

16th August, 2019

Human Rights Committee (HRCtte)
Office of the HRCtte Secretariat
Geneva, Switzerland

RE: Supplementary information for Nicaragua scheduled for adoption of List of Issues (LOIs) by the Human Rights Committee during its 127th session (14th October – 8th November, 2019) in Geneva, Palais Wilson.

Dear Committee Members,

This shadow letter is intended to complement the available information for the adoption of LOIs about the State of Nicaragua for your consideration during the 127th session of the Human Rights Committee (HRCtte). IPAS is an international organization that supports the right to every woman and girl to equal access on a non-discriminatory basis to safe abortion and contraception services, with respect to their human rights, so that they can determine their own future. This letter will provide the Committee with information about Nicaragua's lack of compliance with the International Covenant on Civil and Political Rights (the "Covenant") as a result from the State's restrictive abortion law; current high rates of violence against girls and women and the lack of adoption of measures to ensure the enjoyment of the right to health.

A) National political context

1. From April 2018, Nicaragua faces a context of social and political crisis with serious human rights violations and limitations to freedom of expression and media. Likewise, the current legal framework has not guarantee free, fair, transparent and legitimate elections. This situation has led to the alteration of the constitutional and democratic order of the country.¹ The climate of impunity and corruption in the justice system become a factor for women and children to not report abuses and violations to their rights.
2. To date, various international organizations² have proposed peaceful solutions to the crisis in Nicaragua which have been rejected by the State. The Inter-American Commission on Human Rights (IACHR) has urged the State of Nicaragua to allow the entry of the Commission and its mechanisms, as well as other international human rights mechanisms, to create a special commission to carry out diplomatic efforts that seek a peaceful and effective solution to the country's crisis. In August 2018, the Office of the United Nations High Commissioner for Human Rights' working group was compelled to leave the country after presenting a report about Nicaragua's crisis that motivated the rejection of the State.³

¹ Consejo Permanente, Organización de Estados Americanos, D-014/19, "La situación en Nicaragua", (28 de junio de 2019).

² Consejo Permanente, Organización de Estados Americanos, Resolución CP/RES. 1108 (2172/18), "La situación en Nicaragua", (18 de julio de 2018); Resolución CP/RES. 1109 (2175/18), "Grupo de Trabajo para Nicaragua", (2 de agosto de 2018); Resolución CP/RES. 1128 (2231/19), "La situación en Nicaragua", (21 de mayo de 2019) y D-014/19, "La situación en Nicaragua", (28 de junio de 2019).

³ <https://www.elnuevodiario.com.ni/nacionales/473556-crisis-nicaragua-gobierno-expulsa-mision-onu/>

3. Nicaragua also faces a humanitarian crisis characterized by high rates of unemployment; adolescent pregnancy; violence and extreme poverty.⁴ The State reduced the public budget assigned to the health sector by C\$ 941.9 millions (28.10 million US Dlls) and C\$ 1,395.5 millions (41.63 million US Dlls) to education⁵.
4. Since the current President, Daniel Ortega, became Nicaragua's president all the communication channels and spaces between the State and Human Rights organizations have been closed. Between 2015 and 2017, 398 violent acts against 202 female human rights activists have been documented. 45% of the aggressions were perpetrated by the State. Police was the main offender in 25% of the cases and in 1 out of 3 cases the offender had a close link to Government's supportive groups.⁶
5. From April 2018 to January 2019, 445 aggressions were perpetrated by police, paramilitaries and other repression security forces⁷. Aggressions include physical violence, verbal threats, burning homes and at least 109 Human Rights female activists were arbitrary detained.

B) General Context violence against women

6. In 2017, estimated Nicaragua's population was 6.3 million people. 51% were women and 49% were man. 60% of the population is under 30 years old.⁸
7. Nicaragua has the highest rates of sexual violence against girls and women among the region. In 2018, 41% of sexual assault forensic exams were conducted in girls and boys between 0 and 12 years old and 40% in adolescents between 13 and 17 years old. 98.9 % of the victims were women. In 46% of the cases the aggression happened in the victim's or the offender's home and in 84.2% the perpetrator was a relative, a person known by the victim or his or her partner.⁹
8. According to the Nicaraguan Demography and Health Survey (Encuesta Nicaragüense de Demografía y Salud 2011-2012, ENDESA) only 5% of women who referred being a victim of sexual violence in Nicaragua before age 15 looked for help and reported the aggression to police. This demonstrates the lack of trust in the justice system and effective mechanisms to protect girls and adolescents rights sino la falta de mecanismos para proteger los derechos de niñas y adolescentes víctimas de violencia.¹⁰
9. According to the World Health Organization (WHO), Adolescent pregnancy remains a major contributor to maternal and child mortality, and to intergenerational cycles of ill-health and poverty. Pregnancy and childbirth complications are the leading cause of death among 15 to 19 year old girls

