



# NICARAGUA

## **AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 19<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, APRIL-MAY 2014**

### **FOLLOW UP TO THE PREVIOUS REVIEW**

At the time of its first UPR in February 2010, Nicaragua accepted a number of recommendations made by other States, including to accede to ILO Convention 169,<sup>1</sup> to protect human rights defenders and uphold their work,<sup>2</sup> and to implement national legislation on violence against women and to prosecute the perpetrators of such violence.<sup>3</sup>

Amnesty International welcomes the fact that the case against nine women's rights defenders, accused in relation to the case of a nine-year-old girl who was raped and made pregnant in 2003 and who obtained a legal abortion in Nicaragua, was finally closed in early 2010, following two and a half years of legal uncertainty.

Since the last review, the government has taken the positive step of fulfilling its commitment to sign ILO Convention 169. Amnesty International notes, however, that there are several other human rights treaties which Nicaragua was recommended to ratify during the review,<sup>4</sup> but which it has not ratified during the intervening period since its last review, including the Convention for the Protection of All Persons from Enforced Disappearances, the Rome Statute of the International Criminal Court, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Nicaragua supported recommendations on the protection, assistance and health care of women and girl victims of rape and violence. With regard to implementation of the accepted recommendations on violence against women, the authorities initially made some progress, opening up further special police stations for women and children, and also taking steps to strengthen awareness within the National Police of international human rights law and standards, including by providing human rights training to members of the police.

A progressive law, the Comprehensive Law against Violence against Women, (known as Law 779), was unanimously passed in the National Assembly and came into effect on 22 June 2012. However, despite being hailed by many as an important step forwards in the protection of women's human rights in Nicaragua, Law 779 has consistently been attacked by those who argue that the law is breaking up the family, since it provides a clear route for women to leave violent partners and requires accountability for all acts of violence. Eventually, just over a year after the law had come into effect, in September 2013, the National Assembly approved amendments to Law 779 which greatly weaken the protections it provides for women victims of violence, and which facilitates impunity for abusers; as such these amendments constitute a retrogressive measure by the state. More detail on this is contained in the section below on violence against women and girls and sexual and reproductive rights.

Amnesty International deeply regrets that during the last review Nicaragua rejected the recommendations to repeal the total ban on abortion.<sup>5</sup> The ban is one of the most extreme in the world and extends even to victims of rape and to women whose life or health is at risk if they continue with the pregnancy.

Nicaragua's continued refusal to revise the total ban on abortion runs counter to recommendations made by five expert committees of the United Nations, including the Committee against Torture.<sup>6</sup> Amnesty International's research

undertaken since Nicaragua's last review shows that the total ban is having a cruel impact on women and girls, particularly those whose life or health is at risk if they continue with the pregnancy, or who are pregnant as a result of rape. Given the high levels of sexual violence against girls in the country, it is particularly concerning that survivors are not given any choice about how to manage the consequences of rape.

## THE HUMAN RIGHTS SITUATION ON THE GROUND

### **Arbitrary detention, torture and other ill-treatment**

Accountability for human rights violations committed by police officers remains a concern. Amnesty International has received credible reports of human rights violations committed by the police, including rape in custody, as well as ill-treatment of protestors by non-state actors in the presence of the police, who failed to intervene. Detailed investigations have yet to be carried out and the results made public; the appropriate disciplinary and criminal justice actions have yet to be taken; and reparations for the victims in each case have yet to be made. The lack of accountability for such abuses is concerning. Such incidents highlight the need to intensify efforts to ensure that all police officers are familiar with their responsibility to respect human rights and have the necessary knowledge and equipment to apply these principles in their work, as well as ensuring that there are clear procedures for holding them to account when abuses occur.

### **Reports of torture in police detention**

In the morning of 17 March 2013, a woman held in custody at the police delegation in Tipitapa, District 8 of the National Police, was allegedly raped by several police officers. One police officer is reported to have removed her from the cell and instructed her to clean the floors in one of the offices. When the woman entered the room, another police officer was already in there. She reports that she was raped by the first officer while the second watched out in case anyone came by. The second officer is also reported to have raped her, although he was interrupted, when the first officer heard someone in the corridor. The woman was returned to the cell, crying. She has stated that she was too terrified to tell her fellow detainees what had happened, as one of the officers had threatened her not to tell anyone. He told her that no one would believe her anyway as she was a detainee, and that if she did speak out he would take revenge. The woman was compelled to stay in the cell in the police station for several weeks even after she made allegations of rape, and during this period the police officers are alleged to have repeatedly threatened her in an attempt to make her drop the case.

