

## NICARAGUA

International Instrument	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a), Succession (d)	Entry Into Force
UN Convention on the Rights of the Child	6 Feb 1990	5 Oct 1990	
UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography		2 Dec 2004 a	
Protocol to Prevent, Suppress and Punish Trafficking in Persons		12 Oct 2004 a	
UN Optional Protocol on the Involvement of Children in Armed Conflict		17 Mar 2005 a	
International Convention for the Protection of All Persons from Enforced Disappearance			
Hague Convention on International Child Abduction		14 Dec 2000	1 Mar 2001

Nicaragua has made some important improvements to its child protection legislation. In particular, amendments to the Nicaraguan Criminal Code, which entered into force in 2008 and included the criminalization of sexual violence crimes, child pornography, trafficking of children and commercial sexual exploitation, bring Nicaragua's legislation one step closer to harmonization with the CRC and its Optional Protocols. The country also enacted and amended critical legislation aimed at enhancing the protection of children, namely: reforms to the Labor Code concerning children in 2003; reforms to the Food Act of 2004; The General Education Act of 2004; reforms to the Adoption Act of 2007; and the Law of Responsible Parenthood of 2007. Nevertheless, harmonization of the country's legal framework with the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography is still necessary.

A unique series of economic, social, and political factors also contribute to the vulnerability of Nicaraguan children. According to statistics from the Ministry of Family (MIFAM), Nicaragua has an estimated population of 25,000 children in the streets.<sup>1</sup> As an estimated 46.2% of Nicaraguans live below the poverty line,<sup>2</sup> the country is considered the third poorest in Latin America.<sup>3</sup> Poverty among

<sup>1</sup> Nicaraguan Federation of NGOs working with children and adolescents (CODENI). *IV Supplementary Report on the implementation of the Convention on the Rights of the Child - 2004–2007*, presented on March 2010, page 23. Henceforth referred to as "CODENI Report 2010". Available at: [http://codeni.org.ni/files.cdoci/1272053783\\_CODENIs%2011%20SUPPLEMENTARY%REPORT%20CRC.doc](http://codeni.org.ni/files.cdoci/1272053783_CODENIs%2011%20SUPPLEMENTARY%REPORT%20CRC.doc) (last visited October 5, 2011; on file with the International Centre for Missing & Exploited Children).

<sup>2</sup> World Bank Group, *Data and Indicators by country: Nicaragua*. Available at: <http://data.worldbank.org/country/nicaragua>. (last visited October 5, 2011).

<sup>3</sup> UNODC 2007, *supra* note 104.

the population under age 5 equals 57.2%, while extreme poverty reached over 22%.<sup>4</sup> The same was true among the population aged 6 to 11 years.<sup>5</sup> Hurricane Mitch impacted Nicaragua in 1998, followed by several other natural disasters over the years. Hurricane Mitch alone killed 2,515 people while 885 people went missing, with over 150,000 children between the ages of 14 and 18 directly affected by the storm.<sup>6</sup>

As child abuse can be a significant push factor for children who run away from home, it is important to note that violence against children is also a substantial problem in Nicaragua. The Centre for Prevention of Violence in Nicaragua reports that one in three girls and one in five boys were sexually abused in 2007.<sup>7</sup> According to a recent study on child abuse in Nicaragua, it was demonstrated that 90% of all cases were perpetrated by a person close to the child, namely fathers, step-fathers, brothers or boyfriends, and only 10% were carried out by strangers.<sup>8</sup> From January to September 2006, an estimated 1,322 cases of physical and sexual assault, statutory rape, and incest against minors were reported to the police, out of which 1,230 were children under the age of 13.<sup>9</sup> This is a significant increase when compared to 2005 statistics, when just 219 cases were reported for all of 2005.<sup>10</sup>

High levels of migration also result in increased vulnerability of children to child trafficking and child sexual exploitation. An estimated 20,000 to 30,000 Nicaraguans migrate each year, mainly to Costa Rica and the United States.<sup>11</sup> Nicaragua is mainly a source and transit country for men, women, and children subjected to sex trafficking and forced labor. Nicaraguan children are victims of sex trafficking both within the country and in neighboring countries, particularly in Guatemala, Costa Rica, El Salvador, Honduras, Mexico, and the United States.<sup>12</sup>

Nicaragua also endured a long conflict that had a particularly devastating effect on its child population. An estimated 3,000 children were killed; 2,000 were severely wounded; over 200,000 were displaced; 11,549 children were kidnapped and over 25,000 children were orphaned in the conflict that ended in the early 1990s, according to a study carried out in 1996 in Nicaragua.<sup>13</sup> Though the Nicaraguan government and civil society have attempted to provide some assistance to children affected by the conflict (e.g. The Program for the Victims of War),<sup>14</sup> little else has been done to reunite families separated by war. The same is true for any intent to reunite missing children with their families.

Currently there are no missing children laws in the country. As with the majority of countries in Central America, Nicaragua's legal framework only specifies criminal consequences for perpetrators of trafficking and parental child abduction, which are outlined in Articles 182 and 218 of the Criminal

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<sup>4</sup> CODENI Report 2010, *supra* note 120, page 3.

<sup>5</sup> *Id.*

<sup>6</sup> Save the Children: Diagnóstico, 2003, *supra* note 24, pages 122, 123.