⁴ Asamblea Nacional de la República de Nicaragua, Ley No. 978 de Modificación a la Ley No. 966, Ley Anual de Presupuesto General de la República 2018, aprobado el 14 de agosto de 2018, <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92aaea87dac762406257265005d21f7/4e8270146ba05db1062582f100543595?OpenDocument>; El nuevo diario, Diputados de Nicaragua aprueban reforma al presupuesto que recorta C\$5 mil 900 millones, <https://www.elnuevodiario.com.ni/nacionales/472177-diputados-nicaragua-aprueban-reforma-presupuesto>

⁵ <https://www.elnuevodiario.com.ni/economia/471984-gobierno-crisis-nicaragua-gastos/>

⁶ Iniciativa Nicaragüense de Defensoras de DDHH de las Mujeres, Situación de las Defensoras de Derechos Humanos Nicaragua, noviembre 2017, http://im-defensoras.org/wp-content/uploads/2018/06/Informe-IN_Defensoras-VF.pdf

⁷ Registro de Iniciativa Nicaragüense de Defensoras.

⁸ Instituto Nacional de Información de Desarrollo (INIDE)

⁹ Corte Suprema de Justicia, Instituto de Medicina Legal de Nicaragua, Anuario 2018.

¹⁰ Instituto Nacional de Información de Desarrollo y Ministerio de Salud, Encuesta Nicaragüense de Demografía y Salud 2011/2012, 2013.

globally, with low and middle-income countries, like Nicaragua, accounting for 99% of global maternal deaths of women ages 15 to 49 years. Adolescent mothers (ages 10 to 19 years) face higher risks of eclampsia, puerperal endometritis, and systemic infections than women aged 20 to 24 years.¹¹

10. Nicaragua has the highest number of pregnant adolescents between 15 and 19 years old in Latin America accounting for 24% of total pregnancies in the country.¹² From 2005 to 2013 there was an increment by 32,403 to 35,045 of deliveries among adolescents.¹³ Nicaragua also reports a high rate of child marriage with 35% of girls and adolescents married before 18 years old. In most cases, child marriage is a driver of early pregnancy; in other cases, marriage follows a girl's often unwanted pregnancy.¹⁴
11. Criminal Law in Nicaragua criminalizes sexual intercourse with a person under 14 years old.¹⁵ However, girls are forced to risk their health and life by becoming mothers as a consequence of sexual violence. According to official records, from 2006 to 2016, 16,400 girls between 10 and 14 years old gave birth in public hospitals in Nicaragua. ¹⁶ In the period 2005-2013 34% of deliveries in girls were by caesarean section, 90% of cases due to medical complications during childbirth; 8% were diagnosed with intrauterine growth restriction; 5% with congenital anomalies; 1% were low birth weight (<1500 grams) and 11% between 1500 to 2500 grams. 56% of deliveries took place in rural areas and 61% of girls haven't finished primary education. ¹⁷
12. These data also show the existing barriers to healthcare provision for girls' victims of sexual violence, including access to contraceptive methods to prevent unwanted pregnancies, such as the Emergency Contraception Pill.
13. From 2012 to 2017, 365 femicides were recorded in Nicaragua, with an average of 73 femicides per year.¹⁸ During 2019, 44 femicides¹⁹ have been reported which characterized by high levels of viciousness and cruelty with which they were committed. Women who have survived the attacks have suffered serious health consequences. There is no known public program aimed to provide therapeutic care for the victim's relatives or to attend their socio-economic needs, even if the victim was the family's main financial provider. In addition, since January 2016, the State have dismantled the Women's and Children's Commissaries which provided specialized services to direct and indirect femicides' victims.
14. Since April 2018, the State's political crisis has represented greater risks to women's life. Human Rights organizations have reported that serious human rights violations have been committed in Nicaragua against civilian population, including crimes against humanity. During the State's Universal Periodic Review, women's rights organizations and activists pointed out that sexual violence has been used by the State as a torture method to obtain information for investigative and

¹¹ World Health Organization, Teenage pregnancy, (23 de febrero de 2018)

¹² Federación Coordinadora Nicaragüense de ONG que Trabaja con la Niñez y la Adolescencia, ODS 3-meta 3.7.

