

CESCR Shadow Report

Nicaragua

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Committee on Economic, Social and Cultural Rights
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Re: Supplementary information on the Nicaragua Government Report, scheduled for review by the Committee during its 41st session (3-21 November 2008)

Dear Committee Members:

We are making this submission to supplement the periodic report of the State of Nicaragua, which the Committee on Economic, Social and Cultural Rights (the Committee) will review in November 2008 during your 41st session. We hope that the information in this letter will contribute to your work in monitoring compliance with the rights protected in the International Covenant on Economic, Social and Cultural Rights (CESCR).

We are aware that the Committee is concerned with the right to health as evidenced by your General Comment No. 14 issued in 2000. Our main aim is to provide specific information on the criminalization of therapeutic abortion in the Nicaraguan Penal Code and its consequences regarding the rights of women and female adolescents and children in our country.

We hope that the Committee will ask the State of Nicaragua the questions below during your review of the obligations which they assumed upon ratifying the Covenant. We also hope they will be included in your Concluding Observations to the Government. Information on which the questions are based can be found in the subsequent text.

Questions for the State of Nicaragua during the 41st CESCR session

- 1. How will the State Party resolve the discrimination based on sex, age and socioeconomic status which has resulted from the abolition of legal therapeutic abortion?**
- 2. How will the State Party deal with the health problems that women face when these worsen during pregnancy, endangering their lives?**

3. **What strategies has the State party proposed to reduce unsafe abortions, especially in the absence of comprehensive care measures for rural, poor and young population groups?**
4. **How does the State of Nicaragua propose to resolve the ethical dilemma posed to health-care providers, and especially physicians, due to the abolition of therapeutic abortion? Which protection mechanisms will be available to health-care providers who are charged with crimes as a result (for example, medical negligence)?**
5. **How does the State Party ensure that comprehensive sexual and reproductive rights for women are respected in the absence of sufficient measures to deal with unwanted pregnancies, especially resulting from rape?**
6. **What steps is the State Party taking to ensure that the views of specific religious groups do not prevent the legislature from considering new legislation to permit indications for legal abortion, such as to save a woman's health and life or in cases of pregnancy due to rape?**

We hope that the information presented will be useful for your review of the State of Nicaragua's compliance with the International Covenant on Economic, Social and Cultural Rights. If any Committee members have questions, or would like further information, please do not hesitate to contact us.

Very sincerely,

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BACKGROUND INFORMATION FOR THE QUESTIONS

Part II

Article 2.2: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

On 26 October 2006, the National Assembly (legislature) of Nicaragua criminalized therapeutic abortion, the only indication for legally terminating a pregnancy which had existed in the country for 132 years. Article 165 of the Penal Code was eliminated; it had stated: “[The need for] Therapeutic abortion will be determined scientifically with the participation of at least three authorized persons and the consent of the spouse or closest relative to the woman with regard to legal issues.”

The elimination of this possibility for physicians to save a woman’s or girl’s life by ending a pregnancy that poses a grave health risk means that women’s right to life has been seriously curtailed in Nicaragua.

In response to this legislative regression, starting in January 2007 various civil society organizations submitted 45 appeals to the Supreme Court of Justice on the unconstitutional nature of this action. These submissions were supported by various national and international organizations and included 16 amicus curiae briefs to provide the magistrates with scientific and legal arguments as to why this Article of the Nicaraguan Penal Code should be maintained. The Supreme Court did not respond to the submissions despite procedural regulations stipulating the time period within which appeals should receive a response.

In September 2007, the National Assembly approved a new Penal Code (Law 651)¹, which maintained the prohibition of therapeutic abortion. When this Code entered into force on 9 July 2008, the legal appeals from civil society became invalid, so that new appeals of partial unconstitutionality were submitted to the Supreme Court of Justice against specific Articles of Law 641.

The criminalization of abortion responded to requests from religious groups who had influence on political parties represented in Parliament; this violated the constitution of Nicaragua, which in Article 14 states that it is secular State in which policies and laws cannot be formulated on the basis of religious criteria.

Article 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

The State of Nicaragua must promote the comprehensive sexual and reproductive rights of women, including their access to medical services that only they, and not men, may need. Such services include emergency contraception and safe abortion care, especially in the case of women who have suffered sexual assault. The violation of a female sexual violence survivor’s psychological and emotional health should not be aggravated because the State obliges her to carry to term a pregnancy against her will. On the contrary, the State should provide her with medical, psychological and legal care to cope with the

¹ Ley No. 641 – Código Penal de Nicaragua, Artículo 556, inciso 40: Ley No.603, “Ley de derogación al artículo 165 del Código Penal vigente, published in La Gaceta No. 224, 17 November 2006.

resulting injuries. However, women who become pregnant due to rape cannot end a resulting pregnancy legally in Nicaragua.

The denial of such abortion services further constitutes discrimination based on sex because women are left with a result of sexual violence which a male victim would not have to endure. Men do not encounter legal obstacles to receiving certain medical services. Moreover, men are not exposed to criminal penalties, while women are denied the option of having a legal abortion to preserve their health and life and suffer punishment if they turn to an illegal abortion.

Criminalization of therapeutic abortion not only constitutes discrimination against women on the basis of sex but also discrimination on the basis of socioeconomic status since different groups of women have more or less access to information and resources. Depending on their economic resources, some women can gain access to a safe service, so that it is once again the poorest women who put their lives at risk in an effort to save their lives.

If one takes into account that discrimination on the basis of age is prohibited, the abolition of therapeutic abortion is also a clear example of discrimination against adolescent girls, denying their right to health and life. Adolescents aged 15-19 years suffer twice the probability of dying due to pregnancy-related complications than women aged 20-24 years; those younger than 15 years have a four times greater chance of dying.² At least some of these complications could be eliminated by terminating pregnancies, which is now impossible for medical reasons.

