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BRIEFING ON NICARAGUA
TO THE UNITED NATIONS
COMMITTEE ON THE
RIGHTS OF THE CHILD**

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INTRODUCTION

“Rape and sexual abuse of girls aged 13-15 years old. These are the cases we most commonly receive here at our centre. Who is the most common perpetrator? The vast majority are family members, uncles, cousins, step-fathers, fathers, grandfathers.”

Director of a Centre that provides support to victims of domestic and other violence, Granada, Nicaragua

In this briefing, Amnesty International conveys information and concerns regarding the problem of rape and sexual abuse in Nicaragua, in particular regarding how adolescent and young girls are targeted for such abuse. Nicaragua’s obligations under the Convention on the Rights of the Child (CRC) are examined in light of Amnesty International’s research findings from country research visits in 2008, 2009 and 2010.¹ Amnesty International is submitting its concerns under Articles 2.1 (right to non-discrimination), 4 (implementation of the rights), 19 (protection from violence), 24 (health care), 37 (right to be free from torture) and 39 (rehabilitation of survivors) of the CRC.

During the research visits to Nicaragua in 2008, 2009 and 2010, Amnesty International delegates interviewed over 130 people, including: 34 survivors of rape between 10 and 20 years old, eight mothers of survivors of rape, 61 experts providing psycho-social care and legal advice, policewomen, members of the National Assembly, representatives of the Ministry of the Family (MIFAMILIA), two representatives of Local Systems of Integral Health Attention (Sistemas Locales de Atención Integral en Salud - SILAIS), two health care providers at a “Casa Materna”², international non-governmental organizations working in the area of promotion and protection of children’s rights, gynaecologists, psychologists, general practitioners and public health experts. Amnesty International delegates visited nine centres in Managua, Leon, Granada, Masaya, Bluefields and Chinandega where women and girls who are survivors of violence are provided psycho-social and legal support, temporary shelter, health care and advice.

Amnesty International would like to express its deep gratitude to all those who spoke to the organization’s researchers and shared their knowledge and experience. Amnesty International offers its deepest gratitude to each of the survivors, who shared very personal experiences

which were painful to recall.

The names of girls, women, medical professionals, health workers, lawyers and other representatives interviewed by Amnesty International have been withheld or given pseudonyms in order to protect their privacy and ensure that their security is not compromised. The briefing primarily refers to cases and information relating to girls following the CRC's definition of 'child'. However, for the purposes of illustration on occasion the case of an adult woman is referred to; where this occurs her age will be clearly shown in the text.

SUMMARY OF CONCERNS

Amnesty International would like to draw the Committee's attention to the following key areas of concern, which are covered in more detail in the following chapters of this briefing.

Globally, rape and sexual abuse are generally under-reported crimes, and Nicaragua is no exception. Sexual violence against girls is even more under-reported when perpetrated by family members because the girl has no concept of how she can report and be safe and may even blame herself. However, the limited statistics that are available in Nicaragua suggest that the majority of those who experience sexual violence are girls. The NGOs' studies on the number of pregnancies which are a result of rape also underscore the high rate of rape, particularly rape committed by family members. Amnesty International is concerned at the high rates of rapes and sexual abuse, and the fact that, despite the gravity of the problem, the state has failed to take the issue of rape and sexual abuse of girls seriously.

Evidence of this failure ranges from the broad, for example the dismantling of the Inter-Institutional commission on the rights of children (CONAPINA), to the specific - not including education about sexual violence in schools, or other venues for promoting human rights. This means girls often do not know what constitutes a crime or where to go to seek help. The government is not producing disaggregated statistics and information on the cases of rape which come to the attention of the authorities, from the reporting stage to the judgement being set down. The lack of such data is a real hindrance to the carrying out of a thorough gaps analysis on the delivery of effective remedy to rape survivors.

Additionally, Nicaragua does not prohibit corporal punishment and girls fear suffering additional violence as punishment if they do report what is happening to them, particularly as the lack of sex education means issues related to sex are generally considered "taboo" topics.

All children who survive rape are subject to stigmatization and they, rather than the perpetrator, are often blamed by their family and community for the rape. Girls are often pressured not to file a complaint or to stay quiet about the abuse. The stigmatisation is such that it has become a form of discrimination and violation of the right to an effective remedy.

This situation of stigma and lack of awareness of rights means girls in Nicaragua often suffer in silence and, particularly in the case of rape by family members, it sometimes only comes to light when they become pregnant. Once the rape and sexual abuse girls suffer comes to light, they often have to endure several further violations of their rights. Girls are not ensured justice (failure of the right to an effective remedy) and are frequently revictimised by police and justice officials who are not adhering to their codes of conduct and do not take either the

crime, or their obligations seriously. Defendants are regularly allowed to remain out on bail even though they expose the victims to risk of additional forms of violence and coercion.

Girls who become pregnant as a consequence of rape, including rape by family members, are not provided full information and support to decide how they wish to proceed, in accordance with globally recognised standards on rehabilitation of rape survivors. Following a total ban of abortion being introduced in 2006, criminal laws were subsequently passed into law in 2008. The revised criminal code imposes prison sentences on girls who seek abortion and those who assist them, regardless of the circumstances.

Even if a girl's life and health are at stake or she is a victim of rape, criminal sanctions are imposed. Survivors are therefore denied access to abortion services if they do not want to continue with the pregnancy. This is in breach of girls' right to health, dignity, and since there is no exception under Nicaraguan law, and girls face possible criminal sanctions if they do not continue with the pregnancy, it also violates girls' right to be free from torture and cruel, inhuman and degrading treatment. In some cases, survivors may become so desperate they commit suicide, and the state violates their right to life.

For pregnant rape victims who do wish to continue with the pregnancy, they are equally unsupported and their rights to education, work, health and dignity frequently violated. Given that girl and adolescent pregnancies are higher risk pregnancies and the delays and denial of treatment when complications arise during pregnancy, the consequences disproportionately impact on girls. The laws are discriminatory on the basis of sex (only girls can become pregnant) and age.

Despite repeated demands by several United Nations expert committees, and 12 member states during the Universal Periodic Review, the Nicaraguan government has failed to take any action to reform the law.

The high teenage pregnancy rates, as well as the rise in 2008 of teenage maternal deaths from pre-eclampsia and suicide, are a serious cause for concern.³

Amnesty International in the following chapters of this document, expresses its key concerns to the Committee about government compliance with the Convention on the Rights of the Child (CRC), in particular, state compliance with **Articles 2.1, 4, 19, 24, 37 and 39 of the CRC.**

ARTICLE 2.1 OF THE CRC: THE RIGHT TO NON-DISCRIMINATION ON THE BASIS OF GENDER AND AGE

The Nicaraguan Constitution (Article 27) and the Children's Code "Codigo de la Niñez" (Article 102) both establish the equality of all Nicaraguans before the law. Further, Article 46 of the Nicaraguan Constitution provides that international treaties to which the state is party, and the rights that these treaties enshrine, form part of the Constitutional legal framework. Nicaragua is party to the Convention on the Rights of the Child (CRC), the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights, the Convention on the Elimination of all forms of Discrimination against Women and the American Convention, amongst others. All of these treaties recognise the right to non-discrimination on the basis of sex. Further, the CRC, the Covenant on Economic, Cultural and Social Rights and the Covenant on Civil and Political Rights all recognise the right to be free from discrimination on the basis of any "other status".

However, the existence of constitutional and international law guarantees without full implementation is not sufficient. On previous occasions the Committee has promoted an "active" approach to the implementation of Article 2.1. For example, in its Concluding Observation in relation to Bolivia, the Committee emphasized that "the principle of non-discrimination, as provided for under article 2 of the Convention, must be vigorously applied, and [that] a more active approach should be taken to eliminate discrimination against certain groups of children, most notably girl children."⁴ Further, the General Discussion on the girl child, held by the Committee in 1995, concluded: "In fact, girls are simply human beings who should be seen as individuals and not just daughters, sisters, wives or mothers, and who should fully enjoy the fundamental rights inherent to their human dignity."⁵

The negative consequences of discriminatory laws and the omissions by the state in preventing and responding to rape disproportionately affect girls and teenagers under the age of 18. Amnesty International therefore asks the Committee to consider the concerns raised in regard of violations by the Nicaraguan State of the rights contained in Articles 24, 37 and 39 of the Convention simultaneously through the lens of the government's obligations under Article 2.1, the right to non-discrimination on the basis of gender or age.

ARTICLE 4: IMPLEMENTATION OF RIGHTS IN THE CRC

LACK OF EFFECTIVE COORDINATION AT NATIONAL LEVEL

The CRC in its General Comment No.5 at Paragraph 56 recognises that “Implementation is an obligation for States parties, but needs to engage all sectors of society, including children themselves.” Further, at paragraph 58 the Committee has stated that “The State needs to work closely with NGOs in the widest sense, while respecting their autonomy; these include, for example, human rights NGOs, child and youth led organisations and youth groups, parent and family groups, faith groups, academic institutions and professional associations. NGO’s played a crucial part in the drafting of the Convention and their involvement in the process of implementation is vital.”

The lack of an integrated national plan for prevention, protection and rehabilitation in relation to sexual abuse fosters an environment in which pervasive abuse of adolescent and young girls can persist.

The disestablishment of the National Commission of Comprehensive Care and Protection for Children (CONAPINA), a forum for inter-institutional dialogue established by the government through the Children’s Code (1998), is of concern. CONAPINA brought together government officials and non-governmental organizations working on children’s issues. Since 2007 it was put on hold and has not functioned, due to policy decisions by the current administration.⁶ This has closed the only formal space in which government officials and NGOs could discuss issues, develop and coordinate responses relating to children and violence. Although not mandated to specifically provide a forum for the discussion of rape and sexual abuse, CONAPINA was a very useful forum for discussing relevant strategies and challenges relating to violence against children. Rape of girls in Nicaragua is widespread, and requires a decisive, integrated and coordinated response by the authorities. Many experts working with adolescent and young girls whom Amnesty International interviewed stated their concern that at the national level the state authorities are unwilling to engage in discussion of sexual abuse and rape and lament the lack of a formal forum for dialogue and policy development.

The environment for women human rights defenders working on women’s and children’s rights has deteriorated in recent years. In 2007, a complaint against nine prominent women human rights defenders was lodged by a Catholic Church-backed NGO⁷. The complaint alleged that the nine women human rights defenders were guilty of the crime of concealment of rape and crimes against the administration of justice for their involvement in the case of a nine-year-old girl who was raped and made pregnant in 2003 and who obtained a legal abortion in Nicaragua prior to the criminalisation of abortion in all cases. The complaint also alleged that the women were guilty of the public defence of a crime, incitement to commit a crime and conspiracy to commit a crime, for having expressed their opinions and organized demonstrations in favour of access to “therapeutic abortions”.⁸

In April 2010 the women human rights defenders received formal notification that the investigation against them had finally been closed. The investigation had lasted for two and a half years, despite the fact that under Nicaraguan law, the Public Prosecutor's Office had a maximum of three months in complex cases to formally declare whether the investigation was being kept open or closed for lack of evidence. No such declaration was ever made, and no charges were ever brought against the nine defenders as a result of the investigation. The investigation itself and its extended duration caused stress and anxiety to the nine women human rights defenders and their families, and disrupted their work promoting and protecting women's and girls' human rights.

