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The Political Economy of Nicaragua's Institutional and Organisational Framework for Dealing with Youth Violence

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Abstract

This paper discusses the policies and characteristics of the two main organisations that deal with youth violence in Nicaragua. It reveals their problems, deficiencies, ways of insertion into the institutional framework, contradictory priorities, and dysfunctional interactions. The paper presents the political interference that characterises and shapes these policies and organisations, subjecting their performance to power structures articulated by the national elites' hegemony, the weak capacity of the Nicaraguan state apparatus, and the external nature of their sources of legitimacy.

Introduction

Following the decline of ideologically inspired armed movements and the decrease in intensity of political violence, the forms of violence linked to delinquency have become the main concern for several rulers and policymakers. In Nicaragua, the organisations related to public order and a number of researchers have identified youth sectors, some organised in gangs, as the main protagonists of the recent wave of violence.[1] This situation has posed a challenge for the police, the organisations that deal with youth, and the justice system. The making of policies for youth in general, and for the so-called youth at risk, is now in vogue. With a horizon of possibilities conditioned by the social capital of these organisations – defined as networks that imply costs and benefits – the viability and impact of policies partly depend on the way they are inserted into the set of strategies utilised by the organisations that are supposed to apply them.[2] The organisations' share of social capital and set of strategies make it possible for different agents (economic elites, non-governmental and international governmental cooperation) to enforce their interests and implement their agendas. Furthermore, since these organisations were born in quite diverse contexts, and with very different shares of social capital, their relationship with the institutional framework varies along with their possibilities of applying policies that mitigate youth violence. North insists that the institutional matrix and external networks produce interlinkages and dependencies that shape organisations and influence their performance.[3] Here I will exemplify the interlinkages, dependencies, external networks, and dysfunctional interactions of organisations that deal with youth violence in Nicaragua.

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[1] Aminta Granera Sacasa & Sergio J. Cuarezma Terán, *Evolución del Delito en Nicaragua (1980-1995)*, Managua: Editorial UCA, 1997; Policía Nacional, *Plan de prevención de las pandillas 1999*, Managua: Policía Nacional, 1999.

[2] Michael Woolcock & Deepa Narayan, 'Social Capital: Implications for Development Theory, Research and Policy', *The World Bank Research Observer*, 15:2 (August 2000), p.231.

[3] Douglass C. North, *Instituciones, cambio institucional y desempeño económico*, México: Fondo de Cultura Económica, 1993, p.19.

This study focuses on the two state entities that have greatest relevance in the making and enforcement of policies for youths involved in acts of violence. First, the National Police, which is the public organisation of most constant presence in the neighbourhoods where youth gangs operate, and is essential for the implementation of justice on adolescents; second, the Special Ombudsman's Office for Children and Adolescent Issues, an organisation in charge of applying the Code of Childhood and Adolescence, which instituted the new penal justice model for adolescents.

The National Police

A Retrospective Look

The current National Police inherited members, chiefs, vision, and a *modus operandi* from the Sandinista Police, which was born in July 1979 as a unit devoted to the defence of the revolution. Typical of this kind of organisation,[4] the Sandinista Police had a counterinsurgent military vision that prevailed during the 1980s, whose vestiges can be found nowadays in certain operations and in the existence of para-police groups in rural areas.[5] The police officers, just like the members of the Sandinista Popular Army, were trained to tackle counterrevolutionary attacks. The institutional legitimacy of the Sandinista Police depended on the revolutionary project's ability to generate consensus. Its members first identified themselves as militants of the FSLN (Sandinista National Liberation Front), and then as policemen.[6] Later on, the National Police's ties to the FSLN were identified by the highest officers as the main limitation for its institutional development.[7] Politicians that were unsympathetic with the Sandinista Party had little faith in the professionalisation process that the police initiated after the FSLN's electoral defeat in February 1990. Therefore, they proposed to replace the army and the Sandinista Police with an anti-terrorist corps (of a thousand members), an anti-drug corps, an efficient marine corps, and good fiscal vigilance against contraband across national borders.[8]

The institutionalisation of the police apparatus became one of its main corporative survival strategies in a highly polarised political arena. With the end of the revolutionary project's hegemony, the National Police had to search for a new source of legitimacy. Since the legislative and executive powers were fragmented into more than twenty political parties that shunned the inter-subjective understanding that is vital for generating social integration,[9] the police turned to several different sources of legitimacy: its Sandinista origin, its battle against the rising crime rate, protection of the private sector, and support for governmental decisions. It even agreed to become an instrument of repression against demonstrators and strikers, proving its willingness to adjust itself and follow the maximizing path derived from the opportunity set provided by the new institutional structure.[10] The 1992 Police Law defined the organisation as an armed entity of a civil, apolitical, non-party, and non-deliberative nature.[11]

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[4] C. Wright Mills, *La élite del poder*, México: Fondo de Cultura Económica, 1960, p.179.

[5] José Luis Rocha, 'Breve, necesaria y tormentosa historia del FUAC', *Envío*, 232 (July 2001).