¹³ Organización Panamericana de la Salud, El embarazo en adolescentes, Boletín Informativo, (Julio 2015)

¹⁴ United Nations Population Fund, World Population Dashboard, Nicaragua.

¹⁵ Ley 641, Código Penal de la República de Nicaragua, Artículo 168.

¹⁶ Ministerio de Salud, Base de Datos de nacimientos 2005 al 2013. Citado en: OPS. El Embarazo Adolescente. Boletín Informativo. Julio 2015. Nicaragua: MINSA, 2015.

¹⁷ Organización Panamericana de la Salud, El embarazo en adolescentes, Boletín Informativo, (Julio 2015)

¹⁸ Voces contra la violencia, Femicidios, <http://voces.org.ni/femicidios>.

¹⁹ La Prensa. - 12 de Agosto 2019.- Disponible en: <https://www.laprensa.com.ni/2019/08/12/nacionales/2578353-44-mujeres-han-sido-victimas-de-femicidio-en-nicaragua-en-lo-que-va-de-2019>

incriminating purposes against activists and social leaders. To date, 14 defenders have publicly declared to have been victims of sexual violence during arbitrary detention. 4 of them were victims of rape with penetration into their genitals and 3 suffered abortions as a consequence of violent attacks inflicted in prisons.²⁰

C) Total abortion ban for over 12 years and available information on unsafe abortion

15. In violation to the rights to self-determination, non discrimination, equal enjoyment of rights, to life, to non be subjected to torture or to cruel, inhuman or degrading treatment or punishment, to liberty and security, to not be subjected to arbitrary or unlawful interference with her privacy and equal protection of the law (articles 1, 2, 3, 6, 7, 9, 17 and 26 of the Covenant), in 2006, the State approved a total abortion ban by eliminating therapeutic abortion as the only legal circumstance in the country. The total ban of this maternal health care service in Nicaragua has turned the lack of access to legal abortion into a national public health problem that leads women and girls to resort to clandestine abortion. Clandestine abortion accounts for a significant cause of maternal and mortality and morbidity in poor countries where services are more likely to be provided under unsafe circumstances.²¹
16. In its report, the State argues that Nicaragua is in favor of life and, therefore, is responsible to protect the right of the unborn in accordance to the American Convention on Human Rights and its Constitution. The State also reports that abortion is not considered a family planning method and take measures to prevent unwanted pregnancy that includes conferences in schools and communities to young people on the use of contraceptive methods, the risks of early pregnancy and abortion.²²
17. However, with these declarations the State does not recognize the fulfillment of its international Human Rights obligations and makes a wrongful interpretation of the scope of the right to life within the context of reproductive health. The Interamerican Court of Human Rights have previously resolved that the fetus cannot be recognized as a person and, therefore, as entitled to the right to life recognized in the American Convention on Human Rights. The fetus can be recognized as a subject under gradual and incremental protection according to its degree of development but this protection should never prevail to the protection of women´s life.²³ Therefore, the protection to the human right to life cannot be use to argue in favor to denied the access to safe abortion services to women.
18. Also, while access to sexual and reproductive health information is an important measure to prevent unwanted pregnancies, the State does not address the fact that women may require access to abortion services for various reasons other than interrupting unwanted pregnancies. These cases may include, but not limited, when women´s life or health is at risk or when the pregnancy is a consequence of sexual violence.
19. Since 2008, the Supreme Court has received 72 constitutionality appeals against the criminalization of therapeutic abortion, which have not been resolved. The State has also received repeated

²⁰ Movimiento Autónomo de Mujeres e Iniciativa Nicaragüense de Defensoras. - Exposición oral en pre-sesión EPU.- (3 de Abril 2019).

²¹ World Health Organization, Unsafe abortion: global and regional estimates of the incidence of unsafe abortion and associated mortality 2008, 2011.