LACK OF DISAGGREGATED DATA

It is notoriously difficult to get accurate figures of sexual violence in any country as it is a crime that is largely under-reported. Nicaragua has a deficit of data and analysis of cases of rape and sexual abuse from reporting stage to judgement delivery. This absence of statistical information is a real hindrance to the carrying out of an assessment of the prevalence and characteristics of rape and sexual abuse, and also is an obstacle to the implementation of a thorough gaps analysis on the delivery of effective remedy to rape survivors.

ARTICLE 19: PROTECTION FROM VIOLENCE

“My dad was the one who abused me. He started to rape me from when I was 9 until I was 14 years old. I was terrified of him, he was a violent man who would beat us with wire or using his fists...he was a very, very bad person...” **Connie, 17 years old, Managua, Nicaragua.**

HIGH LEVELS OF RAPE AND SEXUAL ABUSE OF GIRLS

Globally, rape and incest are generally under-reported crimes, and Nicaragua is no exception. However, the statistics that are available suggest that many of those who experience sexual violence are girls.⁹ Amnesty International is concerned at the high rates of rape and sexual abuse.

In more than half of the rape cases reported in Nicaragua, the victims are girls below the age of 18, according to the Nicaraguan Forensic Institute (Instituto de Medicina Legal).¹⁰ According to the 2008 Police Annual of Crime Statistics, 66 per cent of all the victims of rape which occurred during the year were 0-17 year-old girls.¹¹ Unfortunately, the 2009 police statistics on rape and sexual based offences were still not available at the time of writing. According to the Nicaraguan Forensic Institute, 77 per cent of rape cases reported in December 2008 involved girls under the age of 17 (295 of 379 cases).

Under-reporting of crimes of sexual violence compromises the reliability of data about the number of pregnancies which result from rape.¹² In an attempt to combat this lack of information, Catholics for Choice (Nicaragua Section) carried out a survey of the local press to analyse rape reports in the media. The results show that between 2005 and 2007, 1,247 girls were reported in newspapers to have been raped and or to have been the victims of incest. Of these crimes, 198 (16 per cent) were reported to have resulted in pregnancy. The overwhelming majority of the girls pregnant as a result of rape or incest (172 of the 198) were between 10 and 14 years old.¹³

LACK OF PREVENTION OF RAPE AND SEXUAL ABUSE

Nicaragua has a legal framework applicable to sexually based offences. In July 2008, the

new Nicaraguan Criminal Code came into force. Chapter II of the Code contains articles which criminalise sexually based offences, including rape, aggravated rape, sexual abuse, incest, and sexual harassment, amongst other acts, and details the penalties relevant and specific to each crime.¹⁴ The age for statutory rape in Nicaragua is 14 years old.

The Nicaraguan government has not developed or introduced appropriate social and educational measures to protect girls from rape and sexual abuse, including by relatives. In relation to the prevention of sexual abuse, many of those interviewed by Amnesty International lamented the absence of a programme designed to educate children, particularly girl children, about their rights to physical and psychological autonomy and integrity and to freedom from violence.

Only one of the survivors interviewed by Amnesty International had received information on what constituted abuse, and what to do if something was happening to them. In June 2009, Julie, aged 13, finally decided to tell her mother about the sexual abuse and rape she had been subjected to repeatedly by her father. Julie was motivated to do so after a teacher at school gave the class a lesson on what abuse was and what to do if they were suffering such abuse. As Julie's mother Alondra explained : *"What brought me here (to the centre) was that my daughter Julie told me that her dad had abused her, she told me that when she was in school the teacher had said that sometimes step-fathers, uncles, cousins, and even neighbours abuse children. And so she came back from school nervous and crying. I asked her "What's going on? What has happened?" She did not want to tell me. I gave her a glass of water and after she drank it she said..."listen, when you were in the hospital dad touched me". I said "he touched you? He only touched you?" Julie replied: "No, he did that thing to me...that thing..... he touched me everywhere when you were in the hospital"...."Ayy! [I said] Its' your dad how is it possible?" In fact Julie only spoke about it to me because the teacher had talked about it. The teacher said if you are touched by your step-father, uncle, cousin etc....the teacher did not mention dads, though. Julie still feels very upset that the teacher did not mention dads."*

Unfortunately, Julie's teacher is the exception rather than the rule in explaining to children what constitutes a crime, and what action to take if something happens to them. The development of a nationwide education and awareness-raising programme for children on their rights, on what constitutes a crime and what steps they can take if they experience violence is desperately needed. The Nicaraguan state has the obligation to break the silence that surrounds sexual abuse and challenge the culture of blaming the survivor. Although awareness-raising lessons are carried out in some schools, more needs to be done to ensure nationwide programmes of awareness-raising and capacity building for all children in all schools, both in the public and private sector. The two main objectives should be to ensure that children are aware of their human right to physical and mental integrity, what conduct against them would constitute a crime and where to go to report any incident of violence, abuse or harassment. The gender specific aspects of sexual abuse should be addressed for both boys and girls, explaining, for example, that boys do also experience sexual abuse, not only girls. Further, information should be specifically directed at girls to empower them as rights holders - not only as children, but as girls. At the same time, appropriate measures must be taken by the state to ensure that those who are mandated to receive reports of violence or abuse have the necessary training and capacity to respond adequately to any potential rise in abuse reports.

Many children suffer physical punishment in the home and the school. Corporal punishment is not a crime in Nicaragua, and some survivors spoke to Amnesty International researchers of how reluctant they were to tell their parents of the sexual violence and abuse they experienced, fearing that – rather than being helped - they would be physically or otherwise punished for raising a taboo subject.¹⁵ Survivors repeatedly told Amnesty International researchers that they wanted more information to be provided to children on what abuse was, and what to do if they were abused. As one director of a centre providing psycho-social and legal support to survivors of rape in Granada told Amnesty International, *“Attitudes and lack of sensitisation to the issue are the problem. In Nicaraguan society sexual abuse and violence in the home towards women and girls is seen as an entirely private issue. Here the rights of children and victims have been badly abused.”*

Sexual and reproductive health education is another area which requires urgent measures to be taken by the state.

NEGATIVE SOCIETAL ATTITUDES TOWARDS SURVIVORS OF ABUSE

Survivors of rape and sexual abuse are subjected to stereotyping negative attitudes which risk aggravating the psychological harm they experience. Nearly all the girls and experts interviewed by Amnesty International spoke of their experience of negative societal attitudes which had caused them serious harm and impeded their recovery.

A general lack of understanding of what constitutes a criminal act in relation to sexual abuse is a serious impediment to reducing the incidence of sexual abuse and rape. Connie, who was 14 when she became pregnant after being raped by her father, also suffered rejection, threats and insults from her family. When the pregnancy and rape came to the attention of the authorities, and the police visited the house, Connie's father killed himself by taking poison, begging her forgiveness as he died. Connie explains what happened afterwards:

“All I could do was cry, that was all that kept me going, crying. Everyone around me criticised me, calling me bad names because I had slept with my father, saying that I was shameless and that I had done it to steal him away from my mum. Even my teachers criticised me. In addition to this my aunties grabbed me by the arms and dug their nails in and pushed me about. One of my aunties called me a shameless girl, and said that I had to pay for what I had done. My brothers told me I had left them without a father. Even now they still say this. They chased me from the house and do not speak to me anymore.”

Members of the community and relatives often blame the girl or adolescent survivor, rather than the perpetrator, for the abuse. Particularly in cases where the accused is a person in a position of social power or an important member of the community, blame is often placed with the abused child. As Linda, a 10 year old survivor of sexual abuse, explained: *“People said things to me, and as he was a priest, no one believed me. Instead, they said “Why are you saying these things?” This reaction hurts me even now.”*

Due to a generalised lack of confidence in the efficacy of the legal system, and also because there is a lack of understanding about what constitutes a crime particularly in relation to sexual abuse, families often discourage the survivor from reporting the incident to the police. Without support, the survivor may be unable to cover the financial and emotional costs of seeking justice. As one psychiatrist in Managua described: *“One of the reasons survivors*

give for missing appointments or sessions, is that they don't even have enough money for the journey, sometimes there isn't support from the rest of the family. This is so important. The majority of mothers and children who decide to report crimes to the police do not have the support of the rest of the family. In turn, this often becomes a reason why many of them get discouraged or abandon the process."

Recently the mother of a survivor of rape was blamed by the police for not reporting the abuse earlier. The mother was detained and prosecuted long before the perpetrator was investigated, charged or detained for having committed the crime. On 8 February 2010, the mother was given a 12 year prison sentence after being found guilty of being complicit in a crime, after she reported the repeated rape her daughter had suffered at the hands of her partner. The police charged her with being complicit with the accused, because she had not reported the crime when her daughter first told her, even though she explained to the police that her daughter had pleaded with her at the time to not report the crime, and she had finally gone to the police to report the abuse against her daughter's wishes. The mother spent 4 months in detention before having her sentence quashed. In the meantime, no efforts were made to detain the step-father accused of rape and sexual abuse. During this time the rapist remained at large, potentially both a flight risk and a danger to the victim, while the mother was in prison.¹⁶

Pressure is often placed on the survivor not to report because of the "scandal" reporting would cause, particularly given the taboo status of issues relating to sex. After she was raped by her 46 year old uncle at the age of 17, several people including the local priest, put pressure on Estefany not to file a complaint and to give her baby up for adoption.

"People even offered me money to give up my baby, offered money for me to put him up for adoption. The worst thing that the local priest and my family said to me was that it would be better if I sorted myself out, that it would be better that way because they didn't want a scandal, that it was upsetting my family and that nobody believed me. My whole extended family turned against us."

Against all odds, Estefany did file a complaint against her rapist and took him to court. The court hearings were very traumatic for Estefany, the judge did not stop the accused from insulting her across the courtroom and permitted all his supporters to be present. The case failed to bring about a guilty verdict, which further left Estefany distraught, and reinforced the stigmatisation she suffered subsequently.

REPORTING RAPE, INCLUDING BY FAMILY MEMBERS

Over recent years there has been a commendable increase in the number of Police Stations for Women and Children across Nicaragua, from 23 to 32. However, Amnesty International is concerned at the lack of investment in police stations to ensure they have the appropriate resources to carry out their work in an effective way which respects the dignity of survivors of rape and ensures their protection.

There is rarely a private room where interviews can take place, and this has consequences for victims who seek help. Several girls interviewed said they had felt humiliated reporting their experiences in an open room in front of other people. Several policewomen also commented on how difficult it was for them to interview girls when other victims of crime were being

interviewed at the same time.¹⁷ Several survivors and their relatives told Amnesty International that, on the basis of their experiences, they believe police officers require more training on how to interview survivors of abuse, and that many officers behaved towards them in a way that showed the same negative attitudes that others in the society show towards survivors.

Alejandra, a 12 year old survivor of sexual abuse by her step-father, told Amnesty International delegates of her experience when she went to report the abuse to the police: *"The police told me to stop crying, that there was no reason for me to cry, that what I was saying was not true. I felt very bad when the police said I was lying, because I would never lie about things like this."*

LACK OF PROTECTION OF SURVIVORS DURING INVESTIGATION AND TRIAL

Amnesty International is concerned that police do not fulfil their obligations to protect girls who are at risk of rape or abuse, or survivors of abuse. Amnesty International heard from several survivors that the police waited days or even weeks before arresting the perpetrator. During this time, the girls reported that they were told to return home – the very place where they were subjected to rape and other abuse. Amnesty International is also concerned that during the investigation and trial, girls are not sufficiently protected from the risk of further abuse. Evidence shows that even after a conviction, in the event the perpetrator is released early from detention, no warning or protection is provided to the victim, leaving her at risk of further violence.