[6] Roberto J. Cajina, 'De la seguridad del Estado a la inseguridad ciudadana', in *Gobernabilidad democrática y seguridad ciudadana en Centroamérica: El caso de Nicaragua*, Managua: CRIES, 2000, p.123.

[7] Francisco Bautista Lara, 'La utopía posible de la nueva policía', *Visión Policial*, 1:6 (1999), p.31.

[8] Roberto Cajina, *Transición política y reconversión militar en Nicaragua, 1990-1995*, Managua: CRIES, 1997, pp.51-52.

[9] Jürgen Habermas, *Facticidad y validez*, Madrid: Editorial Trotta, 2000, p.148.

[10] North (1993), p.152.

[11] Francisco Bautista Lara, *Policía, seguridad ciudadana y violencia en Nicaragua*, Managua: PAVSA, 2004, p.21.

Social Capital: The Two Networks in the Highest Echelons of the Police[12]

The police discourse was adapted to the new circumstances and prevailing mental models. It shifted from a military vision to a citizen security approach that coincides with the rulers' perception that citizen security is one of the national priorities that contribute to the attraction of foreign investment.[13] The police were given the task of ensuring citizen security, and subsequently of transforming Nicaragua into an appropriate recipient for foreign investment. Does this adaptation mean that a certain corporative loyalty – with a propensity to please the rulers in office – is encouraged within the National Police in order to become a stable bureaucracy that, according to Wright Mills, is capable of surviving through changes in the political administration due to the fact that its functionaries separate their personal opinions from their official responsibilities, vision, and life?[14] The definitions found in the legal framework have not dissolved the uncertainty about the police acting as an impartial, third party. Quite accurately, North noticed that when formal constraints change abruptly, they are often incongruent with culturally sanctioned standards of conduct.[15] An explanation of police discourse (or discourses) and conduct can be sought in the composition of its social capital, understanding it as networks that grant a sense of identity and common purpose to both people and organisations, and imply costs and benefits.[16] In fact, the different postures towards youth violence depend on that social capital. Up to this date, the highest positions in the National Police are held by approximately forty former combatants of the revolution; they occupy the highest echelons and are divided into two networks: the traditional economic elite network and the FSLN network.

Members of the traditional elite became police officers in a relatively accidental manner: they participated as commanders in the insurrection that overthrew the Somoza dictatorship, and afterwards, through a distribution of posts in the government, were granted high positions in the police. Following the FSLN defeat, their presence in the organisation contributed to the survival of a frequently questioned police force, as they inspired trust among the new rulers, who were often personally related to them. Now as they reach retirement and leave the police force, these commissioners are reinserting themselves into the economic segments that correspond to their social origins. Of the first three commissioners who retired, one is currently involved in his family business, another became founder and shareholder of the private security company *Servipro*, and the third became the chief of security at *Banco de la Producción*, a local bank. Their origins in the traditional economic elites have allowed them to maintain a certain distance from the FSLN, gain access to other subsistence spheres, and continue utilising their knowledge of security.

The fact that many of the highest officers are coming up for retirement after 25 years of service is an incentive for them to use their power to foster relationships that, after their retirement, will render them profits through the possibility of being hired as permanent employees or as highly paid consultants. This explains the police's special services for the big private companies.[17] Among other services, the police economy of exchange with the

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[12] The information in this segment comes from several sources; among them, a former army colonel and a former minister of justice.

[13] Ministerio de Gobernación, 'Proyecto: Apoyo a la implementación de una estrategia de seguridad ciudadana en Nicaragua', Executive summary, *Diagnóstico de seguridad ciudadana en Nicaragua*, Managua: Ministerio de Gobernación, 2002, p.2.

[14] Wright Mills (1960), p.223.

[15] North (1993), pp.119-120.

[16] Woolcock & Narayan, (2000), pp.226.

[17] For example, during 2004's Labour Day demonstration, an anti-riot squadron surrounded the Pellas Building, headquarter of the economically most powerful family in Nicaragua.

economic elite includes protection, information, and secrecy for white-collar criminals. When a company hires a former commissioner, it is obviously paying not only for his knowledge but also for his relationships with the police and the courts. Through the exchange of personal and mutual services, the power of the elite as a whole increases, and the visions and social contacts of the different dominant hierarchies become equalised, similar to what Wright Mills found in the American elite.[18] The police and economic hierarchies build networks that bind them together through history, economic investments,[19] and mutual favours. These links explain the National Police's repeated assertion in their discourse of a safe country, just as the economic and governmental elites proclaim security to attract foreign investors. This situation reflects the police's current utility function, a trait North identified in organisations that enforce the norms.[20]

The other network is made up of the numerous commissioners with no pedigree, who maintain their loyalty to the FSLN Party.[21] The existence of this other network explains the National Police approach to youth gangs as part of an FSLN strategy to keep close contact with groups that have proven to be valuable in supporting student and transportation strikes. The proximity to youth gangs and the possibility to involve them in riots is essential for Daniel Ortega's project to govern from below by mobilising the party's social base.

