

UN Human Rights Council

c/o OHCHR Civil Society Unit

Geneva, Switzerland

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Dear colleagues,

Please find below information that we would like to see included in the OHCHR's summary of stakeholder information to be provided for consideration during the Human Rights Council's Universal Periodic Review of Nicaragua. We would be most appreciative if you could especially include the texts highlighted in italic type.

Universal Period Review – Nicaragua

Ipas is an international non-profit organization that works globally to increase women's ability to exercise their sexual and reproductive rights and to reduce maternal morbidity and mortality related to unsafe abortion. We believe that women in all countries should be able to determine their own futures, to care for their families and to take decisions related to their own sexuality and reproduction.

In light of the upcoming Universal Periodic Review for Nicaragua at the Human Rights Council, we would like to present some additional Information about the situation of women's human rights in Nicaragua as a result of the criminalization of therapeutic abortion, even when it is the only way to preserve a woman's health and/or life due to complications occurring during pregnancy.

This document includes information that has evoked concern from five Treaty Monitoring Committees (Human Rights Committee, Committee on the Rights of the Child, CESCR Committee, CEDAW Committee, Committee Against Torture). Most recently, in its Concluding Observations to the State of Nicaragua in June 2009, the Committee against Torture¹ expressed its deep concern over the general prohibition of abortion, "even in cases of rape, incest or apparently life-threatening pregnancies that in many cases are the direct result of crimes of gender violence... 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 The Committee is also concerned that the law authorizing therapeutic abortion in such cases was repealed by Parliament in 2006 and that, since the prohibition was adopted, there have been several documented cases in which the death of a pregnant woman has been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

¹ Committee Against Torture. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION. Concluding observations of the Committee against Torture. Nicaragua. 10 June 2009. CAT/C/NIC/CO/1; http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.NIC.CO.1_en.pdf

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...”

An analysis carried out by Ipas Central America of the relationship between maternal mortality and the lack of therapeutic abortion showed violations of women’s rights to life, health, the benefits of scientific progress, and freedom from discrimination, as well as violations of health-care providers’ right to freely exercise their profession. As long as therapeutic abortion is prohibited, the population will continue to experience the consequences, particularly the poorest women and families in Nicaragua.

I. Human rights and legal framework in Nicaragua

In Article 46 of the Republic’s Constitution, Nicaragua recognizes that “...Every person enjoys State protection and recognition of the rights that are inherent to human beings.” This Article also guarantees unrestricted respect for, promotion and protection of human rights, as well as the full validity of rights recorded in different international treaties to which Nicaragua is a State Party.

Beginning in 1870, the Nicaraguan Penal Code legally allowed therapeutic abortion. When the Penal Code was amended in 1974, Article 165 maintained the legality of therapeutic abortion when a pregnancy threatened a woman’s health and life, although the Code prohibited abortion in general.² On 17 November 2006, passage of Law 603, “The Law Abolishing Article 165 of the Current Penal Code,” resulted in the criminalization of therapeutic abortion.

Since 9 May 2008, a newly adopted Penal Code (Law 641) has maintained the prohibition and criminalization of therapeutic abortion in Articles 144 and 145. The current Penal Code also includes Articles 148 and 149, which protect “those to be born”, thus placing all health-care workers at risk of being charged, tried and imprisoned if they end a pregnancy at any stage.

More than one year ago, a petition was submitted to the Supreme Court of Justice regarding the unconstitutionality of Law 641. To date, the Court has not responded, thus violating Article 25.1 of the American Convention on Human Rights, which states: “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

II. The human rights of women in Nicaragua

Articles 144, 145, 148 and 149 of the Penal Code violate girls’, adolescent and adult women’s fundamental human rights, since they imply the denial of timely medical treatment that could preserve their health or life; this translates into an intentional and discriminatory act that exposes women to serious physical and mental suffering.

² “[The need for] therapeutic abortion will be determined scientifically by at least three physicians and with the consent of the spouse or closest relative of the women for legal purposes.”

The denial of therapeutic abortion does not take into account women with high-risk pregnancies, which are a direct cause of maternal morbidity and mortality. An analysis of Ministry of Health statistics for the past three years also shows a systematic increase in indirect obstetric deaths, caused by diseases women already had before pregnancy or by diseases that emerged during their pregnancies. These diseases were aggravated by the physiological effects of pregnancy, thus presenting risks for women's health and life.