Julie, at the age of 13, was sexually abused by her father and then raped by him three times while her mother, Alondra, was in hospital. When Julie, then 14, and her mother reported to the police that Julie had been raped by her father they were told to return to the house and act as though nothing had happened until the police came to arrest him. Julie and Alondra were not informed about when the arrest would take place. As Alondra told Amnesty International *"The police told me that I could not say anything to him. If I did I would be giving him advance warning and giving him the opportunity to get away. I did not say anything to my husband about it."* Julie and her mother had to live with the perpetrator for a further two days before the police detained him at his place of work. Alondra explained how she felt during that time: *"I felt horrible. I did not do it, but I wanted to kill him. It was so awful, because she is his daughter. I think it is so appalling, she is his daughter, he is not just anyone to her. I do not even have the words to explain it."*

Lucía, a 15 year old girl, was abducted on 12 April 2010 by a man known to the family. Finally on 5 July 2010, Lucía was recovered by the police and returned to the home she shared with her guardian. Despite the police having all the details necessary to investigate the man, who is known to the family, the investigation has been slow. The man accused of rape and abduction was spotted by her guardian driving slowly past their house at least 13 times since Lucía has returned to the house. When Lucía's guardian shared her concerns about her safety with the police, one of the officers commented that *"if he [the accused] had wanted to kill Lucía, he would have already done it."* Lucía's guardian has seen the accused pass the house slowly 13 times since the girl was rescued, and despite asking for police protection, no action has been taken to ensure their safety. Both Lucía and her guardian are frightened that the rapist will attempt to harm her again, as they have not been provided with any protection and he has as yet not been taken into police detention pending the

investigation. The physical and psychological health of Lucía has been seriously affected by the rape and the continued lack of security. The threat of a further attack is undermining her recovery and reintegration.

State failure to ensure that survivors of rape are protected has had serious consequences. For example, in August 2009, a 13-year-old Nicaraguan girl was stabbed to death with a bayonet by her stepfather, who had been released from prison three days earlier. He had been sentenced to 13 years' imprisonment for the aggravated rape which had resulted in the girl's pregnancy. The young girl had lived with her mother and the baby she had borne as a consequence of the rape. Her stepfather was released after serving just eight months, on grounds of ill health. But no notice of his release was given to the girl or her family in advance, nor were any protection measures put in place. In the wake of the murder, there was reportedly no investigation into the court's decision to release him.

LACK OF RESOURCES AND NON-FULFILMENT OF DUTY BY POLICE OFFICERS

Amnesty International is concerned that the police do not count with the resources and facilities necessary to carry out their work or treat survivors with dignity and respect. A lack of resources such as fuel and vehicles seriously impedes the ability of police to provide protection or investigate reports of rape or sexual abuse of young girls and women. Amnesty International interviewed policewomen, survivors, relatives of survivors and those working with survivors, all of whom lamented the inadequate budgetary provision to the police for fuel costs. Whilst on some occasions policewomen will use their own money to cover the costs of fuel, sometimes lack of resources is used by police to justify taking no action, even when a girl is in danger of rape or sexual abuse.

On 12 April 2010, a 15 year old girl, Lucía,¹⁸ was kidnapped by a man who was known to her family. The girl's guardian reported her as missing and told the police that a witness had seen her getting into the vehicle owned by the man.

Lucía's guardian told the police officers of her suspicions that it was the neighbour who had taken the girl and shared details such as the man's name, vehicle make and registration plate, as well as his address. As Lucía's guardian told Amnesty International *"I also asked them to visit the place where I thought the man might be holding her, but in the end the police did nothing, stating that they did not have a vehicle available, or fuel, to be able to do anything."* Lucía's guardian offered to give the police officers the fuel they needed, despite this offer they still refused to act to protect the child.

During this time the man who had abducted the girl allegedly raped her and then kept her in the house of a relative of his as a domestic worker. He told her that if she tried to contact anyone he would kill her father. On Sunday 4 July 2010, Lucía's guardian received a call from a person who knew her, and said they had spotted the girl in a house nearby. The same day Lucía's guardian immediately contacted the police and informed them of the address. The police said they could not do anything at that time because, once again, they did not have any fuel or sufficient staff. Lucía was finally recovered from the house by the police officers on the afternoon of 5 July 2010.

The issue of lack of transport and insufficient funds allocated for fuel particularly affects police operating in rural areas although, as can be seen from the experience of 15 year old

Lucía and her guardian, it is also a problem which even affects Managua-based police, and places girls across Nicaragua in danger of further violence. In the autonomous regions of Nicaragua, such as the South Atlantic Autonomous Region (RAAS), policewomen have to cover huge distances and overcome challenging terrain to reach girls in need. In the RAAS, the lack of proper resources for transport for the Police Stations for Women and Children poses a serious obstacle to the protection of survivors of rape and abuse. As a police officer explained, in Bluefields and the RAAS, some hamlets are eight hours away by boat or car. *“The problem is getting there. When the destination is to the west it’s easier, because you can just catch a bus and go, or hire a truck or a car, but here it costs a lot in fuel to reach the municipalities, we are talking about 150 gallons to get to La Cruz de Rio Grande, it’s four hours away, or five, depending on how the lake is.”*

The lack of fuel and transport means that survivors who file a complaint with the police often have to find and pay for their own transport from the police station to the Forensic Institute for assessment, and any subsequent appointments to seek medical treatment or receive psycho-social legal support. Without the assessment by the Forensic Institute the case will not proceed to the courts. The cost of the trip to the Forensic Institute alone can be prohibitive for those with low economic resources and particularly for girls from rural areas, and where the financial and time cost of travelling to attend appointments with attorneys or to attend court hearings is particularly burdensome.¹⁹ On some occasions, policewomen told Amnesty International, they pay out of their own pocket to cover the fuel costs to enable the case to proceed.²⁰ It is therefore left to survivors, the non-governmental organizations such as the members of the Alliance of Women’s Centres (Alianza de Centros de Mujeres) and occasionally the police officers themselves to find the finances to facilitate attendance at the appointments necessary for the case to progress in the courts. As a result, many survivors’ access to justice and care is obstructed.

SHELTERS

In the whole of Nicaragua, there are ten shelters for survivors of domestic abuse and rape (also known as refuge houses). Of these ten shelters, seven receive adult survivors of violence and three are dedicated to children. All the shelters are run by non-governmental organizations. The Nicaraguan government does not currently provide any financial or other support to the NGOs running shelters for survivors of rape and sexual abuse and the NGOs cover all the costs for care and are dependent on international donors. The shelters work at a local level with the Ministry of the Family (MIFAMILIA) and the Women’s and Children’s Police Stations to provide shelter to women and girls.

At a local level, cooperation between the NGOs and government officials on specific cases appears to function well, with many of the Women and Children’s Police officers and MIFAMILIA staff referring girls to support centres to receive psycho-social and legal assistance or shelter delivered by NGOs.

The provision of shelter, psycho-social and legal support to survivors is essential for protection and rehabilitation. Lack of such support increases the risk that criminal prosecutions of perpetrators and rehabilitation of survivors are unsuccessful.

Given the lack of shelters, some policewomen and NGOs providing support to survivors of rape told Amnesty International that they often end up taking survivors into their own homes

in order to enable them to attend hospital appointments, court hearings or even just to ensure they are protected from further abuse and do not have to return to the home where the abuse took place. The distances the survivors have to travel to access support services and court hearings mean that an overnight stay at least, and often longer, is required.

The Nicaraguan state has obligations under the CRC to ensure survivors are provided protection when they are at risk. The authorities must also make sure children, not least given their additional dependency on others to provide guidance and facilitate their attendance at hearings, can access an effective remedy. The state must develop a system which responds systematically to the needs of victims in each case as they arise. Children and relatives of children, who have suffered violations as a consequence of state inaction or failures, should have recourse to an effective remedy to redress and obtain reparation for the harm they have suffered.

REPEATED CANCELLATION OF HEARINGS

Amnesty International is concerned that survivors of rape and sexual abuse do not have access to an effective remedy. According to testimony of survivors, psychiatrists and lawyers, victims frequently abandon the case pre and during the trial as they find the process financially prohibitive or too traumatic.

Several lawyers representing survivors told Amnesty International delegates that court hearings are often cancelled at the last minute. Each time this happens, the family incurs costs of travel and taking the day off work to be able to attend. There are not only financial costs placed on the family when a hearing is cancelled, but there are also the emotional costs of preparing to attend a hearing, with the prospect of seeing the attacker in court, only to have the hearing cancelled. As one lawyer working at a women and children's centre in Managua described to Amnesty International, during an interview with a survivor and former client:

"The re-programming of the trial of her rapist happened five times, as it was with a jury. The jury did not arrive. Then there was a problem with the formation of the jury. We arrived at court five times and finally on the fifth occasion the jury was formed and the hearing took place. This process is another total re-victimisation for the family who enter the justice system."

Several of the lawyers interviewed by Amnesty International were concerned that constant delaying and re-scheduling of hearings was a tactic employed by the defence to force the judge to drop charges. Rules established in good faith to protect the accused from excessive pre-trial detention stipulate a maximum three month period in which the trial should take place. If the three month limit is exceeded, it is deemed a mis-trial and the accused is freed.

As one mother explained to Amnesty International *"The authorities detained him for three months so that the trial could start, but always just as the hearing was about to start it would be cancelled because they did not have a jury member, and without a jury they could not proceed. After almost six or seven hearings finally it took place. And I said to myself "Oh God, please let the case finish properly and not end with him being freed" because they said if this trial didn't reach its end, he could walk free because they have gone over the three months, and then they would be violating his rights."*²¹

SENSITISATION OF JUSTICE OFFICIALS

In 2003 a manual was published for police, prosecutors, medical forensic experts and judicial officials titled “Protocol of conduct in Crimes of Domestic Violence and Sexual Assaults – a Guide for Police, Prosecutors, Forensic experts and Judicial officials.”(Protocol for justice officials)²² The manual provides information and guidance to justice officials on the special needs of survivors of rape and domestic violence, and the procedures justice officials should adhere to when dealing with cases of this kind. Many lawyers and psychiatrists working with survivors are concerned that not enough has been done to ensure the standards of care contained in the manual are put into action by state officials who come into contact with survivors. This lack of sensitisation leads to re-victimisation of the survivor and her family, and can cause failures in procedure which allow the perpetrator to escape punishment.

Prosecutors and justice officials must implement and adhere to the Protocol for justice officials. Where judges, prosecutors and lawyers do not behave with utmost respect for rules and guidelines established to protect survivors, or if they are found to be abusing rules established in good faith to the detriment of the survivor, to further the interests of their clients, they must be disciplined.

For many, the trial is a very traumatic time for both the survivor and her family. As Estefany told Amnesty International:

“Many times I wanted to kill myself. The trial was like a ten month nightmare. I had to see him again and again, and to see him meant going through it all again...I felt like I was dying, but slowly, slowly, slowly.”

A lawyer at the Centre supporting Estefany in Granada told Amnesty International delegates of the very negative societal attitudes expressed towards victims in cases where the justice system fails to deliver a guilty verdict in rape cases. *“People think “if they let him go you must be the guilty one”. The people associate guilt with the outcome. He did not plead guilty and he got let off. The environment here is one in which society and family blame the victim.”*

During the trial the judge and other court officials behaved disrespectfully towards Estefany. The 46 year old man who raped her was a powerful local criminal in Granada, as well as being married to her teenage cousin, and he was permitted to bring many of his supporters and extended family to the hearing. Estefany’s case failed to secure a prosecution. As she told Amnesty International delegates *“When the case failed, I became hysterical. My mother was also in a bad way, she knew I was not the guilty one.”*

For economic reasons, Estefany’s brothers and father still maintain some contact with the man who raped her, who is an influential member of the family. This is a situation which causes Estefany to be very distressed. Her brother in particular behaves very resentfully towards her, and has even been violent towards her since the case failed. As Estefany explains:

“We are divided in my family, us women and the brother and the dad. It is difficult to take all this in. One of my brothers has hurt me, well, actually both of them, physically, verbally and

morally. I had to leave the house because my brother beat me, he almost split my head open. They are both sexist and I am the only young woman in the house and they know what happened to me, they think they can do what they want with me. Because I stand up for myself and don't just do and say what they want me to, I left. I am thinking about leaving again now as my brother went to his [the rapist's] house asking him for financial support for education and his other costs. They blame me for everything that happened and I am going to carry this problem like a crucifix."

ARTICLE 24: VIOLATION OF THE RIGHT TO HEALTH

Article 24 creates an obligation of the state to ensure the highest attainable standard of health for children. This includes two components. First, the state must ensure the conditions that empower children to be healthy, for example ensuring that girls have access to education, including education on sexual and reproductive health and rights. Second, the state must ensure that children have access to acceptable, appropriate, affordable and high quality health care on a non discriminatory basis. In this section we focus primarily on access to health care, but want to note that realization of the right to health requires the state to engage both elements.

Pregnant women under the age of 20 have a higher risk of obstetric complications than women between the ages of 20 and 35, according to the Nicaraguan Society of Gynaecologists and Obstetrics (SONIGOB) and international medical opinion.²³ Such complications include obstructed labour resulting from cephalo-pelvic disproportion, the medical term for a pelvis that is too narrow to allow passage of the foetus. This condition often occurs in younger girls who have not yet reached physical maturity.²⁴ The higher risk for girls of complications during pregnancy means that they may suffer disproportionately from the negative impact of delays or denial of medically indicated treatment as a result of the complete prohibition of abortion. Studies carried out by the Alan Guttmacher Institute and the United Nations Population Fund indicate that Nicaragua has the highest teenage pregnancy rate in Latin America and the Caribbean, with around a quarter of all births being to girls aged between 15 and 19. In rural areas the rate is even higher with teenagers accounting for a third of all births.²⁵

DISCRIMINATORY LAWS

Prior to 2006, Nicaraguan law permitted exceptions to the general ban on abortion only for those women and girls whose life or health was threatened by the continuation of their pregnancy, and, in some cases, for victims of rape.²⁶

This has now completely changed. The revised penal code, which came into force in July

2008, repealed this exception, with the result that victims of rape and those whose life or health depend on access to abortion are now prohibited from legally obtaining it. The new legislation criminalises all forms of abortion, regardless of the circumstances in which the abortion is sought, obtained or performed.²⁷ The revised law also provides for prison sentences for medical providers who cause unintentional harm to the foetus during the administration of medically indicated treatment to pregnant women and girls.²⁸ The law imposes prison sentences for girls or women who seek to terminate their pregnancy, regardless of the circumstances. The consequences and impact of this law are disproportionately experienced by girls as they constitute the vast majority of rape survivors and this age group also suffers higher risks of complications during pregnancy.²⁹

The revised penal code removes any exceptions to the criminal prohibition on abortion. Article 143 of the revised penal code states:

*Whosoever causes an abortion with the consent of the woman shall be sanctioned with a penalty of one to three years in prison. If the person is a medical professional or health worker, the penalty will simultaneously include being prohibited from working in medicine or as a health worker for two to five years.*³⁰

*The woman who intentionally causes her own abortion or agrees with someone else to provide an abortion will face a penalty of one to two years in prison.*³¹

Article 145 of the revised penal code states:

*Whosoever through recklessness causes a woman to abort will be punished by between six months and one year in prison; if the event occurs in the course of practising as a health professional, the additional punishment of a prohibition on holding medical office for between one and four years will also be imposed. In this case, the pregnant woman will not be punished.*³²

As a result, the penal code now provides prison sentences for health care providers who carry out abortion and for women and girls who seek or obtain an abortion. These sanctions apply even in cases where abortion services are provided in response to the risk to a woman's life or health posed by continuation of pregnancy.

The law also added two additional provisions aimed at health care providers. Article 148 of the revised penal code states:

*Whosoever, by whatever method or procedure wounds the unborn or causes an illness which has grave consequences for normal development, or causes a grave and permanent physical or psychological wound to the foetus will be punished by between two to five years in prison and a prohibition on exercising any medical profession or providing services of any type in a clinic or gynaecological practice, public or private, for between two to eight years.*³³

Article 149 of the revised penal code states:

Whosoever through recklessness causes the wounds described in the previous article to the unborn will be punished with between one and two years in prison and a prohibition on

*exercising any medical profession or providing services of any type in a clinic or gynaecological practice, public or private, for between one to five years. The pregnant woman will not be punished under this article.*³⁴

These provisions 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 woman's or the foetus's life or health.

The ban and criminalisation of abortion in Nicaragua specifically target those narrow categories of individuals for whom abortion had been previously available, namely women and girls who have become pregnant as a result of rape or whose life or health are threatened by continuation of their pregnancy. The impact is felt most acutely by these groups of women and girls, as well as by pregnant women and girls in need of medical care that is denied or delayed due to the threat of criminal sanctions against doctors. That only women and girls, and not men or boys, suffer under this law demonstrates the law's discriminatory intent and impact.

WITHHOLDING HEALTH SERVICES FOR WOMEN AND GIRLS CONSTITUTES SEX DISCRIMINATION

Only women and girls – not men and boys – experience pregnancy. Under the revised law, they are denied access to treatment which only they need as women and girls. The total ban therefore constitutes discrimination on the ground of sex.

The cruel and discriminatory impact of the total ban of abortion on girls who are survivors of rape, are discussed in this document under articles 37 and 39 of the CRC.

THE CRIMINALISATION OF ABORTION RESULTS IN DENIAL OR UNACCEPTABLE DELAYS IN THE TREATMENT OF OBSTETRIC COMPLICATIONS

Foetal and maternal life and health can be put at risk by medical conditions experienced by the pregnant girl, whether these conditions are caused by the pregnancy (such as eclampsia or miscarriage) or aggravated by it (such as certain heart conditions or cancer). Foetal and maternal life and health can also be put at risk by obstructed or premature labour. In each situation of medical risk, health professionals aim to preserve or restore both foetal and maternal life and health.

It is widely accepted medical practice to terminate a pregnancy where a girl's life or health is put at risk by continuation of pregnancy. In fact, the current protocols and procedures on best practice issued by Nicaragua's Ministry of Health recommend termination of the pregnancy in cases of severe pre-eclampsia, ectopic pregnancy or other cases where the pregnancy poses a risk to the life or health of the patient.³⁵

Where there has been a stillbirth, a miscarriage or an unsafe abortion, medical care is necessary to address health damage and prevent the girl developing sepsis or haemorrhage which put her health or life at risk. Decisions in these cases must often be taken very rapidly. Delay can mean death or permanent injury, such as infertility.

Some medical interventions during pregnancy or delivery aimed at preserving maternal and foetal life and health can result in unintentional injury or death of the foetus. These include, for instance, malaria or cancer treatment and surgery or expedited delivery.

Nicaraguan doctors and other medical staff told Amnesty International they felt that, as a result of Articles 148 and 149, they had cause to be extremely concerned about treating pregnant girls or women or assisting difficult births. Doctors said they were concerned that fear of criminal prosecution under Articles 148 and 149 had caused otherwise preventable delays in the treatment of pregnant girls or women with obstetric complications, even though doctors know that delays in treatment risk leading to permanent health damage to the patient, such as loss of fertility or permanent disability, or even the loss of her life.

Amnesty International heard numerous accounts of how medical practitioners, in fear of prosecution, had attempted to avoid handling cases of pregnant women and girls who required medical treatment. Such avoidance included sending women and girls to other medical centres, requiring the patients to repeat tests unnecessarily, and delaying medical intervention until it was virtually certain that the patient was going to die if left untreated.

Even in the absence of prosecutions, the doctors interviewed by Amnesty International were unanimous in their anxiety at the possibility of being criminally charged under the law. As one doctor told Amnesty International, *“Doctors’ hands are tied. . . . We are apprehensive even over treating a miscarriage, for example.”*³⁶

As a result, the revised law interferes with and thwarts medical practitioners’ ability to assess, diagnose and treat women and girls suffering from ill-health or obstetric complications during pregnancy. It denies the opportunity for doctors to have a meaningful discussion with the woman or girl about treatment options, or consider her views on the same. It causes delays in urgent decision making concerning life-saving and health-preserving medical treatment.

A woman known in the Nicaraguan press as “Amalia” (not her real name), 27, was ten weeks pregnant when she was diagnosed with cancer on 2 February, 2010. Amalia was told the cancer may have already spread to her brain, lungs and breasts.

Amalia is also the sole carer for her 10-year-old daughter. In December 2009 she sought treatment in a local clinic for breathing problems, fever, nausea and fainting. Her doctors said she required urgent chemotherapy and radiotherapy treatment but did not initiate these because of a fear of unintentional harm to the foetus. The oncologist who first assessed Amalia told her the treatment could not be provided because it was against the law to provide such treatment during pregnancy. Amalia wrote to the President and to the Minister of Health asking for the medical healthcare she required to fight the cancer.

On 18 February 2010, with the help of NGOs, Amalia sought protection measures (medidas cautelares) from the Inter-American Commission on Human Rights (IACHR).³⁷ The IACHR responded by requiring that the Nicaraguan State provide Amalia with the health care and treatment she required for her condition, in accordance with her wishes. The state refused to give Amalia information about or the option of terminating the pregnancy, but Amalia did eventually receive treatment for the cancer.

On 23 July 2010, Amalia went into labour and gave birth prematurely to a stillborn baby. As yet it is unclear what course of treatment Amalia received for the cancer, and whether or not her premature labour and stillborn foetus were the consequence of treatment. It is also

unclear whether Amalia was provided with full information on the possible consequences of each treatment option on her own health and on foetal development.

The Nicaraguan state has on several occasions been asked about the cruel and unjustifiable consequences of the total ban on abortion, both in terms of the denial or delay of treatment to pregnant girls and women during pregnancy, and the denial of safe and legal abortion as an option to victims of rape. The Nicaraguan state has been told that such a ban places Nicaragua in breach of its obligations to protect fundamental human rights including the right to life, the right to health and the right to be free from torture, cruel inhuman or degrading treatment or punishment. The Nicaraguan State has been urged to reform the laws by the Committee against Torture, the Committee on Economic Social and Cultural Rights, the Human Rights Committee, and the Committee for the Elimination of Discrimination against Women, as well as the several state members of the Human Rights Council during the Universal Periodic Review of Nicaragua.³⁸

ARTICLE 37: RIGHT TO BE FREE FROM TORTURE

The criminalisation of abortion compounds physical pain, fear, depression and stigma. In many cases the level of suffering may lead to death or suicide. Amnesty International is concerned that girls in Nicaragua suffer torture and other ill-treatment as a direct consequence of the state's legislative action.

In May 2009, the Committee against Torture concluded its review of Nicaragua by stating in para 16 that it was *“deeply concerned by the general prohibition of abortion set forth in articles 143-145 of the Criminal Code, even in cases of rape, incest or apparently life-threatening pregnancies that in many cases are the direct result of crimes of gender violence. For the woman in question, this situation entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression. The Committee also notes with concern that women who, for the reasons mentioned above, seek an abortion face the risk of being penalized for doing so. The Committee is also concerned that the law authorizing therapeutic abortion in such cases was repealed by Parliament in 2006 and that, since the prohibition was adopted, there have been several documented cases in which the death of a pregnant woman has been associated with the lack of timely medical intervention to save her life, in clear violation of numerous ethical standards of the medical profession. The Committee also notes with concern that medical personnel may be investigated and punished by the State party for carrying out a therapeutic abortion under sections 148 and 149 of the Criminal Code.”*

The Committee against Torture urged Nicaragua to *“review its legislation on abortion, as recommended by the Human Rights Council, the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights*

in their latest concluding observations, and to consider the possibility of providing for exceptions to the general prohibition of abortion for cases of therapeutic abortion and pregnancy resulting from rape or incest. The State party should, in accordance with the guidelines issued by the World Health Organization, guarantee immediate and unconditional treatment for persons seeking emergency medical care. The State party should also avoid penalizing medical professionals for the exercise of their professional responsibilities.”

In 2006 the National Assembly repealed a provision that permitted therapeutic abortions and, in 2008, enacted new provisions that ban abortions in all circumstances.

In so acting, the National Assembly required doctors to ignore the requirements of the obstetric protocols developed by the Ministry of Health for best practice management of complications during pregnancy. The purpose of the obstetric protocols is “to institutionalise best practices, those procedures that have proven to be the safest, most effective, most efficient and least costly and that ensure the reduction of maternal and infant mortality”.³⁹ The protocols mandate termination of pregnancy in particular medical circumstances.

A robust public debate followed the initial proposal to prohibit abortion in all circumstances. The Nicaraguan medical community, women’s rights groups and civil society organizations raised wide-ranging public health and human rights concerns in the media and with those state authorities willing to receive them, relating to the blanket prohibition of abortion.⁴⁰ These constituencies repeatedly highlighted to the government and the legislature the multiple detrimental effects the complete prohibition and criminalisation of abortion would have on pregnant women and girls.

As one example of these efforts, on 20 October 2006, 21 Nicaraguan medical associations from across the spectrum of medical disciplines, including those representing gynaecologists, obstetricians, nurses, psychiatrists, public health experts and cardiologists, issued a joint public statement against the proposed total ban on abortion, with an explicit warning that health professionals’ “ability to provide health care and practice our profession will be limited if this prohibition is passed”.⁴¹ The statement, directed specifically to the legislature, explained that “There are situations in which continuation of pregnancy could result in the death or permanent disability for the woman.”⁴² The associations of doctors and nurses urged the legislature to ensure that the law provide for an exception to the criminalization of abortion, permitting abortion to take place in cases where continuation of pregnancy poses a risk to the life or health of the woman.⁴³

The women’s rights movement and the Coordinadora Civil, an umbrella organization representing the interest of many Nicaraguan civil society organizations and networks working on a wide range of issues, issued statements explicitly outlining the risks to the health and lives of women and girls in Nicaragua.⁴⁴

The representatives of a number of international institutions and states co-signed a letter expressing their grave concern regarding the proposed revision of the penal code’s provisions on abortion to the National Assembly on the same day.⁴⁵ These included the United Nations Children’s Fund (UNICEF), United Nations Development Programme (UNDP), United Nations Population Fund (UNFPA), the Pan-American Health Organisation (PAHO), the World Health Organisation and the diplomatic representatives of Norway, the Netherlands, the European

Commission, Finland, Denmark, Iceland and the United Kingdom. The Inter-American Commission on Human Rights also sent a letter of concern to the Foreign Minister of Nicaragua.⁴⁶

In spite of these efforts to persuade the National Assembly to avoid the harms to women and girls that would result from their action, that body repealed a provision that allowed for the possibility of therapeutic abortion, replacing it with a blanket prohibition on abortion and enacting other punitive measures that deny essential medical services to pregnant women and girls. Accordingly, applying an objective determination of intent, the presumptions that attach to legislative action, and the fact that numerous national and international organizations explicitly and repeatedly called lawmakers' attention to the consequences of the new law, this Committee should conclude that the National Assembly enacted the legislation with the full knowledge of the severe pain and suffering that necessarily follow from the denial of essential medical services to pregnant women and girls.

Amnesty International has serious concerns that the purpose and consequences of the provisions 143,145, 148 and 149 of the revised penal code place Nicaragua in breach of its obligation to ensure the right of girls to freedom from torture and cruel, inhuman or degrading treatment.⁴⁷ The CRC in its advice to states on compliance with Article 37 has noted that, although widely interpreted to apply to issues of juvenile justice, the protections from torture, cruel, inhuman or degrading treatment or punishment contained in Article 37 "are absolute provisions, requiring the State to protection children *wherever they are*."⁴⁸ The complete criminalisation of abortion greatly increases the level of pain and suffering endured by many pregnant girls, including those who are seeking medical care and rape victims who are seeking a therapeutic abortion. Given that young girls and adolescents are highly represented in both reported rape statistics and pregnancy statistics in Nicaragua⁴⁹, and on the basis of extensive interviews with survivors of rape, Amnesty International finds that the impact of the ban on abortion in Nicaragua is most acutely felt by pregnant girls who:

- are survivors of rape and incest
- need treatment for life-threatening illnesses such as cancer
- face complications in pregnancy and are in need of essential medical treatment
- are in need of medical care when a pregnancy ends prematurely, whether the pregnancy ended through a spontaneous miscarriage or an induced abortion

Denial of access to legal and safe abortion services can cause delays in treatment which pose a threat to the health and life of Nicaraguan girls. The criminalisation of abortion compounds the physical pain, fear, depression and stigma those girls experience. In some cases, the level of suffering may be so high as to lead to death or suicide. As Amnesty International and other groups have found elsewhere, criminalisation does not mean that no abortions will take place—some girls will resort to abortion in violation of the law and in unsafe circumstances, risking their health and lives as well as the possibility of severe punishment in the process.

Rosmary lives with her mother, brother, sister and grandmother. When she was 12 years old her uncle came to live with them for a few months. Rosmary's mother had separated from

her father and had to work hard to financially support the family on her own. Rosmery's uncle took advantage of the fact that her mother was away from the house for work and raped Rosmery over a period of several weeks. Rosmery was just 12 years old at this time. Rosmery's mother, Adriana, explained how horrified and sickened she was to find out her daughter had been raped, and that then Rosmery and Adriana could hardly comprehend the additional trauma of the pregnancy. As Adriana explains:

"...for me it was horrifying, that a child should have to give birth to another child...this tormented me very much, I felt a deep pain at the idea that my daughter should have to go through this, that something would come out of her after being raped...and of course the risk to her health at that age. "

Rosmery and her mother Adriana saw no alternative but to seek a clandestine and illegal abortion. Through contacts they managed to get expert assistance, so the abortion Rosmery had, although clandestine, was safe and performed in hygienic conditions. The fear of prosecution still bears heavily on Adriana and those who risked prosecution to assist Rosmery.

Like the girls and women they support, doctors who perform abortions are at risk of punitive measures, including professional, criminal and even religious sanctions.⁵⁰ In specific situations, they have only two choices which are exclusive: either to obey the law or to fulfil their ethical obligation to save life and health and to respect the inherent dignity of their patient by providing her with an abortion.

Indeed, the denial of access to essential medical services alone has severe consequences for pregnant women and girls, regardless of whether criminal penalties are imposed. Nicaraguan women and girls who are affected by the total ban on abortion are often already in a traumatised state, experiencing severe pain, and in fear for their health and lives, even prior to the denial of medically indicated treatment. These women and girls suffer torture and other ill-treatment as a direct result of the state's legislative action.

The mental anguish and physical consequences inherent in forcing, or coercing in any way, any pregnant woman or girl by law and on pain of criminal punishment to carry an unwanted pregnancy to term is aggravated among the women and girls targeted by this law: victims of rape and women and girls whose life or health depend on the termination of their pregnancy.

Some rape victims bring their pregnancy to term by their own choice. Amnesty International's interviews in Nicaragua indicate, however, that for many the pregnancy is a daily reminder of the violence and humiliation they have suffered, with long-lasting physical consequences. This is particularly the case for many girls who receive no financial or psycho-social support from the state to be able to continue in education. A psychiatrist working for an organization supporting victims of rape and abuse told Amnesty International, "*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.*"⁵¹

The World Health Organization's Guidelines for medico-legal care for victims of sexual violence include pregnancy testing, pregnancy prevention and access to safe abortion

services among the range of services to which rape victims should be ensured access.⁵² The importance to rape victims of having a full range of services and options available cannot be underestimated. All the victims of rape interviewed by Amnesty International underlined the importance of victims of rape having all options available to them in order to deal with the consequences of rape and abuse as they personally decide what is best for them, including therapeutic abortion as one of the options. All survivors emphasised the need for the state to be supportive of the survivor, however she decided to manage the consequences of rape.

The CRC has previously instructed states that laws which deny rape and incest victims the option of accessing safe and legal abortion services breach the obligations of the State under the Convention. In the case of Palau, the CRC recommended that “the State Party review its legislation concerning abortion, with a view to guaranteeing the best interests of child victims of rape and incest...”⁵³

Because the revised criminal law denies rape victims the choice of accessing safe abortion services legally, it compels those who would otherwise opt for pregnancy termination to continue the pregnancy against their will, resulting in potentially extended and intense physical and psychological suffering. Faced with these circumstances, some rape victims seek illegal and unsafe abortions, putting their health, liberty and even life at risk. Some attempt suicide. One doctor told Amnesty International that just that week he had seen a mother and her fifteen-year-old daughter. The daughter had been raped by a neighbour and found out she was pregnant as a consequence of the rape. She was distraught and had attempted to kill herself by cutting her wrists.⁵⁴

THE SEVERITY OF SUFFERING IS SUCH THAT DEATH MAY RESULT

The suffering resulting from denial in law of access to abortion services can be so severe that the lives of women and girls are threatened. The new law causes this particularly extreme form of suffering in two principal ways.

First, the new law increases the risk that women and girls will die from preventable causes. The link between unsafe abortion and maternal mortality and morbidity is well established.⁵⁵ Twelve percent of maternal deaths in Latin America are due to complications from unsafe abortions.⁵⁶ This law puts in jeopardy any efforts by the Nicaraguan government to reduce maternal mortality.

