

## **Coordinating Federation of Nicaraguan NGO's that work with Children and Adolescents**

### **Alternative Report for the Periodic Universal Exam (EPU/PUE), Session 19, April-May 2013**

The Coordinating Federation of Nicaraguan NGO's that work with Children and Adolescents (CODENI) has elaborated this report in the framework of their institutional duties and after a large process of consults and validation with NGO's, cooperation agencies, specialists in childhood and adolescence issues, and with boys, girls and adolescents themselves. Based on qualitative and quantitative information in order to identify advancements and challenges in the upholding of children's and adolescent's rights, this report was prepared from the recommendations emitted by the Council on Human Rights of the United Nations in their 14<sup>th</sup> period of sessions with the Nicaraguan Government. The analysis period comprises the years 2009 through 2012.

It is important to highlight that the issues and recommendations addressed in the present report that pertain to childhood and adolescence have already been addressed on previous occasions by the Committee of Children's Rights and the Council on Human Rights of the United Nations; occasions on which, they urged the Nicaraguan Government to comply.

#### **I. Background and General Framework**

##### **a. The international commitments of the Nicaraguan Government**

Nicaragua has still not ratified the III Discretionary Protocol of the CRC in relation to the communications procedure approved by the General Assembly of the United Nations in 2011. In the same manner, the Nicaraguan Government has not signed the International Convention for the Protection of all individuals against forceful disappearances, the Discretionary Protocol of the Convention on the elimination of all forms of discrimination against women and the Discretionary Protocol of the International Agreement on Economic, Social and Cultural Rights.

#### **Recommendation**

***1. That the State of Nicaragua signs the commitments and obligations that derive from the recommendations of the Committee of Children's Rights, such as the III Discretionary Protocol of the CRC in relation to a Communications Procedure.***

##### **b. Internal Constitutional and Legislative Framework**

Nicaragua has advanced its legal framework regarding childhood and adolescence. Several laws that are linked to children's and adolescents rights have been approved. The Children's and Adolescent's Code (CAC), which has been enacted since 1998 remains as the legal framework that uphold all matters in children's and adolescents Rights. Though the lack of human, technical and financial resources, along with a lack of political will has limited its complete enacting.

The Civil Registration Law is still pending approval. The lack of registration is a relevant issue, and it is estimated that the level of under-registration ranges between 15% and 20% of the individuals born in this country. CODENI has pointed out the importance of modernizing the citizen registration process in such a way that would eliminate the barriers that withhold the right of thousands of girls, boys and adolescents to a name and nationality. In 2009, a proposal regarding this matter was presented to the Parliament. Nevertheless, there is no answer yet.

Since 2008 there has been a *total cease of the duties of CONAPINA*<sup>1</sup>. According to the presidential agreement no. 157-2007, approved on the 8<sup>th</sup> of March of 2007, the Ministry of Family, Adolescence and Childhood (MIFAN) took over in a permanent manner of the CONAPINA. To this date there have been no sessions in this Council.

In its stead, the government has established the Social Welfare System, which does not contemplate articulation actions with this instance, as is set by the Children's and Adolescent's Code. CODENI has expressed its concerns regarding this matter, since the dysfunctional nature of CONAPINA has meant a setback in the articulation between the labors of the Government and the Civil Society.

### **Recommendations**

**2. *The approval in 2014 of the Family Code and Civil Registration Law, including the administrative measures needed to ensure an effective application of the regulations.***

**3. *Reactivate the duties of CONAPINA as an interinstitutional coordination center in matters of children's and adolescent's rights as is established by the CAC; and that it may be assigned a budget for its duties.***

#### **c. Relation between legislation and the Monitoring Organs of Human Rights.**

Nicaragua has a large body of social policies regarding children's and adolescent's rights. However, their enactment has been limited by several motives. The lack of budget, independence and unbiased actions of some institutions, as well as specialized personnel, has impeded the objective vigilance and fulfillment of the rights of Nicaraguan children.

