

8 September 2009

Public

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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*:<sup>1</sup>

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 violence against women, 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.

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

# Nicaragua:

## Amnesty International submission to the UN Universal Periodic Review

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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 or incest, 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 or have an abortion and for health professionals who provide abortion services.<sup>2</sup>

The new total ban on abortion also affects the provision of essential health services to women and girls for illnesses or injuries unrelated to a pregnancy. In short, medically indicated treatment which could result in a miscarriage or injury of a foetus is now criminalized

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. 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 losing their licence to practice medicine and being subjected to criminal investigations.

Denying or unduly delaying appropriate medical treatment to women and girls with obstetric complications, such as ectopic pregnancies, miscarriages, hypertension or haemorrhages can increase the risk that women and girls will die or suffer serious long-term health complications, and also cause them anguish, severe pain and suffering that necessarily follow from the denial of essential medical services.

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<sup>2</sup> Articles 143 and 145 of the revised Penal Code (Law No.64, Penal Code of the Republic of Nicaragua) specify one to three years imprisonment for anyone who induces an abortion with the consent of the woman. If the person accused is a health worker, he or she will face a between two-five year ban from practicing medicine. Article 143 also provides a one- two year prison term for any woman or girl convicted of inducing or consenting to an abortion. Articles 148 and 149 of the Penal Code also pose a significant problem to the delivery of obstetric care in Nicaragua, since they criminalise any medically indicated treatment which results in the injury or death of the embryo or fetus and provide for one-two years in prison for the medical practitioner, as well as a one-five year ban on practicing medicine, regardless of intent. See [http://www.poderjudicial.gob.ni/arc-pdf/CP\\_641.pdf](http://www.poderjudicial.gob.ni/arc-pdf/CP_641.pdf), visited 23 March 2009.

Furthermore, denying or unduly delaying appropriate medical treatment to women and girls with unrelated illnesses or injuries, such as malaria, HIV/AIDs, cancer or cardiac distress not only places the life of the woman or girl at risks – but may cause injury or death to the foetus.

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.<sup>3</sup>

In short, the law forces medical service providers to take no actions and therefore avoid criminal liability rather than fulfil their responsibility to provide medically indicated treatment which may save a woman's life, prevent severe injuries or complications, or prevent severe pain and suffering.

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 or incest.

The high level of teenage pregnancies in Nicaragua means that many of those affected by the revised laws are girls under 18.<sup>4</sup> 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.<sup>5</sup> In rural areas the rate is even higher with teenagers accounting for a third of all births. Further exacerbating this issue is the high rates of sexual violence, including incest that girls face in Nicaragua.

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 and incest.<sup>6</sup> 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.<sup>7</sup>

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

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<sup>3</sup> Ibid, Articles 148 and 149

<sup>4</sup> 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>.

<sup>5</sup> 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](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.

<sup>6</sup> 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.

<sup>7</sup> 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].

States.”<sup>8</sup> 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.<sup>9</sup> 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’s human rights**

Amnesty International considers that women or girls who become pregnant as a result of rape and incest 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 or incest victims the freedom to decide for themselves how to respond to an unwanted pregnancy resulting from sexual abuse. If the victim decides against continuing the unwanted pregnancy, she stands in violation of criminal law and faces the risk of prosecution and imprisonment.

Owing to the frequency of acts of rape and incest committed against young and teenage girls (in the majority of cases by older men and relatives) girls 18 years old and under suffer disproportionately from the consequences of the new law. Forcing a woman or girl to carry a pregnancy which is a result of rape or incest to term is recognized as a form of torture and cruel, inhuman and degrading treatment.

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 in circumstances that they were previously permitted. 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.<sup>10</sup> Overall there has been a reported 33 maternal deaths in the first 19 weeks of 2009, 13 more

<sup>8</sup> Article 46 of the Nicaraguan Constitution, available at: <http://www.constitution.org/cons/nicaragu.htm>, visited 23 March 2009.

<sup>9</sup> 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/Go8/456/34/PDF/Go845634.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.

<sup>10</sup> *Situación de Mortalidad Materna, Peri natal y Neonatal*, Semana Epidemiológica 1 a la 19 Años: 2008 – 2009, Dirección General de Servicios de Salud, Ministerio de Salud. Available from: [http://www.enlaceacademico.org/uploads/media/MINSA\\_Situacion\\_de\\_la\\_MM\\_a\\_la\\_Semana\\_192009.pdf](http://www.enlaceacademico.org/uploads/media/MINSA_Situacion_de_la_MM_a_la_Semana_192009.pdf) last visited 26 July 2009

women and girls dying in pregnancy than in the same period last year.<sup>11</sup>

### C. Promotion and protection of human rights on the ground

#### Violence against women, in particular girls

As mentioned above, Amnesty International has serious concerns at the high prevalence of rape and incest of women, but in particular girls, in Nicaragua. In more than half of the rape cases reported in 2008 in Nicaragua, the victims are girls below the age of 18, according to the records of the Women's Police Unit (Comisaría de la Mujer) and the Nicaraguan Forensic Institute (Instituto de Medicina Legal).<sup>12</sup> The Nicaraguan Forensic Institute found that out of the 379 victims of sexual violence they examined in the month of December 2008, 295 (77%) were under the age of 17.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

Amnesty International has found no evidence of a clear government policy to combat and overcome this widespread human rights problem and as a result girls remain exposed to alarming levels of abuse both in the family and the community in keeping with their obligation under the principle of due diligence.

#### Harassment of human rights defenders

Nine women human rights defenders remain at risk of legal proceedings under the revised penal code. The accusation against them contends that by assisting a 9 year old rape victim to access legal abortion services and 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 believes 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.

<sup>11</sup> Ibid.

<sup>12</sup> See the Supreme Court of Justice, Nicaraguan Medical Institute, Monthly Bulletin of Statistics Number 12 from December 2008, titled "*Subdirección de Forensic Monitoring and Epidemiology*" (*Subdirección de Vigilancia y Epidemiología Forense*)

<sup>13</sup> Ibid, page 5.

<sup>14</sup> Catholics for Choice, "*Medios de Comunicación y abuso sexual*", 18 April, 2008.

<sup>15</sup> Ibid.

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 services are accessible in the circumstances indicated 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 treaty bodies in relation to the repeal of the complete prohibition on all forms of abortion.

*Violence against women and girls*

- To publically condemn violence against women and girls
- To take steps to raise public awareness to denounce sexual abuse of women and girls and remove the stigma for those who suffer such abuse
- Investigate and prosecute complaints of sexual abuse and violence, including cases of marital rape and incest
- Ensure women and girl's safety, protection and autonomy as well as their physical, mental and social well being in the aftermath of suffering abuse
- Establish a specific policy and plan of action to eradicate sexual violence against girls

*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 principles of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms "UN Declaration on Human Rights Defenders";
- To investigate fully, promptly and impartially any reported human rights abuses against human rights defenders and civil society activists, and to bring to justice anyone suspected of involvement in such abuses.

*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.
- To investigate fully, promptly and impartially any reported human rights abuses against journalists and media workers, and to bring to justice anyone suspected of involvement in such abuses.



## **Appendix: Amnesty International documents for further reference**

*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 41<sup>st</sup> Session, 3-21 November 2008* Index Number: AMR 43/002/2008 Date Published: 1 October