

ACCESS TO JUSTICE FOR CHILDREN: NICARAGUA

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Nicaragua ratified the CRC on 5 October 1990.¹ Five years after, Nicaragua amended its Constitution to give the CRC constitutional status.² The amended provision states that “[c]hildhood enjoys special protection and all the rights that its status requires, for which reason, the International Convention on the Rights of the Child is fully applicable in Nicaragua.” In addition to the direct application of the CRC being constitutionally guaranteed, in 1998 Nicaragua further established the legal validity of the CRC through Law 287, known as the Children and Adolescents Code.³

Nicaragua has also acceded to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict,⁴ and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography.⁵

B. Does the CRC take precedence over national law?

The CRC takes precedence over national law in Nicaragua only where judges grant such status. However, the CRC and other treaties do not take precedence over the Constitution.⁶

C. Has the CRC been incorporated into national law?

The application of the CRC is constitutionally guaranteed under an amendment to Article 71 of the Nicaraguan Constitution, which automatically incorporated it into the national law.

Furthermore, numerous provisions of the Constitution specifically reference children's rights, including the rights of juvenile offenders. The Childhood and Adolescence Code

¹ UN Treaty Collection, ‘Convention on the Rights of the Child’, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

² Constitution of Nicaragua (*Constitución Política de la República de Nicaragua con sus Reformas Incorporadas*), Article 71.

Available in Spanish at:

<http://www.ineter.gob.ni/constitucion%20politica%20de%20nicaragua%20y%20sus%20reformas.pdf>

³ Children and Adolescents Code (*Código de la Niñez y la Adolescencia*) Law no. 287 of 24 March 1998. Available in Spanish at: <http://www.mifamilia.gob.ni/wp-content/uploads/2011/08/C%C3%93DNNA.pdf>

⁴ UN Treaty Collection, ‘Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict’, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

⁵ UN Treaty Collection, ‘Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography’, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en.

⁶ Constitution, Article 182.

(1998) deals with family life; civil and political rights; economic, social and cultural rights including the rights to health, education, social security, culture and recreation; and duties and responsibilities. It also sets up a specialised criminal justice system for youth.

However, the UN Committee on the Rights of the Child has expressed its concern that 12 years after entering into force, the Children and Adolescents Code “has not been afforded the priority required and lacks the necessary institutional, human, technical and financial resources for full implementation”.⁷

D. Can the CRC be directly enforced in the courts?

As the CRC is fully applicable in Nicaragua, it can be directly enforced in the courts.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

The CRC has been used and applied in both criminal and civil courts in Nicaragua. Courts that have applied or used it include the Civil Court of Appeals.⁸

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Article 9 of the Nicaraguan Code of Civil Procedure states that: “every person has free access to the courts in order to enforce their rights and to defend them”.⁹ Children may bring cases to court in civil, constitutional or administrative proceedings to challenge violations of their rights. Alternatively, a complaint may be filed with the Ministry of Family, Adolescents and Children (MIFAN) (see part III.A below), or the National Police with the assistance of the State’s Attorney (*Fiscal*) or the Public Defender (*Defensor Público*).

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Under the Children and Adolescents Code, a child can bring his or her case either personally or through a legal representative. Under the Code of Civil Procedure, when a child bringing suit is under 15 years of age and has no legal representative, either one of the child’s immediate relatives or the State’s Attorney’s Office may request the court to appoint a guardian for such proceedings.¹⁰ If the child is over 15, the adolescent will

⁷ UN Committee on the Rights of the Child, para. 8.

⁸ Ayerdis Padilla vs Cortez Ortiz. TRIBUNAL DE APELACIONES DE LA CIRCUNSCRIPCIÓN ORIENTAL. SALA CIVIL. MASAYA, 11/05/2012 (Child custody), available at: http://www.poderjudicial.gob.ni/pjupload/tam_my/pdf/disuelto_vinculo_116.pdf

⁹ Nicaraguan Code of Civil Procedure (*Código de Procedimiento Civil de la República de Nicaragua*), Article 9, available at: [http://legislacion.asamblea.gob.ni/normaweb.nsf/%28\\$All%29/98845EE82ED1E7D5062579570056F9F0?OpenDocument](http://legislacion.asamblea.gob.ni/normaweb.nsf/%28$All%29/98845EE82ED1E7D5062579570056F9F0?OpenDocument)

¹⁰ Code of Civil Procedure, Article 862.

have more of a say as to who his or her legal representative should be in the proceedings.¹¹ Where a child is being sued and has no legal representative, a litigation guardian must be appointed.¹²

In *amparo* actions, however, children under the age of 16 must be represented (see part III.A below).

