

Managua, Nicaragua, 23 March 2009

Committee against Torture
c/o Joao Nataf
Human Rights Officer
Secretary of the Committee (a.i.)
Tel: 41-22-917-9102
E-mail: jnataf@ohchr.org

OHCHR REGISTRY

26 MAR 2009

Recipients :CAT.....
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Re: Complementary information for the Committee's review of the periodic report by the State of Nicaragua during its 42nd session (30 April to 1 May 2009)

Dear Committee members,

We are sending you this shadow letter in order to provide supplementary information to the periodic report from the State of Nicaragua, which the Committee against Torture (the Committee) will review during its 42nd session. We hope that the information in this letter will contribute to your work in monitoring compliance with the rights protected under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

We know that the Committee is concerned with the protection of individuals and groups made vulnerable by discrimination from ill-treatment and its consequences, as mentioned in General Comment 2 regarding the deprivation of medical treatment for women and girls, especially in cases related to reproductive decisions.

Our primary aim is to provide specific information regarding the criminalization of therapeutic abortion in Nicaragua's Penal Code, as evidence of the discrimination and marginalization suffered by women, female adolescents and girls in Nicaragua.

We hope that the Committee will pose the questions below to the State of Nicaragua during its review of the State's obligations resulting from ratification of the Convention. We also hope that you will include comments related to the questions in your Concluding Observations to the State of Nicaragua. Information pertinent to these questions is presented in the following pages.

Questions for the State of Nicaragua during the Committee's 42nd session

- 1. How will the State resolve the discrimination and marginalization suffered by women subsequent to the criminalization of therapeutic abortion, a medical treatment that can save their health and/or life?**
- 2. How will the State resolve the health problems presented by women that can worsen during pregnancy, endangering their lives, and the discrimination that ensues by withholding required medical treatment since therapeutic abortion has been criminalized in all circumstances?**
- 3. How will the State of Nicaragua resolve the ethical dilemma faced by health-care providers, especially physicians, due to the criminalization of therapeutic abortion? Which mechanisms will be adopted to protect health-care providers against possible complaints and charges?**

4. How will the State ensure respect for the sexual and reproductive rights women, female adolescents and girls in the absence of sufficient measures to deal with unwanted pregnancies, particularly as a result of rape?

We hope that the information presented in the next pages will be useful for your review of compliance with the Convention by the State of Nicaragua. We would be happy to answer any questions or provide additional information to the Committee members as required.

Very sincerely,

Asociación de mujeres AXAYACATL – Masaya
Asociación nicaragüense de Trans
Asociación para el Apoyo a la Familia Nicaragüense (ANFAM)
Camenas Trans
Católicas por el Derecho a Decidir Nicaragua
Centro Ecu­mé­ni­co Antonio Valdivieso
Centro Nicaragüense de Derechos Humanos (CENIDH)
Centro de Estudios y Promoción Social (CEPS)
Corriente Joven Feminista
Facultad de Ciencias Médicas de la Universidad Autónoma de Nicaragua – Managua
Facultad de Ciencias Médicas de la Universidad Autónoma de Nicaragua – León
Fundación Puntos de Encuentro
Grupo Feminista de León
Grupo de Mujeres Lesbianas SAFO
Iniciativa desde la Diversidad Sexual por los Derechos Humanos
Ipas Centroamérica
Movimiento Comunal Nicaragüense (MCN)
Movimiento Nicaragüense contra el Abuso Sexual
Organización Dos Generaciones
Programa Interdisciplinario de Estudios de Género de la Universidad Centroamericana (UCA)
Sociedad Nicaragüense de Médicos Generales
Sociedad Nicaragüense de Ginecología y Obstetricia
Una Nueva Esperanza

SUPPLEMENTARY INFORMATION

Part I

Article 1.1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 2. 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Harm to women, female adolescents and girls in Nicaragua

On 26 October 2006, the National Assembly criminalized therapeutic abortion, the only indication for terminating pregnancies allowed by law in Nicaragua for 133 years. Up to that time, Article 165 of the Penal Code stated: "[The need for] therapeutic abortion will be decided scientifically for legal purposes, by three practitioners and with the consent of the spouse or closest relative of the woman."

