

NOT EVEN WHEN HER LIFE IS AT STAKE

HOW THE TOTAL ABORTION BAN IN NICARAGUA CRIMINALIZES DOCTORS AND ENDANGERS WOMEN AND GIRLS

REPRODUCTIVE HEALTH
IS A HUMAN RIGHT

AMNESTY
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‘BEFORE, NO WOMAN WAS FORCED TO HAVE A PARTICULAR COURSE OF TREATMENT... [A WOMAN] HAD EVERY RIGHT TO SAY “I UNDERSTAND THE RISKS, I KNOW I MIGHT DIE, BUT I CHOOSE TO CONTINUE ANYWAY WITH THIS PREGNANCY”... EQUALLY IF A WOMAN TOLD ME, “IT MAKES ME SAD TO LOSE THIS PREGNANCY, BUT I WANT THE CANCER TREATMENT”, I WOULD BE ABLE TO RESPECT HER RIGHT TO CHOOSE LIFE.’

Nicaraguan doctor interviewed by Amnesty International, November 2008

Since July 2008 all abortion in all circumstances has been outlawed in Nicaragua. Before 2006, Nicaraguan law allowed women and girls whose lives or health were threatened by their pregnancy and, in some cases, rape survivors, to be exempted from the general ban on abortion. However, the revised Penal Code, which came into force in July 2008, repealed all such exceptions to the general

THE 2008 REVISED PENAL CODE

The revised Nicaraguan Penal Code removes all exceptions to the prohibition on abortion. Articles 143 and 145 of the Penal Code provide for prison sentences for health care professionals who carry out an abortion and for women and girls who seek or obtain an abortion. These sanctions apply even in cases where continuing with a pregnancy puts the woman’s life or health at risk. The Code also includes two additional provisions aimed at health care providers. Articles 148 and 149 put doctors at risk of criminal prosecution in any case, regardless of intent, in which foetal injury of any degree, or foetal death, results from medical care aimed at preserving the life or health of the woman or the foetus.

ban. The new law criminalizes all forms of abortion, regardless of the circumstances in which it is sought, obtained or performed.

The new law also provides for prison sentences for medical personnel who cause unintentional harm to the foetus when providing any form of treatment to pregnant women and girls. This puts doctors and other health professionals in an impossible position when the demands of the law are diametrically opposed to their ethical obligation to save life and protect the inherent dignity of the patient. Health professionals working in Nicaraguan hospitals and clinics are no longer able to provide the support and care which they feel is indicated solely on the basis of their medical and ethical judgement and the wishes of the patient. The threat of criminalization hanging over them can act as an obstacle to appropriate, prompt and sometimes life-saving medical care.

The criminalization of all abortion without exception greatly increases the suffering experienced by many pregnant women and girls seeking medical care. It compounds



physical pain, fear, depression and stigma; in some cases it may lead to death or attempted suicide.

Some groups of women and girls are particularly affected by the new legislation. Specifically, those women and girls who are pregnant and need treatment for life-threatening illnesses, those facing complications in their pregnancy, those needing medical treatment after a miscarriage or abortion, and survivors of rape or incest. The effect of the law is to deny them essential medical treatment at a time when they are likely to be in a traumatized state, experiencing severe pain or in fear for their health and lives. Criminalization does not stop abortions taking place. Rather, it forces women and girls to turn in desperation to clandestine or self-induced abortion, endangering their lives and health – and running the risk of prosecution and imprisonment.

The effect of the revised Penal Code has been to leave an entire nation of women and girls whose pregnancies develop complications at risk of dangerous or fatal consequences.



A health worker advises a woman patient at a public hospital in the city of Ocotal, November 2007.

It has also condemned survivors of rape and incest to carrying to term the resulting pregnancy. This compounds the trauma of sexual violence and disregards the risks such a pregnancy might pose to the physical and mental health of the survivor, who may be just a child herself.

Nicaragua has an obligation under international law to protect the human rights of women and girls. Amnesty International believes that the consequences of the new Nicaraguan law on abortion breach a number of the human rights which Nicaragua has pledged to uphold, including the right to life, the right to health and the right to freedom from torture and other ill-treatment.