C. In the case of infants and young children, how would cases typically be brought?

In the case of an infant or a young child, a case would typically be brought by a representative or another person with knowledge of the violation.

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

There are two institutions that provide free or subsidised legal services to children and their representatives who have financial needs: the Public Defender's Office and the State Attorney's Office. Both bodies assist any citizen (including children or their representatives) without the financial capacity to pay for a private attorney, and provide them with a defence.

Specifically, Article 212 of Law no. 260 on the Organization of the Judiciary Power¹³ states that the Public Defender will provide a lawyer if a person is accused of a crime, or if a person wishes to file a lawsuit under civil, commercial, labour, rural, or family law. According to Article 10 of Law no. 346 on the Organization of the State Attorney's Office,¹⁴ the Office provides legal assistance in private prosecutions to victims lacking legal capacity (including children), so long as they lack legal representation.

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

There are no other such conditions or limits. It is not necessary for the child's parent or guardian to agree to the child bringing a case, because the governmental agencies such as the MIFAN and the Public Defender's Office can file the complaint without such approval.

III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Children or their representatives may bring the following actions under the Constitution in relation to violations of children's rights:

1. A "writ of *amparo*" may be filed by any natural or legal person who is harmed

¹¹ Code of Civil Procedure, Article 589.

¹² Code of Civil Procedure, Article 861.

¹³ Available at: <http://www.defensoria.poderjudicial.gob.ni/index.php/df>

¹⁴ Available at: http://www.poderjudicial.gob.ni/pjupload/spenal/pdf/2000_ley01.pdf

or in imminent danger of being harmed by any provision, act or resolution and in general, any act or omission of any officer, authority or agent thereof, who violates or attempts to violate the rights and guarantees enshrined in the Constitution.¹⁵ Actions of *amparo* are filed before the Court of Appeals. Children from the age of 16 years may file a writ of *amparo* directly without any representative. Children aged under 16 can do so through their legal representative, who must take the petition before the local State Attorney Office. This Office will, in turn, represent the child in the proceedings.¹⁶

2. An “action of unconstitutionality” may be filed by any citizen(s) when a law, decree or regulation conflict with what is prescribed in the Constitution.¹⁷ Actions of unconstitutionality are filed before the Supreme Court of Justice.
3. A “writ of habeas corpus” (“*exhibición personal*”) may be filed by any citizen of Nicaragua on behalf of a child whose right to personal freedom is violated against the responsible authority.¹⁸
4. A “writ of habeas data” may be filed to protect an individual’s personal information or data and to avoid unauthorised or unlawful disclosure of personal data in order to protect the individual’s constitutional rights.¹⁹

Alternatively, a complaint regarding a violation, or risk of violation, of children’s rights can be made directly to the MIFAN at its headquarters, its Delegations District or its Departments.²⁰ The MIFAN is responsible for supervising the restitution of the rights of children through special protection measures.²¹ When the MIFAN has knowledge, either through a complaint or an *ex officio* action, that a child may qualify for special protection measures, the MIFAN must immediately proceed to an investigation. If, upon investigation, the MIFAN finds that a crime against a child occurred, the parent or guardian of the child must file a complaint with the Special Office for Women, Children, and Adolescents (*Comisaría de la Mujer, Niñez y Adolescencia*).²² If the parent or guardian refuses to file a complaint, the MIFAN itself must bring the complaint.

Any citizen²³ can bring a case directly before the special Contentious-Administrative

¹⁵ Constitution, Article 188; Amparo Law no. 49 with amendments (*Ley de Amparo con Reformas Incorporadas*), Article 26, available at: <http://www.poderjudicial.gob.ni/pjupload/scons1/pdf/texto.pdf>.

¹⁶ Amparo Law, Article 32.