The criminalization of therapeutic abortion constitutes a violation of women's fundamental human rights, since it implies denying them medical treatment that can save their lives or preserve their health. This is an intentional act of discrimination that exposes women to serious physical and mental suffering, which the Convention defines as cruel and inhuman treatment.

The denial of this medical service does not take into account the special needs of women with high-risk pregnancies, which are a direct cause of maternal morbidity and mortality. According to preliminary statistics from the Nicaraguan Ministry of Health, in 2008 maternal deaths were registered that were related to pre-existing pathologies, such as cardiopathy, breast cancer, meningioma, hepato-cellular cancer, auto-immune diseases (e.g., Guillain Barré syndrome) and HIV infection.¹ 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. When a country has prohibitionary laws, this situation contributes to an increase in maternal mortality rates.

The State of Nicaragua must promote women's sexual and reproductive rights, including access to medical services that only they, and not men, need. These services include emergency contraception and safe abortion care, especially in cases of women and girls who have been raped. The psychological and emotional damage to the health of survivors of sexual abuse must not be aggravated by an obligation imposed by the State to continue a pregnancy against their will. On the contrary, the State should provide them with medical, psychological and legal assistance to help them recuperate from the injuries suffered. However, women and girls who have become pregnant as a result of rape cannot legally terminate those pregnancies in Nicaragua.

¹ Registry of maternal deaths by the Ministry of Health in Nicaragua, 2008

The denial of therapeutic abortion constitutes discrimination based on sex since men do not encounter legal barriers to receiving certain medical services, nor criminal penalties for using such services, while women are denied the option of terminating a pregnancy to preserve their health and lives and run the risk of criminal sanctions if they access this service illegally (General Comment 2, paragraph 22²). Moreover, this situation implies discrimination based on socioeconomic status for those who have less access to information and resources; women who have more economic resources are able to access a safe abortion, while poorer women risk their lives with unsafe abortions.

As age is considered one of the criteria that contributes to discrimination which forms the basis for torture and ill-treatment (General Comment, paragraph 22), denial of therapeutic abortion also constitutes a clear example of discrimination against female adolescents and girls, since adolescents aged 15-19 years of age have double the risk of dying due to pregnancy-related complications compared to women aged 20-24 years; for girls younger than 15 years, the risk is four times greater.³ At least some of these potential complications can be resolved through access to therapeutic abortion as part of medical treatment, which has now been impossible for the past three years due to the State-imposed legal restrictions.

Even in countries where the majority of the population lives in good socioeconomic conditions, has access to a system of universal health care and modern contraceptive methods, it is impossible to predict and prevent all pregnancies that may pose a danger to the health or life of pregnant women. "...The death or severe health consequence following the denial of a therapeutic abortion is in many cases foreseeable and preventable".⁴

In 2004, the Committee against Torture expressed concern in its Concluding Observations to the State of Chile regarding "Reports that life-saving medical care for women suffering complications after illegal abortions is administered only on condition that they provide information on those performing such abortions." This situation is now possible in Nicaragua. An employee of a United Nations agency in Nicaragua said: "Women are afraid of seeking treatment. That's the first step.... And doctors are afraid of providing treatment.... It's the psychological factor.... And the combination may have caused deaths."⁵

Harm to health-care providers

The criminalization of therapeutic abortion was approved without taking into account the views of medical societies, schools of medicine, and national and international human rights organizations that publicly opposed this decision.

The rights of health-care professionals, particularly physicians, are violated by this legislative change. The total criminalization of abortion to preserve women's lives and physical or mental health clearly restricts their duty to protect the lives of patients and their right to self-determination. This also constitutes a

² Comité against Torture. 24 January 2008. *General Comment No. 2*; <http://daccessdds.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement>

³ 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

⁴ Møllmann, Marianne. October 2007. *Over their dead bodies. Denial of access to emergency obstetric care and therapeutic abortion in Nicaragua*. New York, Human Rights Watch; page 7; <http://www.hrw.org/en/reports/2007/10/01/over-their-dead-bodies-0>

⁵ Møllmann, Marianne. October 2007. *Over their dead bodies. Denial of access to emergency obstetric care and therapeutic abortion in Nicaragua*. New York, Human Rights Watch; <http://www.hrw.org/en/reports/2007/10/01/over-their-dead-bodies-0>

violation of the Nicaraguan Political Constitution, which states that every Nicaraguan has the right to exercise his profession freely (Article 86).⁶

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 case of obstetric emergencies, the delays can mean the difference between life and death or can result in permanent disabilities such as sterility.⁷

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 2.2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.