<sup>7</sup> UNHCR 2008 Central America Report, *supra* note 97, page 34.

<sup>8</sup> Economic Commission for Latin America and the Caribbean (ECLAC/UNICEF), Child abuse: a painful reality behind closed doors, July 2009, page 7. Available at: <http://www.eclac.org/dds/noticias/desafios/0/37890/Challenges9-cepal-unicef.pdf> (last visited October 5, 2011; on file with the International Centre for Missing & Exploited Children).

<sup>9</sup> UNHCR 2008 Central America Report, *supra* note 97, page 40.

<sup>10</sup> *Id.*

<sup>11</sup> CODENI Report 2010, *supra* note 120, page 4.

<sup>12</sup> U.S. TIP Report 2011, *supra* note 25, page 276.

<sup>13</sup> Save the Children: Diagnóstico 2003, *supra* note 24, page 90. More precise statistics were reported and accounted for 22,050 who were partially orphaned and 2,450 who were totally orphaned during the conflict.

<sup>14</sup> The Program for the Victims of War in Nicaragua offered compensation to people under 21 years of age who have lost one or both parents in the conflict.

Code.<sup>15</sup> The Child and Adolescent Code of Nicaragua also establishes that it is illegal for a mother to “give” or “sell” her children to a third person, noted in Article 72.<sup>16</sup> One of the criticisms of the Committee on the Rights of the Child to Nicaragua is the fact that the sale and trafficking of children are criminalized within the same article, while those two charges should be considered separately.

While there is no legal definition of a “missing child”, there is also no specific legislation governing law enforcement response. The only relevant Codes appear to be, the Organic Law of the National Police, No. 228, which requires all police officers to quickly intervene to prevent crime or to stop it from being concluded in general,<sup>17</sup> and the Child and Adolescent Code, which places the responsibility for the protection of children under the state’s realm of responsibility.<sup>18</sup>

In terms of travel regulations, Nicaragua has protocols aimed at preventing a child from leaving the country without the authorization of both parents. According to information obtained during the field visit,<sup>19</sup> authorization of the person exercising the parental authority or guardianship is mandatory for every child traveling out of Nicaragua. Exit control requirements are established by the Child and Adolescent Code (Código de la Niñez y la Adolescencia).<sup>20</sup> The country’s immigration laws also prohibit children and adolescents from leaving the country without the permission of their parents or legal guardians. Nevertheless, interviews carried out in-country demonstrated challenges to regulating the validity of travel documents used for this purpose. For example, some anecdotal information mentioned instances in which notaries selling authorizations and/or the notarized authorization was issued without the appropriate legal basis (i.e. no authorization from the other parent; insufficient documentation, etc.). In addition, to potentially facilitating abduction, these practices can contribute to illegal international adoptions of children.

One central accomplishment for Nicaragua was the creation of a free child helpline, *Línea 133*,<sup>21</sup> established for public reporting of human trafficking. The line available 24 hours a day, seven days a week and is funded by MIFAM and coordinated by the NGO Child Helpline International. The project has experienced some funding constraints in recent years, which has limited the effectiveness of the helpline outside of the capital city of Managua. Also, it is suspected that instances of sexual abuse are under-reported by victims for several reasons, not the least of which is the mistrust of government and the fear of reprisal.

Even though there are laws in Nicaragua mandating that the government provide special attention to children and to expedite any actions involving their well-being, interviews with a prosecutor from the Nicaragua’s Childhood Court (*Juzgado de la Niñez*) demonstrated that the implementation of these laws is not optimal. The prosecutor articulated that one of the reasons may be the lack of awareness of these tools, particularly by prosecutors. The prosecutor also indicated that in many instances, cases were not prosecuted to the full extent of the law because of failures by the prosecutors in presenting the case, as many prosecutors lacked the knowledge and training in regards to International conventions and other relevant codes.

<sup>15</sup> Código Penal de Nicaragua, Ley 641, Art. 182, 218 (2008). [Penal Code of Nicaragua, Law 641 (2008).] (on file with the International Centre for Missing & Exploited Children).

<sup>16</sup> Code of Childhood and Adolescence of Nicaragua, *supra* 45, Art. 72.

<sup>17</sup> Ley Orgánica de la Policía Nacional de Nicaragua, No. 228 (1996). [The Organic Law of the National Police of Nicaragua.] (on file with the International Centre for Missing & Exploited Children).

<sup>18</sup> Code of Childhood and Adolescence of Nicaragua, *supra* note 45.

<sup>19</sup> Information provided by the Nicaraguan point of contact for this research. August 12, 2011. (on file with the International Centre for Missing & Exploited Children).

<sup>20</sup> Code of Childhood and Adolescence of Nicaragua, *supra* note 45, Art. 29.

<sup>21</sup> The Línea 133 hotline number is 133. <http://www.iadb.org/campaign/llamayvive/country/Nicaragua.cfm> (on file with the International Centre for Missing & Exploited Children).

Unfortunately there are no comprehensive and systematic mechanisms for data collection, analysis and monitoring of missing children's issues in Nicaragua. The country does not utilize any notification systems for the media and/or other agencies, besides law enforcement, working with missing children issues. As a result, parents often seek out support themselves directly from the media.