The credibility that the officers from the traditional economic elite inspire in the government, in addition to its Sandinista ties, have rendered benefits for police finances as a whole as well as direct benefit for a number of officers. The relative increase in the National Police budget during the last five years have exceeded those in the central government's total budget. Between 2000 and 2001, the police received a budget increase of 46 percent, whereas the whole state apparatus obtained a 37 percent increase. The following year, the government's total budget suffered a 10 percent decrease, but in contrast the police received a 25 percent increase. While in 2005 the police received an 11 percent higher budget than in 2004, the whole public sector only received 0.69 percent more. Because of this steady increase, the police budget has gone from 2.39 percent to 3.79 percent of the total state budget. From 2000 to 2005, there was an increase of 2,091 (33 percent) police officers, at least 18 percentile points above the country's population growth. Adding the 593 new officers from 2005, there is now a total of 8,360 police officers.[22] To the expansion of the police should be added the successful private security industry, which represents the realisation of personal investments by some of the police's highest officers.[23] Security requires investment as much as investment

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[18] Wright Mills (1960), pp.269-273.

[19] Current and former members of the National Police are shareholders of the country's most important security companies, weapons stores, lumber companies, and insurance companies.

[20] North (1993), p.81.

[21] The validity of the links between the Police and the FSLN was made clear with shocking evidence when, in order to collect money for Managua's municipality, recently won by a Sandinista from Daniel Ortega's closest circle, the National Police imposed car license plate renewals that included the unusual prerequisite of having paid all taxes to the city's municipality ('Diputados citarán por cambio de placas', *La Prensa*, 19 March 2005).

[22] Ministerio de Hacienda y Crédito Público, *Presupuesto General de la República*, Managua: Ministerio de Hacienda y Crédito Público, 2000-2005.

[23] In 2000, 47 private security companies were functioning in Nicaragua and employed 6,536 agents (Godnick, *et al*., 'Balas perdidas: el impacto del mal uso de armas pequeñas en Centroamérica', Geneva & Oslo: Small Arms Survey & Norwegian Initiative on Small Arms Transfers, 2002, p.11). In 2005, there were 67 private security companies covering 4,153 locations with 9,329 guards and 6,805 weapons (Policía Nacional, *Registro nacional de empresas de vigilancia*, Mangua: Policía Nacional, 2005). In Managua alone, the 8,217 guards that work for these companies are almost as many as the total amount of police officers in the whole country. Additionally, 5,000 street guards work independently (Antonio Montesinos, 'Seguridad privada en Nicaragua', 2005, at http://www.foroswebgratis.com/foro-mensajes.php?).

requires security. The officers of the highest echelons have positioned themselves successfully in both the private and public sectors. They have been able to obtain assistance from different groups through their strategy of granting unconditional support to governmental decisions, fighting crime, and protecting the private sector.

Citizen Security and Youth Violence

The protagonist of the discourse and actions regarding youth violence is the Sandinista network. Since the late 1980s, the National Police have been paying attention to the increasing rate of youth violence.[24] This new focus of interest was probably due not only to the fact that the galloping economic deterioration produced a perfect environment for an increase in delinquency and the emergence of the first youth gangs, but also to a growing attention from the police towards forms of delinquency not associated with national security. The military definition of conflicts gave way to a definition of civil security. But in these new circumstances, the Sandinista network applied an approach towards youth violence in general and youth gangs in particular that was quite the opposite of their Central American counterparts. Their operations directed towards youth gangs were named after holidays – Bethlehem Plan at Christmas or Beach Plan in Holy Week – in contrast with the police operations in El Salvador, Guatemala, and Honduras, which had names that expressed their will to severely suppress gang members: Anti-Gang laws, Broom Plan, Zero Tolerance Plan, and Strong Grip Plan.[25]

The Nicaraguan police noticed that in other countries 'zero tolerance' policies had had higher costs – in financial and organisational prestige – than community-based rehabilitation policies.[26] The Sandinista elite's ability to use sociological terms and concepts and their notoriously superior discursive capacity in relation to their Central American colleagues enabled the appearance of innovative proposals and an assessment of citizen security that deepened the analysis of youth gangs without criminalising their members.[27] The Police Delegation of Managua's District II developed a *desalzamiento*[28] ('end your rebellion') strategy. Their plan was divided into three phases: truce, armistice, and reintegration into the work force.[29] This strategy suffered from weak territorial coverage and was interpreted as an FSLN strategy to manipulate the gangs.

The police trumpet the thesis that Nicaraguan youth gangs are not as dangerous as those found in the rest of Central America.[30] Even the Ministry of Government's citizen security assessment presents gangs as groups of youth that vindicate their identity and defend their role as members of society.[31] The police publicly claim that criminal violence in Nicaragua is minimal.[32] This discourse is connected to President Bolaños's slogan of Nicaragua as the safest country in Central America. On this point, the discourse of the police networks and the

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[24] Granera Sacasa & Cuarezma Terán (1997).

