Health to assist those wounded and injured people and to deliver the epicrisis of the deaths to process their death certificates, is among the main denounces made for violation to the human rights of the family members, without the authorities having pronounced themselves.
23. An undetermined number of NNA has also been physically and psychologically affected, because they lost their parents, siblings and family members: because they were wounded by rubber bullets, lead, mortars, fragments of bullets and projectiles of war; exposed to tear gas and fires in their homes; and because they were subjected to a situation of harassment, for five months. The monitoring made by the Observatory of CODENI, reveals that +58 NNA lost their parents, although this cipher could be higher, since there are no official records either.
24. In the first three months of the crisis, product of a situation of protest, the insecurity and the presence of paramilitary armed forces on the streets forced the families to not send their children to school and in other cases the authorities themselves were forced to close some education centers, mainly in the cities

⁶ CODENI has presented reports on the state of violation of the rights of children and adolescents: two reports to the IACHR, a report to the United Nations High Commissioner for Human Rights, a report to the Committee on the Rights of the Child in Geneva, and maintained contact with the Rapporteur on the Rights of the Child of the CIDH. The inputs have been taken from the reports of the Inter-American Commission on Human Rights (CIDH), the Observatory of DDHHNNA of CODENI and of specialized national agencies such as the Nicaraguan Center for Human Rights (CENIDH), the Permanent Commission of Human Rights (CPDH) and the Nicaraguan Association for Human Rights (ANPDH).

⁷ preliminary report of Nicaraguan citizens killed in civic protest as a human right and executed by armed groups (paramilitary or shock forces) period: 19/04/2018 - 02/07/2018.

⁸ Preliminary report (2018), Truth, Justice and Peace Commission, Pg. 25.

where the protest was intensified, such as Managua, León, Masaya, Matagalpa, Juigalpa, Jinotega and Estelí, among others. This situation complicated even more the already deteriorated quality of education in the country.

25. The exacerbation of government repression has led to forced migration. Until mid-August, according to numbers from the Directorate General of Migration and Foreigners (DGME) of Costa Rica, more than 23 thousands of Nicaraguan citizens has requested refuge. According to the officials of the DGME of Costa Rica, the relatives have requested refuge for 2,464 children and adolescents in that country. In Nicaragua are not exact numbers of how many NNA accompanied them, but it is important to point out the negative effects (emotional, family shredding, poverty, abandonment, etc.), that this forced mobilizations causes in the Nicaraguan families and in the NNA in particular⁹.
26. In its official speech, the government has tried to sell to the collective imagination that the country is back to normal, despite the increase in kidnappings of people who have participated in the protests and the presence of paramilitary forces on the streets, trying to leave in oblivion the violations to human rights committed, including those committed to children. On the contrary, the government has not guaranteed the application of integral measures for the protection towards children and the perception that they have about the presence of the police and paramilitary forces which is of "fear, sadness, anger and pain"¹⁰.
27. Before the sociopolitical crisis started, the gender violence (sexual violence, interfamily, femicide, patrimony, etc.), was without any doubt one of the public health problems that most affected children, adolescents and women. However, complaints from the population for cases of gender violence in girls, adolescents and women continue, without the government authorities publishing any statistics nor reporting the state of these complaints. OSC that works on the theme report that between January and August of this year, attended to 46 girls, boys and adolescents victims of sexual and intrafamily violence.
28. The PPDDHH and in particular the Special Attorney for Children and Adolescents has failed to fulfill its oversight role to the State's authorities for the serious violations of the human rights of children. The only intervention has been made through the Truth, Justice and Peace Commission, created to investigate the deaths and damages caused during the crisis.
29. The Inter-American Commission on Human Rights (CIDH) published three specific recommendations (No. 14, 11 and 12), where urges to the government to assure the life, integrity and safety of all people, specially of the NNA, and to systematize and publish information of the people treated in public and private hospitals as a result of social protests, but it has not assumed the responsibility of applying them.

c. Right to Individual Freedom

30. The Truth, Justice and Peace Commission, reported from the beginning of the crisis until July 2018, 64 adolescents (aged between 14 and 17 years old) were detained¹¹. On the contrary, reports from organisms of human rights (CPDH) register 15 adolescents prosecuted for participating in protests. The detained adolescents presented severe injuries, sings of torture and in some cases burns with acids. The crimes that are attributed to these adolescents are aggravated robbery, illegal possession of weapons and one of them is being accused of terrorism, organized crime, and illegal possession of weapons. The

⁹ <https://www.laprensa.com.ni/2018/07/31/nacionales/2455056-al-menos-23000-nicaraguenses-han-solicitado-refugio-en-costa-rica-desde-el-inicio-de-la-crisis>

¹⁰ CODENI, (2018), *Perceptions report on the impact and affectations in childhood and adolescence in the face of the sociopolitical crisis*, Pg. 8.

¹¹ *Ídem*.

National Police ignores the resources of personal exhibition and adolescents remain in detention until the judges grant them freedom. On the other hand, the National Police assigns them that they are over 18 years old and initiate proceedings in the adult courts.

31. The judicial prosecution of these adolescents violate the principles and provisions of the Children and Adolescence Code, which in its articles 15, 16 and 19 establishes that every NNA has the right to freedom, to participate in the social and political life of the nation and to express their thoughts in public or private spaces, and that the State has to provide protection and care to girls, boys and adolescents who are in danger.
32. CODENI reiterates its concern about the increase in insecurity in the country, which could lead to an increase in the presence of organized crime, drug trafficking and consumption, human trafficking, a significant increase in child labor as a result of the economic crises. Likewise, its concern for the number of children and adolescents of families who have taken land and live in the open and are exposed to the worst environmental conditions, insecurity, hygiene, lack of water and sanitation services. The state has not published information on the number of children living under these conditions.

Recommendation

- xi. That the State comply with Observation No. 3 of the CIDH regarding the creation of an international investigation mechanism on the acts of violence that have occurred, with guarantees of autonomy and independence to ensure the right to the truth and to duly identify those responsible.*
- xii. That the State abide by Observations No. 4, 11 and 12 of the CIDH to guarantee the life, integrity and liberty of the persons and to publish information about injured and injured persons during the protests, especially cases of children and adolescents.*