THE POLITICS BEHIND THE BAN

In the months before the November 2006 presidential elections, the issue of access to abortion services became a hot political topic. The close-run nature of the elections meant that presidential candidates were very responsive to the demands of interest groups, and the two main parties decided to follow the call of leading members of the Catholic Church and some other Christian

groups to impose a complete ban on abortion. A bill was put before the National Assembly in October 2006.

As the debate intensified and the elections drew nearer, 21 Nicaraguan medical associations, including those representing gynaecologists, obstetricians, nurses, psychiatrists, and public health experts, issued a joint public statement against a prohibition on therapeutic abortions (such as where the woman's life or health were at serious risk or where the pregnancy was the result of rape or incest). The statement warned that the ability of health professionals to provide health care and practise their profession would be limited if the bill were passed and asked that the proposed law include exceptions to the ban where necessary to save life and safeguard health.

Well-respected international bodies also voiced their concern. A joint letter was sent to the Nicaraguan National Assembly by the UN Development Programme, the World Health Organization, the UN Children's Fund (UNICEF) and the Pan-American Health Organization (PAHO).

Amnesty International believes that where women's access to safe and legal abortion services and information is restricted, their fundamental human rights may be at grave risk. Amnesty International therefore calls on states to do the following to prevent and end grave abuses of women's human rights, in accordance with state obligations under international human rights standards:

(a) repeal all laws which permit the imprisonment or imposition of any other criminal sanction on women for seeking or having an abortion and all other laws which provide for imprisonment or other criminal penalties solely for those providing information about or carrying out abortions;

(b) provide access to medical services for complications arising from abortion to all women in need in any circumstance, regardless of the legal status of abortion;

(c) take all necessary measures to ensure that safe and legal abortion services are available, accessible, acceptable and of good quality for all women who require them in cases of pregnancy as a result of rape, sexual assault or incest and pregnancy which poses a risk to the life or grave risk to the health of the woman.

Amnesty International does not take a position on any other aspects of abortion.

'DOCTORS HANDS ARE TIED... WE ARE ANXIOUS EVEN ABOUT TREATING A MISCARRIAGE FOR EXAMPLE.'

Nicaraguan doctor, interviewed by Amnesty International, October 2008

An average of 347 women and girls a year had terminations of ectopic pregnancies in Nicaragua between 1999 and 2005. Ectopic pregnancies (when the fertilized egg is implanted outside the womb) are treated as medical emergencies because they can cause permanent damage and, if the pregnancy is left to continue, can kill the woman. The total abortion ban means that terminations for ectopic pregnancies are no longer legal in Nicaragua.

The Inter-American Commission on Human Rights also spoke out.

“Access to therapeutic abortion is a universally accepted principle which transcends cultural differences, religious creeds and political ideologies. In most countries legislators have taken the framework of human rights into account, but at its heart, therapeutic abortion is a matter of common sense and humanity.”
PAHO public statement, October 2006

However, despite the chorus of opposition from expert medical opinion and international health and human rights bodies, on 26 October 2006, members of the Nicaraguan National Assembly voted in favour of the bill removing women’s right to legal therapeutic abortion. The new law was integrated into Nicaragua’s Penal Code and came into force in July 2008.



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DOCTORS’ HANDS ARE TIED

Before the complete prohibition on abortion came into force, health professionals looked to the Nicaraguan Ministry of Health’s best practice guidelines for advice on how to treat women and girls suffering from obstetric complications. These Obstetric Protocols recommended appropriate procedures for specific medical situations and included recommendations to perform therapeutic abortions where continuing with the pregnancy put the woman or girl’s life at risk.

However, the new Penal Code supersedes the Obstetric Protocols in Nicaraguan law. In effect, health professionals now face a stark choice. As one senior gynaecologist commented: “The Ministry of Health is effectively asking that doctors commit a crime and become criminals. They are asking us to rely on Obstetric Protocols which we know do not have the same legal status as the law. If I do not comply with the Obstetric Protocols I risk being disciplined by MINSAs [Ministry of Health] and if I do not comply with the law I risk prosecution by the state.”