[25] Marlon Carranza, 'Políticas juveniles y rehabilitación de mareros en El Salvador', in *Maras y pandillas en Centroamérica. Políticas juveniles y rehabilitación,* Vol.3, Managua: UCA Publicaciones, 2004, pp.75 & 154.

[26] Francisco Bautista Lara, 'Causas de la violencia social y delictiva de niños, niñas y adolescentes', *Visión Policial,* 4:44 (2003), pp.12-13.

[27] Ministerio de Gobernación (2002), p.10. This same conception appeared in Policía Nacional (1999).

[28] The Police took this term from the military nomenclature. Members of the 'counterrevolutionary army' who surrendered were called '*desalzados*'.

[29] Wendy Bellanger, 'Saliendo de la pandilla', in *Maras y pandillas en Centroamérica. Políticas juveniles y rehabilitación,* Vol.3, Managua: UCA Publicaciones, 2004, p.359.

[30] 'Crimen organizado podría absorberlos', *La Prensa* (20 March 2003).

[31] Ministerio de Gobernación (2002), p.9.

[32] Bautista Lara (2004), p.112.

government coincide. However, this discourse should be seen as a strategy of corporative adaptation and, as we will see in this paper's third section, it is not coherent with the predominant conduct among the police officers who patrol the streets.

The Special Ombudsman's Office for Children and Adolescents

On 12 May 1998, the Code of Childhood and Adolescence (Law No. 287) was approved,[33] validating the Convention on the Rights of the Child in Nicaragua. As an expression of legal globalisation, which implies the transnationalisation of certain legal models, it involved the dissemination of the doctrine of children's human rights, whose application international donors have sponsored in Nicaragua in quite the same way as they have financed judicial reforms in Latin America.[34] The Special Ombudsman's Office for Children and Adolescents (henceforth referred to as the Ombudsman's Office) was created in 2000 as an organisation under the Human Rights Ombudsman's Office devoted to developing a culture that promotes, defends, and respects the human rights of children and adolescents,[35] ensuring the application of the Code of Childhood and Adolescence (henceforth referred to as the Code).

As a local incarnation of international norms, the Code revokes the traditional model of relations based on the notion of children as totally dependent on the arbitrary powers of the family, school, police, and other authorities. Rather it posits the idea that children and adolescents are full subjects and members of a society who enjoy a set of rights especially guaranteed by the Constitution. By reallocating rights, the Code implied an alteration of society's basic normative structure.[36] The membership of the judicial community was enlarged, and the new members were given an autonomy that altered the traditional values. Even though the Code defends the family's position as the centre of children's development (Article 6), it breaks with the patriarchal conception by proposing punishment for parents who mistreat, abuse or exploit their children (Article 26). Most likely those who voted in favour of approving the Code either were not completely aware of this and other revolutionary changes, or from the beginning assumed that the reallocation of rights could not be undertaken without an effective reallocation of resources and a change in what North calls informal constraints.[37]

As a substitute for the Law for the Protection of Minors (1973), the Code regulates all aspects that deal with the development of children and adolescents, and emphasises the specialised penal justice system, which absorbs 132 of the 222 articles that comprise the Code. The proposed system releases all children below 13 years of age from penal responsibility, prohibits the deprivation of liberty for all those below 15 years of age, and grants substantive advantages for adolescents between 13 and 18 years of age who have committed a crime, protecting them against justice delay, turning the trial into a formative process, establishing specialised penal centres for adolescents, and making available an alternative procedure for settlement with the victims that keeps the defendant's record clean. As a result of this new

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[33] Procuraduría para la Defensa de los Derechos Humanos (PDDH), Procuraduría Especial de la Niñez y la Adolescencia, *Código de la Niñez y la Adolescencia comentado por 27 personalidades nicaragüenses*, Managua: PDDH, 2000.

[34] Rachel Sieder, 'Legal Globalization and Human Rights: Constructing the "Rule of Law" in Post-Conflict Guatemala', Crisis States Research Centre/Development Studies Institute research seminar series, 18 February 2004.

[35] Procuraduría para la Defensa de los Derechos Humanos (PDDH), Procuraduría Especial de la Niñez y la Adolescencia, *Informe anual de gestión 20001,* Managua: PDDH, 2001, p.9.

[36] North (1993), p.67.