¹⁷ Constitution, Article 187; Amparo Law, Article 9.

¹⁸ Constitution, Article 45; Amparo Law, Article 4.

¹⁹ Constitution, Article 190; Amparo Law, Articles 87 to 97.

²⁰ Children and Adolescents Code, Article 76.

²¹ Children and Adolescents Code, Article 82; see also Regulations for the Restitution of Rights and Special Protection for Children and Adolescents (*Normativa para la Restitución de Derechos y Protección Especial de Niñas, Niños y Adolescentes*), available at: <http://www.mifamilia.gob.ni/wp-content/uploads/2012/01/Marco-Juridico-Normativa.pdf>.

²² The Special Office for Women, Children, and Adolescents (*Comisaría de la Mujer, Niñez y Adolescencia*) is the equivalent of a special police precinct that allows the public to report domestic violence, sexual abuse and other matters, and receive support. The complainants are assessed by social workers, psychologists, and later referred to an investigator that then reports to the Public Prosecutors Office. *Comisaría de la mujer*, available at: <http://www.policia.gob.ni/cedoc/sector/prevenc/comicmujer.pdf> (Organisational chart and functions).

²³ *Antecedentes y Creación de la Sala de lo Contencioso Administrativo*, available at: <http://www.poderjudicial.gob.ni/sconten2012/default.asp> (Background information on the creation of the

division within the Supreme Court²⁴ regarding acts or resolutions made by the public administration.²⁵

Any citizen regardless of age can report human rights violations to the Office of the Ombudsperson for Human Rights (*Procuraduría Nacional de Derechos Humanos*) via email, in person, or over the phone.²⁶ An Office of the Special Ombudsperson for the Protection of Children and Adolescents (*Procuraduría Especial de la Niñez y la Adolescencia*) was created in 2000 to promote and develop respect for the human rights of children, and operates within the Office of the Ombudsperson for Human Rights. The Ombudsperson for Human Rights can investigate alleged human rights violations and issue warnings to, or recommendations to remove, government officials responsible for violations. The Office of the Ombudsperson for Human Rights has regional offices, but according to its latest published report, it depends greatly on international funding to function.²⁷

Regional mechanisms

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),²⁸ on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights.²⁹ A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.³⁰ The petition must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, the name(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.³¹ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.³² When a petition is declared admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the

specialised jurisdiction).

²⁴ Karlos Navarro, *Reforma Constitucional y justicia contenciosa administrativa*, *El Nuevo Diario*, 11 November 2013, available at:

<http://www.elnuevodiario.com.ni/opinion/301609-reforma-constitucional-justicia-contenciosa-admini/>.

²⁵ Constitution, Article 160.

²⁶ See <http://www.pddh.gob.ni/>.

²⁷ *Procuraduría Nacional de Derechos Humanos*, 2013 report, available at:

<http://www.pddh.gob.ni/>

²⁸ The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a “dual role” as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at:

http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm; American Convention on Human Rights, ‘Pact of San Jose, Costa Rica’, Chapter VII, available at:

http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

²⁹ American Convention on Human Rights, Article 44.

³⁰ Rules of Procedure of the Inter-American Commission on Human Rights, Articles 31-32, available at:

<http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

³¹ *Ibid.*, Article 28.

³² *Ibid.*, Article 23.

human rights violations, making reparations, and/or making changes to the law.

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).³³ Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.³⁴ The Court's judgments are legally binding on the State against which they are made.

B. What powers would courts have to review these violations, and what remedies could they offer?

The Court of Appeals has the power to review actions of *amparo*. If the Court rules in favour of the petitioner, it will order the suspension of the actions being challenged.³⁵ Alternatively, instead of a suspension, the court can order restitution as well as compensation for the damages and losses caused if a third party interested in the proceedings can offer enough compensation to restore the petitioner to the previous state of affairs and pay for the subsequent damages should the *amparo* be successful.³⁶

The Supreme Court has the power to review actions of unconstitutionality. A declaration of unconstitutionality by the Supreme Court will render the challenged law or decree (in whole or in part) not applicable.³⁷ Such a decision must be notified to the executive and legislative powers and published in the Official Gazette.