The new law means that life-saving medical interventions that doctors might have recommended to women and girls in situations of high risk are now effectively ruled out – unless the doctor is willing to risk his or her professional career and a possible term of imprisonment.

Obstetric Protocols issued by the Nicaraguan Ministry of Health in 2006.



THE RISKS TO WOMEN AND GIRLS

The criminalization of all forms of abortion and the resulting fear of prosecution mean that women and girls in need of urgent obstetric care hesitate before seeking medical attention, and that health professionals are compelled by the law to deny women and girls medically indicated treatment.

One health worker described to Amnesty International how a woman admitted to hospital following a miscarriage had been so terrified that she would be prosecuted for having an abortion that she asked doctors not to intervene. She feared that the treatment could be seen as evidence that she had terminated her pregnancy intentionally.

Women and girls in need of urgent medical care may never even make it as far as the hospital gates in case they are reported to the authorities. The chilling effect of the ban extends to women who have miscarried, to women suffering life-threatening conditions as a result of their pregnancies, and also to women in need



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A young survivor of sexual violence, Nicaragua, 2008.

One recent study showed that between 2005 and 2007, the overwhelming majority of girls made pregnant as a result of rape were between 10 and 14 years old.

of emergency treatment for clandestine abortions which have gone wrong.

Criminalization of all forms of abortion is also likely to lead to an increase in unsafe abortions. Clandestine abortions carry a greater risk of permanently damaging women and girls' health, for example causing infertility. In some cases, unsafe abortions by unskilled, unaccountable providers working in unsanitary conditions will lead to deaths.

RAPE SURVIVORS RE-VICTIMIZED

"And what about the girls who are pregnant because of rape, and who live in poverty? They have no other (legal) choice but to give birth."

Health worker at a centre providing psycho-social support for survivors of sexual violence, interviewed by Amnesty International, October 2008

Women and girls who become pregnant as a result of rape now have no option but to carry the pregnancy to term, or to seek unsafe and illegal abortions. Fear and the threat of prosecution and imprisonment may coerce rape victims into continuing with the pregnancy against their will. Rape victims who seek an unsafe "back street"

abortion are not only risking their life and health, they also face imprisonment if they are found out.

Rape and incest are generally under-reported crimes worldwide, and Nicaragua is no exception. However, the statistics which are available suggest that many of those who experience sexual violence are young girls and teenagers. According to the Nicaraguan Institute of Forensic Law, 77 per cent of rape cases reported in December 2008 involved girls under the age of 17.

These are shocking statistics in any circumstances. What makes them even more so is the fact that all pregnant rape victims, including those who are still children themselves, will now have to carry those pregnancies to term.

Under-reporting of crimes of sexual violence makes it hard to state with certainty how many pregnancies result from rapes. However, in an attempt to paint a clearer picture, a Nicaraguan NGO, Catholics for Choice, carried out a survey of rape reports in the local press.

THE NICARAGUAN MINISTRY OF HEALTH RECORDED 115 MATERNAL DEATHS IN 2007 ACROSS THE COUNTRY. A DOCTOR AND EXPERT IN SEXUAL AND REPRODUCTIVE HEALTH WHO CARRIED OUT A STUDY OF THE CASE NOTES OF EACH OF THE 115 DEATHS FOUND THAT AT LEAST 12 OF THESE DEATHS COULD HAVE BEEN PREVENTED HAD THERAPEUTIC ABORTIONS BEEN ACCESSIBLE.

M. was 17 years old when she was raped repeatedly by a 49-year-old relative. She told Amnesty International, “he raped me three times. At the same time he was telling me that he was going to kill me and my mother. I was crying and pleading... he pulled out his gun and I was terrified, horrified. He said that I had to keep quiet... I spoke about it after six months, because I hadn’t got my period and I couldn’t stand keeping silent any longer... I didn’t think I could be pregnant, I thought I hadn’t had my period because of the brutality with which he’d raped me.” M. was then taken to the doctor. “The doctor examined me and told me I was pregnant... I started to cry and cry and cry... A while later I nearly died from pre-eclampsia, I was in the hospital for more than a week. Finally they operated on me and did a caesarean section... I’ve felt like killing myself many times... What happened to me shattered my dreams, my hopes – I wanted to be someone who worked outside the home but I spend all day at home looking after the baby... I can’t even sleep and I feel very unsafe, many of my days are a nightmare, it’s very hard to carry on and I feel very sad and very tired.”