²² HRCtte, Fourth periodic report that Nicaragua should have presented in 2012, in accordance to article 40 of the covenant, CCPR/C/NIC/4, May 17th, 2019, par. 47

²³ Caso Artavia Murillo y otros (Fecundación in Vitro) Vs. Costa Rica. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 28 de noviembre de 2012. Serie C No. 257.

recommendations from United Nations Committees and the Human Rights Council requesting the revision of abortion law, in order to protect women's human rights.²⁴

20. In developing countries with abortion bans, health complications associated to unsafe abortion are common. In 2012, 6.9 million women from developing countries (except East Asia) received post abortion health care services. However, 40% of women who suffer health complications does not received medical treatment.²⁵
21. There are not official records of the number of women who have received post abortion care or the number of maternal deaths associated to unsafe abortion in Nicaragua.
22. In 2010, the Pan American Health Organization (PAHO) estimated that the abortion ban in Nicaragua would result in an increase rate of maternal mortality due to unsafe abortion from 1.6 to 4.6-9.2 per 1,000 women and of maternal mortality due to abortion of total maternal deaths from 2.4 to 12-30 percent. PAHO also acknowledged that the abortion ban has an impact on the quality of the services in Nicaragua causing delays in obstetric complications care due to doubts of medical staff about how they should proceed in cases of post abortion care.²⁶
23. It is difficult to access reliable official data on maternal mortality from years after 2009 given the lack of transparency in the State's actions and the influence that the current government has on the institutions. For example, according to data published by the Ministry of Health, from 2016 to 2018 there were an average of 49 deaths per year.²⁷ However, an investigation by the Confidential titled "Sub registry of maternal deaths", stated that in 2012 the Ministry of Health (MINSa) reported 51 maternal deaths when in fact 71 occurred and in 2013, 87 deaths occurred but only 71 were recorded.²⁸
24. As of January 2017, 1,117 Zika cases in pregnant women were confirmed in Nicaragua. However, the State only reported to PAHO / WHO two confirmed cases of congenital syndrome in fetuses associated with Zika (microcephaly, reduced brain tissue, damage to the back of the eye, congenital contractures and limiting movements of the body after birth).²⁹ The number of cases of congenital syndrome reported by Nicaragua does not match the average percentage of 5% affected fetuses associated with Zika.³⁰ The underreporting cases of congenital syndrome is the result of the State's refusal to publicly address women's requests to terminate their pregnancies in the face of a diagnosis of a genetic condition in the fetus or the need to provide long-term care term for children and their families affected by the virus.

²⁴ See D) section.

²⁵ Guttmacher Institute, Aborto inducido a nivel mundial, incidencia y tendencias mundiales, (marzo 2018).

²⁶ Organización Panamericana de la Salud, Derogación del Aborto Terapéutico en Nicaragua: Impacto en Salud, (14 de julio de 2010).

²⁷ Ministerio del Poder Ciudadano para la Salud, Mapa de mortalidad Materna, 2016, 2017, 2018 y junio 2019.

²⁸ El confidencial, Sub registro de muerte materna, Ismael López, (17 de febrero, 2014).

²⁹ OPS/OMS, Zika, Reporte epidemiológico, Nicaragua (25 de septiembre de 2017).

³⁰ MacDonald P., Holden E. W., Zika and Public Health: Understanding the epidemiology and Information environment, Pediatrics, February 2018, Volume 141/ Supplement 2.

D) Recommendations to Nicaragua from United Nations Human Rights Bodies on total abortion ban and high rates of violence against women

25. United Nations Human Rights Bodies have expressed their concern to the State of Nicaragua due to the high levels of violence against girls and women and the total abortion ban as a policy that violates their human rights. In this regard, they have recommended revising the Law to reduce impunity rates and allow abortion, at least in cases where the health and/or life of the woman is at risk and when the pregnancy is the result of sexual violence. However, the State has ignored the fulfillment of its international obligations.³¹