[37] Agreements and codes of conduct (North, 1993, p.14).

system, the adolescent criminal courts throughout the country processed 15,612 cases from 1998 to 2001,[38] and the number of adolescents deprived of liberty decreased from 449 in 1998 to only 36 in 2003.[39]

The Code's passage took place in a context of reconstruction of the rule of law and a subsequent wave of legal reforms and new laws prescribed as a way of ensuring effective and democratic governance. In the aftermath of the military regimes, reforming the judicial system and validating international conventions and protocols for the recognition of human rights became a concern for donors as well as Latin American governments. Hence, over a billion dollars have been spent on the region's judicial reform since the 1980s.[40]

Although the Sandinista government was an early signatory of the Convention on the Rights of the Child, it took no significant steps to adapt Nicaraguan legislation to the spirit of the Convention, especially regarding adolescent penal justice, and instead maintained the validity of the Law for the Protection of Minors.[41] By the mid-1980s, some intellectuals who worked for NGOs and had financial and ideological support from external cooperation had made some efforts to create proposals for youth policies and reforms to the adolescent penal justice system that would incorporate elements from the international conventions on the rights of children and adolescents.[42] Subsequently, they became part of the team in charge of writing the Code. The Code's advocates do not deceive themselves about the circumstances that made possible its approval. They know that the juncture was perfect for reasons unconnected to the Code's virtues. According to the Ombudsman for Children and Adolescents, the conventions have been ratified and the Code created and approved because children and human rights issues have great acceptance at a national and international level.[43] The commercial insertion into global markets follows on the heels of a juridical insertion into international politics and law. In both cases the insertion is fragile and depends on the erratic nature of domestic politics and external pressures.

Both the Code (1998) and the Ombudsman's Office (2000), as well as the Law to Promote the Integral Development of Nicaraguan Youth (2001), and the National Plan for the Development of Youth (2001), were approved during the Alemán administration, one characterised by its acrid relations with the European Union and US governments as well as with agencies of international cooperation. Alemán hoped to reduce the corruption scandals in which his government was immersed through a boom in this nominal construction of the rule of law. Given this instrumentalisation,[44] a genuine rule of law was fractured from the beginning, since, according to Habermas, it is only viable in a climate free of interferences in the relationship between administrative power and the communicative power that produces law. Instead, as indicated above, the rights were not the result of a process of sufficient deliberation and decision.[45]

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[38] Oficina Técnica para el seguimiento del Sistema Penal de Adolescentes.

[39] CENIDH, *¿Dónde están los derechos?,* Managua: CENIDH, 2004, p.31.

[40] Sieder (2004).

[41] This confirms Wallerstein's thesis that the revolutionary forces of the 20th century were, at most, moderately reformist (Immanuel Wallerstein, *Después del liberalismo*, México: Siglo Veintiuno, 1998, p.7).

[42] Carlos Emilio López, *Políticas de juventud en Nicaragua. Premisas básicas,* Managua: Fundación Movilización Social, 1996; Elías Carranza & Sergio J. Cuarezma Terán, *Bases para la nueva legislación penal juvenil de Nicaragua: diagnóstico jurídico y sociológico del sistema vigente (texto para su estudio)*, Managua: Editorial UCA, 1996.

[43] Interview with Carlos Emilio López, Special Ombudsman for Children and Adolescents.

[44] To place the law at the service of a strategic use of power. Habermas (2000), p.237.

[45] Habermas (2000), pp.218 & 193.

Controversies Surrounding the Code

As Maclure and Sotelo point out, "the passage of the Code into law was an important step in legitimising the discourse of children's rights in Nicaragua".[46] But that step was far from sufficient. To comprehend the magnitude of the distance between dictate and reality, it is convenient to consider Habermas's distinction between juridical validity and legitimacy of law. Juridical validity is produced when a state authority declares that an enforced norm has been sufficiently justified.[47] On the other hand, the term 'legitimacy' implies an equitable consideration of all the distributed interests and values in a juridical community.[48] To become legitimated, the norms have to pass a test of universalisation within a juridical community, where conflicting interests are decisive. Based on this distinction, one can affirm that the Code obtained validity but not legitimacy; or, to use another of Habermas's distinctions, one can say that the moment of validity or rational acceptability, and the moment of social validity or acceptability, have not come together. The approval of the Code meant that a certain sector of the Nicaraguan juridical community recognised the rightful and fair nature of that body of norms and expressed its wish to have it applied in the country. However, the informal constraints inserted in customs, traditions, and codes of conduct are much more resistant to deliberate policies.[49]

The unanimity with which the Code was approved in the National Assembly did not last, partly because it was not the result of a wider consensus. The dialogue process in which the Code was crafted had been restricted to a certain intellectual elite that did not represent what Habermas calls the plurality of constellations of interests and value preferences.[50] Some politicians have openly challenged the Code and tried to present it as some kind of protective barrier for delinquent minors. They are particularly uncomfortable with Article 105, which states that in cases where two or more laws could be applied to an adolescent, the one that is more benign for his or her interests should be applied. Journalists, lawyers, columnists, congresspeople, and other artisans of public opinion have filled the mass media with challenges to the Code and have received an echo from the population. The members of an almost extinct political party adopted the most extreme and deliberative position. In April 2002, with a sudden demonstration of what some people call populist social conservativism,[51] the tiny Christian Way Party presented a bill to reform the Code of Childhood and Adolescence, suggesting that it should come closer to adult penal justice, should make youth and adolescents more responsible for their criminal acts, and should include a more extensive range of sanctions as a judicial response to their criminal acts.[52] The reform proposes that in order to prevent the Code from continuing to act as a protective shield for juvenile delinquents, the penalty of deprivation of liberty should also be applied to adolescents between 13 and 15 years of age, and proposes that to the list of crimes subject to this penalty should be added: association to commit criminal acts, threats, damages, etcetera. During the discussions that surrounded this reform initiative, the possibility of typifying youth gangs as a form of criminal association was contemplated.