In this article, the convention states that the prohibition of torture is absolute and imperative and that States may not invoke exceptional circumstances to justify it. In General Comment 2, the Committee rejected any justification based on religious or traditional beliefs as a reason for the State not complying with this absolute prohibition.⁸

Nevertheless, the criminalization of therapeutic abortion in Nicaragua came in response to requests from religious groups, who used their influence on political parties represented in the Parliament to comply with their demands. This violated the constitution of Nicaragua, which in Article 14 states that Nicaragua is a secular State, in which laws and policies may not be based on religious criteria. Moreover, this conflicts with the obligations assumed in ratifying this Convention.

Article 13. Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

⁶ Political Constitution of the Republic of Nicaragua and amendments (1987-2000). Article No. 86: Every Nicaraguan has the right to choose and freely exercise his profession or office and to choose his place of work, with no other requirements than academic qualifications and fulfillment of his social functions.

⁷ 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

⁸ Committee against Torture. *General Comment 2*, paragraph 22.

Harm to human rights defenders

Human Rights Watch has noted that the State of Nicaragua is persecuting people who have protested against the criminalization of therapeutic abortion:

“Since beginning a campaign against a newly enacted absolute ban on abortion in 2006, women's rights advocates have been subject to official investigations into their work, and some have reported suffering acts of intimidation from unknown sources.... Public statements by Nicaraguan authorities raise doubts as to the motives behind the investigations. In October, Armando Juárez, chief inspector of the Public Prosecutor's Office, suggested that promoting abortion rights could be construed as a crime, according to *El Pueblo Presidente!*, another state news site highlighted on the presidential homepage. Also this month, an article in *El 19* concerning the CINCO and MAM investigations described the "promotion of abortion" as "a flag raised by Nicaraguan pseudo-feminists with the intention of obtaining millions in foreign funds.... Over the past two months, some women's rights defenders have reported being subjected to acts of intimidation, including threatening calls and acts of vandalism by unknown assailants. Earlier in October, Ana María Pizarro, a representative of MAM and one of the women's rights leaders being investigated in the "Rosita" case, reported receiving an anonymous telephone call insinuating that her 13-year-old son would be kidnapped. In September in the city of León, red and black paint - the colors of the governing party - was thrown on the house of human rights advocate Vilma Núñez, former vice-president of the Nicaraguan Supreme Court of Justice and current president of the Nicaraguan Center for Human Rights.”⁹

Another incident involves a case presented in October 2007 to the General Prosecutor's Office of the Republic by the Asociación nicaragüense pro Derechos Humanos (CPDH: Nicaraguan Association for Human Rights). In this case, nine feminists¹⁰ have been accused of covering up a crime of rape and illicit association to commit an offence because they helped a family by demanding that the State authorize a therapeutic abortion for a nine-year-old girl who had been raped. Their action was based on a resolution from the Ministry of Health and reference to Article 165 of the Penal Code which was in current in 2003 (which allowed therapeutic abortion).

These women have a well-known history as defenders of women's human rights, as well as committed social activists. They are all persons of impeccable honor, ethics and commitment to constructing a democratic nation with Access to justice for all people, without discrimination and free from any form of violence.

The General Prosecutor's Office accepted the denunciation and began an investigative process despite having no legal arguments to support this. This action prompted a series of statements by persons and organizations at the national and international levels in support of the nine women charged. The organizations expressed their concern about the harassment and threats against the feminists and invited the Ministry concerned to reject the denunciation as lacking any legal or ethical basis. Nevertheless, in the 18 months since the investigation began the denunciation has not been rejected and continues to be used as a means of pressure against the women and all organizations that work for women's rights.

⁹ Human Rights Watch. 28 October 2008. *Nicaragua: protect rights advocates from harassment and intimidation*; <http://www.hrw.org/en/news/2008/10/28/nicaragua-protect-rights-advocates-harassment-and-intimidation>

¹⁰ Marta María Blandón, Violeta Delgado, Juana Jiménez, Yamileth Mejía, Luisa Molina, Martha Munguía, Lorna Norori, Ana María Pizarro y Mayra Sirias

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