The special Contentious-Administrative division of the Supreme Court can declare an administrative act as null and award damages to the petitioner.³⁸

If, after investigation, the MIFAN finds a violation of the child's rights and that the child qualifies for special protection measures, the MIFAN issues an order or resolution requiring that temporary protective measures be applied to the child. A court could review the temporary protective measures put in place by the MIFAN, and render them permanent under Article 82 of the Children and Adolescents Code.

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

It is necessary to name a specific victim in a challenge or judicial action before the courts. For example, according to Article 30 of the Law of Amparo, the writ must specify the name of the complainant, for this judicial action can only be brought by the party that alleges the violation.

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

³³ Ibid., Article 45.

³⁴ American Convention on Human Rights, Article 63.

³⁵ Amparo Law, Articles 34 to 38.

³⁶ Amparo Law, Article 38.

³⁷ Amparo Law, Article 18.

³⁸ Law Regulating Administrative Disputes Jurisdiction (Law No. 350 of 2000), Article 189.

The Law of Amparo does not allow for group litigation, as this judicial action can only be brought by the party affected.

Article 52 of the Constitution under the Political Rights section states “citizens have the right to make petitions, report anomalies and make constructive criticism, individually or collectively, to the Powers of the State or to any authority; to obtain swift resolution and to be communicated the result in the times the law so establishes”. It is unclear whether this includes group petitions to courts.

Article 834 of the Civil Procedure Code³⁹ allows multiple individuals to file a civil lawsuit and civil lawsuits to be joined against another party if the petitions are at the same stage of proceedings and concern the same type of proceedings.

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

We have not identified any legal provisions that would allow NGOs to file challenges or intervene in cases involving children’s rights violations.

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

A child through his/her representative would file a claim before a civil court for damages. A civil (non-family) case initially could also be filed with the MIFAN. The MIFAN would conduct an initial investigation of the case before filing – or not filing – its findings with the court and seeking a final determination.⁴⁰ Family actions are presented to a family court judge.

In criminal cases, the Nicaraguan National Police could begin a criminal investigation on its own or following an individual petition (*denuncia*).⁴¹ If necessary, the Police could notify the MIFAN in order to apply protective measures for a child. If it is a purely criminal matter, the accusation could also be directly filed with a prosecutor by an individual. If the public interest is at stake or if the victim lacks capacity or has a disability, the Public Prosecutor will take over.⁴² If it is an offence of private prosecution, then it is the victim’s responsibility to pursue criminal action. After the investigation by the National Police or the State’s Attorney’s Office, the State’s Attorney presents the criminal action to the District Criminal Court.

³⁹ Civil Procedure Code, available at:

http://www.wipo.int/wipolex/es/text.jsp?file_id=227641#LinkTarget_7243.

⁴⁰ Chapter 1 Regulations for the Restitution of Rights and Special Protection for Children and Adolescents, *Normativa para la Restitución de Derechos y Protección Especial de Niñas, Niños y Adolescentes*, available at:

<http://www.mifamilia.gob.ni/wp-content/uploads/2012/01/Marco-Juridico-Normativa.pdf>.

⁴¹ Criminal Procedure Code, Article 51, available at:

<http://www.pgr.gob.ni/PDF/anticorrupcion/CODIGO%20PENAL%20Y%20PROCESAL%20PENAL/PROCESAL%20PENAL.pdf>.

⁴² Criminal Procedure Code, Article 89.

Special criminal courts for adolescents exist to hear cases involving children in conflict with the law.

An individual can file an unconstitutionality action directly before the Supreme Court.⁴³ A writ of *amparo* must be filed before a Court of Appeals. Once declared admissible it is decided by the Constitutional Division of the Supreme Court.⁴⁴

Alternatively, the family court or the special court on violence can hear cases where children's rights are at stake.

As at the date of this report, the Contentious-Administrative jurisdiction is in its infancy, thus the law that regulates such matters is still in draft form.

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

As explained in part II.D. above, there are several free services provided by the State. Moreover, children or their legal representatives do not have to pay any legal costs if they are granted legal assistance by the Public Defender or the State's Attorney.