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[46] Richard Maclure & Melvin Sotelo, 'Children's rights as residual social policy in Nicaragua: state priorities and the Code of Childhood and Adolescence', *Third World Quarterly,* 24:4 (2003), p.673.

[47] Habermas (2000), p.223.

[48] Habermas (2000), p.224.

[49] North (1993), p.17.

[50] Habermas (2000), p.232.

[51] Maclure & Sotelo (2003), p.672.

[52] Bancada Camino Cristiano, 'Iniciativa de ley de reforma a la Ley No.287 Código de la Niñez y la Adolescencia', Managua: Bancada Camino Cristiano, 2002.

With this action, the Christian Way Party secretly hoped to enhance its feeble social base through what it considered to be a politically profitable proposal. In May 2004, Wilfredo Navarro, former Minister of Labour in the Liberal Party's administration, presented an anti-gang bill to the Nicaraguan National Assembly. Just as the Brazilian right wing did at the beginning of the 1980s, according to Caldeira,[53] the Christian Way Party and the Liberal Party appealed to citizens' fears: the former to challenge the Code and the latter to promote an anti-gang law that obviously crushes the rights that the Code recognises, and both of them to reduce the delinquents' human rights and the limitations on permissible physical acts by the state.

The Limits of the Ombudsman's Office Social Capital

In a road full of obstacles, the Ombudsman's Office is turning to its social capital for support. It seeks protection for children and women from its ideological peers located in NGOs devoted to human rights. This bond is legally backed by Article 56 of the Code, which invites all sectors of civil society to get involved. The social capital of the Ombudsman's Office is based on its cultural capital,[54] which links it to the NGOs and external cooperation, hence the importance of its ideology and discourse. This is due partly to its functionaries' origins and social capital, and partly to the fact that ideology yields and is oriented to the incentives that it finds in the institutional framework.[55] The budget composition for the Ombudsman's Office is a good indicator of the costs and benefits of its social capital. Of the 15.5 million córdobas (roughly US$940,000) that the Human Rights Ombudsman's Office received from the State in 2003,[56] only 6 percent (US$56,400) was given to the Special Ombudsman's Office for Children and Adolescents,[57] and this amount only accounted for 19 percent of its total income, if we add the US$322,900 it received from international cooperation.[58] International cooperation's financial weight in its budget (81 percent) doubled the weight of all international organisations in the public sector as a whole (40 percent), and in ministries with great international dependence, such as the Ministry of Health (38 percent).[59]

With that endowment of resources and configuration of social capital, the Ombudsman's Office took on the defence of the Code. It responded to the political parties' challenges with the publication of a document,[60] in which it tried to dispel the myths about the Code and instead present it as a historical benchmark that gives rights to a social sector that had been marginalised from social policies and law throughout history. The counterarguments do not point to the Code's moral foundation and the benefits derived from its application; rather they highlight its character as ambassador of the international legislation. Its legitimacy is

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[53] Teresa Caldeira, *City of Walls*, Berkeley: University of California Press, 2000, p.339.

[54] The term cultural capital represents the collection of non-economic forces such as family background, social class, varying investments in and commitments to education, which influence academic success (Bourdieu, Pierre, *The Forms of Capital*, in John Richardson (ed.), *Handbook of Theory and Research for the Sociology of Education*, New York: Greenwood Press, 1986, pp.241-258).

[55] North (1993), p.19.

[56] Ministerio de Hacienda y Crédito Público (2003).

[57] Interview with Carlos Emilio López, Special Ombudsman for Children and Adolescents.

[58] On an average exchange rate for 2003 of 15.1064 córdobas per one dollar (Banco Central de Nicaragua, *Indicadores Económicos,* 10:11 (December 2003), p.122; Procuraduría para la Defensa de los Derechos Humanos (PDDH), *Informe quinquenal del Procurador Especial de la Niñez y la Adolescencia. Noviembre 1999-Junio 2004*, Managua: PDDH, 2004, p.49).

[59] Maclure & Sotelo (2003), p.679.

[60] Procuraduría Especial de la Niñez y la Adolescencia, *Contraargumentos a iniciativas de reforma al Código de la Niñez y la Adolescencia*, Managua: PDDH & Red de Alcaldes Amigos de las niñas y los niños, 2002.

supposed to derive from being a concretion of legal globalisation. But as Sieder observed, legal globalisation has different impacts within each local context, depending on the institutional framework and the type of legal interactions that have historically characterised the relationship between the State and society.[61] In the Nicaraguan context, where legislative production has been a monopoly of the elites,[62] with scarce information and almost no social participation, turning to an external source of legitimacy strengthens the tendency to ignore the moment of building social validity or acceptability: in other words, legitimacy. The Special Ombudsman for Children and Adolescents acknowledges two key issues surrounding this fact: the Code's greatest adversary is public opinion, for ideological reasons and lack of information.[63] The lack of knowledge, discussion, and awareness of the Code has been widely documented.[64] The Ombudsman's Office did not assign resources to encourage favourable public opinion about it and put citizens on the path towards the necessary consensus.[65] For this reason, the political elite's exploitation – in association with the mass media – of the Code's unpopularity to obtain political gains will continue to be a temptation. The opposition to the Code is seen as politically profitable. The insufficient legitimacy derived from this situation is expressed in a dysfunctional interaction between the National Police and the Ombudsman's Office.