*The new law therefore contradicts the guidance given by the Human Rights Committee that, in order to reduce the maternal death rate, states should ensure that women do not have to undergo clandestine abortions.*⁵⁷

Second, the new law limits the options that pregnant women and girls have to such an extent that some may feel driven to commit suicide. Public health research has established a causal link between unwanted pregnancy and suicide of women. The World Health Organisation and UNFPA have found:

In industrialized countries, rates of suicide in pregnancy have declined over the past 50 years, a change attributed to the increased availability of contraception, affordable and accessible services for the termination of pregnancy, and reduction in the stigma associated with births to unmarried women. Summary reviews have found that suicide in pregnancy is not common; however, when it happens, it is primarily associated with unwanted pregnancy

or entrapment in situations of sexual or physical abuse or poverty. 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.⁵⁸

The CRC has repeatedly called on states to take measures to prevent suicide. In its General Comment No. 4 (2003), Adolescent health and development in the context of the Convention on the Rights of the Child, the Committee expresses that it “is also very concerned by the significant occurrence of suicide among this age group. Mental disorders and psychosocial illness are relatively common among adolescents. In many countries symptoms as depression, eating disorders and self-destructive behaviours, sometimes leading to self-inflicted injuries and suicide, are increasing. They may be related to, inter alia, violence, ill-treatment, abuse and neglect, including sexual abuse, and unrealistic high expectations and/or bullying or hazing in and outside school. The States parties should provide these adolescents with all the necessary services.”

In Nicaragua, an analysis by the Ministry of Health of the maternal mortality figures for 2007 and 2008 found that the principal causes of adolescent maternal mortality were the consumption of poison and pre-eclampsia.⁵⁹

Preventable maternal death and suicide are extreme forms of suffering caused by the new law. In addition, Amnesty International's research in Nicaragua indicates other severe pain and suffering, both physical and mental, that women and girls may be forced to endure as a result of the total ban.

ARTICLE 39: RECOVERY, REINTEGRATION, REPARATION

“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. I ask myself, why did these things happen to me?” **Estefany, then aged 18, talking about her rape and subsequent pregnancy, Managua, 2008.**

Any person who has suffered a violation of their human rights is entitled to a remedy under international human rights law. Rashida Manjoo, the United Nations Special Rapporteur on violence against women, its causes and consequences, has identified the many gender-specific challenges and difficulties that women and girls face in seeking reparation for violence. For example, in her report issued in April 2010, Rashida Manjoo comments in paragraph 50 that *“Since women and girls who are subjected to gender violence, including sexual violence and forced unions, are often re-victimized in their families and communities, restitution of identity, family life and citizenship for them may require measures that target their wider communities – including attempts to subvert cultural understandings around the value of women’s purity and sexuality. Although some of the intangible assets that are often taken from victims of sexual violence, such as virginity or social standing, cannot be returned, all the tangible assets of which victims of sexual violence are commonly stripped should be borne in mind. Communal and family ostracism, abandonment by spouses and partners and becoming unmarriageable or sick are all too commonly synonyms of material destitution, and the costs of ongoing medical treatment, pregnancy, abortions and raising children from rape, are all too real to deny. To date, no reparations programme has succeeded in fully reflecting the economic impact of raising children born of rape.”*⁶⁰

It is also important to take into account the precedent set by the Inter-American Court of

Human Rights in its decision on the case *Cotton Field v. Mexico*, which related to two young girls and one woman who were abducted, raped and killed. The relatives of the murdered girls and woman took the case against Mexico arguing that the State failed to diligently investigate, prosecute and punish the perpetrators and to treat the relatives of the deceased in a dignified way. The Special Rapporteur comments in paragraph 77 on the implications of the landmark decision in her report “*The Court found that the State of Mexico violated the rights to life, freedom, personal integrity, access to justice and legal remedies and the right not to be discriminated against on the grounds of sex under the American Convention. It also considered that Mexico had infringed its obligations by failing to apply due diligence to prevent, investigate and impose penalties for violence against women or its duty to provide adequate responses in the legal system to punish and eradicate violence against women, thereby infringing the Inter- American Convention on the Prevention, Punishment, and Eradication of Violence against Women.*”⁶¹

As Rashida Manjoo observes in the same paragraph “*This decision is seminal in that it is the first time that the Court has embraced the concept of gender-sensitive reparations with a transformative aspiration.*”⁶²

Rape victims and survivors of abuse are entitled under article 39 of the CRC to “*physical and psychological recovery and social reintegration*” and that “*such recovery and integration shall take place in an environment which fosters the health, self-respect and dignity of the child.*” In order for the state to comply with the requirements of Article 39, the best interests of the child must be prioritised, as must the maximum survival and development of the child.⁶³

Amnesty International is concerned that the Nicaraguan state does not provide survivors of rape information about all the options available to them and does not fulfil its obligation to support them in how they wish to manage the consequences of rape.

DENIAL OF ACCESS TO SAFE AND LEGAL ABORTION SERVICES

Where girls have been subjected not just to rape or sexual abuse (crimes in Nicaraguan law), but also suffered from consequences such as pregnancy and denial of abortion, their need for specific forms of remedy and reparation is complex.

The Beijing Platform of Action of the Fourth World Conference on Women recognised that “[t]he human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”⁶⁴ Rape is the ultimate denial of this right. In specific circumstances it constitutes a form of torture and other cruel, inhuman or degrading treatment.⁶⁵

Article 14 of the Convention against Torture requires states to provide “*the means of as full rehabilitation as possible.*” To ensure a gender-inclusive approach to torture, the UN Special Rapporteur on Torture has underlined “*the need to perceive it [torture] as a process*”, explaining that mental trauma and stigma attached to sexual violence and its impact are continuous in nature.⁶⁶ The means of the fullest possible rehabilitation for the rape victim need to respond to the continuous impact of the initial violation and its sequelae, including pregnancy which the concerned woman or girl may or may not want to bring to term.

The World Health Organisation's Guidelines for the Medico-Legal Care for Victims of Sexual Violence identify sexual violence as a "*violent, aggressive and hostile act used as a means to degrade, dominate, humiliate, terrorize and control women.*"⁶⁷ The guidelines advise: "*Victims of sexual assault require comprehensive, gender sensitive health services in order to cope with the physical and mental health consequences of their experience and to aid their recovery from an extremely distressing and traumatic event.*"⁶⁸ Any woman or girl who has become pregnant as a result of sexual violence, including incest, must, the WHO Guidelines conclude, have the option of accessing safe and legal abortion services as part of a range of support services, including treatment and follow-up care for physical injuries, pregnancy prevention and management, sexually transmitted infections and counselling and social support.⁶⁹

Other authoritative bodies with mandates relating to human rights have commented on the need for safe abortion services to be available as an option to survivors of rape. The European Union has stated that safe and legal abortion services should be made available to women and girls in States party to the European Convention on Human Rights. The Council of Europe Parliamentary Assembly urged member States to "recognise the inalienable right of women who have been raped to undergo voluntary termination of pregnancy if they wish, *this right arising automatically from the rape*".⁷⁰

Similarly, in its decision to end the criminalisation of abortion in certain circumstances including for survivors of rape, the Constitutional Court of Colombia also commented on the entitlement of rape victims to have the option to have a safe and legal abortion if they decide that they do not want to continue with the pregnancy:

"It is hard to imagine a more serious violation and a conduct more blatantly against social harmony among equals. A woman who becomes pregnant as a result of rape cannot be legally required to act as a heroine and take on the burden that continuing with the pregnancy entails. Nor can her fundamental human rights be disregarded as would be the case if she were required to carry the pregnancy to term against her will, turning her into a mere instrument of procreation."

Further, the Court stated, "[S]he cannot be obligated to procreate nor be subjected to criminal sanctions for exercising her constitutional rights while trying to lessen the consequences of the crime of which she was victim."⁷¹

Obstacles frustrating access to safe abortion services in accordance with the law and lack of access to effective remedy were the focus for the European Court of Human Rights in the case of *Tysi c v Poland*. In this case, the European Court of Human Rights considered that Poland provided no effective mechanism to ensure the availability or legality of therapeutic abortion either in a consultation process between the woman and her doctors or between doctors themselves. The Court recognised that Alicja Tysi c had suffered severe distress and anguish and her right to privacy, enshrined in article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention), had been violated, in particular due to the lack of procedural fairness. Retroactive civil and criminal remedies were not considered sufficient.

In the case of Nicaragua, there is now no remedy for denial of access to safe abortion

services at all, as there is no mechanism for accessing a legal abortion and abortion is a crime in all circumstances. A Nicaraguan girl pregnant as a result of rape confronts both the threat of and employment of violence by the perpetrator to force her to submit to his will and the State's threat of imprisonment to her and anyone who helps her, if she does not continue with the pregnancy. Nicaraguan NGOs have filed a challenge to the constitutionality of the law prohibiting all forms of abortion. The Supreme Court stated that it would set down judgement on the legality of the law by 6 May 2009. The court is now over a year late in issuing its resolution, despite fundamental rights of women and girls being at stake.

LACK OF SUPPORT FOR GIRLS TO CONTINUE WITH THEIR LIFE PLAN

Many girls who survive rape face rejection by family and are forced to depend on charity from non-governmental organizations or neighbours. Connie, who was 14 when she became pregnant after being raped by her father, also suffered rejection, threats and insults from her family. When the pregnancy and rape came to the attention of the authorities, and the police visited the house, Connie's father killed himself by taking poison, begging her forgiveness as he died.

"During the pregnancy I had very high blood pressure, and I had my daughter at six and a half months; at first I did not want her, I didn't want her, some people came to see me in the hospital to see if I wanted to give her up for adoption but then, when I arrived home, I didn't want to, I kept her and I made sure that not even a fly landed on her. A month passed and she looked better. I went to my father's house – well I had to, as I didn't have anything, no clothes, nothing. My family had burned everything, my clothes, my bed...I asked them for money for milk and they said no. I tried to work out what to do, as they didn't give me even one peso, so I had no clothes for the baby, none for me, no bed, nothing. The neighbours gave me a cot and a mattress, and another gave me something to carry the things for the baby. I asked my aunt for my money [inheritance] and she said no because I was a bitch and I'd killed her brother, that I didn't deserve anything he'd left. She nearly hit me."

The lack of financial support for rape victims towards payment of travel costs to attend court hearings and get from the police station to the Forensic Institute or hospital for assessment after reporting rape, is also an obstacle to survivors travelling to receive the rehabilitation (psycho-social-medical and legal) support they need. As a psychiatrist with many years experience working with child survivors of rape and sexual abuse explained to Amnesty International researchers: *"One of the reasons survivors frequently give for abandoning counselling sessions and appointments, is because they do not have money to cover the cost of the journey."*

Survivors must be able to count on the support of the government, however they choose to manage the consequences of a devastating criminal act such as rape. Currently, survivors' experience is one of isolation and having to survive by themselves or depending on charity.

As Estefany described to Amnesty International delegates in October 2008, just months after giving birth at the age of 17 to a son, after being raped by her teenage cousin's 46 year old husband *"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. I ask myself, why did these things happen to me?"* In April 2010, two years on since the first interview, Amnesty International interviewed Estefany

once again to see if she had returned to her studies or received support from the state to move forward. Estefany explained that, "*The only women in the house were my mum and me. I try to give the impression that I am strong, because I don't want people to carry on pressuring me, not my family, not anyone. I've been sitting at home, without work, without studying. The only institution which has supported me has been an NGO.*"⁷²

7. RECOMMENDATIONS

Rape and sexual abuse in Nicaragua is endemic. Serious concerns exist over the Nicaraguan State's compliance with Articles 2.1, 4, 19, 24, 37 and 39 of the CRC. Amnesty International urges the state to take the following steps to ensure the rights of girls are protected:

Regarding violations of Nicaraguan girls' right to non-discrimination:

The state must ensure all laws and policies respect the right of girls not to suffer discrimination on the basis of sex or age. Any laws and policies which violate these rights must be repealed and reformed.