To be eligible for legal aid one must present the certificate of poverty obtained via judicial proceedings, otherwise the Public Defender's Office will determine through a speedy internal process if an individual qualifies for free legal assistance.⁴⁵

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Pro bono services are provided by private attorneys in Nicaragua. An NGO called CALPI provides legal representation to indigenous groups whose land ownership is challenged.⁴⁶ Organisations that provide free legal assistance to children specifically in the country could not be found.

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

The time limit to file a criminal action is: (a) within 20 years if the maximum penalty for the offence is imprisonment for 15 or more years; (b) within 15 years if the maximum penalty is imprisonment for more than 10 years but less than 15 years; (c) within 10 years if the maximum penalty is imprisonment for more than five years but

⁴³ Amparo Law, Article 14.

⁴⁴ Amparo Law, Article 28.

⁴⁵ Law 260 on the Organization of the Judicial Power, Article 213.

⁴⁶ <http://calpi.nativeweb.org/quehacemos.htm>.

less than 10 years; (d) within five years for any other felonies; and (e) within three years for misdemeanors.⁴⁷ The time limit for bringing criminal prosecution starts running on the day the offence is committed.⁴⁸ The only exception is for crimes against the sexual freedom and integrity of a child. The time limit for prosecuting such violations starts running on the day the victim turns 21 years old.⁴⁹

In civil cases, there is a general limitation period of 10 years, though there are exceptions to the rule. For example, there is no time limit for children to file a paternity lawsuit or to file a maintenance suit. For the latter, they should do so through their representatives if they lack legal capacity.⁵⁰

According to Article 29 of the Law of Amparo, an affected party can file a writ of *amparo* within 30 days of notification of the act or resolution or since the action or omission has come to his/her knowledge. Under Article 13, an unconstitutionality writ can be filed by an affected party within 60 days of the entry into force of the law, decree, or regulation.

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

Under Article 15 of the Criminal Procedure Code, any fact relevant to the case can be presented as a medium of legal proof. The types of evidence include, among others, documents, witnesses and expert (*perito*) examinations.⁵¹ The evidence must be useful, relevant, legal and admissible.⁵²

In civil cases, the types of evidence that are admissible include, among others, testimony, documents, judge's inspection, expert opinions and depositions of witnesses.⁵³

Article 17 of the Children and Adolescents Code states that children "have the right to be heard in any judicial or administrative proceeding affecting their rights, freedoms and guarantees, either personally or by a legal representative or by the competent authority, in accordance with the procedural rules for the case and depending on the age and maturity. The breach of these rights will result in nullity of all the proceedings." Article 489 of the Code of Family Law states that an Assistant Committee will provide the necessary assistance so as to allow children to participate and testify in the proceedings in an "adequate manner".

However, in its 2010 concluding observations, the UN Committee on the Rights of the Child expressed its concern that children's views are not always duly taken into account in judicial and administrative proceedings.⁵⁴

⁴⁷ Criminal Code of the Republic of Nicaragua, Article 131.

⁴⁸ See Código Penal, Article 132.

⁴⁹ Código Penal, Article 132.

⁵⁰ Civil Code, Article 280; Family Code, Articles 200, 306, available at: <http://www.unfpa.org.ni/wp-content/uploads/2014/11/Codigo-Fam1.pdf>; Law of Maintenance, Article 13.

⁵¹ Criminal Procedure Code, Articles 210, 201, 207, 308.

⁵² Criminal Procedure Code. Article 16.

⁵³ Code of Civil Procedure, Title IXI, Article 1127.

⁵⁴ UN Committee on the Rights of the Child, *Concluding observations on the fourth periodic report of*

Despite not being established by legislation, in child abuse cases children can testify in a specially designed room known as the Gesell Dome.⁵⁵ It is unclear if its use and existence are widespread in the country.⁵⁶

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

According to the Criminal Procedure Code, whenever an accused has been arrested for committing a felony, a judgment must be pronounced within a period not exceeding three months from the first hearing in the case. If the defendant is not arrested, such period is six months. If the crime is a misdemeanour, such period is one month for those arrested and two months for those not arrested. A misdemeanour trial cannot last more than 10 days.⁵⁷

Civil cases are not subject to the same standards. However, for cases involving the Maintenance Obligation Act, a judge will make a decision of the case upon summary judgment—that is, a resolution should be reached in less than one month.⁵⁸ In practice, however, because of the backlog in courts, resolutions in those cases can take up to eight months.

In child protection proceedings, the MIFAN must notify the complainant of the administrative decision within three weeks of the complaint being filed.⁵⁹

G. Appeal. What are the possibilities for appealing a decision to a higher court?

In civil cases, an appeal will proceed from judgments given by first instance civil courts to the Civil Court of Appeals.

According to Article 21 of the Criminal Procedure Code, appeals in criminal cases will

Nicaragua, CRC/C/NIC/CO/4, 20 October 2010, para. 41. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fNIC%2fCO%2f4&Lang=en

⁵⁵ The *gesell dome* is a room originally designed by psychologist Alfred Gesell to allow children to testify in an environment where they can feel comfortable, and accompanied by a person of their trust. It can be used in civil or criminal matters. The aim is to prevent re-victimisation of the child by carrying out a single interview conducted by a psychologist or specially trained personnel (police or official of the judiciary). While the child is being interviewed in a room, all instances are recorded, and simultaneously transmitted by CCTV to a room where the defendant and court officials are located. Where CCTV technology is not available, special glass is used to separate the room where the defendant and court officials are present and the interview room where the child is present in order to prevent the child from seeing or hearing such parties. This allows all interested parties to be present, therefore preventing them from alleging that the testimony took place without their knowledge and must be repeated for the sake of the accused's rights.

⁵⁶ With funding from a foreign agency, a “gesell dome” room was set up in 2012 in the Special Center for Victims of Violence. See: <http://www.aecid.org.ni/creacion-del-centro-de-atencion-integrado-de-atencion-a-victimas-de-violencia-d-e-genero-en-bilwi-region-autonoma-del-atlantico-norte-raan/>.

⁵⁷ Criminal Procedure Code, Article 134.

⁵⁸ Law no. 143 of January 22, 1992, published in The Gazette, Official Journal no. 57 of March 24, 1992, Article 19.

⁵⁹ *Normativa para la Restitución de Derechos y Protección Especial de Niñas, Niños y Adolescentes*, Chapter 1, Article 2, available at: <http://www.mifamilia.gob.ni/wp-content/uploads/2012/01/Marco-Juridico-Normativa.pdf>.

proceed against all judgments in the first instance by the local (misdemeanours) and district judges (serious crimes) to the Appeals Tribunal.⁶⁰

The law does not specify avenues for appealing judgments on actions of *amparo* and unconstitutionality.

- H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Political backlash and other potential impacts of a decision will largely depend on the case and public opinion. If the decision becomes politicised or if there are other self-interests involved, there could be issues of enforcement, due to the prevalence of corruption in the Nicaraguan judicial system. Many members of the judiciary did not render impartial judgments in civil matters and were not independent of political or other influence. A report presented before the OAS by the *Fondo Conjunto de Donantes para la Anticorrupción* (FAC) states that the anti-corruption process in Nicaragua is obstructed partly due to the politicisation of judicial power.⁶¹

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

See part IV.H above.

- V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

According to a 2015 Freedom House report, the court system “suffers from corruption, long delays, a large backlog of cases, and a severe shortage of public defenders”.

In Nicaragua there are numerous indigenous groups which, due to being geographically isolated, do not always have access to judicial resources. According to a 2015 Freedom House report, access to justice is “especially deficient in rural areas and on the Caribbean coast”.⁶² To remedy this situation, the OAS has launched a programme of “judicial facilitators”,⁶³ which Nicaragua has adopted. These are members of the community who are specially trained to mediate in conflicts, and are particularly useful in areas located far from the courts.

This report is provided for educational and informational purposes only and should not be construed as legal advice.

⁶⁰ Criminal Procedure Code, Articles 21, 380.

⁶¹ Diagnóstico de la corrupción en Nicaragua, Managua, November 2009, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_diagnostico.pdf.

⁶² Freedom House, ‘Nicaragua’, 2015, available at: https://freedomhouse.org/report/freedom-world/2015/nicaragua#_VcDhGbyYO1E.

⁶³ Servicio de Facilitadores Judiciales (Service of Judicial Facilitators), available at: <http://www.poderjudicial.gob.ni/facilitadores/coordinador.asp>.