During the subsequent trial it is alleged that up to 10 police officers were present in the court room to support the accused, taking it in turns to be present all day, even though their presence was clearly intimidating for the victim. Witnesses and physical evidence documented by the Institute of Forensic Medicine both in Tipitapa and in Managua support the woman's claim that she was raped. The two police officers were initially suspended. The fact that there is credible evidence that this took place while she was in the custody of the state underscores the responsibility of the state to carry out a robust investigation and to take all actions necessary to ensure access to justice and reparation for the victim, as well as accountability for those responsible.

A fortnight after the November 2012 municipal elections, continuing fraud allegations prompted clashes between supporters of the opposition Constitutional Liberal Party (*Partido Liberal Constitucionalista*, PLC) and supporters of the governing Sandinista National Liberation Front (*Frente Sandinista de Liberación Nacional*, FSLN) in Nueva Guinea, in the South Atlantic Autonomous Region. Human rights organizations reported that PLC supporters were arrested by the police and ill-treated in custody. Detainees reported being beaten, and women and girl detainees said that they were forced to remove their clothes in front of male officers, who humiliated them and threatened them with sexual violence. To date no report has been published of the investigation which is alleged to have taken place into this incident and no action has been taken to hold police officers to account via the criminal justice system.

### **Allegations of failure to investigate and to protect**

At around 4 am on 22 June 2013, several dozen students who had slept out in the street at a protest camp were attacked by hundreds of individuals wearing ski masks and scarves to conceal their identity. The students had been accompanying a group of elderly people demanding access to a minimum state pension. There are reports, including victim testimonies, that the young protestors were physically attacked and beaten by the unknown masked assailants. Several of the male students were forced to remove their clothes, until they were naked or wearing only their underwear. Both female and

male protestors were physically beaten and robbed of their clothing and other possessions. All reports and testimonies concur that the police agents in the cordon, which had been in place for several days since the protest started, stood by as the students were attacked. Two of the victims told Amnesty International that police officers kicked them as they lay on the ground. Other victims said that the police did not intervene to assist them as they were beaten and robbed by the assailants in front of them or just yards away.

Amnesty International is not aware of the outcome of any investigation into this incident, including the failure by the police to protect the protestors from harm, or of the perpetrators being held to account.

### **Violence against women and girls and sexual and reproductive rights**

According to official police statistics, during the first six months of 2012, the Police Unit for Women and Children received 1,862 reports of sexual violence. Children aged 14 or under accounted for 1,048 of the victims and 80% of the victims were aged 17 or younger. Although the statistics did not reveal the gender of victims, previous government statistics have shown that women and girls make up the majority of victims of sexual violence.

In October 2012, the police in Matagalpa, in the north of Nicaragua, were instructed to arrest a teacher accused of sexually abusing a 14-year-old pupil. However, the arrest warrant was not executed, allegedly due to lack of space in the prison system and lack of police capacity. The teacher reportedly fled the city.

In July 2012, the Ministry of Health announced that over the decade 2000-2009, the number of births to girls aged between 10 and 14 had increased by 47.9%. Sexual intercourse with a child under the age of 14 is classed as statutory rape under Nicaraguan law.

Law 779, the Comprehensive Law against Violence against Women, which came into effect on 22 June 2012, banned the use of mediation in cases of violence against women. The law was hailed as a significant step forwards in the protection of women from violence, and sent a strong message regarding accountability for acts of violence against women.

The ban on mediation has been welcomed by experts on the grounds that mediation takes violence against women out of the public sphere and into the private sphere, and puts women back in situations of risk. According to local women's rights organizations, of 85 women killed in 2012, 13 had been through a process of mediation prior to their murder.

Law 779 has been consistently attacked for breaking up the family unit and for favouring women over men. Radical changes drafted by the National Assembly in response to the criticism were approved in September 2013. State attorneys now have the authority to recommend mediation to victims in cases where the man is accused of crimes with a penalty of five years or under, including threats, assault, bodily harm and abduction of children. Amnesty International is deeply concerned at these reforms to Law 779 which are contrary to the government's international and national obligations to protect women's human rights. The organization is also concerned at the lack of consultation on the reforms to the law with human rights and women's rights experts, and with survivors' groups.

In making these reforms the government has taken a retrogressive step, sending a dangerous message that some forms of violence against women are acceptable in Nicaragua and that abusers can escape accountability by entering into a process of mediation with their victim.

On 28 September 2012, human rights groups and women's organizations took to the streets to protest against the government's refusal to repeal the total ban on abortion and against the continued failure by the Supreme Court of Justice to rule on a 2007 petition challenging the constitutionality of the ban.

All forms of abortion are illegal in Nicaragua. Under the Criminal Code, Law 641, abortion is a crime in all circumstances, even if the life or health of the woman or girl is at risk, or she is a victim of rape. The Criminal Code imposes lengthy prison sentences on women and girls who seek or obtain an abortion, as well as the person who provides such a service. The Criminal Code even criminalizes unintentional harm to the foetus.<sup>7</sup> Doctors have expressed their concerns to Amnesty International that the criminalization of abortion and related articles in the Criminal Code obstruct their work and make even attending an obstructed labour a risk for them.<sup>8</sup>

The Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights visited Nicaragua in May 2012 and urged the government to repeal the total abortion ban and to examine the link between gender-based violence and sexual and reproductive rights.