National Police, Code, and Ombudsman's Office

The Youth Gang Prevention Plan that the police launched in 1999 appeared hardly a year after the approval of the Code. Regardless of the rhetoric of tolerance in several fragments of the document – an echo of the Sandinista network's discourse – its application was a good example of the repressive perspective. Even though the Plan mentioned the Code, the rise in juvenile delinquency was presented as a menace to social order, and therefore had to be eliminated. The Plan was a mixture of rehabilitative rhetoric and repressive proposals to destroy gang leadership. A few weeks after the application of the Plan, and in total opposition to Article 95 of the Code, more than 400 adolescents, most of them less than 15 years old, were arrested without judicial guarantees.[66] NGOs have especially denounced the abuses of power and arbitrariness in the capture of adolescent delinquents and the infringement of the Code by the police.[67] Those abuses display the prejudices against the Code that the police shares with the general public opinion.

The National Police and the Ministry of Government blame their financial restrictions as their main impediment to act as the Code requires.[68] But cultural barriers, diversity of visions, and police interests have proven to be more efficient obstacles. The police prefer to rely on direct punishment, beating young delinquents then freeing them without any judicial mediation. Due to the ideological, social, and generational gap between the majority of police officers and those at the highest echelons, most policemen do not act according to their superiors' discourse. The policy towards youth violence applied by the District II Police Delegation was rather exceptional, and only applied by the delegation's chief with the help of some of his

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[61] Sieder (2004).

[62] E. Novoa Monreal, *El Derecho como obstáculo al cambio social*, México: Siglo Veintiuno, 1995, p.60; R. Delgado Romero, 'La Gobernabilidad democrática en Nicaragua: principales desafíos', *Revista Probidad* 24 (2003), en http://www.revistaprobidad.info/024/015.pdf.

[63] Interview with Carlos Emilio López, Special Ombudsman for Children and Adolescents.

[64] FUNPRODE, *Informe final del proyecto justicia penal especializada*, Managua: FUNPRODE, 2003, p.80.

[65] Habermas (2000), p.172.

[66] Maclure & Sotelo (2003), p.681.

[67] FUNPRODE (2003), p.66.

[68] FUNPRODE (2003), p.72; Ministerio de Gobernación (2002), p.19.

subordinates. The statements about Nicaragua as a country of undeniable citizen security, and about the less violent nature of its youth gangs, are found in documents and articles produced by the highest echelons. Among its series of real police actions to deal with youth violence, the one with the greatest impact is its participation in the best-selling mass media phenomenon: images in the news of police officers capturing and beating young delinquents.

The Brazilian anthropologist Teresa Caldeira, who studied and described the "talk of crime", said it engenders a "symbolic order" that "discriminates against some groups", and "makes fear circulate through the repetition of histories". It reinforces inequalities, eliminates respect for citizen's rights, and "allows abuses by the organisations of order" by creating stereotypes and prejudices.[69] The mass media, especially the televised news, has turned Nicaraguan police officers into the main characters of 'images of violence' that play the same role as the "talk of crime". Those images modify the symbolic order in order to segregate. The domiciles – private spaces – of the young delinquents are invaded and exhibited until they are transformed into criminalised public spaces. The filmed invasions are discrimination rituals that show citizens – labelled as anti-socials – that in practice have no rights. Thus, police brutality against them is seen as normal, lawful, and even plausible. The images of violence, like the "talk of crime", "rely on simplifications and stereotypes to create a symbolic criminal who is the essence of evil",[70] and against whom anything can be done.

The police could stop the dissemination of these images by changing its behaviour and, since a great number of those captured are minors, by applying Article 71 of the Code to the media.[71] Instead, the police are the protagonists of the violence whose images the media disseminates, legitimising and reinforcing the atmosphere of violence in certain contexts. Those images of violence show which places are dangerous, due to their occupation by violent individuals. In this manner they strengthen the spatial segregation that Rodgers[72] identified in the reconfiguration of Managua through the construction of a network of fortified enclaves occupied by the elites that maintain communication between their separated spaces, while at the same time isolating them from the dangerous zones. The images of violence reinforce the stigma based on an unequal distribution of risk. There is no explicit police policy to enforce this behaviour, but this violence definitely reflects the actions of the police that are more present in the social imagery, performs the conservative politicians' challenges to the Code by them, and is useful for the interests of the highest echelons of the police because the perception of a dangerous city wins clients for the private security business as well as justifying increases in the police budget.

