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NICARAGUA

Submission to the UN Universal Periodic Review

**Seventh session of the UPR Working Group of the UN
Human Rights Council**

February 2010



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.¹

Under section B, Amnesty International raises concern over the changes in the domestic legal framework in 2006 and 2008 which have introduced a total ban on all forms of abortion in Nicaragua and the impact of this on the right to health, life and physical integrity of women and girls in Nicaragua.

Section C highlights Amnesty International's concerns regarding restrictions on the right to freedom of expression, and human rights defenders.

In section D, Amnesty International makes a number of recommendations for action by the government.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

The repeal by the Nicaraguan government in 2006 of the legal provisions allowing for therapeutic abortion immediately placed Nicaragua in breach of its international legal obligations to protect human rights. The repeal of the provision permitting therapeutic abortion in situations where the life of the pregnant woman or girl is at risk, or the pregnancy is the result of rape, endangers the lives of women and girls and puts medical professionals in an unconscionable position.

In addition, since July 2008, abortion is a criminal offence in Nicaragua in all circumstances. The new Penal Code provides for lengthy prison sentences for women and girls who seek an abortion and for health professionals who provide abortion services and life-saving and health-preserving obstetric care for pregnant women and girls.² The ban on abortion allows no exceptions. It applies in situations where continued pregnancy risks the life or health of the woman or girl, and where the pregnancy is the result of rape. The high level of teenage pregnancies in Nicaragua means that many of those affected by the revised laws are girls under 18.³

The new Penal Code has also affected the provision of health services to women and girls other than abortion. Medically indicated treatment which results in the unintentional death or injury of a foetus is now criminalized, irrespective of the intention of the medical professionals concerned or the circumstances in which the treatment was provided. Doctors who act in accordance with the Obstetric Protocols, intervening in order to save a patient from dying as a result of obstetric complications, risk their professional career and, potentially, their liberty. Examples of such interventions include treatment for malaria or HIV/AIDs, urgent cardiac surgery or intervention in an obstructed or otherwise complicated birth. Even health care providers trying to save the foetus during a difficult delivery which, through no negligence or intention to do harm, results in the injury or death of the foetus, could be subject to criminal prosecution.

The new legal framework disempowers doctors and health professionals by making it harder, if not impossible, for them to make timely decisions about how to treat complications during pregnancy and childbirth. Doctors have now to consider the legal implications of administering medically indicated treatment to pregnant women and girls for conditions unrelated to the pregnancy in case the effects of the treatment place them at odds with the law. It is also an obstacle to timely treatment of women and girls suffering complications as a result of miscarriage or induced abortion. Denying or unduly delaying appropriate medical treatment to women and girls with obstetric complications, such as ectopic pregnancies, hypertension or haemorrhages can

² Articles 143 and 145 of the revised Penal Code (Law No.64, Penal Code of the Republic of Nicaragua). Articles 148 and 149 of the Penal Code also pose a significant problem to the delivery of obstetric care in Nicaragua. See http://www.poderjudicial.gob.ni/arc-pdf/CP_641.pdf, visited 23 March 2009.

³ Article 1 of the UN Convention on the Rights of the Child defines girls as girl children aged under 18 years of age. See <http://www2.ohchr.org/english/law/crc.htm>.

increase the risk that women and girls will die or suffer serious long-term health complications, and in the process cause them the anguish, severe pain and suffering that necessarily follow from the denial of essential medical services.

Before the law was changed, therapeutic abortion had been recognized as a legal, legitimate and necessary medical procedure for more than 100 years in Nicaragua. The law was interpreted in practice to permit abortion to be performed when the life or health of the woman or girl was at risk from continuation of pregnancy and, on particular occasions, in cases of pregnancy as a result of rape.⁴ Law No. 165 permitted therapeutic abortion if three medical practitioners formally agreed that it was necessary and the permission of the husband or close family member had also been secured.⁵

The Nicaraguan Constitution states: "In the national territory every person enjoys state protection and recognition of the inherent rights of the human person, the unrestricted respect, promotion and protection of human rights and the full exercise of the rights enshrined in the Universal Declaration of Human Rights, in the American Declaration on the Rights and Duties of Man, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights of the United Nations, and in the American Convention on Human Rights of the Organization of American States."⁶ Despite these constitutional guarantees, the Nicaraguan government continues to defy the call from four United Nations treaty bodies, namely the Committee against Torture, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee and the Committee on the Elimination of Discrimination against Women to repeal the complete ban on, and criminalisation of, all forms of abortion.⁷ The Inter-American Commissioner for Women's Rights, Victor Abramovich, wrote a letter to the government prior to the introduction of the complete ban to warn it that if such an extreme ban was introduced the Nicaraguan State would be breaching its obligations under the American Convention.