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

### Amnesty International calls on the government of Nicaragua:

#### *Violence against women and girls and sexual and reproductive rights*

- To rectify the retrogressive step taken in weakening the protection offered under the Comprehensive Law against Violence against Women (Law 779), and to avoid putting women in a situation where they have to negotiate with their attackers. In situations of violence, mediation should not be offered as an option by the state, as it not only puts women in a situation of risk, but also allows perpetrators to escape justice for their crimes. The state must offer women an effective, clear and safe route out of violent situations, and ensure that those who abuse them are held to account;
- To urgently address the rape and sexual abuse of girls in Nicaragua, including through the development, consultation and implementation of an integrated plan with the objective of preventing rape and sexual abuse of children, protecting survivors and bringing perpetrators to justice, and ensuring full reparation for young survivors, including the provision of services which foster their health, self-respect, autonomy and dignity and ensure their physical and psychological recovery and social reintegration;
- To decriminalize abortion in all circumstances and to ensure that safe and legal abortion services are available as an option for women and girls who are pregnant as a result of rape, or whose lives or health are put at risk should they continue with the pregnancy.

#### *Arbitrary detention, torture and other ill-treatment / Allegations of failure to investigate and to protect*

- To ensure thorough, independent and transparent investigations into all allegations of rape and other torture and ill-treatment at the hands of the police. Where police officers or other state officials are found to have committed human rights violations, action must be taken to hold them to account and to provide reparations and redress to the victims, without delays. The state must take action to ensure the non-repetition of such acts and the safety and physical integrity of those in their custody;
- To ensure that any police officer accused of failing to protect peaceful protestors is properly investigated, and sanctioned if the allegations are upheld.

#### *Ratification of human rights treaties*

- To ratify the Convention for the Protection of All Persons from Enforced Disappearances, the Rome Statute of the International Criminal Court, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

## ENDNOTES

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<sup>1</sup> A/HRC/14/3, recommendation 92.4 (Chile)

<sup>2</sup> Ibid, recommendations 90.10 (Spain), 90.30 (Belgium), 92.10-11 (Norway, Spain), 92.25-30 (Canada, Ireland, Italy, Czech Republic, Norway, France).

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<sup>3</sup> Ibid, recommendations 90.5-6 (Canada, UK), 90.19 (Thailand), 90.22-23 (Mexico, Azerbaijan), 90.25 (Germany), 90.27 (Israel), 92.13-14 (Czech Republic, Ireland), 92.40 (Czech Republic).

<sup>4</sup> Ibid, recommendations 92.1-3 (Spain, Belarus, Finland, Spain, Chile)

<sup>5</sup> A/HRC/14/37, paragraph 243

<sup>6</sup> See report by Amnesty International, Listen to their voices and act – Stop the rape and sexual abuse of girls in Nicaragua: <http://www.amnesty.org/en/library/asset/AMR43/008/2010/en/geaf7298-e3b2-41ae-acdd-f235b5575589/amr430082010en.pdf>: "The Nicaraguan authorities have been urged to reform the abortion laws by a series of UN committees, including the Committee against Torture, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, as well as the several state members of the Human Rights Council and the Committee on the Rights of the Child. Most recently, the Committee on the Rights of the Child expressed its concern that the Penal Code has criminalized abortion, even when the mother's life is at risk and when the pregnancy is the result of rape or incest, and in this regard it shares the concerns expressed previously by the Committee against Torture (CAT/C/NIC/CO/1, para. 16, 2009), the Human Rights Committee (CCPR/C/NIC/CO/3, para. 13, 2008), the Committee on Economic, Social and Cultural Rights (E/C.12/NIC/CO/4, para. 26, 2008) and the Committee on the Elimination of Discrimination against Women (CEDAW/C/NIC/CO/6, para. 17, 2007).

<sup>7</sup> In 2010, a pregnant woman known as "Amalia" was refused cancer treatment on the grounds that medical staff could have faced prosecution if they caused harm to the foetus during her treatment, even if the harm was caused unintentionally. Treatment was eventually provided for Amalia, following an order from the Inter-American Court of Human Rights: <http://www.amnesty.org/en/news-and-updates/nicaragua-abortion-law-puts-pregnant-cancer-victim-risk-2010-02-23>

<sup>8</sup> See report by Amnesty International The impact of the total ban of abortion v Nicaragua: The total abortion ban in Nicaragua: Women's lives and health endangered, medical professionals criminalized <http://www.amnesty.org/en/library/info/AMR43/001/2009>