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**REPORT ON VIOLATIONS OF WOMEN'S HUMAN  
RIGHTS TO THERAPEUTIC ABORTION AND  
EMERGENCY MEDICAL CARE, AND  
OF THE RIGHTS OF WOMEN'S HUMAN RIGHTS  
DEFENDERS**

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**In response to the**

**SECOND AND THIRD PERIODIC REPORT  
OF NICARAGUA**

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## Executive Summary

This Shadow Report is submitted by the Autonomous Women's Movement of Nicaragua (MAM: Movimiento Autonomo de Mujeres) and the Center for Constitutional Rights (CDC: Centro de Derechos Constitucionales), located in Managua, Nicaragua, and the International Women's Human Rights Clinic (IWHR) at the City University of New York (CUNY) School of Law. Descriptions of these organizations are provided in Appendix A.

The Report addresses two urgent concerns:

- The recently enacted laws that criminalized all abortion, including doctors who provide them and women who seek them or who, in desperation, self-abort; and
- The escalating campaign of harassment and persecution against groups who oppose the abortion ban as well as other groups who are outspoken in their criticism of the current government.

First, as to the absolute abortion ban on therapeutic abortion. The major impact of this law falls principally upon the poor and young women. Prior to the repeal, 1818 therapeutic abortions were performed in Nicaragua. Since enactment of the law, however, approximately 2500 women have gone abroad to obtain safe abortions. Doctors are chilled from performing life-saving treatments, including therapeutic abortion. Women's lives and health are placed at risk by the anti-therapeutic abortion in three situations all of which ethically demand immediate intervention: (1) women in life and health threatening pregnancies, including those resulting from rape and incest or fetal deformities or who encounter potentially fatal complications are denied their right to choose therapeutic abortion; (2) pregnant women who require emergency obstetric intervention, e.g., to terminate an ectopic pregnancy; and (3) women suffering dangerous consequences of unsafe abortion. Twelve (12) women have been reported to have died as a result of the law, but the figure is likely much greater than that as it fails to take into account a sharp rise in young pregnant women alleged to have committed suicide and "indirect" causes such as aneurysms and hyperthyroidism. With respect to obstetric emergencies, the Pan American Health Organization (PAHO) estimates that one ectopic pregnancy occurs daily in Nicaragua. Each one of these women is at risk of death or severe health damage without the immediate and untrammelled assistance of doctors.

This Human Rights Committee, other human rights bodies, the World Conferences, the World Health Organization, and many international health organizations all underscore the toll in women's lives and health that restrictive legal abortion exacts and Nicaragua's law is the most extreme law possible.

The Nicaraguan government, by supporting the law, has failed both to monitor the real impact of the law and minimize its dangers, even by assuring doctors that they can act without fear of criminal charges in obstetric emergencies. The government has thereby violated pregnant women's rights to equality (art. 3 and 26); life (art. 6); freedom from torture and inhuman treatment (art. 7); right to liberty and security of the person (art. 9); right to privacy (art. 17); freedom from religious coercion (art. 18); freedom of expression (art. 19); protection of family

(art. 23); and the rights of the child (art. 24). It has also violated doctors rights to practice their profession ethically and provide necessary and confidential services to their patients in violation of rights to equality (art. 3 and 26); right to liberty and security of the person (art. 9); right to privacy (art. 17); freedom from religious coercion (art. 18); and freedom of expression (art. 19).

Accordingly, we call upon the Committee, consistent with your practice and precedents, to closely examine Nicaragua on its support for the law, to declare the absolute ban a violation of the Convention, and to call upon the Government of Nicaragua to remove all penalties against therapeutic abortion, including in regard to pregnancies resulting from rape and incest and from serious fetal deformity.

Second, as to the attacks on human rights defenders. The Government of Nicaragua has since 2007 waged, and permitted and encouraged its supporters to wage, and is therefore complicit in an escalating campaign of political harassment and persecution against MAM and other human rights defenders who have advocated for therapeutic abortion and opposed the criminal abortion law as well as other Government policies. As a result of exercising their rights protected by the Convention, MAM and its members have been subjected to continuous harassment, and their work and lives obstructed. The rights violated include their rights to hold independent opinions; criticize the government; assist a nine-year-old girl, then believed to be a rape victim, to obtain a therapeutic abortion under the old law; sponsor demonstrations; and alert the international community about the violations of their rights.

Examples of the abuse include an ongoing criminal investigation of nine leaders of MAM purportedly for their role in assisting the nine-year old; violent disruption by Sandinista party supporters of the Government of a demonstration they co-organized on September 20, 2008 in which two people were injured; attacks on homes and invasion of the security and privacy of leaders through late-night threatening phone calls; scurrilous and dangerous attacks by Government officials and others in the press and in public labeling the activists as “baby killers,” “murderers” and traitors to the nation. During the week of September 22, 2008, it was reported that criminal charges would be filed imminently; one of the human rights’ leaders’ home was spray-painted and oil poured on the lawn; and a Government minister charged publicly that those who oppose abortion are criminals. Doctors who oppose the abortion law and have done so publicly have also come under attack, receiving threatening night calls, and subject to efforts at entrapment by women calling in the night seeking illegal abortions.