Regarding the lack of a current, integrated plan to address rape and sexual abuse:

Amnesty International urges the state to address rape and sexual abuse of children in Nicaragua, including the development, consultation and implementation of an integrated plan with the objective of:

- a) preventing rape and sexual abuse, including by family members, of children, particularly girl children;
- b) protecting survivors of abuse and bringing perpetrators to justice and;
- c) ensuring full reparation for girls who have been targeted for rape and sexual violence, including the provision of services which foster the health, self-respect and dignity of survivors and ensure their physical and psychological recovery and social reintegration.
- d) The authorities must listen to the voices and experiences of survivors and consult widely with key stakeholders including NGOs working with survivors when developing such a plan and coordinating its implementation.

Regarding the lack of disaggregated statistics:

The government must produce disaggregated statistics and information on the cases of rape which come to the attention of the authorities, from the reporting stage to the judgement being set down, and further relating to the recovery, reintegration and reparation of rape survivors.

Regarding the situation of stigma and lack of awareness of rights:

The Nicaraguan authorities should develop and deliver a nationwide programme of education promoting physical autonomy and personal integrity as a component of the curriculum in all schools. The programme should empower all girls, boys and adolescents with a sense of physical autonomy and respect for the physical autonomy of others. The programme must clearly explain to children and adolescents what constitutes physical, psychological and

sexual abuse and how to seek help if they experience abuse or know someone who is suffering abuse. The programme must be made accessible in all languages and in all localities, including rural.

Regarding the negative societal attitudes towards rape and incest victims:

The Nicaraguan government must ensure that children, their families and members of the community are educated about the criminal nature of specific kinds of conduct and the severity of the crimes, and highlight the impact such crimes have, in particular on girls.

Regarding government failures to observe due diligence in relation to rape and sexual abuse:

The Nicaraguan government must fulfil its obligation to address as a matter of urgency the crimes of sexual violence – including by non-state actors - against girls. The state must take the appropriate measures to prevent, investigate and impose penalties for violence against girls and fulfil its duty to provide adequate responses in the legal system to punish and eradicate violence against girls.

Regarding the total ban on abortion violates girls' rights, and places Nicaragua in breach of articles 2.1, 24, 37 and 39 of the CRC:

The Nicaraguan authorities must repeal Articles 143, 145, 148 and 149 of the Penal Code. It must reform the Penal code to ensure that women and girls are not subject to criminal sanctions for seeking or obtaining an abortion under any circumstances. It must also ensure that medical health practitioners are not criminalised solely for providing abortion services that are safe. Further, the Nicaraguan government must take all corrective measures necessary to 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 the continuation of pregnancy would put the health or life of the woman or girl at risk.

Regarding the state failure to provide comprehensive support to survivors of rape:

The Nicaraguan government must fully support children who survive rape and provide them with comprehensive counselling, medical care and psycho-social legal support. This support must be gender sensitive and girls must be fully supported to make free and informed choices on how to manage the consequences of rape, including in relation to continuation or termination of pregnancy.

Girls who decide to continue with the pregnancy must receive the information and support necessary to continue pursuing their life plan with dignity, including continuing with their education or work, in accordance with their wishes. Equally, girls who do not wish to continue with the pregnancy must have access to safe and legal abortion services, and must be able to count on the support necessary to continue their life plans with dignity.

Regarding girls not having access to effective remedy:

Steps must be taken to ensure girls who have suffered rape and sexual abuse have access to justice including an effective remedy. This must include support in covering the costs of seeking justice and reparation. Particularly girls from rural areas and those travelling long distances must be supported in order to participate in court hearings and meetings with justice officials. The state must ensure provision of shelter, psycho-social and legal support to survivors in order to provide protection and rehabilitation.

Regarding re-victimisation of survivors by police and justice officials:

The government must ensure the implementation of the Protocols for justice officials in order to prevent re-victimisation of survivors by police, prosecutors and judges. The Nicaraguan authorities must develop and implement programmes to ensure survivors of rape, including by family members, are treated in a way which does not re-victimise them, but rather that treats them with respect, dignity and professionalism. Particular attention should be paid to the police, prosecutors, justice officials and also the Forensic Institutes and clinics, including measures to monitor compliance.

Regarding lack of protection for survivors of rape and girls at risk:

The Nicaraguan state must ensure that girls who survive rape are protected from any threat of further abuse, and that their dignity, physical and psychological integrity, and right to life and well-being are prioritised. Particularly during the investigation and trial, the authorities must ensure strategies for protection of the survivors who are at risk, are developed and implemented.

Regarding state laws which permit corporal punishment:

The Nicaraguan authorities must amend the law which permits corporal punishment, to outlaw violent acts against children, wherever they may occur.

Regarding the Nicaraguan state failure to comply with previous treaty body recommendations:

The Nicaraguan authorities must comply with previous treaty body recommendations, including the recommendation of the UN Committee against Torture which is the fourth UN treaty body to demand that the Nicaraguan government repeal the complete ban on abortion in all circumstances because this ban violates the rights of women and girls. The UN Human Rights Committee, the UN Committee on Economic, Social and Cultural Rights and the UN Committee on the Elimination of All forms of Discrimination Against Women have already highlighted to the Government of Nicaragua that this law breaches Nicaragua's international legal obligations and places the lives and health of women and girls in jeopardy.

¹ 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 unwanted 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.

2 "Maternal House" temporary shelter for girls and women with high risk pregnancies to spend their final weeks until the birth with trained professional assistance on hand.

3 Ministry of Health, Análisis Comparativo de Situación de Mortalidad Semanas Epidemiológicas 1 a la 53, Años:2007-2008.

4 Bolivia, IRCO, Add. 1, para.14

5 See Report on the eight session, January 1995, CRC/C/38

6 See article published in El Nuevo Diario "Prevén eliminar Conapina: No hay interés del presidente Daniel Ortega para asumir el Consejo Nacional de Protección Integral a la Niñez y la Adolescencia" 2 August 2007

7 Nicaragua: Defending women's right to life and health: Women human rights defenders in Nicaragua (AI Index: AMR 43/001/2008), 9 October 2008: <http://www.amnesty.org/en/library/info/AMR43/001/2008/en>

8 Therapeutic abortion" is the term broadly used to describe abortion services for women and girls whose pregnancies put their lives or health in danger, or whose pregnancies are a result of rape.

9 Ann Olsson, Mary Ellsberg, Staffan Berglund, Andrés Herrera, Elmer Zelaya, Rodolfo Peña, Felix Zelaya and Lars-Åke Persson "Sexual abuse during childhood and adolescence among Nicaraguan men and women: a population-based anonymous survey", Child Abuse and Neglect Volume 24, Issue 12, December 2000, Pages 1579-1589. See also Anuario Estadístico de la Policía Nacional 2006, 2.10 Características de las Mujeres Víctimas de la Delincuencia a Nivel Nacional por Tipología en año 2006, page 53, which records that of the 1462 rapes reported that year some 1004 of the survivors were under the age of 18, the majority – 691 – were under the age of 14.

10 See Corte Suprema de Justicia Instituto de Medicina Legal, Subdirección de Vigilancia y Epidemiología Forense, Boletín Estadístico Mensual Numero 12 Diciembre 2008 and also Policía Nacional – Comisaría de la Mujer, Características de las Mujeres víctimas de Delincuencia a Nivel Nacional, 1 Semestre de 2008, which records that of the 945 victims of rape reported in the first semester of 2008, some 626 were below the age of 17 years old. Both documents held in Amnesty International records.

11 See page 67 of the Nicaraguan National Police Annual of Statistics for 2008

12 UN Committee on the Elimination of Discrimination against Women, General Recommendation No.12, para4, calls on states to include in their periodic reports "[s]tatistical data on the incidence of violence of all kinds against women and on women who are victims of violence." General Recommendation No.19, Article 2 (c) recommends that state parties "encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence." Available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#top>, last visited 23 March 2009.

13 Católicas por el Derecho a Decidir, "Medios de Comunicación y abuso sexual", 18 April, 2008.

14 Law No. 164, Penal Code of the Republic of Nicaragua, arts. 167 - 183(See http://www.poderjudicial.gob.ni/arc-pdf/CP_641.pdf for the full reformed penal code as of July 2008)

15 Interview , Granada with survivor and his mother, March 2010

16 Information obtained during interview with lawyers and also see article published in El Nuevo Diario, Lara, Rafael "Ministerio Público admitió su error: TAM mantiene a madre en prisión y violador suelto", 5 May 2010 <http://www.elnuevodiario.com.ni/nacionales/73776>

17 Interviews , Police officer from Comisaría de la Mujer, Managua 2008 and Bluefields 2010

18 Lucia is not her real name. As with all the names in this document, pseudonyms have been used to protect the identity of the survivor.

19 The United Nations World Food Programme (WFP) in a statement issued in May 2009 predicted that the general global economic decline and increased costs of food could result in reduced food stuffs in households across Nicaragua. The WFP stated that the subsequent change in diet may cause a rise, from the current figure of one in five children, in the number of children in Nicaragua suffering stunted growth due to malnutrition. See Executive Brief- Nicaragua, Effects of the Financial Crisis on Vulnerable Households, United Nations World Food Programme, 26 May 2009

20 Meetings with policewomen in Managua (2008) and Bluefields (2010)

21 Interview with mother of survivor of abuse, Managua, March 2010

22 Corte Suprema de Justicia, "Protocolo de Actuación en Delitos de Maltrato Familiar y Agresiones Sexuales" Guía para personal Policial, Fiscal, Medico Forense y Judicial, published in Managua, 2003

23 Amicus Curiae to the Constitutional section of the Nicaraguan Supreme Court, by the Nicaraguan Society of Gynaecologists and Obstetrics (SONIGOB), 28 May 2007

24 Ibid. SONIGOB Amicus Curiae (28 May 2007)

25 See Datos sobre la salud sexual y reproductiva de la juventud nicaragüense, May 2008, available at: http://www.guttmacher.org/pubs/2008/07/02/fb_Nicaragua.pdf; and UNPF, Personalising Population – Background on Nicaragua, available at: <http://www.unfpa.org/focus/nicaragua/background.htm>, both visited 23 March 2009.