The new model of "Direct Democracy" implemented by the government, which entails that only public institutions and organized populations can participate in the Cabinets of Family, Community and Life, was institutionalized in the Family Code. Said model has reduced joint efforts between government institutions and NGOs in matters of promoting and defending children's and adolescent's rights, which violates what has been provided in the current legal framework.

**Ombudsman for Human Rights (PDDH):** The Committee of Children's Rights and the Council on Human Rights of the United Nations, in their past reports have urged

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<sup>1</sup> In accordance with the law for the organization of the National Council for the integral protection of Children and Adolescents and the Office for the advocacy of Girls, Boys and Adolescents (Law (351), which was approved in May 2000, its second article establishes that the CONAPINA will "act as an articulation instance between the government institutions and with the other powers of the state and civil society that work with children and adolescents.

the Nicaraguan government on the need of having an impartial governmental organ regarding human rights. However, the PDDH has of yet not overcome its lack of independence, autonomy and impartialness in the fulfillment of its duties ensuring an objective vigilance, investigation and sanction of children's and adolescent's rights violations. In the same manner, the assignment of human, technical and financial resources for this entity is still very limited.

### **Recommendation**

**4. *That the State of Nicaragua, through its legislative power, name a Human Rights Ombudsman, return autonomy to the PPDH and insure the human, technical and financial resources that guarantee the full exercise of its duties supervising and defending children's and adolescent's rights.***

- d. **The public policies as a mechanism that contribute to the reduction of social margination and inequity levels.**

**Special protection policies for children and adolescents:** There is still a negligible implementation of the special protection policies. The budgets for its undertaking represent less than 1.0% in relation to the Internal Gross Product (IGB). Although MIFAN has improved its budget in the past years, it is still insufficient for it to exercise its role as children and adolescent's rights defender.

**Access to public information:** The lack of access to information is an obstacle in the follow up and evaluation of the advancements or challenges of the execution of public policies regarding children and adolescents. Although the government through MIFAN has at its disposal a unique system of indicators on children and adolescence (SUINA), the information it discloses is limited and in the majority of cases it is outdated. The rest of the public institutions do not provide information, even though Nicaragua has a Law for the Access to Public Information (Law 625).

With the support of cooperating organisms, CODENI has made available to the public the Human Rights Observatory on Childhood and Adolescence. Said manual was created as a tool of social involvement linked to the exercise of social advocacy for the effective fulfillment of the rights of boys, girls and adolescents.

### **Recommendations**

**5. *That the Government ensures in its Annual General Budget of the Republic, the resources for the implementation of special protection policies on the prevention of domestic and sexual violence, child labor, teenage pregnancy and HIV and AIDS.***

**6. *That the Government complies with the provisions of Act 621 to provide access to information on children and adolescents in order to monitor the fulfillment of their rights.***

## **II. Implementation of International Obligations and Human Rights**

### **a. Equality and non discrimination**

**Indigenous peoples and of African descent:** Our Political Constitution and judicial organs recognize the equalities of all Nicaraguan citizens in the eyes of the law. However, boys, girls and adolescents continue to suffer discrimination based on their

age, gender, social and economic condition, race and ethnicity. The CRC and the Council on Human Rights of the United Nations have recommended on previous occasions that the Nicaraguan government should implement strategies aimed at reducing the gap of inequality in which boys, girls and adolescents of the Caribbean Coast live.

According to the last national census (2009), the population under the age of 13 is 74,101 children in the North Atlantic Autonomous Region – RAAN (41.3%) and 27,324 children in the South Atlantic Autonomous Region – RAAS (36.8%). The increase in population in certain urban sectors of these regions, the lack of a similar increase in basic services, and the scatteredness of the rural communities in the Caribbean make it difficult to efficiently distribute basic services such as health, education, drinking water, housing, etc. The right of boys, girls and adolescents to receive education in their native language and with respect towards their own cultures and customs is limited. The bilingual intercultural education program is only available in 35% of the schools in the regions.

