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Nicaraguan Juvenile-Justice System Comes Under Scrutiny

by Benjamin Witte-Lebhar

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The recent stabbing death of a university student in Managua has ignited a fierce nationwide debate regarding Nicaragua’s juvenile-crime laws. Critics say underage criminals hide behind the Código de la Niñez y Adolescencia to get away—literally, in some cases—with murder. Rights groups, however, say the 13-year-old Código is sound. Rather than overhaul it, they say, authorities ought to do a better job of putting the code’s precepts into practice.

Universidad Nacional de Ingeniería (UNI) architecture student Evans Omar Ponce, 20, died May 13 from stab wounds allegedly inflicted by a group of adolescents. The assailants reportedly tried to steal Ponce’s cell phone. Ironically, the crime took place just steps from the headquarters of Nicaragua’s Policía Nacional (PN).

"Maybe they robbed him because he was pretty well-dressed. Maybe they thought he had money. But often he’d only carry his bus pass with him," the victim’s grieving mother, Lucrecia Ponce, told . "I’m not carrying hate in my heart, because I’m with God. But I want justice to be done. And I want them to reform [the Código de la Niñez y Adolescencia], because if they’re going to run around doing bad things like robbing and killing, then they’re acting like adults. In that case, they should be tried like adults."

Lucrecia Ponce’s call for reforming the juvenile criminal code has been taken up by hundreds of university students around Managua. Led by the Unión Nacional de Estudiantes de Nicaragua (UNEN) and Consejo Nacional de Universidades (CNU), the students have carried out several marches through the capital, including a candlelight vigil on June 13, the one-month anniversary of Evans Ponce’s killing. Demanding improved security in and around their schools, the students groups are also insisting that authorities stiffen penalties for juvenile offenders.

The Código de la Niñez y Adolescencia, passed in 1998, fixes at six years the maximum jail sentence a juvenile (aged 15 to 18) can serve, even in cases involving murder or rape. "But in most cases, they serve just two or three years in prison," CNU President Telêmaco Talavera said in a June 14 press conference. "That’s why we need to apply the Código with transparency."

The students have found an ally in Nicaragua’s top prosecutor, Julio Centeno Gómez, who agrees that the Código is too lax in meting out punishments. "As a lawyer, I fully support what the young people are demanding," he told in early June. "We, as the Ministerio Público, see the everyday objective reality of juvenile crime, the daily effects illicit behavior has on citizen security."

The protestors also have the backing of Deputy Carlos García of the conservative Alianza Liberal Nicaragüense (ALN). On June 8, García—a member of the directive board of the unicameral Asamblea Nacional (AN)—presented the legislature with a formal proposal to reform the Código de la Niñez y Adolescencia. The proposal calls for upping the maximum sentence for adolescents from six to 15 years. The ALN legislator said he is looking to protect citizens and their family members from youth criminals whose current sentences "don’t correspond to what they should have to pay."
Standing by the status quo

Not everyone in Nicaragua’s AN agrees with García. Deputy Edwin Castro of the governing Frente Sandinista de Liberación Nacional (FLSN) says he understands the frustrations of the protesting university students but insists the Código’s sentencing guidelines "are sufficient for punishing adolescents." The Sandinistas control 38 of the AN’s 92 seats. The rest are divided among numerous opposition parties, the largest of which is the conservative Partido Liberal Constitucionalista (PLC), which holds 19 seats.

Another staunch defender of the Código is Carlos López, a former special procurator for childhood and adolescent affairs and one of the architects of the current juvenile-justice system. López says the Código’s six-year maximum sentence was chosen carefully in accordance with Nicaragua’s Constitution, which states that children and adults should be tried differently. The UN’s Convention on the Rights of the Child, which Nicaragua signed in 1990, demands the same thing.

"The problem with the Código isn’t what it says but rather that most people don’t know what it says," López told the online publication . "It’s obvious that the few people calling for its reform don’t really know what the Código proposes. It doesn’t allow for impunity [as critics claim]. Instead it creates a particular penal system for adolescents from age 13 onward, who can be tried and, if they’re found guilty, punished."

A host of rights groups, nongovernmental organizations (NGOs), and Nicaragua’s juvenile judges agree with López. Stiffening jail sentences for youth simply passes the problem off to the already saturated penitentiary system, where young offenders are likely to learn even more bad habits, they argue.

It would be a "step backward in terms of human rights," said María Machicado of the United Nations Children’s Fund (UNICEF). "The Código is at this point an example for the region. It’s well-considered and recognized. The only concern is that it needs to be better implemented," the UNICEF official told .

The UN’s Committee on the Rights of the Child (CRC) came to the same conclusion during a fact-finding mission to Nicaragua last year. The CRC praised Nicaragua for establishing a separate juvenile-court system but lamented that it lacks special detention centers for juveniles, who are instead being locked up with adults. The problem, in other words, is not the Código, which explicitly calls for juveniles and adults to be detained separately but rather how the rules are enforced.

"In the Corte Suprema de Justicia (CSJ) there have been significant advances when it comes to the juvenile-justice system," said Mario Chamorro, head of the youth-focused NGO Dos Generaciones. "There is a [juvenile] court in each department and interdisciplinary teams that carry out socioeducational measures. But what the government needs to do now is focus on the penitentiary system. It needs to invest in special jails for youth. That’s something that’s still lacking."

The Oficina Técnica para el Seguimiento del Sistema Penal de Adolescentes (OTSSPA-CSJ) says that Nicaragua has some 215 juvenile prisoners. The adult prison population is estimated at 6,800. Of the 53,364 cases that went through the juvenile-justice system between 1998, when the Código went into effect, and 2010, approximately 2,400 adolescent defendants were found to be "criminally responsible." More than 86% of those cases were resolved by "other means for ending the process," meaning the youth (the vast majority of whom are boys) were able to avoid jail time.
Tempest in a teapot?

How will this battle of words and ideas play out in the coming months? At this point it’s difficult to say. As the outrage generated by Evans Ponce’s murder fades, so, too, could the debate on juvenile justice.

For all the attention they’ve received, the university protests have been quite modest in size. The UNEN and CNU are not likely to bring the city of Managua to a standstill anytime soon. And Deputy García’s reform proposal could easily go the way of most deputy-sponsored bills—nowhere.

On the other hand, Nicaragua has a general election coming up on Nov. 6, meaning that juvenile crime could be transformed into a major campaign issue. In that case, the Asamblea could feel compelled to act. The debate already has some political undertones. Carlos López, the former juvenile-affairs procurator, is running for a deputy seat under the FLSN banner. Deputy García, his opponent when it comes to the juvenile-justice issue, could soon be a rival in the legislature as well.

Five years ago, pre-election political jockeying transformed partisan concerns about abortion into a major campaign issue. As a result, the AN—just days before the 2006 general election—rushed through a Catholic Church-backed bill to extend the country’s already restrictive abortion law to therapeutic cases as well (NotiCen, Nov. 2, 2006). The ratcheted-up abortion law stipulates lengthy prison sentences not only for women who choose to abort but also for health-care practitioners who assist them.

Given the timing, the juvenile-justice issue could follow a similar pattern, say groups like the Movimiento contra el Abuso Sexual (MCAS). "What’s the point in debating a reform to the Código de la Niñez now, in an election year? Nicaragua already went through this with the past elections, when women’s rights become the object of political negotiations," MCAS noted in recent statement. "As a result, they penalized therapeutic abortions. Are we now going to negotiate the rights of boys, girls, and adolescents?"