Extreme consequences of the ban on women and girl children's human rights

The total ban on abortion makes no provision for exceptions where the life or health of the woman is at risk and so implicitly requires doctors to ignore the Nicaraguan Ministry of Health's Rules and Protocols for the Management of Obstetric Complications (Obstetric Protocols) on best practice for the management of complications during pregnancy. The Obstetric Protocols mandate termination of pregnancy in response to specific obstetric complications in order to reduce maternal deaths.

⁴ 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.

⁵ Article 165 of the previous Penal Code (1893) had stated: "To fulfil legal requirements, the need for a therapeutic abortion shall be determined scientifically by at least three medical professionals and have the agreement of the partner or family member closest to the woman." [Amnesty International's own translation].

⁶ Article 46 of the Nicaraguan Constitution, available at: <http://www.constitution.org/cons/nicaragu.htm>, visited 23 March 2009.

⁷ In its concluding observations, the UN Committee on Economic Social and Cultural Rights "urges the State party to review its legislation on abortion and to study the possibility of providing for exceptions to the general prohibition on abortion in cases of therapeutic abortion or pregnancies resulting from rape or incest. Furthermore, the State party should adopt measures to assist women in avoiding unwanted pregnancies, so that they do not have to resort to potentially life-threatening illegal or unsafe abortions, or have abortions abroad. Furthermore, the State should avoid penalizing medical professionals in the exercise of their professional responsibilities". See E/C.12/NIC/CO/4, para26. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G08/456/34/PDF/G0845634.pdf?OpenElement> last visited on 21 June 2009. The 2008 Conclusions of the UN Human Rights Committee (U.N. Doc. CCPR/C/NIC/CO/3, paragraph 13) relate the Human Rights Committee's concerns in relation to the total ban on abortion in Nicaragua. See also paragraphs 15 and 16 of the Concluding Observations by the Committee against Torture, 14 of May 2009, (CAT/C/NIC/CO/1), on the total ban on abortion and the situation of women human rights defenders in Nicaragua.

Amnesty International considers that women or girls who become pregnant as a result of sexual violence must have access to support services, including access to safe and legal abortion, treatment for physical injuries and sexually transmitted infections, advice and support on pregnancy prevention and management, and counselling and social support. However, the revised penal code denies rape victims the freedom to decide for themselves how to respond to an unwanted pregnancy resulting from sexual coercion. If the rape victim decides against continuing the pregnancy, she stands in violation of criminal law and faces the risk of prosecution and imprisonment. According to a survey of media reports between 2005 and 2007, 1,247 girls were reported in newspapers to have been raped or to have been the victims of incest in Nicaragua. Of these crimes, 198 (16 per cent) were reported to have resulted in pregnancy. The overwhelming majority of the girls made pregnant as a result of rape or incest (172 of the 198) were between 10 and 14 years old.⁸

The revised Penal Code is gender-discriminatory, denying women and girls treatment which only they need. Only women and girls risk physical and mental suffering or losing their lives as a result of delays in or denial of medical treatment if complications arise during pregnancy. Only women and girls are compelled to continue a medically dangerous or unwanted pregnancy or face imprisonment. Only women and girls suffer the mental anguish and physical pain of an unsafe abortion, risking their health and life in the process.

Health professionals face possible imprisonment for providing information about or carrying out abortions. There are grave concerns that the criminalization of abortion in all circumstances means that some women and girls in Nicaragua in desperation turn to unsafe clandestine abortions. In the first 19 weeks of 2009, some 16% of all maternal deaths were as a consequence of unsafe abortion compared to none in the same period in 2008. Overall there has been a reported 33 maternal deaths in the first 19 weeks of 2009, 13 more women and girls dying in pregnancy than in the same period last year.

C. Promotion and protection of human rights on the ground

Harassment of human rights defenders

Nine women human rights defenders remain at risk of legal proceedings. The accusation against them contends that by expressing their opinions and organizing demonstrations in favour of access to “therapeutic abortions”, they are guilty of conspiracy to commit a crime, incitement to commit a crime, and public defence of a crime.