### **Recommendation**

*7. Provide harmony as soon as possible to the policies aimed at children and adolescents in order to make an effective fulfillment of the principle of the best interest of children and fulfill the recommendation of the CRC regarding the Caribbean Coast.*

#### **b. The Right to freedom, integrity and safety of people**

**Violence in schools:** it is noteworthy that the Ministry of Education has explicitly prohibited corporal punishment and other forms of humiliating punishment against students. They have also included content in the teacher training programs that strengthens positive discipline and respectful relationships between teachers and students.

However there is another phenomenon that threatens the integrity of children and adolescents both inside and out of the classrooms. The abuse of psychoactive substances, alcohol, tobacco, among others, are recurring problems that take place in some schools and generate a growing concern for educators, parents, authorities and villagers.

On the other hand, cases of school harassment (Bullying) and abuse by teachers that affects children and adolescents are still cropping up. However, the authorities have not implemented the measures required by the Ministerial Agreement 217-2006. Violence has an impact on school performance, makes learning difficult, it exacerbates aggressive behavior, poor academic performance and encourages school dropouts.

**Domestic and Sexual Violence:** National Police statistics, in 2011 recorded 2,132 complaints of crimes against sexual freedom and integrity of children and adolescents. Out of this total, 1,359 were reported rapes in its various forms (rape, rape of children under the age of 14, aggravated rape) and 650 for sexual abuse.

90.0% of the victims and survivors of sexual violence are female, 2.0% more than in

2010. Of the total victims that year, 71.0% were children and adolescents under the age of 17.

According to statistics from the Institute of Legal Medicine (IML), domestic violence in 2011, like the two previous years, ranked second as a cause of physical injury, with 10,644 cases, representing an incidence rate of 181 cases per 100,000 inhabitants.

**Femicide:** Femicide increased according to records from the Commissariat of Women and Children of the National Police. By 2011 females accounted for 30 deaths of victims of domestic and sexual violence. 87.0% of these deaths correspond to domestic violence and the remaining to sexual violence. In 2012 there were 76 femicides.

In contrast, according to the media monitoring that the NGOs undertake to address this issue, the number of victims of femicide in 2011 was higher: 76 women. Out of which 7 were girls between the ages of 0 and 17 years. While in 2012, 85 women were killed, 22 of them were under 20 years. In more than half of the cases the perpetrator was an acquaintance.

**Enforcement of the Integral Law against Violence towards Women (Act 779):** There are mixed opinions on the implementation of Law 779, some religious sectors and parts of the legal profession have called it unconstitutional, arguing that it violates the principle of equality and it undermines family unity. In the same vein, the Supreme Court of Justice (CSJ) did not allow the appeal for unconstitutionality. However, it did send a draft amendment of the law to the Parliament, revising Articles 30, 32 and 46, which establish the figure of mediation in mild cases that local courts may carry, while criminal districts can address mild to severe cases.

Before the official entry into effectiveness of this Act (June 2012), it was a recurring practice to use legal mediation in crimes against physical and sexual freedom. With mediation the victim was on unequal terms, usually in a position of submission, economic dependence and often emotionally affected, being a victim of blackmail and intimidation. This resulted in being forced to comply with unsatisfactory agreements that could never compensate the damage. Nowadays, the Act prohibits mediation in these crimes.

CODENI has argued that any reform to the Law 779 will not reduce violence against women. But, by developing joint strategies channeled to change attitudes and behavior in the population regarding domestic and sexual violence against women, it may result in a decrease of said cases.

**Therapeutic Abortion:** CODENI has manifested its concern over the penalization of Therapeutic Abortion. Especially in the cases of rape towards children and adolescents, where the best interest of the child should be upheld. Currently, adolescents are forced to carry out their pregnancies, thus violating their human rights. Several NGOs have introduced motions before the Supreme Justice Court and have participated in campaigns for the reversal of the penalization of therapeutic abortion since 2007. To this date, there is no clear position on behalf of the political parties or from the government of supporting a change in the Penal Code in order to reverse the penalization of therapeutic abortion.