The mother of a child survivor of sexual abuse reads a booklet on child abuse at a support centre in October 2008. Many victims of sexual violence are young girls or teenagers.

According to newspaper reports, between 2005 and 2007, 1,247 girls were raped or were victims of incest. Of these crimes, 198 (16 per cent) were reported to have resulted in pregnancy. The overwhelming majority of the girls made pregnant as a result of rape or incest (172 of the 198) were between 10 and 14 years old.

While this survey gives some idea of the magnitude of the problem of sexual violence in Nicaragua, it is widely accepted that the true scale of the problem, particularly in rural areas, is much greater.

Health professionals and psychiatrists who work with rape survivors in Nicaragua have expressed deep concern at the impact that carrying on with an unwanted pregnancy as a result of rape can have on women and girls.

“Many of those who have become pregnant as a result of rape have to leave school. They do not have the capacity to concentrate, and many of them tell us that they do not even have the will to continue with their lives.”

Amnesty International interview with a psychiatrist working for an organization supporting young victims of rape and abuse, October 2008

Denied a choice in what happens to them, there is evidence that pregnant women and girls are being driven to take their own lives. An official analysis of maternal mortality figures for 2007 and 2008 found that there had been a 24 per cent rise in teenage maternal deaths in 2008 compared to 2007. The main causes of adolescent maternal mortality were pre-eclampsia (hypertension) and the consumption of poison.

Public health research shows that there is a link between unwanted pregnancy and suicides. According to the World Health Organization, “Suicide is disproportionately associated with adolescent pregnancy, and appears to be the last resort for women with an unwanted pregnancy in settings

where reproductive choice is limited; for example, where single women are not legally able to obtain contraceptives, and legal pregnancy termination services are unavailable.”

In the face of official indifference and social stigma, women and girls who have been victims of sexual violence are struggling to make themselves heard.

“If I could ask the officials here for anything I would ask them to hear and trust the words of rape victims and change the treatment of victims of sexual violence. I would ask them to stop denying victims of rape the option to have a therapeutic abortion.”

Mother of a child rape victim

YOUNG WOMEN AND POVERTY – PAYING THE PRICE

Nicaragua has the highest teenage pregnancy rate in Latin America and the Caribbean. Around a quarter of all births in Nicaragua are to girls and young women aged between 15 and 19. In rural areas the rate is even higher, with teenagers accounting for a third of all births.

The criminalization of all forms of abortion carries special risks for younger women and girls. According to the Nicaraguan Society of Gynaecologists and Obstetricians, the risk of obstetric complications is higher for women and girls under 20, compared with women aged between 20 and 35. In the case of younger pregnant girls, the pelvis may still be too narrow to allow for an easy delivery, while life and health-threatening conditions like eclampsia or pre-eclampsia both occur more often in teenage pregnancies.

The complete abortion ban has left young women in Nicaragua particularly vulnerable. It is also likely that the majority of victims of the ban on all forms of abortion will be women and girls living in poverty. Maternal mortality disproportionately affects women



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and girls living in poverty, especially those living in rural areas with little access to emergency medical care.

REDUCING MATERNAL MORTALITY AND ILLNESS

The United Nations Millennium Development Goals (MDGs) are a set of internationally agreed development priorities. In accordance with Goal 5 (MDG 5), the Nicaraguan government has pledged to reduce maternal mortality by 75 per cent by the year 2015. The criminalization of all forms of abortion calls into question this commitment.

The lack of detailed data on maternal deaths makes getting a real idea of maternal mortality trends in Nicaragua, as elsewhere, difficult. This type of information is crucial in forming policies to tackle maternal deaths. However, the criminalization of all forms of abortion makes the task of gathering information harder since women and girls may now seek unsafe clandestine abortions. The resulting deaths and illness are unlikely to be included in official statistics because of the fear and stigma associated with breaking the law. Meanwhile, health professionals who

choose to offer necessary abortion services to women and girls whose lives are in danger have a strong incentive not to keep accurate patient records. With the threat of prosecution hanging over their heads, many may even decide that it is better not to record treatment accurately in order to protect both the patient and themselves from criminal investigation.