In 2008, maternal deaths were recorded in relation to diseases women suffered prior to becoming pregnant, such as: cardiopathies, breast cancer, hepato-cellular cancer, HIV infection, diabetes, meningioma, gliomas, chronic hypertension, etc.³ The risk of death during pregnancy, increased by these indirect medical causes, can be considerably reduced through therapeutic abortion. Of the 28 deaths ascribed by the Ministry of Health in 2008 to indirect obstetric causes, 13 (46%) of the women would have had a considerable chance of recovering their health or saving their lives with access to a therapeutic abortion. These women, mostly aged 15-24 years, left behind 24 orphaned girls and boys. They were in contact with health services through prenatal care visits and at delivery, but died because of the State's failure to respect, protect and guarantee their fundamental rights to health and life, which are recognized in Articles 23⁴ and 59⁵ of the Republic's Constitution. Therefore, the possibility of ending a pregnancy to protect a woman's life is directly related to her right to life.

Denial of therapeutic abortion services also violates women's ***right to equality and freedom from discrimination***. This is first because men do not encounter legal obstacles to receiving certain medical services, nor are they penalized for accessing such services, whereas women are denied the option of ending a pregnancy to preserve their health and life and they risk sanctions if they do so illegally. Criminalization of therapeutic abortion also violates ***the right to liberty*** as it prevents women from freely making decisions about their own health and lives.

Second, this situation constitutes socioeconomic discrimination regarding access to information and resources, since women with greater resources are able to obtain safe services through other means while the poorest women risk their lives with unsafe abortions.

Third, if age is considered a criterion for discrimination, the denial of therapeutic abortion constitutes a clear case of discrimination against girls and adolescent women, since adolescents aged 15-19 years are twice as likely to die of pregnancy-related complications as women aged 20-24 years; this is four times more likely for girls younger than 15 years.⁶ At least some of these complications could be prevented through access to therapeutic abortion as part of medical treatment, as was the case for the 54% of women who presented a medical condition that worsened with pregnancy and who were younger than 24 years in 2008.

³ Maternal mortality register of the Nicaraguan Ministry of Health, 2008

⁴ Article 23: The right to life is inviolable and inherent to the human being. In Nicaragua, there is no death penalty. Constitution of the Republic of Nicaragua

⁵ Article 59: Nicaraguans have an equal right to Health. Constitution of the Republic of Nicaragua

⁶ National Center for Health Statistic Births: *Final Data for 2002, National Vital Statistic Reports* 12/17/2003. The National Campaign to Prevent Teen Pregnancy. *Teen Pregnancy, So What?* Updated 2/04, accessed 5/11/04

The CEDAW Committee has emphasized that laws which penalize certain medical interventions needed only by women form a barrier to women's rights to health care and gender equality in the area of health.⁷

On 12 June 2009, the Council on Human Rights recognized "that most instances of maternal mortality and morbidity are preventable, and that preventable maternal mortality and morbidity is a health, development and human rights challenge that also requires the effective promotion and protection of the human rights of women and girls, in particular their rights to life, to be equal in dignity, to education, to be free to seek, receive and impart information, to enjoy the benefits of scientific progress, to freedom from discrimination, and to enjoy the highest attainable standard of physical and mental health, including sexual and reproductive health."

III. The human rights of health-care providers

A second group of people whose rights have been violated through the criminalization of therapeutic abortion are health-care providers, particularly physicians. The complete criminalization of abortion, including in cases when it could preserve a woman's life and physical/mental health, clearly impedes doctors' duty to protect patients' lives and their right to self-determination. This also contravenes the Constitution of Nicaragua, which establishes every Nicaraguan citizen's right to freely exercise his/her profession.

The criminalization of therapeutic abortion also places physicians in a precarious legal situation. If they terminate a pregnancy for medical reasons, they can be denounced, investigated, charged and condemned for committing the "crime" of abortion, but if they do not offer this medical treatment because it is prohibited by the Penal Code, they can also be denounced, charged and condemned for not complying with Article 160 of the Code (omission of first aid), which penalizes health-care workers who deny medical care when this could reduce serious risks to a person's health.

IV. Conclusion

The State of Nicaragua must urgently make all health services accessible to women and decriminalize therapeutic abortion in order to decrease maternal mortality and advance respect for the human rights of women of all ages in Nicaragua.

We hope that the Human Rights Council will adopt and reinforce the recommendations made by Treaty Monitoring Committees to Nicaragua in this regard, asking the State of Nicaragua to review its legislation and again permit access to therapeutic abortion.

We are grateful for this opportunity to present information to the Human Rights Council in the context of the Universal Periodic Review and are available to provide further information as needed.

Sincerely,
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⁷ General Recommendation 24, CEDAW