**Sexual exploitation and trafficking:** Even with the effort undertaken through public campaigns with the support of external cooperation, the trafficking statistics are difficult to calculate. National Police data for the period 2009-2011 recorded 26 complaints of trafficking and 31 for sexual exploitation. About half of the victims were between 13 and 17 years.

NGOs working in the field have indicated that this type of crime is being made visible through the reports as a product of the campaigns. In the same manner, a potential risk to children, adolescents and adult women has been identified in the form of internet sites, where a network can entice a victim by offering them employment.

Commercial sexual exploitation of children and adolescents is a matter of concern for CODENI, since according to official statistics it is known to be a growing phenomenon, yet it remains disguised and invisible, which hinders a comprehensive approach.

### **Recommendations**

*8. That the Ministry of Education (MINED) applies what has been established in the current Ministerial Agreements to ensure the protection against any kind of physical or humiliating punishment that girls, boys and adolescents may receive.*

*9. That the State ensures the application of Law 779, by providing budget, materials and trained human resources. We reject the modification of establishing the mediation as a legal figure.*

*10. That the State provides especial protection against all forms of violence towards women, assuring the victim's access to justice as well as the restitution of their rights, creating the required mechanisms so the operational justice organs apply appropriate sanctions to the perpetrators.*

*11. Modification of the Penal Code to reestablish the right of girls, boys and adolescents victims of sexual abuse to receive protection, legal attention and health care, including access to therapeutic abortion in a legal, secure manner.*

### **c. Right to an adequate standard of living**

There are notorious advances in the matter of health, particularly in the mother-child binomial. Amongst these is the significant reduction of maternal and child deaths, child malnutrition, increase in the access and coverage of immunization programs, breastfeeding promotion and the national days of health. The mortality rate in girls and boys under five years is calculated in 23 and 27 deaths for 1,000 nvr<sup>2</sup>. Maternal mortality has also decreased in the last years, up until 2012 the calculations are of 50.6 deaths for 1,000 nvr. In the same way, child malnutrition has decreased. The estimate in 2011 is 12.0%.

There are improvements in some indicators of performance and impact measuring the health policies. Still, more resources are required for this sector. The disbursement in health as a percentage of the Gross Domestic Product (GDP) went from 3.6% in 2005

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<sup>2</sup> Registered alive at birth

to 3.8 in 2010<sup>3</sup>. At a Central American level, Nicaragua is listed amongst the countries that spends less in health per inhabitant (US\$58.4), Guatemala invests an average of US\$214.00, Honduras US\$193, El Salvador US\$251.00, and Costa Rica US 943.00 (Data World Bank, 2011).

The Nicaraguan government has made important efforts to ensure health care to mothers and children. Nevertheless, there is still a population sector from 6 to 18 years old that continues to be limited in the public health policies.

**Adolescent pregnancy:** Nicaragua presents the highest proportion of adolescent pregnancy in Latin America; 26.3% of pregnant women in the country are adolescents, 110 per 1,000 adolescent women (between 15 and 19 years of age) are mothers. The majority of pregnant adolescents are poor, single, with little or no education at all. They have fewer opportunities to conclude their education. 15% of women in the range of 15 and 49 years of age have no possibilities of planning their pregnancies.

The proportion of women between 20 and 24 years of age who gave birth during their adolescence and belong to the lower socioeconomic stratum is twice as much than those in the highest socioeconomic stratum. Statistics from MINSa state that between the years 2000 and 2009, the number of girls from 10 to 14 years old who gave birth raised from 1,066 to 1,577. The rate of births in mothers from 10 to 14 years old has increased in the last decade by 47.9%. Meanwhile, 25% of all births in Nicaragua are from adolescent mothers, in the rank of 15 to 19 years old.

**HIV and AIDS** The rate of accumulated prevalence (number of people who have been identified to date) in 2012 is calculated in 99 per 100 thousand inhabitants, 17.5% more than what it was registered in 2010 (82.5), while the incidence rate (new number of identified people) was of 19.8 per 100 thousand inhabitants.

Depending on their place of residence, 68% of persons living with HIV are from the urban areas and 24% from the rural areas. Regarding age, it was found that from the total amount of people with HIV, 19% are in the rank of 30 to 39 years old, followed by the group of 25 to 29 years old, and 20 to 24 years of age with 19.8% and 16.3%, respectively. People under 19 years of age presented an 8.6% of new HIV infections.

Adolescents are especially vulnerable to HIV epidemic, given, among other factors, to early initiation of sexual life, associated to substances abuse (alcohol, drugs, etc.), stress and sexual violence.

### **Recommendations**

***12. That the government, through MINSa ensures the resources for programs of promotion of sexual and reproductive health, and reduces adolescent pregnancies and HIV.***

***13. That the government, through MIFAN, MINED, MINSa, and the Justice System join efforts to assure the integral attention to girls or pregnant adolescents, as well as guaranteeing access to justice for those felonies committed against them.***

***14. Regarding pregnant girls and adolescents, the correspondent legal functionaries must apply the required law and report the cases.***

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<sup>3</sup> The percentual decrease during the following years is a result of a recalculation of the country's GDP. Although, the tendency for growth continues in the budget destined for health. Health expenses represent 3.1% of the GDP in 2013

#### **d. Right to education**

The public investment in basic and secondary education has raised its percentage rather shyly in relation to the GDP. In 2006 the calculus was 3.3% and by 2010 it was estimated in 3.8%<sup>4</sup>. The government projections estimate that by 2016 it might represent 3.1% of the GDP. According to the classification of budget for education, 67% of it is given to basic and secondary education, universities receive an average of 30%, and technical education gets less than 2%. Technical education is the less prioritized in the whole educational system.

**Investment in Basic and Secondary Education:** In 2013, the budget for MINED was calculated as US\$301 million. In this amount, the preschool program represents less than 2% of the MINED total budget, basic education received the largest budget proportion, with an annual average equivalent to 64.2%, and secondary education received the annual equivalent to 11.3%. In the same manner, Nicaragua invests an average of US\$21.3 per preschool student, US\$210.5 in basic education, and US\$90.5 in secondary school, both numbers per student.

In regards to infrastructure, MINED has invested less than 10% of its budget for the construction and rehabilitation of school facilities. Instead, the major offices have provided resources for the improvement of schools infrastructure at the local level through transferences made by the Treasury Ministry.

Teachers of primary schools have received professionalization in their field. It is considered that 80.3 % of teachers from basic education are graduated teachers. 68.7% of secondary teachers are graduated. Also, teachers' salary has been improved. A nominal monthly salary might be around US\$213.7. Although, it is the lowest teacher's salary in the Central American region.

#### **School exclusion**

The United Nations International Children's Emergency Fund (UNICEF), in its study "Completar la Escuela en Centroamerica: los desafios pendientes / Completing school in Central America: pending challenges", points out the following: In Nicaragua, approximately 870,420 girls, boys and adolescents experience school exclusion; 21,457 girls and boys have the required age to attend school, but they fail to do so. Also, approximately 53,818 girls and boys have the age to attend school, but they fail to do so, and 564,309 girls and boys are in risk of dropping primary school. About 71,527 adolescents have the age to assist to secondary school, but do not attend. Around 159,309 adolescents are in risk of dropping out of secondary school.

#### **Children and adolescent with special needs:**

Currently, there are 26 special education schools. In those, educative attention is provided to girls, boys and adolescents who present different disabilities: sensorial, intellectual, motor, and multiple. Besides, there are 13 integrating classrooms which function in the regular schools at the national level. However, there is no data on the number of children attending these different modalities. On the other side, the

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<sup>4</sup> As with the health expense, the expense on education as a percentage of the GDP, saw a decrease in percentual terms in the past three years as the Central Bank of Nicaragua update the national accounts and recalculated the GDP. By 2013, the expense in basic education represents 2.8% of the GDP.



quantity of special education schools is minimal in relation to the existing needs in the country.

In budgetary matters, the allocation of resources for this sub-system represents less than 1% of the total budget designated to MINED. That is to say that it is less than US\$250.000 per year. On the other side, the government implemented the Program “Todos con voz”/Everyone with a voice. This program was started in 2008, and until 2010, it found 126,000 families with disabled persons. Nevertheless, the numbers gathered are not disaggregated by age and sex<sup>5</sup>.

### **Recommendations**

*15. That the government ensures in the annual national budget the required resources to improve and expand the infrastructure and facilities in the preschool, secondary and technical school levels.*

*16. That the government assures an inclusive education in all the levels of education, as well as the harmonizing of the secondary, technical, and superior school levels.*

### **e. Right to the protection against all the forms of exploitation (economical)**

**Economic exploitation including child labor** Despite the efforts made by the Ministry of Labor on the prevention and surveillance of child labor, the task of labor inspectors is mainly focused in the formal sector, which leaves working children from informal sector completely defenseless.

Child labor continues to be a pending issue in the matter of policies for special protection. The last official data published by the Encuesta sobre Trabajo Infantil (Survey on Child Labor), ENTIA 2005, reports that 239 thousand girls and boys between 5 to 17 years old were performing some kind of work, 36 of 100 under the minimal age allowed to work (14 years old). 76% of those children are incorporated to the informal economic sector, in the category of unremunerated working relative. Many of the activities performed by these children are categorized as worst forms of child labor. In 2009, the government performed the ENTIA 2009. However, its results have not been published up to date.

### **Recommendations**

*17. That the State publishes the statistics related to child labor and strengthens the prevention and surveillance mechanisms of child labor in both formal and informal economic sectors.*

*18. Guaranteeing of the resources in the government’s general budget for the complete implementation of the Path for the eradication of child labor.*

*19. That the government ensures the adequate conditions for adolescents to enter the working life.*

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<sup>5</sup> The “Los Pipitos” foundation has developed a successful experience in articulating amongst the different sectors of civil society in order to destine resources and efforts for the attention and social insertion of underage children with disabilities, especially those from households with a reduced income. In the same manner, it has articulated actions at a local, regional and national level through education centers and early stimulation in 83 of the 153 municipalities of the country.

#### **f. Specialized penal justice for adolescents**

After 13 years of the approval and having in effect the Code of Children and Adolescents, it has not received the necessary priority, neither the resources (human, technical, institutional, economical), to achieve a total and satisfactory application.

Given the circumstances of a university student being killed by some teenagers in a burglary situation, the legislative branch, after doing some consultations, has raised the need of updating the code's content, with no modification of the infliction of freedom deprivation for adolescents.

Regarding the application of juvenile justice standards, actors of civil society and government coincide that this phenomenon of girls and boy's transgressions is caused by structural factors in their environment, such as violence in their families, lack of basic living conditions, and playful and educative options.

CODENI's approach is that any initiative of revision and modification of the Code of Children and Adolescents must go through a wide assessment of a comprehensive execution of this instrument, with participation of all the sectors involved in the promotion and defense of the rights of children and adolescents. Up to date, there has not been definition of a date for the proposed modification.

#### **Recommendations**

*20. That the State assigns in its general annual budget the economical resources intended to guarantee the application of socio educative measures in transgressing adolescents.*

*21. That the State, through the justice administrators provides access to justice in time and form, as it is established in the Code of Children and Adolescents, as well as the designing of the guarantee policies established in this code.*