The government has recognized that it faces several challenges in reducing the number of women and girls dying during pregnancy and childbirth. These include a shortage of quality obstetric care, lack of appropriate and accessible services and facilities, and poverty. Maternal deaths usually occur because of a lack of appropriate and timely treatment of obstetric complications or as a result of inappropriate treatment. The authorities have introduced a number of programmes to reduce maternal mortality, and increased the budget allocation to the health sector as a whole. These important measures deserve recognition. However, the legal status, availability, accessibility and quality of abortion information and services play a large part in determining

A doctor in a hospital in Chinandega, January 2009.

Doctors providing any form of treatment to pregnant women and girls that causes unintentional harm to the foetus could now face imprisonment.

‘WE CAN LOSE OUR LICENCES TO PRACTISE MEDICINE, OUR FREEDOM AND OUR REPUTATION, SIMPLY BECAUSE WHEN IT WAS NECESSARY WE ACTED.’

Doctor interviewed by Amnesty International, Nicaragua, October 2008

the extent to which any country can be successful in achieving MDG 5. The criminalization of abortion in all circumstances and placing a legal hurdle between the doctor and the delivery of timely and appropriate reproductive and maternal health care will only frustrate the impact of programmes to reduce maternal mortality. So long as these criminal provisions remain in force, the health and lives of women and girls in Nicaragua will be jeopardized.



Above: Demonstration calling for the decriminalization of therapeutic abortion, Managua, January 2007.

Front cover: Protesters outside the Supreme Court in Managua call for the decriminalization of therapeutic abortion, July 2008. The banner reads: "Decriminalize Now!"



For more information, see: *The total abortion ban in Nicaragua – Women's lives and health endangered, medical professionals criminalized* (AMR 43/001/2009), published July 2009.

TAKE ACTION NOW

Please write to President Daniel Ortega and to the President of the Nicaraguan National Assembly, calling on the Nicaraguan authorities to:

- repeal Articles 143, 145, 148 and 149 of the Penal Code and reform the Penal Code to ensure that women and girls are not subject to criminal sanctions for seeking or obtaining an abortion. The revised criminal code must also ensure that medical practitioners are not criminalized solely for providing abortion services that are safe.
- promote and support the full implementation of the best practice Obstetric Protocols issued by the Ministry of Health, and ensure that every girl or woman in need is counselled on and able to access comprehensive life-saving obstetric care, including – where medically indicated – safe abortion services.
- ensure that safe and legal abortion services are accessible without unreasonable restrictions to all girls and women who require them in cases of pregnancy resulting from rape or incest and in circumstances where continuation of pregnancy would put the health or life of the woman or girl at risk.
- amend the law to ensure that women and girls who are pregnant as a result of rape are not compelled to continue with the pregnancy against their will, and that rape victims have access to comprehensive counselling, medical care and psycho-social and legal support.
- ensure that all laws and policies governing the provision of reproductive health services and related data collection are evidence based and reflect medical ethics and clinical and public health best practice.

Please write to:

Daniel Ortega Saavedra
 Presidente de la República
 Reparto El Carmen
 Costado oeste del Parque El Carmen
 Managua, Nicaragua
 Fax: +505 2266 3102
 Salutation: Dear President/Estimado Sr. Presidente

Ing. René Núñez Téllez
 Presidente de la Asamblea Nacional
 Asamblea Nacional de la República de Nicaragua
 Avenida Bolívar, Apto. Postal 4659
 Managua, Nicaragua
 Fax: +505 2228-3039 (say "tono de fax, por favor")
 Salutation: Dear President/Estimado Sr. Presidente

Please send copies of your letters or faxes to your local Nicaraguan diplomatic representative.

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Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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Amnesty International
 International Secretariat
 Peter Benenson House
 1 Easton Street
 London WC1X 0DW
 United Kingdom
 www.amnesty.org