Intolerant of opposition, the Government is not only attacking MAM and its allies; it has launched an attack on any and all opposition from civil society. In September 2008, the press published an article revealing the government’s intention to file charges of money-laundering against 17 non-governmental organizations who oppose the Government, most of whom are involved with women’s human rights, including domestic violence and abortion. The “charges” are an effort to stop all international funding of non-governmental groups and the government expelled from Nicaragua two international non-governmental organizations (NGOs) that have provided funds, Oxfam-London and HIVOS of the Netherlands.

On October 2, 3, 7 and 8, 2008, the public prosecutor summoned members of the board of directors of CINCO, Center for Communication Research, and leaders of MAM to appear during

a criminal investigation without citing specific charges, but signaling that they had harmed the Nicaraguan State, as a way to intimidate human rights defenders.

It is, therefore, urgent that the Human Rights Committee investigate this escalating and increasingly frightening campaign of persecution of human rights defenders by the Government, by the Sandinista party members acting with the Government, and by private persons incited by this campaign which violates the rights of MAM, the doctors and other human rights defenders under this Convention.

Specifically, the Government's actions and omissions are violating the rights to defend and promote the equality and rights of women (arts. 3 and 26); freedom from reputational attacks (arts. 17 and 26); to protect everyone's right of conscience and belief (art. 18); to hold and express their opinions publicly (art. 19); to assemble peacefully and demonstrate (art. 21); freedom of association (art. 22); to organize and associate to critique and have impact on policies and public attitudes (art. 25); and to take part in public affairs (art. 25).

Under the Convention, the Government has the obligation not only to respect these rights, but also to ensure them against private obstruction (articles 2 and 5). Instead the Government's policies are encouraging increasing attacks.

In conclusion, the undersigned groups call upon the Committee to investigate both these issues with the Government of Nicaragua and to make recommendations urgently needed both to protect the lives and health of women needing therapeutic abortion or emergency obstetric care and to protect the defenders of women's human rights from escalating and dangerous political harassment and persecution.

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## I. Statement of Facts

This Report is addressed to Issue # 8 in the Committee's list of issues, specifically with respect to Nicaragua's total ban on abortion. The Committee asked the following of the State party:

Please provide information on the reform of the Criminal Code, which has prohibited therapeutic abortion since 2006. Please also comment on reports that this reform has led to a rise in the number of clandestine abortions and consequently high maternal mortality rate.

This Report also addresses the violation of rights under the Convention implicated by the Government of Nicaragua's attempt to ban all opposition to the criminal ban and related issues. Both during and since adoption of therapeutic abortion, the Movimiento Autonomo de las Mujeres (MAM) and other groups have collected and disseminated information on the toll it is taking on women's lives and health, and have organized and demonstrated against the ban. Since the filing of our earlier Shadow Report and the formulation of the List of Issues, these groups and leaders have been subject to escalating and dangerous harassment by the Government of Nicaragua directly and as a result of its encouragement of others and failure to exercise due diligence to protect the rights to take issue with the government. Both issues present urgent matters for this Committee's review of Nicaragua's periodic report.

Nicaragua's third periodic report submitted to the Human Rights Committee is insufficient in its treatment of the country's current ban on therapeutic abortion.<sup>1</sup> The Report purports to attribute the significant maternal mortality to conditions of poverty and rural life, but gives no account of the role of its absolute ban on abortion. While the report gives a cursory description of the political controversy surrounding the ban, it fails to address the serious repercussions the ban has had on women, their families, and the entire medical profession.

### A. Legal Background

On October 26, 2006, the National Assembly voted to revoke the provision in the Nicaraguan criminal code that had permitted therapeutic abortions for over a century, thereby creating a total ban on abortion.<sup>2</sup> Every major medical society in Nicaragua opposed the ban.<sup>3</sup> According to the Nicaraguan Ministry of Health, 1,818 women received either legal abortions or treatment for

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<sup>1</sup> Third Periodic Report of Nicaragua to the Human Rights Committee, U.N. Doc. CCPR/C/NIC/3, 19 Oct. 2007, available at [http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.NIC.3\\_sp.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.NIC.3_sp.pdf).