The Ombudsman's Office has tried to stop police violence against adolescents. It charged that 47 percent of adolescent detainees were subjected to mistreatment during detention,[73] and that investigative declarations were taken from 11 percent of them without the presence of an attorney.[74] These and other anomalies do not depend on the budget limitations the police

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[69] Caldeira (2000), pp.38-39.

[70] Caldeira (2000), p.344.

[71] That prohibits the diffusion of identification marks that correspond to children and adolescents who have been active or passive agents of penal infraction (PDDH, 2000).

[72] Dennis Rodgers, '"Disembedding" the city: crime, insecurity and spatial organization in Managua, Nicaragua', *Environment and Urbanization,* 16:2 (October 2004), pp.113-124.

[73] 62.5 % were hit and kicked, 12.5% were hit and verbally abused, and 7.5% were hit and received other types of mistreatment (Procuraduría para la Defensa de los Derechos Humanos (PDDH), *¿Cara o sol Investigación Socio-Jurídica de Adolescentes que se encuentran en Privación de Libertad en los Departamentos de la Policía a nivel Nacional,* Managua: PDDH, 2002, p.93).

[74] PDDH (2002), pp.87-121.

purport to suffer, but on the cultivation of will, which has yet to be undertaken. This process has to start with a change of vision. The police officers believe that the Code promotes impunity because it takes longer for them to capture the young delinquents than for the judicial authorities to let them free.[75] Sieder found a similar situation in Guatemala, where many citizens blame the New Penal Procedures Code for the rising crime and impunity.[76] Under this perspective, the reduction in the amount of imprisoned adolescents, which the Ombudsman's Office sees as an achievement of the Code, appears as a failure of justice or a triumph of impunity. The National Police leadership went to the extreme of admitting that it feels impotent in the presence of the Code because it considers it as a legal obstacle to re-establishing public order.[77] The National Police vision of reality and the Ombudsman's Office's approach appear as divergent mental models,[78] with what are perceived as opposing aims: the reestablishment of public order for the former, and the primacy of human rights for the latter. These differing visions underlie the impossibility of coordinating actions between the Ombudsman's Office and the National Police.

Conclusions

The National Police strategy to survive and legitimate itself has benefited from the origins of its highest echelons, some from the traditional elite and others from *Sandinismo*. That bifurcated membership has generated different discourses and actions towards youth violence that have often been in contradiction with the most common police actions. Those linked to the elite maintain the discourse of a safe country while they obtain public and private budget increases for security. The Sandinista group approaches gangs with rehabilitative rhetoric and actions of reduced coverage, but only so they can later manipulate them. In their daily actions, most officers on the beat participate in the mass media phenomenon of images of violence, which reinforce fear and social discrimination. These discourses and actions do not coincide with the Ombudsman's Office's intentions, as vicar of the international juridical order, to deal with youth violence by defending its human rights. The police's service to the elites, both Sandinista and traditional, its violence against adolescents, and its ideological stereotypes of reality, which prioritise order, characterise the National Police as an entity that reproduces the dichotomy of 'human rights versus citizen security,' which at present does not work towards creating synergy with the Ombudsman's Office.

On the other hand, the Ombudsman's Office does not defend the Code based on social support, but rather based on its condition as executor of international legislation, a situation that places it in confrontation with current public opinion. Just as the agro-export economic model made Nicaragua dependent on the international economic structure, the imported normative model might prolong the Nicaraguan State's crisis of legitimacy. Due to the type of legal interactions that characterise state–society relations, the preceding organisational agreements were not sufficient to make possible the implementation of the Code through a simple adjustment. Legal globalisation should be accompanied by the promotion of changes in the agents' subjective models, an application of mechanisms of coercive power and societal sanctions, and the fostering of other norms of conduct, all of which will result in a slow and prolonged process of institutional evolution.[79] The efforts of the Ombudsman's Office have

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[75] PDDH (2002), p.71.

[76] Sieder (2004).

[77] PDDH (2002), p.71.

[78] North (1993), pp.31 & 38-39.

[79] According to North, the absence of these elements in Latin American states explains their failure to apply the American Constitution (North, 1993, pp.132 & pp.83–84).

not produced the incremental alteration of informal constraints that involves changing mental models and norms of conduct to mitigate their incongruity and tension with the new set of norms;[80] nor has it improved its relationship with the police. Without a working relationship and a policy of concerted actions with the National Police, the Ombudsman's Office has no coercive mechanisms to enforce the Code. Its main limitation is not financial (solved by external cooperation), but the lack of a strategy to pay the cost of constructing certain political transactions, taking into account the diversity of interests, a social consensus that legitimates the Code. In Woolcock's words, we could say that so far the Ombudsman's Office has built bridges but not bonds. [81] It has relied on its international connections rather than foster the type of national integration on which it could have striven to establish the legitimacy of the Code.

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[80] North (1993), pp.106 & 115.
[81] Woolcock & Narayan, (2000), p.230.

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