26 The circumstances in which therapeutic abortion was permitted were not explicitly defined in Nicaraguan law. However, the Health Ministry in its laws governing the provision of therapeutic abortion, defined therapeutic abortion as : "Interruption of pregnancy before 20 weeks gestation through medically indicated treatment due to maternal pathologies...that are exacerbated by the pregnancy or for maternal pathologies that have a negative effect on the growth and development of the foetus." Ministerio de Salud, Norma de Atención al Aborto. Managua, Nicaragua, 1989

27 See Law No. 164, Penal Code of the Republic of Nicaragua, arts. 143 and 145. (See http://www.poderjudicial.gob.ni/arc-pdf/CP_641.pdf for the full reformed penal code as of July 2008)

28 See *ibid.*, arts. 148 and 149.

29 Supra see Endnote 10, 11 and 25

30 Articles 143-149, "Ley 641: Penal Code of the Republic of Nicaragua", in Chapter 2 of the reformed penal code titled "Abortion, Genetic manipulation and harm to the unborn foetus" cited from the Editorial Jurídica 1ra edición 2008, pages 67-68/ The English text contained in this submission to the Committee Against Torture is an unofficial translation from the Spanish of articles 143,145, 148 and 149 by Amnesty International

31 Ibid. Ley 641

32 Ibid. Ley 641

33 Ibid. Ley 641

34 Supra N30, Ley 641 Penal Code of the Republic of Nicaragua

35 See Ministry of Health, "Rules and Protocols for the Management of Obstetric Complications", December 2006 (on file with Amnesty International). The obstetric protocols were prepared by the Ministry of Health specifically to reduce maternal illness and deaths and raise the standard of obstetric care across the country. All doctors in Nicaragua are required to comply with these protocols

36 Amnesty International interview with gynaecologist (name withheld), Nicaragua, October 2008

37 Inter-American Commission on Human Rights, Precautionary measures PM 43-10 – "Amelia", Nicaragua, 26 February, 2010 see: <http://www.cidh.org/medidas/2010.eng.htm>

38 See CCPR/C/NIC/CO/3 at paragraph 13, E/C.12/NIC/CO/4 at paragraphs 26 and 27, CAT/C/NIC/CO/1 at paragraphs 15 and 16

39 Page 26, "Rules and protocols for the treatment of obstetric complications" Ministry of Health December, 2006

40 See for example the joint letter written to all the Presidential candidates and the President of the National Assembly, from the Campaña 28 de septiembre por la Despenalización del Aborto en América Latina y el Caribe, Movimiento Autónomo de Mujeres, Asociación de Hombres contra la Violencia, Comité Latinoamericano y del Caribe de Defensa de los Derechos de la Mujer, Red de Salud de las Mujeres Latinoamericanas y del Caribe available from:

<http://www.minsa.gob.ni/bns/observatorio/documentos/antes/Carta%20del%20Movimiento%20Autonomo%20de%20Mujeres.pdf> and, further, the Declaration of Nicaraguan medical societies and faculties of medicine on the criminalization of therapeutic abortion issued on 20 October 2006

<http://www.euram.com.ni/Terapeutico/Archivos%20PDF/Antes%20Penalizacion/Sociedades%20Medicas,%20Enfermeria%20y%20Universidades,%20Declaracion.pdf>.

See also the Nicaraguan Society of General Medical Practitioners (SONIMEG) statement at

http://www.sonimeg.net/index.php?option=com_content&view=section&layout=blog&id=8&Itemid=1

41 See the Declaration of Nicaraguan medical societies and faculties of medicine on the criminalization of therapeutic abortion issued on 20 October 2006

<http://www.euram.com.ni/Terapeutico/Archivos%20PDF/Antes%20Penalizacion/Sociedades%20Medicas,%20Enfermeria%20y%20Universidades,%20Declaracion.pdf>.

See also the Nicaraguan Society of General Medical Practitioners (SONIMEG) statement at

http://www.sonimeg.net/index.php?option=com_content&view=section&layout=blog&id=8&Itemid=1

The full list of Nicaraguan associations of health care professionals who signed the statement warning against a complete prohibition are the following: Sociedad Nicaragüense de Ginecología y Obstetricia, Sociedad Nicaragüense de Medicina General, Facultad de Medicina UNAN León, Asociación de Gineco-Obstetras, Ecografistas de Nicaragua, Asociación Nicaragüense de Cirugía General, Asociación Nicaragüense de Psiquiatría, Centro de Investigaciones y Estudios de la Salud, Asociación Nicaragüense de Salud Pública, Asociación Centroamericana de Sistema y Economía de Salud, Facultad de Medicina UNAN Managua, Asociación Nicaragüense de Ortopedia y Traumatología, Fundación de Mujeres Médicas, Asociación de Cirugía Oral y Maxilofacial, Asociación Nicaragüense de Cirugía Laparoscópica, Asociación Nicaragüense de Dermatología, Asociación Nicaragüense de Infectología, Asociación Gineco-Obstetras de León, Asociación Urológica de Nicaragua, Asociación Nicaragüense de Cardiología, Colegio de Enfermeras/os de Nicaragua and the Asociación Nicaragüense de Medicina Interna.

42 See the Declaration of Nicaraguan medical societies and faculties of medicine on the criminalization of therapeutic abortion issued on 20 October 2006

<http://www.euram.com.ni/Terapeutico/Archivos%20PDF/Antes%20Penalizacion/Sociedades%20Medicas,%20Enfermeria%20y%20Universidades,%20Declaracion.pdf>

43 Ibid.

44 See the joint petition to the Supreme Court by the Nicaraguan Centre for Human Rights (CENIDH) Movimiento Feminista, la Sociedad Nicaragüense de Ginecología y Obstetricia, la Asociación de Médicos Generales, la Facultad de Medicina de la UNAN Managua y León, la Sociedad de Enfermeras/os de Nicaragua, la Coordinadora de la Nifex y la Adolescencia, el Movimiento Comunal Nicaragüense, la Coordinadora Civil available from: <http://www.cenidh.org/casodetalle.php?idinforme=17> see also article titled "Brenes suena tambores de guerra contra el aborto terapéutico" available at: <http://www.radiolaprimerisima.com/noticias/8807>

45 Copy of the letter in Amnesty International records

46 Copy of the letter in Amnesty International records

47 Amnesty International assessed the implications of the revised penal code on women's access to medical care during obstetric complications and the provision of support and medical care for victims of rape and incest in Nicaragua. In June and October 2008, Amnesty International interviewed Nicaraguan doctors and gynaecologists working in both public and private health institutions, directors, psychiatrists, lawyers and social workers in organizations providing psycho-social and legal support for victims of gender-based violence, including victims of rape and sexual abuse who are under the age of 18. Amnesty International also interviewed 27 rape victims and their relatives. Amnesty International has also expressed public concern about the complete ban on abortion to the Committee on Economic Social and Cultural Rights in October 2008 (AMR 43/002/2008)). These documents are available from: <http://www.amnesty.org/en/library/info/AMR43/001/2008/en> and <http://www.amnesty.org/en/library/info/AMR43/002/2008/en>

48 See page 540 of the "Implementation Handbook for the Convention on the Rights of the Child", Fully Revised Edition, UNICEF 2002

49 Supra, Endnote10, Endnote 11 and Endnote 25

50 An example of such religious sanctions can be seen in the case of doctors who provided a 9 year old girl pregnant with twins as a consequence of rape in Brazil.

Both the doctors and the mother in this case were excommunicated by the Catholic Church for seeking and providing safe abortion services. For more information on this case see "Excommunicated doctor hailed for abortion on child rape victim," CNN 11 March 2009 available from:

<http://edition.cnn.com/2009/WORLD/americas/03/11/brazil.rape.abortion/> and further "Excommunication Of Brazilian Abortion Doctors In Case Of Nine-Year-Old Rape Survivor Fuels Controversy" Medical News Today, 16 March 2009 available from:

- <http://www.medicalnewstoday.com/articles/142292.php> and, further "Vatican backs Abortion Row Bishop" BBC News online 7 March 2009 available at: <http://news.bbc.co.uk/1/hi/world/americas/7930380.stm>
- 51 Amnesty International interview with psychiatrist, October 2008
- 52 World Health Organisation, Guidelines for medico-legal care for victims of sexual violence, 2003, pp. 2 and 28, http://www.who.int/violence_injury_prevention/publications/violence/med_leg_guidelines/en/index.htm. Where they refer to abortion as an option for pregnant rape victims, the guidelines also refer to the status of abortion in national law.
- 53 See paras. 46 and 47, Palau IRCO, Add.149
- 54 Interview with a gynaecologist in Managua, Nicaragua, November 2008. Name withheld. Also, interviews with experts working in the field of sexual abuse emphasised the concern they had at the rising number of suicides which might be linked to involuntary continuation of pregnancy. Although the State has not investigated whether or not they are victims of sexual violence, the prevalence of sexual violence against young girls and adolescents in Nicaragua and the rise in teenage deaths as a result of consumption of poison are of concern Análisis Comparativo de Situación de Mortalidad Semanas Epidemiológicas 1 a la 53 Años: 2007 – 2008 Ministerio de Salud, 5 January 2009
- 55 See page 14, "Safe abortion: Technical and Policy Guidance for Health Systems" World Health Organisation, Geneva, 2003 and further "Global and Regional estimates of the incidence of unsafe abortion and associated mortality in 2003" 5th edition, World Health Organisation 2003. Available at: http://who.int/reproductive-health/publications/unsafeabortion_2003/ua_estimates03.pdf
- 56 See page 9, statistic taken from a study published in 2006, "Nota informativa: Derogación del Derecho al Aborto Terapéutico en Nicaragua: Impacto en Salud" published by the Pan-American Health Organisation (OPS-OMS) November, 2006 Available from: <http://www.bertha.gob.ni/adolescentes/descarga/doc1/Derogacion%20del%20%20Aborto%20Terapeutico%20en%20Nicaragua.pdf>
- 57 Human Rights Committee, General Comment 28, Article 3, Equality of rights between men and women (Para 10) , U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).
- 58 World Health Organisation and UNFPA, Mental health aspects of women's reproductive health - A global review of the literature, 2009, p. 9, http://whqlibdoc.who.int/publications/2009/9789241563567_eng.pdf
- 59 Análisis Comparativo de Situación de Mortalidad Semanas Epidemiológicas 1 a la 53 Años: 2007 – 2008 Ministerio de Salud, 5 January 2009
- 60 See para 50, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/14/22, published on 23 April 2010
- 61 See para 77, A/HRC/14/22, published on 23 April 2010
- 62 See para 77, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/14/22, published on 23 April 2010
- 63 See Hodgkin, R and Newell, P, for UNICEF, Implementation Handbook for the Convention on the Rights of the Child fully revised edition, 2002 page 579
- 64 See Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995) at para.97. Available at: <http://www1.umn.edu/humanrts/instree/e5dplw.htm>
- 65 "It is widely recognized, including by former Special Rapporteurs on torture and by regional jurisprudence, that rape constitutes torture when it is carried out by or at the instigation of or with the consent or acquiescence of public officials." (Report of the UN Special Rapporteur on torture, Manfred Nowak, to the 7th Session of the Human Rights Council, UN Doc. A/HRC/7/3 15 January 2008, paragraph 34.) The Special Rapporteur on torture has also recognised domestic violence as one of the "forms of violence that may constitute torture or cruel, inhuman and degrading treatment" (id, paragraph 44) and elaborated on different manifestations of state acquiescence in domestic violence (id, paragraph 46) He has further drawn attention to the feeling of protection from social stigmatization which victims of sexual violence in Guatemala have reported feeling when the crime is defined as torture rather than rape, forced impregnation or sexual slavery (id, paragraph 66)
- 66 Report of the UN Special Rapporteur on Torture, Manfred Nowak, to the 7th Session of the Human Rights Council, UN Doc. A/HRC/7/3 15 January 2008, paragraph
- 67 WHO Guidelines for Medico-Legal Care for Victims of sexual violence. Page 9
- 68 Ibid.
- 69 World Health Organisation, Guidelines for medico-legal care for victims of sexual violence, http://www.who.int/violence_injury_prevention/publications/violence/med_leg_guidelines/en/index.html
- 70 See Resolution 1212 (2000) Rape in Armed Conflicts (emphasis added). Text available from: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta00/ERES1212.htm> and further Sexual assaults linked to Date-Rape Drugs Recommendation 1777 (2007) full text available from: http://www.coe.int/t/e/legal_affairs/legal_co-operation/steering_committees/cdcj/cj-s-vict/Rec%201777.pdf
- 71 See Colombian Constitutional Court Decision C-355/2006, Excerpts of the Constitutional Courts Ruling, published by Women's Link Worldwide at page 52
- 72 Interview with "Estefany" in Granada, April 2010