<sup>2</sup> Associated Press, *Nicaragua Bans All Abortion*, SUNDAY HERALD SUN (Australia), Nov. 19, 2006, at 40. In the past, the Penal Code provided that therapeutic abortions could be performed only "with the intervention of at least three doctors and by consent of the spouse or family member of the woman for legal purposes." Código Penal de Nicaragua, Title I, Chapter 5, Article 165 accessed at, [http://www.oas.org/juridico/Mla/sp/nic/sp\\_nic-int-text-cp.html](http://www.oas.org/juridico/Mla/sp/nic/sp_nic-int-text-cp.html). These extremely limiting circumstances made the former Nicaraguan law the most restrictive of its kind in Latin America DERROGACIÓN DEL ABORTO TERAPÉUTICO EN NICARAGUA: IMPACTO EN SALUD, 8, ORGANIZACIÓN PANAMERICANA DE LA SALUD, (displaying a chart indicating that to perform a legal therapeutic abortion, Jamaica requires the consent of two doctors) [hereinafter PAHO Report]. A fuller discussion of the detrimental nature of consent laws of this kind is found at footnote 170.

<sup>3</sup> N.C. Aizenman, *Nicaragua's Total Ban On Abortion Spurs Critics*, WASH. POST, Nov. 28, 2006 at A01.

complications like ectopic pregnancies in public hospitals in the year preceding the ban.<sup>4</sup> Under the new penal law, which was enacted in September 2007, doctors charged with performing or assisting in therapeutic abortions could face a prison term of up to eight years and the loss of their medical license.<sup>5</sup> Women who consent to an abortion or try to induce one themselves are subject to a prison sentence of one to two years.<sup>6</sup>

Women's and other human rights organizations also vigorously opposed the ban. Although women's organizations have presented appeals to the Supreme Court, the court did not rule on the constitutionality of the law;<sup>7</sup> the existence of the new stricter ban is now subject to new appeals, further delaying the process. The Court's failure to respond to these appeals is a clear violation of the American Convention on Human Rights, article 25, which states "[e]veryone has the right...to a competent court or tribunal for protection against acts that violate his fundamental rights."<sup>8</sup>

The Catholic Church, that today represents a minority within Catholicism with respect to sexual and reproductive rights,<sup>9</sup> was instrumental in the passage of the ban. In a recent interview, Father Henry Moreno, one of the key proponents of the ban in a working-class neighborhood of Managua, acknowledged that the Church had been "pushing for a change to the penal code for years" with the backing of the Vatican and evangelical groups. In the summer of 2006 the Catholic Church mounted a "massive campaign to change the law" that included giant rallies, plastered posters and billboards all over Managua<sup>10</sup> and collected 200,000 signatures that were presented to the Nicaraguan Congress.<sup>11</sup> The religious call was such that it led twenty-five legislative supporters of therapeutic abortion to "silence themselves in a political move to appease socially conservative voters."<sup>12</sup>

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<sup>4</sup> Lorraine Orlandi, *Nicaragua's Abortion Ban Faces Legal Blockade*, WOMEN'S ENEWS, Nov. 17, 2006, <http://www.womensenews.org/article.cfm/dyn/aid/2963>.

<sup>5</sup> Ley No. 641, Nov. 13, 2007, Código Penal, bk. 2, tit. 1, ch. 1, arts. 143, 144 & 145, *available at* <http://www.asamblea.gob.ni/opciones/constituciones/Codigo%20Penal.pdf> (prescribing sentences of one to three years in prison for performing an abortion with the woman's consent, three to six years if there is no consent, six to eight years if the abortion was performed with violence, intimidation, or deceit, and six months to a year for a reckless abortion).

<sup>6</sup> *Id.* art. 143.

<sup>7</sup> HUMAN RIGHTS WATCH, *OVER THEIR DEAD BODIES: DENIAL OF ACCESS TO EMERGENCY OBSTETRIC CARE AND THERAPEUTIC ABORTION IN NICARAGUA* 5, fn. 15 (2007), *available at* <http://hrw.org/reports/2007/nicaragua1007/nicaragua1007webcover.pdf> ("The concrete penal code provision revocation of which was sought in the petitions (law no 603) was replaced by a new penal code in September 2007. Therefore, though the relevant provisions are the same, the petitions filed with the Supreme Court are no longer valid and will have to be resubmitted to be ruled upon.").

<sup>8</sup> American Convention on Human Rights, art. 25, (Nov. 22, 1969).

<sup>9</sup> Elfriede Harth, *President of Catholics for Choice Presentation to the European Parliament*, (April, 2008), <http://www.catholicsforchoice.org/topics/international/CFCPresentationtotheEuropeanParliament.asp> (last visited, Sept. 17, 2008).

<sup>10</sup> Kate Seelye, *The Cost of Nicaragua's Total Abortion Ban*, FRONTLINE WORLD, Mar. 13, 2008, [http://www.pbs.org/frontlineworld/blog/2008/03/the\\_cost\\_of\\_nic.html](http://www.pbs.org/frontlineworld/blog/2008/03/the_cost_of_nic.html).article (last visited Sept. 16, 2008).

<sup>11</sup> Joycelyn Getgen, *Reproductive Injustice: An Analysis of Nicaragua's Complete Abortion Ban*, 41 CORNELL INT'L L.J. 143, 154 (2008).

<sup>12</sup> *Id.*

## B. Impact of the Law on Women

The new law is “a government death penalty imposed on women,” according to one gynecologist.<sup>13</sup> Although there have been no reported prosecutions, “the mere possibility of facing criminal charges for providing life-saving health services has had a deadly effect.”<sup>14</sup>

The effect on women is three-fold: (1) denial of access to life- and/or health-saving abortion services, (2) denial or delay in access to other obstetric emergency care, including emergency care for complications of clandestine abortions and (3) a pronounced fear among women of seeking treatment for obstetric emergencies and among doctors of treating them.<sup>15</sup>

The Ministry of Health has reported a decrease in maternal mortality since the ban on therapeutic abortion was implemented,<sup>16</sup> but the data suggest that this is an inaccurate, incomplete characterization. While the total number of maternal deaths decreased, the maternal mortality ratio,<sup>17</sup> which is more useful for tracking maternal mortality across years, has increased from 76 to 82 per 100,000 live births.<sup>18</sup>

Further, the method of calculating the maternal mortality ratio masks some of the effects of the abortion ban.<sup>19</sup> For example, the proportion of total maternal deaths attributable to “indirect” causes such as cancer, hypothyroidism, and deep vein thrombosis rose 10% from 2006 to 2007.<sup>20</sup> Of the 30 such deaths in 2007, 12 were attributable to pre-existing conditions exacerbated by the pregnancy that would likely have been ameliorated by a therapeutic abortion.<sup>21</sup> These women were mostly young, rural mothers whose preventable deaths have collectively left 30 children orphaned.<sup>22</sup> The impact of maternal mortality on Nicaraguan families is severe: of the 115 women who died of pregnancy-related causes in 2007, 87 of them were mothers, leaving 305 motherless children.<sup>23</sup> As long as the ban on therapeutic abortion remains in place, the ratio of maternal mortality attributable to preventable causes can be expected to rise, leaving more children motherless.

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<sup>13</sup> Jose Adan Silva, *Nicaragua: Due To Abortion Ban, Doctors Stand By As Women Die*, INTER PRESS SERVICE, Oct. 31, 2007 (quoting Ana Maria Pizarro, the head of the nongovernmental organization Si Mujer and a gynecologist).

<sup>14</sup> HUMAN RIGHTS WATCH, *supra* note 7, at 6.

<sup>15</sup> *Id.* at 1.

<sup>16</sup> Angela Heimbürger & Lance Lattig, Human Rights Watch Commentary, For Nicaraguans, International Women’s Day Marks a Step Back, March 8, 2008, <http://www.hrw.org/english/docs/2008/03/12/nicara18276.htm> (reporting a 6% decrease in maternal mortality rate according to Ministry of Health).

<sup>17</sup> Maternal deaths per 100,000 live births.

<sup>18</sup> Karen Padilla K, 2008. *La Muerte Materna en Nicaragua: La vida de cada mujer cuenta 7 Managua, Nicaragua*. Ipas Centroamérica [hereinafter *Muerte Materna*].

<sup>19</sup> The maternal mortality ratio includes only “direct” deaths (resulting from pregnancy, childbirth, or postpartum complications), and “indirect” deaths (resulting from pre-existing conditions exacerbated by the pregnancy, or non-obstetric conditions that arise during the pregnancy and for which pregnancy presents an increased risk to life or health), but excludes “non-obstetric” deaths of pregnant women (deaths not caused by obstetrical conditions, including suicide, homicide, or accidental death). *Muerte Materna* 7.

<sup>20</sup> *Muerte Materna* 8 (figure shows increase from 15.9% to 26.1%).

<sup>21</sup> *Muerte Materna* 9.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 6.



Other deaths that lend insight into the effects of the ban on women's lives are the ones that are not counted toward the maternal mortality rate: non-obstetric deaths. The number of pregnant women who the Ministry records as dying of causes "unrelated" to the pregnancy—including suicide or poisoning—has doubled.<sup>24</sup> Of these deaths, an astounding 63% were suicides.<sup>25</sup> The suicides overwhelmingly fit a profile: most were women under 25 years old in early pregnancy who used pesticides to end their lives.<sup>26</sup>

The impact on young women appears to be particularly severe. The pattern of pregnancy-related "suicides" among young women and girls is especially troubling in light of the fact that 30% of Nicaraguan pregnancies are teen pregnancies, a large number of which are the result of rape.<sup>27</sup> Doctors have noted with concern that a number of young women have died from pesticides taken intravaginally.<sup>28</sup> Although the Ministry of Health classifies these tragic deaths as suicides, the unusual profile has led doctors to believe that these may have been accidental poisonings incident to attempted abortions.<sup>29</sup> This Committee has previously expressed concern with States Parties' failure to investigate possibly pregnancy-related suicides, particularly where minors are involved.<sup>30</sup>

While NGOs estimate that 2,500 women have obtained abortions out of the country since the ban was imposed,<sup>31</sup> other women have resorted to illegal, and often unsafe, abortions in Nicaragua. In two cases documented by Human Rights Watch, women suffering from permanent health conditions (who may have qualified for the exception before the ban) chose to procure illegal abortions rather than discontinue their medication and risk permanent damage to their health.<sup>32</sup> One woman, a 30-year-old single mother of two with a chronic health condition, stopped taking her medication during the pregnancy.<sup>33</sup> She reported "feeling horrible and in pain" and had trouble caring for her children.<sup>34</sup> She tried to induce an abortion using pills and injections before finding a clinic to perform the abortion.<sup>35</sup>

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<sup>24</sup> MINISTERIO DE SALUD, ANÁLISIS COMPARATIVO ANUAL DE SITUACIÓN DE MORTALIDAD MATERNA: AÑOS 2005, 2006, 2007 (2008).

<sup>25</sup> Muerte Materna, *supra* note 18, at 10.

<sup>26</sup> *Id.*

<sup>27</sup> PAHO report Page 15.

<sup>28</sup> Interview with gynecologist in Leon (Feb. 14, 2008).

<sup>29</sup> Interview with gynecologist in Managua (Feb. 13, 2008).

<sup>30</sup> Ecuador, ICCPR, A/53/40 vol. I (1998) 43 at para. 284.

The very high number of suicides of young females, which appear in part to be related to the prohibition of abortion, is of concern. The State party's failure to address the resulting problems faced by adolescent girls, in particular rape victims, who suffer the consequences of such acts for the rest of their lives, is regretted. Such situations are, from both the legal and practical standpoints, incompatible with articles 3, 6 and 7 of the Covenant, and with article 24 when female minors are involved. All necessary legislative and other measures should be adopted to assist women, and particularly adolescent girls, faced with the problem of unwanted pregnancies to obtain access to adequate health and education facilities.

<sup>31</sup> Silva, *supra* note 8 (citing the Autonomous Women's Movement [MAM]).

<sup>32</sup> HUMAN RIGHTS WATCH, *supra* note 7, at 7–9.

<sup>33</sup> *Id.* at 7.

<sup>34</sup> *Id.* at 8.

<sup>35</sup> *Id.*

Pregnant women not seeking to terminate their pregnancies are also placed at risk. Many doctors fear that treating any pregnancy-related complications may lead to prosecution.<sup>36</sup> According to the Human Rights Watch:

The Pan-American Health Organization estimates that one woman per day suffers from an ectopic pregnancy in Nicaragua, and every two days a woman suffers a miscarriage from a molar pregnancy, and another woman a miscarriage from cancer-related pregnancy complications. All of these cases often generate the need for emergency obstetric care, in most cases to treat incomplete miscarriages, resulting infections, and/or septic shock, and, in the case of ectopic pregnancies, to surgically remove the fertilized ovum.<sup>37</sup>

Under the ban, however, doctors are afraid to treat women who have had miscarriages—both natural and self-inflicted—for fear of being accused of performing an abortion.<sup>38</sup> One doctor told Human Rights Watch that as a result of the ban, public hospitals “don’t treat any hemorrhaging, not even post-menopausal hemorrhaging.”<sup>39</sup> The president of the Nicaraguan Society of Gynecology and Obstetrics, Efrain Toruno, similarly told reporters prior to the passage of the bill that doctors would be afraid under the new law to treat a woman with vaginal bleeding.<sup>40</sup> Such was the case with Olga Reyes, a 22-year-old law student who was left untreated, waiting “bent over and in agony” for hours after being diagnosed with an ectopic pregnancy before she was finally operated on.<sup>41</sup> She died as a result of the delay.<sup>42</sup> In another case reported to MAM, a pregnant woman died because of diarrhea because the doctors were afraid that treating her would lead to a spontaneous abortion. The government has refused to take action against doctors who have refused legal obstetric care to women.<sup>43</sup>

Although the Nicaraguan Health Ministry has issued guidelines for doctors treating obstetric emergencies, it has failed to ensure that doctors will feel authorized to implement them in light of the criminal ban and the fact that statutes are generally considered superior over potentially conflicting regulations.<sup>44</sup> The definitions and scope of obstetric emergencies are still unclear, according to doctors and NGOs, and provide no guidance about whether therapeutic abortion falls within the scope of obstetric emergency, as it should.<sup>45</sup> Beyond that, the protocols contradict the total ban, in one place advising the doctor to “evacuate the uterus as soon as

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<sup>36</sup> Indira A.R. Lakshmanan, *Nicaragua Abortion Ban Called a Threat to Lives*, BOSTON GLOBE, Nov. 26, 2006, available at [http://www.boston.com/news/world/articles/2006/11/26/nicaragua\\_abortion\\_ban\\_called\\_a\\_threat\\_to\\_lives/?page=1](http://www.boston.com/news/world/articles/2006/11/26/nicaragua_abortion_ban_called_a_threat_to_lives/?page=1).

<sup>37</sup> HUMAN RIGHTS WATCH, at 11.

<sup>38</sup> Lakshmanan,.

<sup>39</sup> HUMAN RIGHTS WATCH at 5.

<sup>40</sup> Rory Carroll, *Nicaragua Votes to Outlaw Abortion*, THE GUARDIAN, Oct. 27, 2006, at 21.

<sup>41</sup> Associated Press, *Women Die After Nicaragua's Ban on Abortions*, Nov. 6, 2007, available at <http://www.msnbc.msn.com/id/21601045>.

<sup>42</sup> *Id.*

<sup>43</sup> Associated Press, *Nicaragua's Abortion Ban Putting Women's Lives at Risk, US Rights Group Says*, Oct. 2, 2007, available at <http://www.iht.com/articles/ap/2007/10/02/america/LA-GEN-Nicaragua-Abortions.php> [hereinafter *Ban Putting Women's Lives at Risk*].

<sup>44</sup> HUMAN RIGHTS WATCH, at 9–10.

<sup>45</sup> *Ban Putting Women's Lives at Risk*.

possible,” independently of whether the fetus is alive or not.<sup>46</sup> While this is proper advice, neither the Guidelines nor the Health Ministry has addressed in writing the impact of the ban. Although one medical association, concerned that the actions prescribed in the protocols themselves were illegal, sought such advice from the Health Ministry, they never received a response.<sup>47</sup> Because of the apparent contradictions in the law and the protocols, doctors feel forced to choose between their obligation to treat patients in need and staying within the bounds of the law.<sup>48</sup> This puts women’s right to medical care to save their lives and health in constant jeopardy.

Even apart from the threat of prosecution, “the pressure is great” on doctors not to perform therapeutic abortions.<sup>49</sup> One doctor in Managua gave the following account of a patient in heart failure whose doctor determined she was in need of a therapeutic abortion:

[T]he Archbishop arrived from the city of Juigalpa to talk to the head of the hospital. He told the director that the patient was a member of his church, and that they were praying for her, and told the director not to do anything. The Director called the doctor and said, “Please don’t put me in this situation.” So the doctor said, she’s not in my care, the internists (in intensive care) have her. The internists said, “OK, you don’t want us to do anything; we will send her home.” So they did.<sup>50</sup>

Although no doctors have been prosecuted for the crime of abortion, the potential for facing criminal charges for providing life-saving health services has had a chilling effect.

“The effect [of the ban] has been on the medical personnel,” said Dr. Jorge Orochena from the Health Ministry to Human Rights Watch.<sup>51</sup> “There have been situations that should have been treated [but] out of fear they haven’t been treated fast.”<sup>52</sup> This sense was confirmed by a medical doctor from a low-cost clinic close to a major hospital in Managua. She commented to Human Rights Watch, “The day they passed the law [criminalizing all abortion] people come to my clinic from the hospital, bleeding. They start coming, and they say, ‘In the hospital they tell me to come to your clinic, that you can treat me, that they can’t.’ ... Many of those cases didn’t even have to do with abortion.”<sup>53</sup>

This was the case of Francis Zamora. She arrived in critical condition suffering from septic shock due to an infection related to pregnancy complications. Doctors said there was nothing they could do, that “the laws in the country had changed”, and they had to wait for the baby to be

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<sup>46</sup> MINISTERIO DE SALUD, NORMAS Y PROTOCOLOS PARA LA ATENCIÓN DE LAS COMPLICACIONES OBSTÉTRICAS 110-111 (2008).

<sup>47</sup> Interview with gynecologist in Managua, Nicaragua (Feb. 13, 2008).

<sup>48</sup> Interview with gynecologists in Leon, Nicaragua (Feb. 14, 2008).

<sup>49</sup> Interview with gynecologist in Managua, Nicaragua (Feb. 13, 2008).

<sup>50</sup> Interview with gynecologist in Managua, Nicaragua (Feb. 13, 2008).

<sup>51</sup> HUMAN RIGHTS WATCH, *supra* note 7, (interview with Dr. Jorge Orochena, Managua, August 14, 2007).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

expulsed on its own before they could treat her for the infection. Francis died five days later, leaving three small children orphaned.<sup>54</sup>

Dr. Somarriba, an obstetrician at a teaching hospital north of Managua, in Leon, was interviewed about the total ban,

"Our hands are tied," he told me. He pointed to one of his patients, a tired-looking woman of 36, seated on a narrow hospital bed. Her case was complicated. She was several months pregnant and had a heart problem exacerbated by the pregnancy. Because of this, she might not survive childbirth. In the meantime, Somarriba said, she is on a heart medicine that will almost certainly harm the fetus. "What she really needs is a therapeutic abortion to save her life," he said. When I asked him if he would be willing to break the law and perform the abortion, he shook his head: "In addition to going to jail for many years, I could lose the prestige I have worked 25 years to secure."<sup>55</sup>

### **C. Governmental Attacks and Complicity in Attacks on Opponents of the Ban.**

Women's human rights activists have been subjected to persecution and threats for their work educating the public and advocating for legal reform. On November 17, 2007, nine women's rights defenders, Ana María Pizarro, Juanita Jiménez Martínez, Lorna Norori Gutiérrez, Martha Murgía Alvarado, Mayra Sirias, Yamileth Mejía Palma and Violeta Delgado Sarmiento discovered in the newspaper *La Prensa* that they faced criminal charges as accomplices in the abortion undergone by a nine-year-old girl known as "Rosita" who was raped and impregnated by her stepfather in 2003.<sup>56</sup> Formal charges were not filed until 10 days later, on November 27, 2007. They did not have an opportunity to actually see the formal charges until they filed a petition before the Public Prosecutor on December 10, and since that time the activists have repeatedly been called back to meetings and interrogations relating to the accusations. The charges, which will hang over their heads and absorb their time and energy, are baseless as the law in 2003 permitted therapeutic abortions, and the then-required panel of three doctors approved the abortion to save the young girl's life.<sup>57</sup> Despite repeated appeals to the court, the charges remain, and no date for formal proceedings has been set; however, the MAM has recently been receiving information that evidence is being fabricated through coercion of "Rosita's" family and judiciary functionaries (forensic, prosecutorial, and among the police) in order to formally charge them imminently.

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<sup>54</sup> Tania Sirias, *Nuevas Leyes la Dejaron Murir*, EL NUEVO DIARIO, Feb. 7, 2007, available at <http://impreso.elnuevodiario.com.ni/2007/02/07/nacionales/40741>.

<sup>55</sup> Kate Seelye, *The Cost of Nicaragua's Total Abortion Ban*, FRONTLINE WORLD, Mar. 8, 2008, available at [http://www.pbs.org/frontlineworld/blog/2008/03/the\\_cost\\_of\\_nic.html](http://www.pbs.org/frontlineworld/blog/2008/03/the_cost_of_nic.html) (last visited Sept. 16, 2008).

<sup>56</sup> Interview by IPS with Sofía Montenegro, organizer of the Nicaragua Autonomous Women's Movement, in Montevideo, Uruguay (Jun. 27, 2008), available at <http://ipsnews.net/news.asp?idnews=42996>.

<sup>57</sup> Nick Miles, *Abortion Ruling Splits Nicaragua*, BBC NEWS, Mar. 4, 2003. <http://news.bbc.co.uk/2/hi/americas/2817051.stm> (last visited Sept. 17, 2008).

With the ban on therapeutic abortion, the Government of Nicaragua, the Sandinista Party and anti-abortion religious groups have also launched a media and harassment campaign to belittle and intimidate activists and health care providers.<sup>58</sup>

On, September 4, 2008, the Ministry of Governance, through the agency that provides oversight for NGOs, accused Oxfam-Great Britain and HIVOS, two international funders, along with the Center for Communications Research (CINCO) of illegally passing funds to the Autonomous Women's Movement (MAM) and 17 other Nicaraguan NGOs, many of whom have been involved in opposing the abortion ban and advocating for women's rights. Leaders of the organizations maintain their actions are legal.<sup>59</sup> On September 30, 2008, the Office of the Prosecutor sent a summons to the President of CINCO, Carlos Fernando Chamorro, to investigate the money laundering charges that the Ministry of Governance will be bringing.

Activists and doctors have received harassing phone calls in the middle of the night, sometimes asking them to perform abortions in an attempt to catch them in an illegal act.<sup>60</sup> Posters are put in hospitals saying abortion is illegal and doctors who perform abortions like to kill babies.<sup>61</sup> On September 15, 2008, an article titled "The Great Abortion Sham" appeared in *The 19*, a weekly publication by the government which has provided the basis of the argument in the campaign against NGOs and MAM in particular. In that article, the president made official statements labeling feminists as abortionists.

More recently, MAM leaders reported the following:

On September 20, a group of MAM activists were participating in a march for democracy in León in the west of the country, and we were attacked by groups publically directed by leaders of the FSLN and who are government functionaries (mayoral candidates and mayors), who threatened our lives. They particularly threatened Sofia Montenegro, echoing elements of the government campaign against her.

The ban and subsequent harassment of women's rights groups has put the security of individuals at risk, preventing them from their work. The continual threats and media campaign pose a barrier to open advocacy and free political speech because activists fear prosecution or public retaliation. Beyond that, for the Government to contribute to and encourage these attacks is particularly dangerous given the volatile atmosphere that attends a religiously freighted issue wherein advocates of legal abortion and women's rights are called "murderers" and "baby killers."

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<sup>58</sup> *CENIDH Expresses Concern about Attacks on NGO*, NICARAGUA NETWORK HOTLINE, Sept. 16, 2008, <http://www.nicanet.org/?p=563> (last visited Sept. 18, 2008).

<sup>59</sup> *Id.*

<sup>60</sup> Interview with gynecologist in Managua, Nicaragua (Feb. 13, 2008).

<sup>61</sup> *Id.*

## **II. Nicaragua Abortion Ban Violates ICCPR Articles 3, 6(1), 7, 9, 17, 18, 19, 21, 22, 23, 24, 25 and 26.**

### **Nicaragua Recognizes International Treaty Law as Domestic Law**

Nicaragua recognizes the rights protected in the ICCPR in Article 46 of its Political Constitution, which states: “All persons shall enjoy within the national territory the protection of the State and recognition of the rights inherent in the human person, unrestricted observance, promotion and protection of human rights, and full observance of the rights proclaimed in... the International Covenant on Civil and Political Rights, and in the American Convention on Human Rights of the Organization of American States.”

The absolute ban on abortion and its implementation violate the rights under this Covenant of women, doctors and others who assist pregnant women to obtain emergency medical services as follows.

#### **A. ICCPR Articles Violated by the Ban**

##### **Article 3: Equal right of men and women to the enjoyment of all civil and political rights & Article 26: Equal protection of the law**

###### ***a. Women Seeking Therapeutic Abortion and Emergency Obstetric Services, Including for Complications of Abortion Harmed by the Ban.***

Article 3 requires “States to provide for equality between men and women in the enjoyment of all Covenant rights.”<sup>62</sup> In General Comment 28, the Committee highlights the indivisibility of all human rights by declaring the “important impact of this article on the enjoyment by women of the human rights protected under the Covenant.”<sup>63</sup>

The Committee on the Elimination of Discrimination Against Women supports this conclusion and highlights the equality of rights violation involved. Article 12 of the CEDAW Convention provides that “States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”<sup>64</sup> General Recommendation 24 explains, “it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women.”<sup>65</sup> States parties’ obligations require them to “refrain from obstructing action taken by women in pursuit of health goals” including the imposition of barriers to women’s access to appropriate health care such as “laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.”<sup>66</sup>

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<sup>62</sup> ICCPR, Article 3, U.N. Doc. A/6316 (1966), *accessed at* <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>63</sup> Human Rights Committee, Human Rights Committee General Comment No. 28, Equality of Rights Between Men and Women ¶1 U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

<sup>64</sup> CEDAW, Article 12, *accessed at* <http://www2.ohchr.org/english/law/cedaw.htm>.

<sup>65</sup> CEDAW General Recommendation No. 24, ¶11 (20<sup>th</sup> Session, 1999).

<sup>66</sup> *Id.* ¶14.

Equality is also emphasized in Article 12(1) of the ICESCR, which declares “States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>67</sup> In General Comment 14, that committee emphasizes that “equality cannot be achieved without the implementation of strategies that address the specific health needs of women.... [It] requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.”<sup>68</sup>

Nicaragua’s complete ban on abortion is discriminatory and disproportionately affects women and prevents them, in violation of Article 3 of the ICCPR, from enjoying the rights protected by this Covenant, identified below, on an equal footing with men, including their right to life, privacy, and to freedom from torture or other cruel, inhuman and degrading treatment.<sup>69</sup> Article 3 is also complemented by Article 26, which enjoins “States parties to “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.”<sup>70</sup> Under General Comment 28, this Committee underscores that Article 26 requires parties to “review their legislation and practices and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields.”<sup>71</sup>

The ban discriminates punitively against women who exercise their right to make reproductive decisions, and decide to terminate a pregnancy even in therapeutic situations. Additionally, it has the practical effect of deterring and obstructing women from seeking treatment for abortion and pregnancy-related complications, such as in life-threatening hemorrhaging or infection. The effects of the ban have had a disparate impact on women like Francis Zamora who eventually died from septic shock due to an infection related to pregnancy complications while waiting for medical treatment.

### ***b. Doctors and Other Medical Providers Harmed by the Ban***

The inequality imposed by the ban on women has a parallel discriminatory impact on doctors, obstructing them from providing equal services to their women patients. The National Association of Obstetrics and Gynecology of Nicaragua stated in its *amicus curiae* brief to the Nicaraguan Supreme Court that the law prevents doctors and medical providers from exercising their ethical and professional responsibilities to provide the highest standard of medical care “without consideration of age, sex...religion, culture, beliefs, political affiliation, economic means or nationality.”<sup>72</sup> Under Nicaraguan law requiring the reporting of criminal conduct, as discussed below, it also places them in the position of violating their oath to maintain the confidentiality of patient information. As such, the ban places doctors in the difficult position of

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<sup>67</sup> ICESCR, Article 12, accessed at, [http://www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm).

<sup>68</sup> ICESCR General Comment No. 14, ¶21 (22<sup>nd</sup> Session, 2000).

<sup>69</sup> Karen Noelia Llantoy Huamán v. Peru, Communication No. 1153/2003, ¶3.2(b) U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

<sup>70</sup> ICCPR, Article 26, accessed at, <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>71</sup> Human Rights Committee, Human Rights Committee General Comment No. 28, Equality of Rights Between Men and Women ