“History will judge our society by the way we treat our Children and Adolescents; it will not be the wealth we accumulate, the politics we direct or the beauty of our homes, but rather how we treat what is most important for our society: Children.”

*Bruce Harris*
*Executive Director of Casa Alianza*
The International Project

Consortium for Street Children


The Consortium for Street Children (CSC) is a network of NGOs working with street-involved children, and children at risk of taking to street life in Africa, Asia, Eastern and Central Europe, and Latin America.

Street children are particularly vulnerable to abuses in juvenile justice systems: they are more likely to come into (actual or perceived) conflict with the law, and they are less able to defend themselves from abuse once within the system. CSC has undertaken a two-year research and advocacy project with local partners to examine the situation of street children in juvenile justice systems in six countries: Kenya, Nicaragua, Nigeria, Pakistan, the Philippines and Romania.

This report documents the findings from this project in relation to Nicaragua.

The international project is funded by the UK Community Fund, the UK Foreign and Commonwealth Office Human Rights Project Fund, and the UK Methodist Association of Youth Clubs ‘Streets Apart’ Campaign.

The project in Nicaragua is funded with generous support from the UK Community Fund.
In many countries around the world street children are particularly vulnerable to abuses in juvenile justice systems: they are highly likely to come into contact with the criminal justice system in the first place, and they are less able to defend themselves from abuse once within the system. In some countries, in the absence of adequate social welfare responses, the criminal justice system is used to warehouse homeless children regardless of whether or not they have committed a crime. In other countries, outdated legislation means that children face harsh sentences for petty (often ‘survival’) theft, substance abuse, begging and ‘vagrancy’. In short, these children are discriminated against and have their rights violated because they are poor.

In response to the internationally identified need to address the particular overlap between street children and the criminal justice system, The Consortium for Street Children (CSC) has undertaken a two-year research and advocacy project working with local partners to examine the situation of the human rights abuses of street children in juvenile justice systems in six countries: Kenya, Nicaragua, Nigeria, Pakistan, the Philippines and Romania.

Research was undertaken and national, cross-sectoral workshops were convened involving street children themselves, civil society organisations, the police, judiciary, social and probation services and other stakeholders to identify key obstacles to the implementation of international human rights standards for street children in juvenile justice systems in each country. With an emphasis on constructive dialogue and collaboration between civil society and government, the workshops addressed issues of national relevance, examined examples of innovative good practice in this area and outlined recommendations for further action.

The project helped to promote international exchange of experiences through a workshop attended by project partners from all six countries, held in London in July 2003. The discussions from this were then compiled together with case studies and the findings from each country into a practical, international handbook on street children and juvenile justice.

CSC would like to thank all those who contributed to this project in Nicaragua, in particular our local partner Casa Alianza Nicaragua, without whose dedication, enthusiasm and hard work, none of this would have been possible. Special thanks also go to the children who had the opportunity to take part in this project, as well as to those who did not: those who are still on the streets or behind bars. Hopefully this project will go some way towards sharing their stories and highlighting their incredible resiliency, courage and imagination in the face of exceptionally difficult circumstances, reminding us that street children are first and foremost children, humans entitled to human rights, who need us to work together as a matter of urgency to put the ‘justice’ back into the ‘justice’ system.

Marie Wernham
Advocacy Officer, Consortium for Street Children, www.streetchildren.org.uk
The International Project

The aim of the project under which this report was made, is the mobilization of national and international response to uphold the human rights of street children within the juvenile justice system, recognizing and highlighting the pivotal issues and problems and working towards child-friendly resolutions. As part of an on-going global campaign and a multi-country production of a Handbook on Street Children and the Juvenile Justice System by the Consortium for Street Children (UK), this report is also intended as a tool for lobbying and advocating the rights of street children in the juvenile justice system.

The Project in Nicaragua

Culling reports and studies made by different organizations, this report is the culmination of researches and workshops conducted by Casa Alianza Nicaragua, a Nicaraguan Non-Governmental Organization (NGO) dedicated to the rehabilitation and defense of street children. It was founded in 1998 as a subsidiary of Covenant House, and currently runs residential programs for adolescent boys and girls, as well as programs for the community in general. These include: Legal Support, Family Reintegration, Psychological Attention and Social Work, Medical Attention, Spiritual Support, Addictions and HIV/AIDS. The assistance of Casa Alianza Nicaragua, along with other organizations and individuals who took part in the project, was indispensable throughout the research and workshops, which were conducted with support from the UK Community Fund.

The project in Nicaragua had two main objectives:

1. To spread information on the situation of street children and adolescents and to lobby for enforcement of their human rights when they come into conflict with the law.

2. To sensitize key actors including state powers, civil society organizations, authorities and operators of the judiciary system concerning the plight of street children in conflict with the law and the need to follow at least the minimum standards internationally recognized for juvenile justice (e.g. The UN Convention on the Rights of the Child, UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the UN Standard Minimum Rules for the Treatment of Juveniles Deprived of Their Liberty).

Fulfilling these objectives meant firstly undertaking a brief analysis of the situation of street children in Nicaragua, and the reasons for their arrival and prolonged existence on the streets. Secondly, it required a close examination of the existing legal processes, terms and guarantees of national laws relating to juvenile justice in Nicaragua (primarily the ‘Special Criminal Justice System for Adolescents’) to identify the gaps and shortcomings that permit rights violations to occur. Thirdly, it was necessary to gather information from street children and other actors from relevant institutions (police, judiciary, NGOs etc.) on the actual experience of children in conflict
with the law at all stages, from arrest through to trial, sentencing and detention. At the same time, evidence of good practices were collected regarding the treatment of street children subject to the justice system, which then fed into the final task of formulating recommendations to improve the observance and respect of fundamental rights and guarantees recognized in national and international legislation.

Having established close cooperative relations with the Nicaraguan Special Attorney’s Office for Children and Adolescents, and the Attorney General’s Office for the Defence of Human Rights, Casa Alianza was able to collect data on the conditions for children in detention from 18 police delegations across the country. Judicial headquarters were also visited as well as a number of penitentiary institutions. Inspections of cells for interim detention in both police and penitentiary buildings were carried out, and interviews were held with confined adolescents, police authorities, judges and penitentiary staff, as well as with some members of the Public Ministry, Public Counsels for the Defense, and some non-government authorities that work on the issue.

**The Consulting Forum on Juvenile Justice**

25-26 November 2002, Holiday Inn, Managua

The objective of this Forum was to bring together previously-detained street children and a variety of NGO staff to discuss the findings of the primary research described above. A total of 86 people took part in the Forum, of whom 10 were adolescents with experience of the juvenile justice system. The remaining 70+ adult participants came from within police departments, relevant government ministries, NGOs and the national media. Work groups were organized according to the skills and experience of those participating, and different phases of the Special Criminal Justice System for Adolescents in Nicaragua were analysed: (1) arrest and detention; (2) the judicial process; (3) legal terms, rights and guarantees; and (4) sentencing. The results of these discussions are incorporated into this report.

Examples of innovative good practice were also put forward at the Forum, with the intention that all of this information and learning – along with that collected in the other countries involved in the project - would then feed into the development of a practical, international handbook on street children and juvenile justice, available separately.¹

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¹ This handbook, published by CSC, highlights factors common to all countries and includes examples of good practice from Africa, Asia, Central and Eastern Europe and Latin America. It contains: practical help on advocacy on this issue; specific sections on gender, on racial, ethnic, socio-economic and other forms of discrimination, and on street children’s coping strategies, resiliency and participation.
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INTRODUCTION

I've been living on the streets for the past 5 years...I've tried just about everything: glue, marijuana, crack, hard liquor and cigarettes. Now I just sniff glue. I do it because I feel very sad. I feel like I'm really alone. I don't want to live on the streets. I've already suffered a lot and I'm only 15 years old.

- Marilin

What do I want from life? To be accepted, to be honest and responsible. I do not want to be alone, or without a family.

- Rigoberto (17)

These sentiments summarize the urgent need and impetus behind this booklet. Stigmatized, feared and ignored by society, street children in Nicaragua today constitute a large and growing sector of the country’s most disadvantaged youth, facing continual and serious dangers to their health, moral and social development. Worsening levels of poverty and a disintegration of the family environment have led to a sharp increase in the visible presence of children on the streets, particularly in urban centres. The capital, Managua, is a magnet for these children, with as many as 69% of the country’s total street children estimated to be living the capital.

As in most countries around the world, street children in Nicaragua are the target of both fear and derision, and have been widely blamed for the country’s soaring crime rate and violence. However, in reality, the “street” is hardly a representation of “the sum total of their social networks or experiences.” Definitely, “there is more to the lives of [street] children than what is revealed by ad hoc categorizations based on criteria of physical location, social neglect, and economic activity.”

This report examines the theory and practice of the justice system in relation to street children from the point of arrest, through detention prosecution and sentencing. The report also contains an overview on the existing responses and projects by the government and civil society. In identifying areas where stronger responses are desired and what challenges both system and society face in their efforts to address the plight of street children, the report looks into the Nicaraguan juvenile justice system, and presents proposals as stated by workshop participants for the improvement of the system.

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4 Casa-Alianza website, ‘Street Children in Nicaragua’. http://www.casa-alianza.org/EN/about/offices/nicaragua/children.phtml
Stressing the use of child-sensitive terminology and unless quoting references and identifying the titles of previous researches, we have used the words “children” and “adolescents” and not “minors” or “juvenile” in referring to people under the age of 18. The international human rights community recognizes the specific distinction in the Spanish language between the terms “children” (niños / niñas), referring to younger, pre-pubescent children and “adolescents” (adolescentes), referring to older children who are nonetheless still under the age of 18. In this report, the terms “children” and “adolescents” are therefore both used to denote under-18-year-olds. Terms such as “juvenile” and “minor” detract from the reality that children are children. Likewise, the term “children in conflict with the law” (CICL) is used throughout this report to reflect international concerns for the promotion of the child’s sense of dignity and worth. The terms “youthful offender” and “juvenile delinquent” are avoided (except when cited in direct quotations) as they are increasingly seen as out-dated, connoting a prejudicial and negative outlook towards children who are alleged or accused of breaking the law. More accurate still are references to “children in actual or perceived conflict with the law” (CAPCL), which captures the situation of street children who can come into contact with the law even if they have not committed any crime. There is also the debate about whether any of these terms accurately capture the idea that some laws are “in conflict” with the children, such as outdated legislation on begging and ‘vagrancy’.

We hope that as virtually an extension of the forum, this report will be valuable to both policy makers and implementers, and stimulate increased support and genuine concern from the general public for the welfare of street children in general and those in conflict with the law in particular.
NICARAGUA AND CHILDREN’S RIGHTS

Geography and Climate

The Republic of Nicaragua occupies the center of the Central American Isthmus, which in turn serves as the unifying point between North and South America. With a population of just over 5 million (2003 est.), the territory is divided into 15 Departments and 2 Autonomous Regions. The region is particularly prone to disasters including earthquakes, volcanic eruptions, floods and drought, and Hurricane Mitch in 1998 caused widespread devastation and loss of livelihoods for thousands of families.

History

The Pacific Coast of Nicaragua was settled as a Spanish colony from Panama in the early 16th century. In 1821 it declared its independence from Spain and the country then became an independent republic in 1838. Although Great Britain occupied the Caribbean Coast in the first half of the 19th century, it gradually ceded control of the region in subsequent decades. Violent opposition to governmental manipulation and corruption then spread to all classes by 1978 and resulted in a short-lived civil war that brought the Marxist Sandinista guerrillas to power in 1979. This group’s pretensions to improve the living conditions of the population could not, however, prevent another lengthy civil war dominating much of the 1980s fought by anti-Sandinista contra guerrillas sponsored by the US. This war destroyed a substantial part of the productive and economic infrastructure, killed over 60,000 among civilian and contending forces, and left profound wounds among Nicaraguan families. In 1990, the disarmament and pacification process began, and although the country was able to slowly rebuild its economy, a large proportion of the population remains in poverty.

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**Socio-Economic Situation**

Nicaragua is today one of the southern hemisphere's poorest countries, facing low per capita income, flagging socio-economic indicators, and huge external debt. The distribution of income is one of the most unequal on the globe. The 2002 Annual Report from the Nicaraguan Center on Human Rights upholds that the standard of living of Nicaraguans has recently deteriorated to the lowest levels in history, making Nicaragua the poorest among the 21 Latin American nations after Haiti. Approximately 50% of households live below the poverty line (2001 est.) and this has had devastating consequences on children and adolescents below the age of 18, who make up 53% of the population. One in four of these children live in a household headed by a woman, most likely the result of family violence and disintegration. Poor administration, legal and cultural factors have also led to a situation where as many as 36% of children are still not legally registered.

**Health**

According to UNICEF, one of every three children has some degree of chronic malnutrition and nine per cent suffer from severe malnutrition. The maternal mortality rate (MMR) of 150 per 100,000 live births is unacceptably high, while adolescent pregnancies account for one of every four births nationally.

Meanwhile, the presence of HIV/AIDS in all departments and the potential of its spread represent a high, latent risk to Nicaragua. Although official data show a low number of actual cases, this inspires a false sense of security and continued recklessness among sexually active adolescents.

**Education and Work**

Although an estimated 79% of primary-school-age children are registered as enrolled, the quality and relevance of education are significant problems. It takes an average of 10.3 years to complete the mandatory six years of schooling, and only 29% of children complete primary schooling. Poverty is the greatest factor affecting school participation, with many families unable to afford the direct or hidden costs. Many see sending their children out to work in the cities or to beg on the streets as more economically viable options, and the number of children selling sweets or water, collecting garbage and/or shoe-shining in the urban centres continues to rise. Thus, while unemployment oscillates between 55-60% for the population as a whole, data collected by the Ministry of Labor for the year 2002 suggests that Nicaragua has over 300,000 working children, despite the fact that the Political Constitution prohibits child labor as detrimental to the normal development of children and their education.

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9 Statistics in this section are taken from the UNICEF website, http://www.unicef.org/infobycountry/nicaragua.html.
Overview of UN Convention on the Rights of the Child (CRC) Implementation

Nicaragua ratified the UN Convention on the Rights of the Child in October 1990. Nine years later, the Committee on the Rights of the Child noted the following points of progress in its Concluding Observations:\(^{11}\):

- The constitutional reform in 1995, which afforded constitutional status to the Convention on the Rights of the Child.

- The enactment of the Code on Children and Adolescents (1998), which constitutes a genuine process of civil society participation and has contributed to create awareness of the Convention.

- The development of training material for law-enforcement officials working with children in conflict with the law; the establishment of an inter-agency committee on juvenile justice; the conduct of a study on the financial and human resources for the full implementation of the juvenile justice system; the development of a project "Integrated support for the juvenile prison population in Nicaragua"; and the separation of children from adults in detention centres.

However, the Committee also expressed concern at the general lack of awareness of the CRC among professional groups, children, parents and the general public, along with a number of concerns of particular relevance to street children and juvenile justice, namely:

*Concerns of relevance to street children in general:*

- The lack of measures taken to harmonize the minimum legal ages for access to work (14) and for ending compulsory education (12).

- The high drop-out rates from primary and secondary schools, especially in rural areas, by the poor condition of schools and the scarcity of textbooks.

- The insufficient law enforcement and the lack of adequate monitoring mechanisms to address the widespread employment of children, especially in the informal sector and in domestic settings.

- The persistent regional disparities between the Atlantic and Central/Pacific regions, the growing disparities between urban and rural areas as well as the increasing number of people living in urban poor and marginalized areas. Furthermore, the predominance of discrimination on the basis of ethnic origin, gender, social status and disability is also a major concern.

\(^{11}\) Concluding Observations of the Committee on the Rights of the Child: Nicaragua. 24/08/99.
• The insufficient public awareness regarding the harmful consequences of ill-treatment and abuse, including sexual abuse, both within and outside the family. Concern is also expressed at the insufficient resources, both financial and human, as well as at the lack of adequately trained personnel, to prevent and combat such abuse. The insufficiency of rehabilitation measures and facilities for such children and their limited access to justice are also matters of concern.

Concerns of relevance to the Juvenile Justice System:

• The insufficient judicial procedures to investigate cases of police brutality, ill-treatment or abuse of children.

• The inadequacy of measures taken to ensure that the conditions in institutions are regularly monitored and concern that the placement of children in public and private institutions is not periodically reviewed.

• That the child's right to express his/her views in a judicial or administrative procedure affecting him/her, as established in article 17 of the Code on Children and Adolescents, may not be respected in all cases in a culture where respect for the views of the child is not fully developed.

• The poor conditions in prisons and detention centres for juveniles; the lack of correctional centres for the rehabilitation of children in conflict with the law; that access to justice is not guaranteed in a prompt manner for children in detention; and that due process is not always guaranteed. Concern is further expressed at the aggravated penal penalties regarding "property offences" committed by children.
Definitions and Estimates

The United Nations has defined the term ‘street children’ to include “any boy or girl… for whom the street in the widest sense of the word… has become his or her habitual abode and/or source of livelihood, and who is inadequately protected, supervised, or directed by responsible adults.”\(^\text{12}\) A generic term indeed, the label is often understood to include all children found in or on the streets doing some activities regardless whether they have a family or not. The term also widely refers to: (1) children forced to live in the streets and fend for themselves either because they have no families, have been abandoned, or have run away from their families; (2) children who choose, or who are forced to work in the streets or open-air markets but return home; and (3) children of families who live on the streets. The Consortium for Street Children (CSC) acknowledges the limitations and many connotations, both positive and negative, of the term “street children”, but – in the absence of a widely acceptable alternative - uses the term for convenience, on the understanding that “in reality, street children themselves often defy such convenient generalizations because each child is unique”. CSC also maintains that definitions of “street children” in different contexts must take into account the child’s own perceptions of their individual circumstances and how they themselves wish to be described. [Does Casa Alianza have a specific definition they wish to include here?]

Although the complexity of every child’s situation cannot be underestimated, street children often fall into four categories. The first category are children who work and live on the street full time. They maintain loose or little family contact and live in groups in temporary makeshift shelters or dark alleys. The second category are children who work on the streets by day but link up with their families in the evenings. This category maintains good family contact. They may be on the streets to have fun, to pass time or due to overcrowding in their homes, which may provide little more than a place to sleep. The third category is that of children who are on the streets occasionally, for instance, in the evenings, weekends and during school holidays. The fourth category is that of children whose parents are street adolescents, also referred to as street families.

The varied interpretations of the term ‘street children’ and the need for clarity in its usage have made it difficult to obtain exact estimates of how many children fall into this category in Nicaragua. Different methodologies and definitions among government and NGO sources have produced exaggerated, under-estimated or often wildly conflicting statistics. Anecdotal evidence and estimates suggest that the numbers are continuing to increase year on year, with no sign of rebate.

Geographical distribution\textsuperscript{13}

The FONIF (Governmental Social Welfare Agency) and UNICEF study (December 1996) indicated that Managua is the magnet of the country, and families with important economic problems end up there. The study states that 69\% of the country's street children live in the streets of Managua.

The places in Managua where street children and adolescents meet are numerous and dispersed across the whole city. Some characterize the city as a “farm with traffic lights”. The destruction of the capital by the 1973 earthquake, and the war, have not permitted a reconstruction of the city and Managua still lacks a center of town, a likely concentration point for street children. The children are in the markets, bus terminals or the garbage dump. The largest concentration of street children is in the Mercado Oriental which has several meeting points.

According to this study, 42\% of the children on the streets are between 6 and 11 years old and 49\% are between 12 and 18. The main activities of the children are selling items like candy or gum, garbage reclamation, begging, stealing and prostitution. The average age of the children in the garbage dump is said to be 10 years, with 16 years as the average age for children involved in prostitution, although 13-year-old girls were found involved in these activities.

Addictions\textsuperscript{14}

The abuse of substances among street children in Nicaragua is an endemic and persisting phenomenon. Glue is used principally (0.50 USD/jar) and crack is starting to become a strong alternative ($1 USD/small bag with 2 to 3 rocks). In the FONIF and UNICEF (1996) study, the majority of the drug consumers stated that they have been doing so for at least 2 years or more. The study concludes that "in a context where the majority of the population has not received institutional support, it is seen that the risk factors have not impacted uniformly on all the population, but in the case of drug consumers (a minority sector but significant in the population) the effects seem indeed serious”.

According to the organizations which were visited, “the drug consumption level in the marginal neighborhoods has grown to worrisome levels. The children start consuming drugs in their own homes. In time, they start staying in the streets more and more, thus arriving at a rupture with the family.”

In a recent analysis conducted in Managua's Oriental Market by the center for health "Francisco Buitrago," 1,300 glue-sniffing children were detected.\textsuperscript{15} In 1990 there were 200, in 1993 about

\textsuperscript{13} Information taken from Casa Alianza website, www.casa-alianza.org.
\textsuperscript{14} Information taken from Casa Alianza website, www.casa-alianza.org.
\textsuperscript{15} http://www.casa-alianza.org/EN/about/offices/nicaragua/children.phtml
300, and in 1994 the number rose to 980. According to other sources, there are estimated to be around 7,000 glue-sniffing children in Managua.\textsuperscript{16}

Crack began to supplant marijuana and glue as drug of choice from around mid-1999, rapidly spreading to such an extent that today it is omnipresent. This shift has also been accompanied by a dramatic increase in violent crime on the streets, largely due, it would appear, to the increased ‘high’ that crack offers its users. As these street boys describe,

\begin{quote}
Crack puts you crazy, like you’re flying, and then when you come down, it’ll make you do anything to get another fix, even rob your neighbours, your friends, your own family even... it’s not like marijuana, which just makes you feel at ease with everybody...

It makes the user more aggressive... this drug, crack, it makes you really violent, I tell you... when I smoke up and somebody insults me, I immediately want to kill them, to get a machete and do them in, to defend myself... I don’t stop and think, talk to them, ask them why or whatever... all I want to do is kill them... it’s the drug, I tell you, that’s where the violence comes from...\textsuperscript{17}
\end{quote}

\section*{Street Gangs}

An important feature of street life in Nicaragua and other countries in Central America is the increasing emergence of street gangs. According to one newspaper article from May 2003, “The influence of US gang culture is evident in poor neighbourhoods or barrios across Central America”, with over 100 different gangs estimated to operate in Managua, the capital of Nicaragua.\textsuperscript{18} Membership in these groups has offered many from the poorer communities a way to fit into the new realities of post-conflict Nicaragua. As one Red Cross worker put it,

\begin{quote}
If home life is tough, children will look outside the home to get the love and support they need. Look around, you will see all these young kids hanging around the older gang members. They are the role models.\textsuperscript{19}
\end{quote}

Many gang members agree: "Fundamentally we are friends who hang out together…” explains the leader of one, "We started this gang about five years ago to protect ourselves from other gangs." Most gangs are male only, and often act as the informal leaders of marginalized communities, while others develop into criminal groups and commit a range of offences from kidnapping to violent armed robberies to pay for deep-rooted drug addictions. Gangs will often

\textsuperscript{16} UNICEF (1996) Análisis de la situación de la niñez y de la mujer.
cross each other in the fight for territory, sometimes for a few city blocks or a football field. Their weapons range from primitive sticks and knives, to home-made 'zip' guns, to AK-47 assault rifles and fragmentation grenades.\textsuperscript{20} With an unofficial curfew restricting many parts of Managua at night and 40,000 gang members arrested in 2001 alone,\textsuperscript{21} the situation has got so bad that parents have felt it necessary to use extreme measures to prevent their children taking to the streets in these gangs (see case study below).

\begin{center}
\textbf{Case study - Street Gangs in Managua, Nicaragua}
\end{center}

Jose, 17, is chained by the ankle to an iron ring set into the floor of his parents' wooden shack. He spends his days in a chair, a few feet from a tiny black and white television. At night he is chained to the frame of his bed. He is freed only to perform what his mother calls "his bodily needs".

Jose is a member of Los Puenteros, a street gang from a poor neighbourhood in southern Managua, Nicaragua's capital. He is addicted to crack cocaine. To pay for it he breaks into people's houses or robs on the streets armed with a machete. He once took and sold his young cousins' school shoes and rucksacks.

"I don't know how long we will keep him there," Dona Wilma, Jose's mother, said. Jose says nothing and doesn't take his eyes off the cartoons. "But what else can we do? If we didn't he would go out on the streets and be killed or arrested."

Without the chains, Jose would be on the run from the police with other members of Los Puenteros who were at a bar on May 17 when their leader, Tres Ojos (Three Eyes), killed a member of a rival gang with two machete blows to the head.

Inter-gang violence has increased to the point where an unofficial curfew operates in most of Managua's marginal neighbourhoods where more than 100 gangs operate. In this city of 1.2 million people, police made more than 40,000 arrests of gang members in 2001.

After dark, people close their doors and windows and the streets become a battleground between rival gangs armed with stones, machetes, pistols, and home-made mortars.

Nelly Rodriguez, a resident of the area known as Las Americas II, said: "When they start to fight, stones start flying in every direction. So many hit the roof of the house it feels like it is going to cave in and I get under the table with my children."

The risks to non-combatants are real. In March Yolanda Molina, 12, was shot dead in her home during a gunfight between rival gangs.


Street children who are not part of these gangs can find themselves either outcast even further or specifically targeted as victims. For example, one street boy called Lester was attacked by members of the "Death" gang in 2002. His back and arms were beaten as he tried to defend a street girl he was sleeping next to from the gang. "They tried to rape her and I fought them, but they cut me up really bad with machetes," he says, showing off the jagged pink scars on his back, arms and legs. "If the police hadn't shown up, they would have killed me". Another girl, 17-year old Maria, has been a favourite target for the street gangs because even after 10 years living on the streets she is still an attractive girl. "I was held down and raped by two members from the "Monsters" gang. When I resisted, they burned my hands with cigarettes."\(^{22}\)

The official response to street gangs in Nicaragua has been a mix of repression and attempts to open a dialogue with gangs and young people, and in Managua police have set up "prevention committees" to visit gang members and their families. The organisation Ceprev has also worked with more than 3,000 pandilleros (gang members) over the past six years in one district of Managua with the aim of improving their relations with their families. Its director, Monica Zalaquette, says: "The problem is not economic poverty, it is the poverty of our family culture - that's what we have to change."\(^{23}\) The widespread lack of services is also a contributing factor according to Bruce Harris of Casa Alianza:

> For years, the authorities have left young people without hope, without access to school or jobs and the only governmental response to youth dissent has been repression. We have forced the kids to the extremes of society and they have responded with violence. Gangs can no longer be ignored, especially if we want to live in peace.\(^{24}\)

Obviously, whatever the factors behind the rise in street gangs, the existence of these numerous groups greatly increases the likelihood of street children coming into conflict with the law.

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In 1990, Nicaragua ratified the United Nations Convention on the Rights of the Child (CRC), a global instrument that contains a constellation of civil, economic, political, social and cultural rights of the child in favor of children, without making distinctions of any nature. Part of Nicaragua’s obligations as a signatory of the CRC is to implement and legislate for new laws designed to uphold the rights of children as outlined in the CRC. Nicaragua’s response was to develop The Code for Children and Adolescents, which entered into effect in November 1998.

Up until that time, children between 15-18 years old were treated in much the same way as adults within the Nicaraguan justice system, with the only difference being consideration of age minority as an attenuation of criminal responsibility (and thus sentencing) by the judge. With regard to conditions for deprivation of freedom, during interim confinement or sentence compliance, there were no differences. For children under 15 years old, the Law on Tutelage for Minors (1973) granted the “Judge for Minors” unlimited discretion to make decisions over them, be it because accusations of misdemeanors or crimes were imputed against them, because they were in a state of supposed abandonment, or because the authority considered them a social danger. The response was always confinement in reformatorys.

During the 1980s, jurisdictional functions granted to judges for minors passed to the administrative sphere, and reformatorys were substituted with State Protection Centers. The number of these Centers was then heavily reduced over the 1990s, which generated a significant increased number of children living on the streets.

**The Children and Adolescents Code (1998)**

On 28 March 1998, the Nicaraguan National Assembly approved the Code for Children and Adolescents, Law No. 287, which entered into force some six months later in November. The Code was drawn up to incorporate a number of international instruments relating to child protection, namely the the UN Convention on the Rights of the Child, UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), UN Rules for the Protection of Juveniles Deprived of Their Liberty, and the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines). While Books I and II of the Code were concerned with recognizing the civil, political, economic, social and cultural rights of children and adolescents, Book III devoted itself to the establishment of ‘Special Criminal Justice for Adolescents’.

The main features of this new juvenile justice system are summarized in the box below.
The Code for Children and Adolescents – Main features relating to Juvenile Justice

Criminal Responsibility

For children between 15 and 18 years of age the legal authority can enforce measures contemplated in Book 3 of the Code, including deprivation of liberty for up to a maximum of six years.

Children between 13 and 15 years of age to whom criminal responsibility is proven, will receive special protection measures or measures contemplated in Book III, except those that imply deprivation of liberty.

Children under 13 years of age are exempt from criminal responsibility; in cases where they come into conflict with the law, they will be attended administratively with protection measures; measures that imply deprivation of liberty will in no way be applied.

Trial

Criminal District Courts for Adolescents are the entities in charge of administering justice and hearing first trial accusations attributed to adolescents for crimes or misdemeanors. The Appeals Court hears second trials (appeals). The Supreme Court of Justice hears extraordinary appeals for cassations\(^\text{25}\) and revisions. (Article 112)

Those required at trial are: a) the child accused of committing or participating in crimes or misdemeanors; b) specialized prosecutors from the Public Ministry, who oversee compliance with legal procedures in actions taken by the police and their investigations; c) the Public Counsel for the Defense (specialists in child matters); and (d) the victim.

The mother and father of the child accused can intervene throughout the entire procedure as contributors in the defense.

Detention

Police faculties in matters of criminal justice for children are limited to the arrest of adolescents presumably responsible for committing a crime. This procedure must be carried out with a court order, unless it is a flagrant crime. In that case, they will remit them to the competent authority within a 24-hour period, during which the adolescent cannot remain with adults (Article 127).

Article 127 of the Code establishes that provisional detention centers and special confinement centers will be under the jurisdiction of the General Office of the National Penitentiary System of the Governance Ministry.

\(^{25}\) A cassation is an annulment of a judicial decision by a higher court.
Implementation of The Code for Children and Adolescents

In view of the lack of material and human resources required to apply the new code, as well as the need for institutional and social changes, implementation of special justice for children began slowly, and some essential regulations for the good performance of the criminal system for adolescents are still not respected.

The Supreme Court of Justice created 2 exclusive Juvenile Courts (and not 17 as the Code for Children and Adolescents demands in Article 114) in the Managua region, while extending to six judicial circumscriptions in the rest of the country the authority to administer Special Criminal Justice for Adolescents. As such, only the two dedicated juvenile courts in Managua have Specialized Interdisciplinary Teams as the Code for Children and Adolescents establishes in Article 113.

To comply with the Code’s provision that children under 18 years old shall not be confined together with adults, the National Police proceeded to vacate or accommodate one or several cells in prisons and detention centres across the country for use by children. Though separate, these cells are the same as adult cells and have no particular facilities relative to the age of their occupants.

Overall, the lack of resources and willpower dedicated to the implementation of the Code has provoked some to question the usefulness and ability of the Specialised Criminal Justice System in fulfilling its potential. Popular perceptions of impunity for youths committing crimes have given rise to sporadic parliamentary proposals, such as that made in 2002, arguing for the suspension of the Code, and a widening in the scope of crimes for which children may be detained. Although this particular proposal failed, as long as the Code continues to be improperly and partially implemented, the rights of children within the justice system in Nicaragua will remain in jeopardy.
Article 37 (b) of the CRC states that:

No child shall be deprived of his/her liberty **unlawfully or arbitrarily**. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. (emphasis added)

Article 103 of the Code also forbids imposition of arrests or deprivation of liberty when not based on causes set by the law with arrangement of a legal procedure and an order from a competent authority. Finally, Article 33 (2.1) of the Political Constitution of Nicaragua establishes the rights of all arrested persons:

a) To be informed without delay, in a language they understand and in detailed manner, the reasons of the arrest and accusations formulated against them;

b) To inform their family of the arrest either themselves or by the police,

c) To be treated with due respect for the dignity inherent to human beings.\(^{26}\)

Despite these provisions, over 20% of the children interviewed for this report testified that their arresting officers had failed to produce a warrant, court order or give any reason for their action at the time. Of the 44 files reviewed for this project, only 11 were found to have legal orders (warrants), suggesting the remaining 33 were all crimes where the child exhibited ‘flagrant guilt’. Most appear to be picked up on charges of Habitual Vagrancy, Disrespect to Authorities and Alteration of Public Order such as incidents involving drugs and fighting. Just under half of those being detained reported being beaten by police at the moment of being captured, usually with a combination of fists, truncheons and being threatened with guns. One boy described how he was stripped naked by police, taunted and left in a cell. This humiliation continued when his girlfriend came to the station to visit him, whereupon four officers ridiculed and made fun of him.\(^{27}\) Interestingly, another child in a neighbouring cell who had been beaten saw himself as actually deserving of such treatment, and actually saw it objectively as a reflection of the gang violence police personnel face on a daily basis:

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\(^{26}\) The *Code for Children and Adolescents* recognizes these same guarantees in Article 101, a and b, and adds the right of the detained adolescent to request the immediate presence of the mother, father or tutor. The *Beijing Regulations* also refer to these rights in Regulation 10, and call it “First Contact”.

\(^{27}\) Notes from CSC mission to Nicaragua, 26 April 2002.
Some police use beatings in a ‘well-meaning’ manner – especially with street children high on glue – to try and teach them the harm of such behaviour. However, this is rarely successful because we have no other positive alternatives.28

Once arrested, the police or the child themselves are obliged under the provisions above to inform the closest family member, but 47% suggested that their families had found out from other sources (friends, onlookers) rather than police and 18% still had no idea whether their family knew about their arrest or not. The children also said that the police never referred to NGOs for assistance in detaining children, despite this being a potentially valuable diversionary measure to reduce the child’s contact with the more advanced stages of the justice system.

**Establishing the Age of the Child**

Article 97 of the Code for Children and Adolescents establishes that in case the age of a person presumably under 18 years of age cannot be established, the person will be considered to have that age and will be subject to the dispositions of that Code. The disposition constitutes a presumption in favor of the adolescent when there are difficulties in determining his/her age. However, most of the police authorities explained that when they arrest an adolescent, if it is not obvious that they are a child and if they are unable to produce a birth certificate, they remit him/her to ordinary jurisdictions within a term of 48 hours as if they were an adult.

**Reasons for Arrest**

The table below is compiled from National Police Statistics, and shows the main offences (whether actual or perceived) for which boys and girls under 18 years of age were arrested from 1998-2002.

**Boys**

<table>
<thead>
<tr>
<th>Crimes/Years</th>
<th>Total</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>Most Attributed Crimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crimes Against People</td>
<td>5,561</td>
<td>1,625</td>
<td>1,366</td>
<td>1,023</td>
<td>825</td>
<td>722</td>
<td>4,268/Injuries</td>
</tr>
<tr>
<td>Crimes Against Property</td>
<td>9,652</td>
<td>1,701</td>
<td>2,293</td>
<td>2,016</td>
<td>1,964</td>
<td>1,678</td>
<td>1,636/Theft</td>
</tr>
<tr>
<td>Drugs</td>
<td>588</td>
<td>157</td>
<td>146</td>
<td>98</td>
<td>88</td>
<td>99</td>
<td>185/Consumption</td>
</tr>
<tr>
<td>Crimes Against Individual Freedom</td>
<td>148</td>
<td></td>
<td>77</td>
<td>71</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Others</td>
<td>2,224</td>
<td>240</td>
<td>537</td>
<td>315</td>
<td>519</td>
<td>613</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>18,173</td>
<td>3,723</td>
<td>4,342</td>
<td>3,452</td>
<td>3,473</td>
<td>3,183</td>
<td></td>
</tr>
</tbody>
</table>

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28 Notes from CSC mission to Nicaragua, 26 April 2002.
**Girls**

<table>
<thead>
<tr>
<th>Crimes/Years</th>
<th>Total</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>Of which:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crimes Against People</td>
<td>641</td>
<td>227</td>
<td>213</td>
<td>110</td>
<td>50</td>
<td>41</td>
<td>506/Injuries</td>
</tr>
<tr>
<td>Crimes Against Property</td>
<td>450</td>
<td>124</td>
<td>129</td>
<td>91</td>
<td>69</td>
<td>37</td>
<td>227/Theft</td>
</tr>
<tr>
<td>Drugs</td>
<td>83</td>
<td>14</td>
<td>31</td>
<td>19</td>
<td>11</td>
<td>08</td>
<td>25/Consumption</td>
</tr>
<tr>
<td>Crimes Against Individual Freedom</td>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td>04</td>
<td>08</td>
<td></td>
</tr>
<tr>
<td>Others</td>
<td>125</td>
<td>34</td>
<td>44</td>
<td>16</td>
<td>21</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>1,311</td>
<td>399</td>
<td>417</td>
<td>236</td>
<td>155</td>
<td>104</td>
<td></td>
</tr>
</tbody>
</table>

When these data are compared with similarly disaggregated statistics for adult detainees over the same five years, it emerges that boys under 18 made up only 12% of all males detained 1998-2002, while girls under 18 comprised only 9% of all females detained.\(^{29}\) It is therefore evident that, despite a public image that would perhaps suggest otherwise, children do not commit most of the crimes in Nicaragua. Furthermore, the majority of the crimes attributed to them (against property) are not the most severe.

However, it must be acknowledged that the above statistics relate only to those adolescents who were detained by police, who may or may not then be subject to further detention at a court sentencing. Records for these were unavailable at the time of writing, and it is unknown how many cases there were where the Public Ministry dismissed criminal action altogether.

In principle, detention procedures are issued as a precautionary measure in the following circumstances: in cases of flagrant crime; when there are serious presumptions of participation in crimes of homicide; grievous bodily harm; rape; abduction, theft; drug trafficking; arson; poisoning or adulteration of drinking water, beverages, food or medical substances (Article 203 of the Code); and when there is reasonable risk that the adolescent could evade the actions of justice, (Articles 142 and 143 of the Code). Yet as the table below shows, large numbers of children have been held in detention since 1996:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Inmates</th>
<th>Boys under 13 Years Old</th>
<th>Girls under 13 Years Old</th>
<th>Boys under 18 Years Old</th>
<th>Girls under 18 Years Old</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>29,893</td>
<td>192</td>
<td>42</td>
<td>3,322</td>
<td>405</td>
</tr>
<tr>
<td>1997</td>
<td>35,925</td>
<td>137</td>
<td>26</td>
<td>4,599</td>
<td>457</td>
</tr>
<tr>
<td>1998</td>
<td>37,658</td>
<td>105</td>
<td>10</td>
<td>3,723</td>
<td>399</td>
</tr>
<tr>
<td>1999</td>
<td>37,393</td>
<td>144</td>
<td>16</td>
<td>4,342</td>
<td>417</td>
</tr>
<tr>
<td>2000</td>
<td>37,073</td>
<td>-</td>
<td>-</td>
<td>3,452</td>
<td>236</td>
</tr>
<tr>
<td>2001</td>
<td>40,568</td>
<td>-</td>
<td>-</td>
<td>3,473</td>
<td>155</td>
</tr>
</tbody>
</table>


Police detention should take place in an exclusive area completely separate from adults for a maximum term of 24 hours, after which the police are required to bring the child before a competent judge, under whose custody they remain from that point onwards (Articles 111, 124, 127 of the Code). Yet police authorities admitted that they cannot usually comply with this 24 hour period because of transportation problems, and/or because the Judge for Adolescents does not receive them due to other timetabled obligations such as inspections, audiences, etc.

Under the Code, the District Attorney’s Office, Courts at the Trial Level and Courts of Appeals are required to consider detained children as maximum priority so that provisional confinement is as brief as possible (Article 144 of the Code). The judge or other competent officials should also examine the possibility of freeing the adolescent without delay (Regulation 10.2 and 13.1 of the Beijing Regulations). However, in practice the remittance of a child to the custody of an ordinary judge (even before a competent judge) has become a lengthy bureaucratic procedure lasting on average more than a week.
Separation by Age and Sex

The Code for Children and Adolescents orders in Article 111 that for provisional or definite confinement, adolescents must be placed in an Exclusive Center for Adolescents, administered by the National Penitentiary System (Article 227). Yet close to six years after the Code was introduced, Exclusive Centers for Adolescents have yet to materialise. In their place, the Governance Ministry have decided to simply assign a few already existing cells within police stations for the use of adolescents.

A child detained in such a cell can then remain there under custody of the Judge for Adolescents for up to three months, which is the maximum term for the special criminal process for adolescents during first trial proceedings (see Article 142 of the Code). Until a sentence is finally issued against him/her, the arrested child will not be transferred to Centers under the National Penitentiary System.

Although arrested girls are usually given their own cells with other females, they are not separated in terms of age due to confines of space. This means young girls often find themselves co-habitating with adult women prisoners. Similarly, boys are frequently detained in the same cells as adult offenders, particularly in the Department of Managua, which suffers from considerable overcrowding. On average, it was found that just under 25% of the children visited in detention were confined in the same cells as adults

Detention Records

Rules 7 of the Standard Minimum Rules and 21 of the Rules for the Protection of Juveniles Deprived of Their Liberty, provide that in all places where people are confined, a Registry Book must be kept up to date, duly bound and numbered by page, indicating the following for each person under detention:

a) their identity;
b) causes for detention;
c) the authority that ordered it;
d) day and hour of confinement, as well as departure.

No person can be admitted in a center for deprivation of liberty without a valid order for detention, the details of which must be duly consigned in the registry book. The registers for adolescents should be of a confidential nature, and should be regularly inspected by officials to facilitate detection of any illegal detentions.

30 The separation of children and adults in detention is also provided for in: Article 10 of the International Covenant on Civil and Political Rights; Article 5.5 of the American Convention on Human Rights and Rule 29 of the Rules for the Protection of Juveniles Deprived of Their Liberty, as well as Regulations 8.d) and 85.2) of the Standard Minimum Rules, which require separation of males and females.
Although all police stations were found to have Registry Books of Detainees in which records were entered, further investigation showed that not all detainees had been registered, and that the data was rarely up to date (usually between 5 days and a week out of date, sometimes as much as two weeks). Excuses for this delay in record keeping related mostly to insufficient human resources.

**Detention Conditions**


According to *Rule 31* of the UN Rules for the Protection of Juveniles Deprived of Their Liberty (1990), locations destined for confinement of prisoners, establishes that the “minors” will have the right to have places and services that satisfy all the demands for hygiene and human dignity. *Rule 32* also establishes that the design and physical environment of detention centers for children should correspond to the rehabilitation goals of the minors confined, taking into account the need for privacy, sensory stimulus, possibilities for association with their companions, and participation in recreational activities. The design and structure should reduce to the minimum risks of fires, guarantee secure evacuation and rely on an alarm system against fires. Confinement centers should not be located in areas that present known risks for their health, or where other dangers may exist.

More specifically, *Rules 10, 11* and *12* of the Rules for the Protection of Juveniles Deprived of Their Liberty require that detention conditions must satisfy a number of hygiene demands that take into account the climate (particularly the volume of air), minimum surface, lighting, heating and ventilation. There must be windows sufficiently large so that the prisoners can read with natural light, and must be distributed in such a way that fresh air can enter, whether or not artificial ventilation is available. Artificial light has to be enough so that prisoners can read without damaging their eyesight. *Rule 13* establishes that bathing and shower facilities should be adequate so that each prisoner can and should be required to take a shower at temperatures that are adapted to the climate, with the frequency required by hygiene. Sanitary facilities should also be adequate so that prisoners can satisfy their natural needs in a timely and private manner, in a clean and decent way.

Finally, *Rule 33* provides that adolescents should sleep in dormitories for small groups, or in individual dormitories, with sufficient and clean bed sheets. At night, all the areas destined for dormitories should be the object of regular and discreet surveillance to ensure protection of all the children. The Chief of Police Delegations expressed that at night, a custodian (whom the prisoners call ‘the conduct’), remains alert in the cell area.

Despite the clear guidance on detention conditions provided in the Rules above, the actual experience of children within police cells was considerably different:
A) Cell Space

National Police facilities in Nicaragua are either very old or were constructed during the 1980s. Although some remodeling has taken place and annexes built in order to meet the increased demand, there are usually a significant number of cells in each station that are in very poor condition. This does not prevent them from being used, however, particularly in the poorer municipalities where overcrowding is common. As a result, children detained in these cells can find themselves with very little living space, sometimes as little as 1.87 metres square as shown in the two example ‘delegations’ below:

IMPORTANT NOTE: The m² figure in these tables refers only to the ‘official’ spaces available, not to the space available in practice based on the number of inmates present during inspection: in other words, in real terms, with (e.g.) 5 inmates present in a 3.75 m² cell, the m²/person is actually only 0.75 m².

Surface Space per Cell in Delegation 3 (Altagracia):

<table>
<thead>
<tr>
<th>CELL</th>
<th>AREA</th>
<th>SPACES</th>
<th>BUNKBEDS</th>
<th>METRE(sq)</th>
<th>NO. OF INMATES DURING INSPECTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3.75 m²</td>
<td>15</td>
<td>15</td>
<td></td>
<td>12</td>
</tr>
<tr>
<td>3</td>
<td>3.75 m²</td>
<td>3</td>
<td>3</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>13</td>
<td>3.75 m²</td>
<td>6</td>
<td>6</td>
<td>0.45–0.31 m²</td>
<td>8-12</td>
</tr>
<tr>
<td>18 (Women)</td>
<td>3.75 m²</td>
<td>2</td>
<td>2</td>
<td>0.75 m²</td>
<td>5</td>
</tr>
<tr>
<td>19 (Children)</td>
<td>3.75 m²</td>
<td>2</td>
<td>2</td>
<td>0.75 m²</td>
<td>5</td>
</tr>
</tbody>
</table>

Surface Space per Cell in Delegation 8 (Tipitapa):

<table>
<thead>
<tr>
<th>CELL</th>
<th>AREA</th>
<th>SPACES</th>
<th>BUNKBEDS</th>
<th>METRE(sq)</th>
<th>NO. OF INMATES DURING INSPECTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (Women)</td>
<td>7 m²</td>
<td>6</td>
<td>6</td>
<td>2.34 m²</td>
<td>3</td>
</tr>
<tr>
<td>2 (Children)</td>
<td>13 m²</td>
<td>6</td>
<td>6</td>
<td>6.5 m²</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>13 m²</td>
<td>6</td>
<td>6</td>
<td>0.81 m²</td>
<td>16</td>
</tr>
<tr>
<td>4</td>
<td>20 m²</td>
<td>None</td>
<td>1.43 m²</td>
<td></td>
<td>14</td>
</tr>
</tbody>
</table>

B) Ventilation and Light

Cells built before the 1980s have very good ventilation because they have bars instead of windows, allowing enough air to enter. However, in units built during and after the 1980s, the cells (averaging 60 m²) and are almost airtight with only one small window. The doors are made of iron with a small opening that remains closed until food is passed through, or when ‘the conduct’ (night warden) allows them to be left open. Ventilation is therefore deficient, provoking excess heat and a very weak entry for fresh air, both at night and during the day.
The Municipality of San Rafael del Sur has a new cell designated for children. San Rafael is about five kilometers from Pochomil (the beach); it is a warm area and the sun feels stronger. At mid-day, the sun hits the cell directly, where, instead of a door, there is an iron bar, and this makes for intense and suffocating heat inside. This cell is very small with a toilet in one corner, which gives the impression that it has simply been converted to a cell from a bathroom.

As with ventilation, lighting conditions in the cells depend on when the units date from. Those built before the 1980s have enough daylight for inmates to read without damaging their eyesight, but their more modern counterparts suffer from a deficiency of natural light and do not possess any artificial light, so that children remain in the dark once the sun has set.

C) Hygiene Facilities

Toilets and showers, both in cells built long ago and during the 1980s, are usually found together. In all the police units (with the exception of San Rafael del Sur – Delegation 7), the toilets are Turkish style (a hole in the ground, and some holes are too small) and are found within the cell. The shower is located above, so that the hole that serves as a toilet is also the water drainage for the shower. This generates humidity and bad odors in the cell, which already suffers from poor ventilation. In detention cells with no shower or toilet, children must ask the custodians to allow them to use the toilet, and due to constant delays, many are forced to urinate in the corner of the cell.

Detainees remain many days with the same clothes. They sweat due to the hot weather, and with nowhere to wash their clothes, this fills the cramped cells with odors that are strong and unpleasant. Officially, they are given a specific hour for taking a shower under custody, but even then, there may not be any water. In the police units at Ciudad Sandino and San Rafael del Sur, there is rarely enough water available for the toilet, let alone a shower. This is because the water service is deficient and is often cut off to avoid leakages. In San Rafael, the lack of running water is a problem that affects the entire municipality.

In general, all the children in the cells stated that they are not supplied with cleaning implements for cleaning the cells; they receive only a certain amount of disinfectant that turns out to be insufficient. When there is no broom, they clean the floor with their slippers (rubber sandals). All of the above therefore presents fertile ground for children to suffer from fungal infections and other illnesses, especially skin problems.

D) Sleeping Conditions

In general, detained children do not receive bed sheets, and have no mattresses or pillows. The lack of bed sheets does not represent a major problem because of the climate, but the lack of mattresses on bunk beds is a problem because they are made of cement, many are in bad shape,
with broken cement and iron rods sticking out. Overcrowding often forces many to sleep on the concrete floor, which is often coated with the humid residue from showers and toilets.

These conditions violate Rule 33 of the UN Rules for the Protection of Juveniles Deprived of Their Liberty, which provides that “each minor will have available clean bed sheets, according to local or national usage, in good conditions and changed regularly for reasons of hygiene.” Being forced to sleep on the floor also contravenes Rule 19, which establishes that each detainee will have access, in conformity with local and national usage, to an individual bed and individual, clean bed sheets conveniently kept and regularly changed in order to ensure cleanliness.

E) Nourishment

*Rule 37* of the UN Rules for the Protection of Juveniles Deprived of Their Liberty establishes that all detention centers must guarantee that all children receive adequate nutrition, prepared and served at accustomed hours, in quality and quantity to satisfy dietary, hygiene and health regulations; and, where reasonably possible, religious and cultural demands. All children must have available and at all times, clean and running water for drinking.

During the investigation, it was found that all police stations suffer from insufficient budgetary allocation necessary to feed detainees to this standard. They receive three cordobas and seventy cents (C$3.70), that is, the equivalent to twenty-eight cents in U.S. dollars (US$ 0.28) for each meal per inmate. A typical meal therefore consists of rice and beans (described by one child as ‘baking powder’ because of its age)\(^{31}\), or rice and spaghetti; once a week they receive a type of soup made with chicken giblets (chicken feet, heads and giblets) with rice. Conditions regarding hygiene in food preparation are, in general, acceptable.

Detained children receive two meals per day. In Delegations 5 and 6, according to the testimony of inmates, they only receive food once a day, while in Delegation 7 (San Rafael del Sur), two of the children interviewed reported that they had not received food from the police in more than 24 hours. Although family members can bring the children food three times a day according to an established schedule, some chiefs of police delegations explained that this measure is rarely used because the families are themselves struggling with low incomes. As such, only a few children receive family support for their nutrition while in detention. Some police delegations have made considerable efforts to ensure their detainees are fed sufficiently, such as the Mateare section (Police Delegation 1, Ciudad Sandino), who provide the inmates with three meals per day, consisting of the same food eaten by the police personnel themselves.

With respect to water, most delegations have drinking water available, yet the spout is the same that serves toilets and showers, and is neither hygienic nor pleasant to drink from. In the already mentioned delegations that have problems with water supply, (Ciudad Sandino and San Rafael del Sur), water is available only during certain hours of the day.

\(^{31}\) Notes from CSC mission to Nicaragua, 26 April 2002.
F) Recreational Activities

*Rule 47* of the UN Rules for the Protection of Juveniles Deprived of Their Liberty establishes that all children should have enough time available for outdoor physical exercises on a daily basis, in addition to time for recreational activities, part of which (if the child so desires) should be dedicated to develop arts and trades.

In general, children detained by police do not carry out any type of physical exercise, are are not even taken outside, except when they receive family visits (usually twice a week). The time allowed for this meeting varies between police delegations, some allowing 15 to 30 minutes, others 30 to 40 minutes. Some police authorities suggested that inmates are not taken out in the sun because they do not have the available personnel to control or to safeguard the children. No recreational activities are provided in police detention, except in Delegation 8 (Tipitapa) where children are permitted to practice table games and play cards.

G) Education

*Rule 38* of the UN Rules for the Protection of Juveniles Deprived of Their Liberty states that all children of obliged school age in detention have the right to receive education adapted to his/her needs and capacities, and destined to prepare him/her for reinsertion into society. *Rule 41* further establishes that all Detention Centers should facilitate access for children to a well-sorted library with books and newspapers, adequately instructive and recreational.

In the investigation ‘*Face or Sun*’ (carried out by The Attorney General’s Office for Defense of Human Rights and Casa Alianza in 2002), survey results among adolescents deprived of liberty show that of 85 interviewed, 21.2% declared themselves illiterate, only 15.49% had attended approved elementary school (limit of obliged and free education in Nicaragua), and 31.8% refused to answer.\(^\text{32}\) This is significant in suggesting that most of the children in conflict with the law have not had access to schooling before they were arrested as provided for in *Article 121* of the Political Constitution, in *Article 43* of the Code for Children and Adolescents, and *Article 28* of the Convention on the Rights of the Child, as well as other international documents on human rights. Those that were studying before being detained do not have permission to continue their studies as they are under the order of a judge and there is a lack of personnel to supervise this activity.

As for libraries, police delegations do not have reading materials. Some churches, mainly evangelists, visit and bring Bibles and pamphlets with religious content that are given to the inmates, but this is the only material they have.

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\(^{32}\) Moreno, Norma; López, Carlos Emilio (2002). *¿Face or Sun?*, 1ª edition, Special Attorney General’s Office for Children and Adolescents of the Attorney General’s Office for Defense of Human Rights (PDDH).
H) Contact with the Outside World

*Rules 59-62* of the UN Rules for the Protection of Juveniles Deprived of Their Liberty consider contact with the outside world to be an integral part of the child’s right to humanitarian treatment. Communication with and supervised visits from/to their families, friends and other persons (including tutors and their defense counsel) are seen as indispensable for preparing children for their reinsertion in society. *Rule 62* also points out that children should have “the opportunity of regular information on events through newspapers, magazines or other publications, access to television and radio programs, as well as movies and visits from representatives of any club or organization of a legal nature in which the [the child] is interested.”

Yet, as discussed in the sections relating to recreational activities and education above, contact with the outside world for most children in detention is limited to the visits from their families, and this is unlikely to include many street-living children, for whom contact with their relatives may have been severed long ago. During family visits, there is also no possibility for private communication between the confined adolescent and his/her family because all the other inmates are taken out at the same time in a very limited space to receive their visits.

Required authorization from the judge further restricts private communication to the counsel for defense alone. Police authorities permit the latter to visit the children as often as they wish without restrictions. Aside from these few visitors, child detainees have no access to written informative materials, radios and television are not allowed, and there is no access to a telephone or written communication.

I) Medical Attention

The UN Rules for the Protection of Juveniles Deprived of Their Liberty dedicate special attention in *Rules 40 to 55* to the health of children deprived of liberty, establishing among other things:

- The obligation of providing adequate health care, both preventive and corrective, including dental, ophthalmologic and mental health, as well as medication and special diets prescribed by a doctor (*Rule 50*).

- The right to examination by a doctor immediately after confinement in the center for minors (*Rule 50*).

- All detention centers for children must have immediate access to medical facilities and equipment, as well as to capable personnel in sanitary attention, preventive and urgent medical attention. All children who are sick, who complain of being sick, or present symptoms of physical or mental difficulties should be examined rapidly by a medical official (*Rule 51*).
All children who suffer from mental illness must receive treatment in a specialized institution under independent medical supervision (Rule 53). Detention centers for children should organize programs for prevention of undue use of drugs and rehabilitation administered by qualified personnel… and should offer services for detoxification with qualified personnel to children who are drug addicts or alcoholics (Rule 54).

In reality, there are no medical services in police facilities – not even a nurse post or first aid area (with a few exceptions), so the adolescents are not examined when they enter into confinement. When they present health problems, if these are evident according to criteria of the custodian or chief of police in charge, they are referred to the closest health center or hospital, whatever the case may be. If it is not urgent, they first inform the judge and family. Whatever the case, it is the responsibility of the family to provide medication, as neither the police delegations nor the state hospitals have a budget allotted for these purposes. Sick inmates that do not have family support (including many street-living children) are exposed to serious illness and health risks as doctors prescribe medication that cannot ultimately be provided to them.

There are some exceptions to this problem. Police Delegations 2 (Linda Vista) and 4 (Oriental Market) of Managua established agreements and conventions with the American University (UAM), so that students in the last years of medical school may attend inmates when the case warrants it. Nonetheless, this effort is not a complete solution to the problem as medication is still not available for the inmates. Meanwhile, Delegation 7 (San Rafael del Sur) has recently been able to purchase a first aid kit with support from civil society group and local doctors, but serious cases are still a problem as the town does not have a hospital.

J) Personnel Training

Rules 81 and 87 of the UN Rules for the Protection of Juveniles Deprived of Their Liberty standardize requirements for personnel training in confinement centers for children under 18 years old. However, police agents are not trained in this sense, because according to Police Byelaws, their function is not re-education for social reinsertion and therefore does not extend in principle beyond the custody of detainees for periods that are longer than 24 hours for adolescents. This is despite the fact that children may actually be detained in practice for weeks and even months. The result is that they perform simple penitentiary functions because the country does not have Special Confinement Centers for Adolescents or Provisional Detention Centers.

According to the Chiefs of Police interviewed, all instructors and ‘conducts’ for inmates receive training on the rights of the child and adolescent. Obviously, it was very difficult to assess this claim during the few visits allowed for this report.

33 Similar provisions are found in Article 212 of the Code for Children and Adolescents; 6.3, 12.1, and 22 of the Beijing Rules, and Rules 46-54 of the Minimum Rules.
GOOD PRACTICES OF THE NATIONAL POLICE

For reasons of fairness, it must be acknowledged that poor material conditions and budgetary difficulties are behind many of the problems currently experienced by the Nicaraguan police in reaching the targets specified for detention in international law. There are some commendable efforts being made, and these are presented here in the hope that they will inspire others less active to continue struggling to reach their potential.

1) The National Police in Managua, District 2, established coordination with Universidad Americana (UAM), so that students in the last years of medical school can provide attention to the health situation of detained persons.

2) The Chiefs of Police of Delegation 2, in coordination with specialized organizations from civil society, made a study on “Categories of Violence Among Adolescents”, and used this as the basis for promoting the ‘Integral Attention Model for Children and Adolescents in Social Risk Situations’ in the poorest neighborhoods of District 2 in the hope of preventing children coming into conflict with the law.

This Attention Model allowed the police to come closer to youngsters and their communities involved in the project, with significant achievements such as the demobilization of several juvenile groups (adolescent gangs) in the neighborhoods where the project was developed. The National Police are now looking to extend this good practice countrywide.

3) Authorities from District 4 of the National Police in Managua developed relations with business people in the Oriental Market of Managua to help finance remodeled walls in deteriorating cell units. This brought the two-fold benefit of preventing children hurting themselves on the rough walls and reducing the number of insects that thrive in irregular walls. The Oriental Market businesses have also agreed to fund regular fumigation in the cells.

4) The Popular Law Office in the Central American University (UCA), promotes a project for legal defense of inmates in Police Delegations One and Four in Managua, wherein one or two senior law school students stay during certain hours of the day to help safeguard the inmates’ human rights within that Delegation.

5) The Municipality of Mateare, Managua, seldom arrests children. When a child is seen to cause a problem, police authorities call the parents and try to establish a duty of care and responsibility between the two. This practice can take place partly because Mateare is a semi-rural community where most people know each other, but also because the local police chief places strong faith in using parents to help find solutions to problems.
It was also noted that in the Mateare Police Section, inmates receive three meals a day, comprising the same food that police officers themselves consume. This appears possible due to the close relationship established between the police and the community.

6) Police Delegations that have a Commissioner’s Office for Women and Children or similar specialized personnel have increased coordination with civil society institutions and organizations so that alternatives to detention may be discussed for children in conflict with the law.

7) The annual budget for inmates in police units has not varied since 1990. For example, it was known that in San Rafael del Sur (Municipality of Managua), the financial allocation is C$9,430 (approx. US$620) for around thirty inmates, which includes food and cleaning supplies. This state of affairs has inspired ‘prisoner patronages’ in coordination with civil society organisations who each guarantee food for lunch, medication and disinfectants one day a week.

8) As a result of the ties with the community, the delegation in San Rafael del Sur managed to obtain services of a private doctor who provides medical attention to prisoners that present some urgent and serious medical needs. They have also obtained medical attention in the local dispensary at the evangelist church.

9) Police in the City of Juigalpa coordinate with a doctor from the municipality who comes to the police facilities once a week to assess the health of the inmates, particularly children who require specialized check-ups. Furthermore, despite limitation in personnel, the Juigalpa police permit children to receive visits from their families on a daily basis if desired.

10) In Juigalpa, when the National Police does not know the age of an arrested child, they transfer him/her to the forensic doctor with the purpose of determining the biological age more accurately. This avoids sending the child to an ordinary jurisdiction, and safeguards their right to be judged by a specially trained judge for children in conflict with the law.

11) Also in Juigalpa, where there are few public counsels for the defense, police have established coordination with the local dioceses and with the Popular University of Nicaragua (UPONIC), in order to get legal assistance for arrested children.
1. Accusation

In conformity with Nicaraguan Legislation, the investigation begins by regular procedure or by a denouncement before the district attorney, and will have a maximum duration of *ten days* (*Articles 151 and 153 of the Code*). When the adolescent is detained under charge of a flagrant crime, he/she will be placed under custody of the judge for a period of 24 hours and then sent to a provisional detention center (*Article 111 of the Code*). It is then up to the District Attorney’s office to present the accusation within a term of 5 days (*Article 161 of the Code*).

The District Attorney can: a) present the accusation before the District Judge for Criminal Adolescents and request application of the corresponding measure; b) ask the judge to dismiss the process; or c) request temporary stay or dismissal of proceedings, depending on what may correspond (if there is no proof against the adolescent), (*Article 155 of the Code*). Of the 44 files reviewed for this report from the Special Courts for Adolescents, 8 of these were presented to the judge after periods exceeding the legal limit of 5 days, thereby amounting to illegal arrest.

2. Defense

*Articles 101.b* and 107 of the *Code for Children and Adolescents* recognize the right to assistance and advice by a counsel for the defense from the moment of the arrest, during the investigation and during the entire process. Communication between the adolescent and the counsel for the defense must be free and private. In general, this facility was recorded as present in a high percentage of trials – even in those jurisdictions where the number of public counsels for the defense is limited (e.g. Managua and Ciudad Dario). However, decisions in favour of the accused children were presented in only 13 of the 44 cases reviewed, and many detained children reported that they did not know if they had had a defense counsel or not. This suggests that this facility is either underused or of poor quality.

3. Unsworn Statements

When a child’s freedom is restricted, it is the responsibility of the judge to take an unsworn statement within a period of 24 hours. If the child is not deprived of liberty, the declaration can be taken after the conciliation hearing, but if it does not proceed, it should be taken within a term of 5 days, (*Article 162 of the Code for Children and Adolescents*).

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34 Similar provisions are made in *Article 34.4 of the Political Constitution; Regulation 15 of the Beijing Rules; Article 14 of the International Covenant on Civil and Political Rights; Article 8.1 of the American Convention on Human Rights, and Article 93 of the Minimum Rules.*
Despite the above, the child can abstain from confessing / making a statement and they are in no way obliged to confess / make a statement against their will. Charges should not be pressed to obtain their confession and threat or coercion will not be exerted.

Of the 44 files reviewed, 19 children rendered interrogatory confessions / statements before the court authority within the term of law, 12 did it within a term of more than 24 hours, and 13 had not rendered confessions / statements yet. Of further concern is the fact that 11.4% of the children rendered their interrogatory confessions / statements without having a lawyer present, and a family member only accompanied three children (6.8%) when rendering their confession / statements.

4. Bio-Psychosocial Studies

In cases where the deprivation of liberty is a possible sentence, the judge is required to order a bio-psycho-social study of the child, and for that he/she must rely on a specialized interdisciplinary team. This study is critical in ensuring the final sentencing takes into account the child’s particular health, social and psychological situation. However, at the time of writing, only the District Criminal Judge of Managua has the required team established by law to carry out Bio-Psychosocial studies. In some departments of the country the district attorney gets assistance from government health institutions or non-governmental organizations that provide studies in this sense.

Of 44 children’s case files reviewed for this project, the judge ordered the realization of the bio-psycho-social studies for only 10 cases and had not ordered it for 19 cases (44%). Even then, only 7 of the 10 studies requested were actually carried out. Of the remaining 15 cases, 9 had not yet started the process, in one case the accusation was dismissed, 2 had an order for release, 2 were passed to ordinary justice, and in the last case the process had just begun. Failing to systematize the gathering of bio-psychosocial reports in this way leaves children within the justice system at greatly increased risk of inappropriate treatment and sentencing.

5. Length of Trial

Article 142 of The Code prescribes that the criminal process at the trial level for children cannot exceed three months. Within 5 days of being arrested, the judge must present the child at trial, examine the evidence and carry out the necessary petitions (Article 169 of The Code). The judge will then pronounce within the following 24 hours on the admissibility of the evidence, the origin of any request and also, by regular procedure, will be able to subpoena those that he/she considers pertinent, (Article 171 of The Code).

Once the evidence is admitted, a verbal and private hearing takes place within 10 days, in which the child, their counsel for the defense, the defending party, the district attorney and (if possible) the parents should be present. If the child is declared innocent, his/her immediate release will be
ordered; if he/she is declared guilty, the judge will issue a sentence 8 days later which will then be enforced within 24 hours.

Of the 44 legal files from different regions reviewed by the Special Attorney General’s Office for Children and Adolescents and Casa Alianza, 13.6% of the cases had trials with more than three months under process without having issued a sentence. According to some of the judicial officials interviewed, this delay was usually due to the time it takes to carry out bio-psychosocial studies and the heavy caseload of the personnel involved (including judges).

6. Sentencing

Once there is sufficient proof that the child carried out or participated in a crime, the Criminal District Judge for Adolescents can apply the following measures in his/her verdict:

- **Socio-educational**: guidance and social-familial support; admonition and warning; conditional release; rendering of services to the community; refurbishing damages to the victim.

- **Guidance and surveillance**: Obligation to change the place of residence; not to frequent determined places and/or persons; confinement in a treatment program against addictions; attend a formal educational center or occupational programs.

- **Deprivation of liberty**: domiciliary; during free time; and in specialized centers (*Article 195 of the Code*).

The objective of all imposed measures is basically educational and directed toward the child’s reinsertion into his/her family and society without diminishing development of capacities. To decide which sentence is most appropriate, the judge is required to take into account the nature of the crime, the age of the offender, his/her capacity to comply with the measure, and the efforts needed for rehabilitation (*Article 194, 195 of the Code*).

Execution of the sentence is then monitored by The Execution and Surveillance Office of Criminal Sanctions in Adolescents, who will review the measures every six months to recommend modifications or substitution of these with less severe ones, depending on the case, (*Articles 208-211 of the Code*).

Only the Judge can order deprivation of liberty (maximum 6 years) to children 15 years old or older within the National Penitentiary System (*Article 95 of the Code*), for crimes specified in Article 203 of the Code; and only when there is a reasonable risk that the child will evade the action of justice (*Articles 142 and 143 of the Code*). If the child then reaches 18 years of age while serving a sentence that deprived him/her of freedom, he/she will continue in the special center for adolescents but will be separated from them for the remainder of his/her sentence in the rehabilitation center (*Article 125 of the Code*).
At the time of investigation, it appeared that the level of personnel and resources available across the relevant sectors was still insufficient to enforce and monitor sentences other than the deprivation of freedom in conditions already described. Nevertheless, specialized judges from the Managua and Northern jurisdictions in particular have sought support from parents or some non-governmental organizations to assist in applying some socio-educational measures. In this way, they have formed a type of social network that acts *de facto* without recognition from the Supreme Court of Justice.

After the Consulting Forum for this project, an additional person was appointed to the Office for Execution and Surveillance of the Criminal Sanctions for Adolescents in Managua, who has since helped to continue coordination efforts with civil society organizations providing services to children in risk situations. This has increased (though marginally) the alternative options to detention for children in conflict with the law.
GOOD PRACTICES - CRIMINAL DISTRICT JUDGES FOR ADOLESCENTS

At the end of 1998, 8 criminal district Judges For Adolescents (JFAs) were appointed for Nicaragua and have accumulated great experience in the sphere of specialized criminal procedures. Together with others, they have introduced a number of initiatives with the intention of making The Code for Children and Adolescents more efficient. These include the following examples:

- Some verbal hearings, particularly in the North and Las Segovias regions, take place outside the designated courtroom because JFAs have been able to visit different municipalities. This has worked to speed up the Special Criminal Process for Adolescents, and reduce unnecessary delays.

- Some JFAs have agreed or convened with National Police Authorities to ensure that children being tried are transported in separate vehicles to adults.

- For less serious crimes, the tendency among JFAs is to grant domiciliary freedom with a personal bail rendered by family members. This has helped reduce the number in detention, but only for those whose families can afford to stand bail (which is likely to exclude a large number of street children).

- The act of JFAs explaining the judicial actions to the child being processed and to his/her family, legal representatives or human rights entities is becoming more systematic.

- Criminal district JFAs have been open (some more than others) to the assistance of civil society, particularly in listening to the concerns and petitions relating to children deprived of liberty. Judges have also attended seminars and workshops on human rights for children etc.

- Criminal district JFAs promote the protection of, and respect for, the child’s identity by enforcing mechanisms that limit what journalists can publish regarding cases.

- Training workshops on the Code for Children and Adolescents have been provided to different social sectors such as City Hall Council Members, Children’s Movement and the National Police etc. The Specialized Inter-Disciplinary Teams responsible for bio-psychosocial studies were give training to promote awareness, accessibility, patience, sense of humor, and the ability to listen to what children have to say without any judgment.

- The judge reports to the Administrative Authority (Ministry of the Family) in those cases where accused adolescents require special protection (Article 76 of the Code for Children and Adolescents).
GOOD PRACTICES OF THE PUBLIC COUNSEL FOR DEFENSE

Although this institution at present only functions in the Managua jurisdiction and in the North, the examples of good practices listed below are valid in the areas that encompass both of them, and are especially pertinent to the judicial headquarters.

- The coordination of efforts in order to comply with the 24-hour term for remitting children to the judge by the National Police is slowly improving. However, in places far away from the headquarters of the criminal district court for adolescents, it is still not possible to comply with the term established by law.

- In most cases, children beginning their trials make statements with the assistance of a lawyer when appearing before the judge. Public counsels for the defense are almost always physically present in the court.

- The Public Counsel for the Defense (Managua) signed an agreement with the National Police in order to interview detained adolescents without major procedures or formalities, excepting the rigorous ones referring to identification. This does not allay the fact that the police still need to allow more privacy during interviews and grant more time than the usual five to ten minutes currently taken.

- The Criminal District Judge for Adolescents in Managua respects the right to a private interview between the child and his/her counsel for the defense before rendering his/her Interrogatory Statement.

Good Practices of the Public Ministry

The Specialized Unit on Crimes Committed by Children and Adolescents of the Public Ministry (specifically in Managua) has also accumulated important progress, with the following notable advances:

- The District Attorney’s Office developed high operational levels in coordination efforts with the National Police, and although it is true that not everything is solved, this has helped to speed up the general process.

- In Managua, the Public Ministry has two district attorneys on shift, 24 hours a day, 365 days per year. It is to these individuals that the National Police reports any detentions of children.

- When a crime is not serious and the child does not have a criminal record, the Public Ministry usually makes a request to the Criminal District Judge for Adolescents to apply a substitute measure instead of deprivation of liberty.
DEFINITE DEPRIVATION OF LIBERTY (Penitentiary Detention)

The minimum acceptable conditions established by the legal instruments discussed in the section above on Provisional Deprivation of Liberty are also valid for definite confinement in penitentiaries. According to Article 214 of The Code, sentenced deprivation of liberty will be enforced in Special Centers for Adolescents different from those holding adult offenders. The Code also foresees the existence of at least two centers in the country, one for girls and another for boys, and both under the administration of the National Penitentiary System. However, the reality is that Nicaragua still does not have Specialized Confinement Centers for Adolescents. Sentenced children therefore stay in the same penitentiary establishments as adults, with the only difference that they are physically separated from the latter in designated child barracks.

During the month of September 2002, Casa Alianza-Nicaragua visited some of the 8 existing regional penitentiary centers across the country (including Managua) to observe the general conditions. At this time, there were just less than 100 children deprived of liberty in these centers.

Separation by age and sex

As in provisional detention, there is separation by age and sex for men in most centers (although in Juigalpa children were found to be sharing a barrack with the elderly). Girls are only separated by sex and not by age, which means they must share their cells with adult women. This is in spite of the fact that the number of adolescent girls sentenced to prison is actually very small.

The Penitentiary Center in Chinandega has two special cells completely separate from those for adults, and children here confirmed that they had never had to share cells with adults. Similarly, the Penitentiary Center ‘La Modelo’ in Managua has a special area called the Gallery for Adolescents to separate young and adult offenders.

Registry Book for Detainees

The National Penitentiary System has a specialized department called Criminal Control which is exclusively dedicated to keeping up to date records of incoming and outgoing prisoners. Cards and files are also kept for each inmate, and the system was generally found to be effective and well-maintained.

35 These were: The Code for Children and Adolescent (1998), henceforth called the Code; UN Rules for the Protection of Juveniles Deprived of Their Liberty (1990) ; Standard Minimum Rules for the Treatment of Prisoners (1977), and the UN Standard Minimum Rules for the Administration of Juvenile Justice (1985), also known as the Beijing Rules.
**Detention Conditions**

Contrary to police cells, units in the Penitentiary System tend to suffer from less overcrowding and comply with legal requirements for acceptable conditions to a considerably greater extent. Having said that, all the centers were still found to struggle in maintaining adequate material conditions.

The front and roof of cells destined for children in the Penitentiary Center of Chinandega are built with bars, thus allowing enough ventilation and fresh air day and night. Penitentiary officials also allow children to stay out of their cells during the day, and remain in the pavilion next to the cell area, which may however, entail the possibility of intermingling with adults.

The Tipitapa Penitentiary Center has 23 cells, but are only using 4; in others words, they place groups of 4 or 5 children per cell. As in Chinandega, they allow these children to wander the hallways during the day and when they are carrying out activities.

**Light and ventilation**

Cells in the Penitentiary Center of Chinandega are composed of approximately 50% bars, thus allowing enough fresh air and natural light during the day to enable children to read without damaging their eyesight. They also have artificial light until certain hours at night.

Similarly, the cells for children in the Tipitapa Penitentiary Center have a regular sized window and iron bar doors that allow natural light to enter all day long. Each cell also has artificial light up to nine o’clock at night, according to statements from children and penitentiary staff.

**Hygiene Facilities**

In the Tipitapa Penitentiary, toilets and showers are in good hygienic condition. Generally, children are able to use them freely, but on certain occasions they lack running water. The toilets and showers do, however, have curtains affording privacy to their users.

Because the supplies for cleaning these centers are minimal, Penitentiary Directors appeal to private enterprise, civil society organizations and family members of the inmates for support through donations of disinfectants and other cleaning materials. The children themselves are not given anything with which to keep their cells clean, but their testimonies suggest that cells were on the whole kept clean and orderly despite these limitations.

Similar support networks with civil society groups and family members have enabled the children in these centers to receive clean and quality bedsheets and mattresses.
Nourishment

Food for children provisionally deprived of liberty was found not to contain the amount of basic calories required by international regulations, and this is also true for all penitentiary centers in the country.

The budget allotted by the State of Nicaragua for those in Penitentiary Centers is an average of about C$7.00 daily per inmate (USD 0.45). The budget for the penitentiary system diminished by 25% from the year 2001 to the year 2002 (from C$89,477,376 (USD 5,791,415) to C$65,013,021 (USD 4,207,962), despite an increase in the inmate population. The justification for this decrease was therefore given in terms of the drop in value of the Cordoba currency on the international market and a significant increase in product prices. This has also affected the amount of food being brought to the centers voluntarily, as family members are forced to ration further.

Recreational Activities

Children have the opportunity to participate in recreational (mainly sporting) activities set up under the Penitentiary System, as well as ‘cultural activities’ (though these remained more difficult to verify.

Education

The Penitentiary System has made some significant efforts to guarantee this right to children in their centers by establishing agreements with the Ministry of Education for support in this area. In the Chinandega Penitentiary Center, children have a dedicated study center authorized and supported by the Ministry of Education where they receive basic education encompassing elementary school to the fourth year of high school. According to information provided by penitentiary staff, this will also be expanded in 2004 to include the fifth year of high school. Some skills-based courses are also offered, though these remain limited.

In contrast, the Tipitapa Penitentiary Center has a fully functioning school recognized by the Ministry of Education. With assistance from certain international organizations, they have also been able to install a computer classroom for the children.

Medical Attention

Each penitentiary center has a medical clinic, with one doctor and one nurse. Tipitapa has three doctors and four nurses for a total of approximately 710 inmates. When specialized doctors are required, family members must contribute to cover the cost or means of transportation for the child to the public hospital, and once there they are also required to pay for any medication that may be necessary, as the penitentiary allocate no budget for this.
GOOD PRACTICES OF THE NATIONAL PENITENTIARY SYSTEM

Although there is still much room for improvement, it must be recognized that penitentiary authorities have, over the years, made important efforts to promote the human rights of children in detention with initiatives around culture, recreation, sports, family visits and education. This investigation recorded the following good practices:

Chinandega Penitentiary

- Monthly visits from the Criminal District Judge for Adolescents contribute to strengthening working relations between the two groups, and help to ensure follow-up monitoring on the situations of children deprived of liberty.

- One official is required to remain all day in the gallery destined for adolescents, to attend to their concerns and needs.

- Officials have established coordination with the City Hall and ‘Casa del Joven’, the latter being an organization that regularly carries out recreational and spiritual expansion activities with children deprived of liberty. Similarly, they encourage students from local educational centers to visit the detained children and develop casual friendships.

A doctor and psychologist permanently remain in the penitentiary facilities to attend the children.

La Modelo, Tipitapa-Managua Penitentiary System

- Authorities in the Tipitapa Penitentiary System coordinate with the Ministry for Education, Culture and Sports (MECD) in carrying out educational courses for children in the center. Other state institutions and some civil society organizations have also been called in to help develop training events on a selection of themes such as human rights.

- With the approval of the MECD, penitentiary officials organized an English course for children in the center, imparted by one of the adult inmates. Activities within the framework of cultural improvement and artistic development have also been promoted among the detained children.
RECOMMENDATIONS

To the Government of the Republic of Nicaragua:

- Establish the Special Centers for Adolescents in accordance with Articles 111 and 214 of The Code for Children and Adolescents. These should comply with basic requirements for surface area, ventilation, fresh air, natural and artificial light, drinking water and for hygiene that all human beings demand, sanitary services that allow satisfaction of physiological needs in a timely, clean and decent manner.

- Ensure the provision of humane treatment to children in provisional detention and that their innocence is continually presumed so that if the trial is concluded, those that are innocent can be released without feeling that their dignity, rights and guarantees are not undermined.

- Provide training for penitentiary staff on the correct and appropriate treatment of children. Ensure they have the financial and physical capacity to give fair time for visits so that the confined children can have effective communication with their family/friends (even during provisional confinement), and stay informed of important events in the outside world. This would require access to reading material, recreational activities, sunlight and physical exercise.

- Provide open access to medical services and medication in the Penitentiary Center to treat illnesses that require first aid, and ensure adequate and speedy transport to the local hospital in case of severe illness or special attention.

- The quality and quantity of food provided in both provisional and definite detention should be designed with children’s particular needs in mind, and sufficient to ensure a basic, healthy diet and the preservation of good health.

- For as long as Special Centers for Adolescents are not built or are not in proper condition, the Government should provide the necessary resources and allot adequate budget allocation for the National Police to ensure that the minimum standards for children in detention are met under The Code for Children and Adolescents.

- Awareness campaigns should be initiated through various government institutions targeting society as a whole in order to obtain their moral and, if possible, financial support. Private enterprises, merchants in market places, community organizations and assistance organizations are all valuable actors in this respect.
To the National Police:

- All police personnel must be trained in human rights, the rights of children and adolescents, Special Criminal Justice for Adolescents and the Regulations for Administration of Justice for Adolescents. This is something that the General Attorney’s Office for the Defense of Human Rights, Casa Alianza and other organizations can assist with. This will ensure that the institution applies the criteria in a uniform manner according to the law, and not according to the criteria of different Chiefs of Police Delegations, or the official guard shift. The Internal Affairs Division (DAI) of the National Police should then periodically inspect compliance with these regulations.

- A complete and trustworthy registry book must be kept up to date with basic information on the confined children, with details of the notification for each internment, transferral and release of children. Details concerning their physical and mental health characteristics should also be included.

- The police must remit the presumptive adolescent to the corresponding Criminal District Judge for Adolescents within the 24-hour term dictated by law, so that the authority can legally determine whether the inmate is or is not a child.

- Separation by age is part of the obligation of caring imposed by law on the Police in order to maintain security and protection of confined adolescents to preserve their physical and moral integrity. In this sense, police authorities must be ordered to comply with their duty; this could be controlled through surprise inspections by the Internal Affairs Division, the Follow-up Office for Adolescents Deprived of Liberty, and the Defense Office of the General Attorney’s Office for Defense of Human Rights (PDDH).

- The Legal Assistance department and the Internal Affairs Division of the Police must follow-up on compliance with human rights for inmates by informing them of the motive for their detention, so that one of the most basic procedural principles is observed. Their families should also be informed, either by police officials or by the children themselves.

To the Judiciary:

- In conformity with The Code, the Executive and Legislative Powers should assign necessary budget allocation to the judiciary powers for creation of Adolescent Courts and their respective specialized teams that are still lacking in the rest of the country.

- For their part, Magistrates from the Supreme Court must make efforts to name judges and allocate the corresponding salaries. It is worth pointing out the enormous material and salary differences between the Supreme Tribunal and the courts where justice is administered in first instance, as well as among magistrates and judges.
The Judiciary Power should name Public Counsel for the Defense in all the judicial headquarters to guarantee the right to defense for adolescents subject to juvenile justice, especially those that come from low-income families.

As long as Special Judges for Adolescents are not appointed, they must train all judges on human rights and the rights of the child as part of the required training that law schools offer for judges. The Public Ministry should also train department attorney generals that act as accusers in departments located with judiciary headquarters, both on human rights and child matters with regard to procedures.
BIBLIOGRAPHY

Basic Texts


Newspaper and Periodicals


5. Information Provided by Casa Alianza-Nicaragua, relative to Adolescents Deprived of Freedom.
APPENDIX A - OFFICIALS AND AUTHORITIES CONSULTED

A. During field trip visits

1. Dr. Adda Benicia Vanegas Ramos, Dr. Octavio Ernesto Rothschuh Andino; Criminal District Judges for Adolescents in the Managua and Central Jurisdictions.

2. Msc. Lizeth López Vidaurre and Ms. Rebecca Henríquez; members of the Specialized Inter-Disciplinary Team of the Criminal District Court for Adolescents of the Managua Circumscription.


4. Officials from the Nicaraguan Center for Human Rights (CENIDH), Juigalpa branch.

5. Dr. Veronica Nieto Obando, Chief of the Special Crimes Unit for Children and Adolescents from the Public Ministry of Managua.

6. Dr. Ligia Cisneros, Public Counsel for the Defense of Adolescents in Managua.

7. Dr. Aleyda Irías, Public Counsel for the Defense of Adolescents in Managua.


9. Representatives from the Public Ministries in Leon, Managua and Juigalpa.

10. Officials from the National Penitentiary Systems in Chinandega and Chontales.

11. Law Instructors from the Popular Legal Office in the Central American University (UCA).

B. Participants in the Consulting Forum on Juvenile Justice

a) From the State

- María Luisa Ramirez Alvarez, District III, Managua National Police

- Estela Berrios Ayerdís, National Police

- Captain Oscar Vargas Cruz, District II, Managua National Police
- Captain Ramón Morales Vega, District IV, Managua National Police
- Captain César Augusto Cuadra, District VIII, Managua National Police
- María Rocha, District V, Managua National Police
- Captain Carlota María Jerez, Chief of the Women’s and Children’s Commission, Leon
- Dr. Marielos Espinoza, Director of the Public Counsel for the Defense
- Amy García Curtis, Public Ministry of Managua
- Amanda Mendoza, Public Ministry of Managua
- Marina Aurora Amador Díaz, Public Ministry of Chontales
- Dr. Scarleth Lugo Guevara, Criminal District Judge for Adolescents from the Northern and Las Segovias Circumscriptions
- Dr. Johannel Robleto, Criminal District Deputy Judge for Adolescents from Chontales
- María Paola Castro, Criminal District Judge for Adolescents of the Western Circumscription
- Sandra Bermúdez Oporta, Criminal District Court for Adolescents of the Eastern Circumscription
- Dr. Leticia Herrera Sánchez, Director of the Technical Office for Follow-up on Special Criminal Justice for Adolescents in the Supreme Court of Justice
- Ms. Xiomara Martínez Espinoza, Ministry for the Family (Central Delegation)
- Captain Julio César Carrillo Baca, Director (a.i.), Penitentiary Center, Chontales
- Oscar Alonso Espinoza, Penitentiary Center, Chinandega
- Evenor Centeno Aguilar, Penitentiary System, Chinandega
- Julio José Carrillo Valle, National Penitentiary System
- Catalino Martínez, National Penitentiary System
- Martha Garay de Guerrero, Governance Ministry
- Ramón Rodríguez, Special Attorney General’s Office for Children and Adolescents for Defense of Human Rights (PDDH)
b) From Civil Society Organizations

- Aleyda González, CCAN (Defense Counsel for Children, León)
- Freddy Hernández, CCAN (Defense Counsel for Children, León)
- Mauricio Reyes Zambrana, FUNPRODE
- Carlos Vidal Ramos, FUNPRODE
- Dr. Carlos Gómez Torrentes, Nicaraguan Center for Human Rights (CENIDH), Estelí Branch
- Denis Aráuz Orozco, Nicaraguan Center for Human Rights (CENIDH)
- Clara Gerritz, Casa Alianza-Nicaragua
- Alvaro Osorio, Lawyer from the Legal Support Office, Casa Alianza-Nicaragua
- Asmet Rosales, Lawyer from the Legal Support Office, Casa Alianza-Nicaragua
- Rosario Gaitán (Independent Consultant on Citizen Security Issues)
- Marjorie Chica Larios (Independent Consultant on Children and Adolescent Issues)

C. Authorities that Attended the Inauguration of the Consulting Forum

1. Ms. Zelmira García, National Director of Casa Alianza-Nicaragua

2. Mr. Manuel Ignacio Lacayo, Nicaraguan businessman and President of the Board of Directors of Casa Alianza-Nicaragua

3. General Commissioner Aminta Granera, Inspector General of the National Police

4. Doctor Leonel Tapia Valverde, Delegate Representative of Dr. Yadira Centeno González, Magistrate of the Supreme Court of Justice

5. Mrs. Amalia Frech, Executive Secretary of the National Council for Attention and Protection to Children and Adolescents (CONAPINA)

6. Mrs. Luisa Molina, President of the Coordinating Federation of Non-Government Organizations that Work with Children and Adolescents (CODENI)

7. Doctor Analucía Silva, Human Rights Officer, UNICEF Nicaragua