Part III

Article 6.1: The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include...policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

The rights of health-care professionals, and more specifically physicians, have been violated by the legislative change. The total abolition of abortions to preserve women's physical and mental health and lives forms a clear restriction on their duty to protect patients' lives and their right to self-determination. This also constitutes a violation of the Nicaraguan Political Constitution, which states that every Nicaraguan has the right to exercise his profession freely (Article 86).

The prohibition of this clinical procedure which is needed by some women reduces the capacity of health-care providers to provide adequate care. It has led to a greater number of supplementary examinations, second medical opinions and/or referrals so as not to have to treat a patient, thereby delaying care and increasing the risk of death or serious damage to the health of pregnant women. In the

² 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

case of obstetric emergencies, the delays can mean the difference between life and death or can result in permanent disabilities such as sterility.³

The criminalization of therapeutic abortion also jeopardizes physicians from a legal standpoint: if they terminate a pregnancy, they can be denounced, investigated, charged and condemned for the “crime” of abortion, but if they do not offer this service because it is prohibited by the Penal Code, they can also be denounced, charged and condemned for not complying with the Article 160 of the same Penal Code (denial of aid), in which health-care providers are penalized when they deny health care if this can lead to serious health risks for a person.

We can confirm that the abolition of therapeutic abortion by the Nicaraguan State does not guarantee the right of people to exercise their profession freely, because it is obliges physicians to violate their own principles and duties. The impossibility of offering legal abortions for health and life indications can generate feelings of professional powerlessness and affect the providers’ own wellbeing.

Article 10.2: Special protection should be accorded to mothers during a reasonable period before and after childbirth.

The criminalization of therapeutic abortion contravenes Article 10 of the Covenant, which states that States should protect and help families and give special protection to women during pregnancy.

Article 10.3: Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.

Article 10 also mentions the State’s obligation to especially protect children. This right is violated when girls and boys are orphaned because their mothers did not have access to medical services to save their lives. Moreover, girl children and female adolescents who become pregnant due to rape are left without medical aid and protection, whereby the psychological and emotional abuse they suffer is aggravated by a pregnancy they are forced to carry to term.

Article 12: 1: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

It is important to acknowledge that the right to health implies enjoyment of the highest possible level of mental and physical health, which is recognized in many international treaties and by the World Health Organization (WHO), which conceptualizes the right to health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” Women’s rights to health, as well as liberty, are threatened when women are deterred from seeking medical care because they are afraid of being reported to police authorities by doctors or other medical professionals who suspect unlawful behavior.

The Committee has shown its concern about high maternal mortality rates, including those attributed to illegal abortions, in recommendations to other States and we believe that this concern is also warranted regarding Nicaragua.

³ Gómez S., Blandón M. 2007. *Los Rostros detrás de las cifras: Los efectos trágicos de la penalización del aborto terapéutico*. Managua, Nicaragua, Ipas Centroamérica. P. 13

The abolition of therapeutic abortion constitutes a discriminatory action in the health sector because it does not take into account the situation of women with high-risk pregnancies which directly cause maternal morbidity and mortality. Statistics from the Nicaraguan Ministry of Health register maternal deaths related to pathologies that existed prior to pregnancy such as: leukemia, hyperthyroidism, pancytopenia, cancer, hepatic insufficiency, pancreatitis, deep venous thrombosis, cardiopathy, HIV, etc.⁴ The risk of death during pregnancy, aggravated by these indirect medical causes, can be considerably reduced through therapeutic abortion. Therefore, the possibility of terminating a pregnancy to protect a woman's life is directly related to her right to life. Prohibitive or highly restrictive laws in a country contribute to increases in maternal mortality.

In addition, prohibiting therapeutic abortions limits possibilities of reducing infant mortality, and promoting the healthy development of boys and girls, since the deaths of their mothers increases their chances of dying before the age of 5 years. This can contribute to our country not being able to reduce maternal and infant mortality by the year 2015.⁵

When therapeutic abortion was criminalized in Nicaragua, this was done without taking into account the opinions of medical associations, medical schools, and national and international human rights organizations that publicly opposed this decision. In this context, we must note that preventing any kind of abortion not only affects women who need a therapeutic abortion, but also women who need medical care for other complications and pregnancy-related emergencies, such as ectopic pregnancies or miscarriage in which it is impossible to save the fetus.⁶

Even in countries where most of the population lives in good socioeconomic conditions, has access to a universal health system and to modern methods of contraception, it is impossible to predict and prevent pregnancies which could endanger the health or life of pregnant women. Conversely, "...the death or severe health consequence following the denial of a therapeutic abortion is in many cases foreseeable and preventable."⁷

Conclusion

We look forward to hearing the State of Nicaragua's responses to your questions and are confident that your Concluding Observations and recommendations will contribute to the advancement of the sexual and reproductive health and rights of girls and women in Nicaragua.

⁴ Register of maternal deaths of the Nicaragua Ministry of Health, 2007

⁵ Organización Panamericana de la Salud. 2007. *Derogación del Aborto Terapéutico en Nicaragua: Impacto en Salud*. Managua, Nicaragua. P. 17

⁶ Gómez S., Blandón M. 2007. *Los Rostros detrás de las cifras: Los efectos trágicos de la penalización del aborto terapéutico*. Managua, Nicaragua, Ipas Centroamérica. P. 13

⁷ Human Rights Watch. October 2007. *Over their dead bodies. Denial of Access to Emergency Obstetric Care and Therapeutic Abortion*. Vol. 19, No. 2(b). New York, Human Rights Watch, p. 7