EPU

26. As a result of the Universal Periodic Review, on 2013 and 2019 the Human Rights Council recommended the State of Nicaragua to review its abortion law and legalize the provision of this health service. However, in 2014 the State expressly rejected this recommendation, arguing that the prohibition of abortion was consistent with the will of its population. In the Review process of 2019 the State received 18 additional recommendations on sexual and reproductive health, which hasn't been accepted by the State yet.
27. **(Third Cycle - 2019)** The Human Rights Council recommended the State to decriminalize abortion in all circumstances and ensure the availability of safe and legal abortion services for women and girls who become pregnant as a result of rape or whose lives or health are in danger ; to conduct an study on the scope of illegal abortions performed under dangerous conditions in the country and to introduce measures to safeguard the universal right to life and health of women; to guarantee the effectiveness of sexual and reproductive health and rights, including access to all kinds of services and information on sexual and reproductive health. Regarding the prevention of sexual violence against women, the Council also recommended the State to develop strategies and take immediate measures to address the prevailing violence against women and girls, including femicides and sexual abuse.³²
28. **(Second Cycle - 2014)** The Human Rights Council recommended the State to adopt measures to ensure full and effective recognition of sexual and reproductive rights and make legislative changes to decriminalize abortion. However, the State did not accept these recommendations on the grounds that accepting them would be "against the popular and sovereign will of Nicaraguans who, through a democratic process, said they were in favor of the criminalization of abortion."³³

³¹ Comité de Derechos Económicos, Sociales y Culturales (CESCR), Observación General 14: El derecho al disfrute del más alto nivel posible de salud (Art. 12) (22o período de sesiones., 2000), en Recopilación de las Observaciones Generales y Recomendaciones Generales Adoptadas por Órganos Creados en Virtud de Tratados de Derechos Humanos, en 90, párrafo 14, Doc. de la ONU HRI/GEN/1/Rev.5 (2001); Ver CESCR, Observación General 22: El derecho a la salud sexual y reproductiva (artículo 12 del Pacto Internacional de Derechos Económicos, Sociales y Culturales) párrafos 1-2 (Mayo 2016).

³² Consejo de Derechos Humanos, Informe del Grupo de Trabajo sobre el Examen Periódico Universal, Nicaragua, párrafos 125.217-125.220 and 125.239-125.246, Doc. de la ONU A/HRC/42/16, (2019).

³³ Consejo de Derechos Humanos, Informe del Grupo de Trabajo sobre el Examen Periódico Universal, Nicaragua, párrafo 51, Doc. de la ONU A/HRC/27/16/Add.1, (2014).

E) Suggested questions

We kindly request the HRCtte pose the following questions to the State of Nicaragua during its 127th session:

29. What measures has the State of Nicaragua taken to reduce child pregnancy in girls under 14 years old, since these cases should be legally considered the result of sexual violence?
30. What measures has the State of Nicaragua taken to reduce cases of maternal mortality associated with unsafe abortion?
31. In response to the recommendation that the State of Nicaragua has repeatedly received from various United Nations Human Rights Bodies, does the State intend to consider changing its abortion law and allow the legal access to this health service at least in the cases of sexual violence and when women's health and/or life is at risk?
32. In Nicaragua, abortion is illegal under any circumstances, even when women's health or life is at risk. What measures are available for pregnant girls and women whose health or life is at risk?
33. What measures has the State taken to ensure that the budget cut does not affect the provision of sexual and reproductive health services, particularly the access to contraceptive services and care for victims of sexual violence?
34. What measures has the State taken to guarantee access to comprehensive health services for girls and women victims of sexual violence, particularly to the Emergency Contraception Pill to prevent unwanted pregnancies?
35. What measures has the State taken to guarantee the existence of reliable health care databases that allow to know the cases of medical care for sexual violence, post-abortion care and maternal death due to unsafe abortion?
36. What measures does the State promote to guarantee sexual education and thus prevent unwanted pregnancies in Nicaragua?
37. What effective measures can the State implement to prevent femicide and sexual violence against girls and women and its consequences?
38. What measures has the State taken to provide support to the daughters and sons of the victims of femicides?

F) Conclusions

39. The abortion ban in Nicaragua violates girls and women's human rights in accordance with articles 1, 2, 3, 6, 7, 9, 17 and 26 of the Covenant.
40. Abortion Law in Nicaragua causes girls and women who want to terminate their pregnancy to risk their physical, mental and social well-being when they go to unsafe services.
41. The State of Nicaragua must fulfill its international obligations and guarantee the protection of the human rights of Nicaraguan girls and women.

42. We hope that this information will be useful for the adoption of LOIs about the State of Nicaragua, in compliance with the Covenant.

Very sincerely,

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