The complaint was brought in October 2007 by a Church-backed non-governmental organization, the Nicaraguan Association for Human Rights (*Asociación Nicaragüense Pro-Derechos Humanos*, ANPDH). The nine women named in the complaint are Ana María Pizarro (doctor), Juanita Jiménez (lawyer), Lorna Norori (psychologist), Luisa Molina Arguello (sociologist), Martha María Blandón (psychologist), Martha Munguía (sociologist), Mayra Sirias (teacher), Violeta Delgado (project manager) and Yamileth Mejía (psychologist). All nine women are well-known women’s rights defenders, working with a variety of non-governmental organizations. They have extensive combined experience in the promotion of sexual health issues and women’s rights, work with survivors of domestic violence and sexual abuse, and the promotion of the rights of children and young people. Amnesty International fears that the complaint against the nine women has been brought solely because of their human rights work and the campaigning activities they have carried out to promote the right of women and girls to access safe and effective sexual and reproductive health services. At the time of writing, the Attorney General had yet to rule on whether the complaint would be dropped or whether charges would be formalized.

⁸ Católicas por el Derecho a Decidir, “Medios de Comunicación y abuso sexual”, 18 April, 2008.

In September 2008, a government publication carried an article making a series of allegations against several female journalists, human rights defenders and political activists, including claims that they practised “black magic”. The article criticized the women for supporting sexual and reproductive rights. Among those named in the publication was Patricia Orozco, a journalist and women’s human rights defender. Following the publication of the article, Patricia Orozco received death threats and threats of sexual violence by phone and text message.

Restrictions on the right to freedom of expression

In the weeks following the municipal elections in November 2008, at least 20 journalists were physically attacked; many were beaten. The majority of the attacks were carried out by groups of supporters of the Sandinista Liberation Front Party (FSLN). The premises of at least five independent media outlets were vandalized.

D. Recommendations for action by the State under review

Amnesty International calls on the government:

Women’s and girl children’s human rights

- To repeal Articles 143, 145, 148 and 149 of the Penal Code and decriminalize abortion in all circumstances. Women and girls must not be subject to criminal sanctions for seeking or obtaining an abortion under any circumstances;
- To reform legislation to allow for therapeutic abortion in cases of pregnancy resulting from rape or incest and in circumstances where continuation of pregnancy would put the health or life of the woman or girl at risk. The reforms must ensure that safe abortion is accessible without unreasonable restrictions;
- To ensure that medical professionals are not criminally sanctioned for providing safe abortion services;
- To ensure all health institutions and clinics promote and strengthen awareness and implementation of the Nicaraguan Obstetric Protocols when treating obstetric complications;
- To remove the legal obligation, and any practical obstacles, that compel women and girls who are pregnant as a result of rape or incest to continue involuntarily with the pregnancy;
- To undertake immediate law reform to ensure rape victims have access to comprehensive remedies, including counselling, medical care and psycho-social and legal support in line with World Health Organization guidelines and that they are fully supported to make free and informed decisions on how to manage the consequences of rape, including continuation or termination of a pregnancy;
- To ensure women and men have access to and receive contraceptive services and information and are able to make informed choices about sex and reproduction, free from coercion and discrimination;
- To increase the provision of antenatal, maternity and postnatal services and assistance and support for parents.

Cooperation with UN human rights mechanisms

- To adhere to all the recommendations made by the UN expert Committees in relation to repeal of the complete prohibition on all forms of abortion.

Human rights defenders

- To ensure that human rights defenders and medical professionals campaigning to raise awareness of the negative impact of the revised law and to promote and defend the human rights of women and girls are

able to carry out their legitimate work without restrictions or fear of reprisals, in accordance with the UN Declaration on Human Rights Defenders;

- To investigate fully, promptly and impartially any reported human rights abuses against civil society activists, journalists and members of groups or communities, and to bring to justice anyone suspected of involvement in such abuses, in trials which meet international standards of fair trial.

Rights to freedom of expression, assembly and association

- To uphold the rights to freedom of expression, assembly and association and to allow restrictions only when prescribed by law, in accordance with international human rights law.

Appendix: Amnesty International documents for further reference⁹

The total abortion ban in Nicaragua: Women's lives and health endangered, medical professionals criminalized. Index Number: AMR 43/001/2009. Date Published: 27 July 2009

Not even when her life is at stake: How the total abortion ban in Nicaragua criminalizes doctors and endangers women and girls. Index Number: AMR 43/004/2009. Date Published: 27 July 2009

The impact of the complete ban of abortion in Nicaragua: Briefing to the United Nations Committee against Torture Index Number: AMR 43/005/2009. Date Published: 29 April 2009

Defending women's right to life and health: Women human rights defenders in Nicaragua
Index Number: AMR 43/001/2008. Date Published: 9 October 2008

Nicaragua: Submission to the United Nations Committee on Economic Social and Cultural Rights 41st Session, 3-21 November 2008 Index Number: AMR 43/002/2008 Date Published: 1 October

⁹ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/nicaragua>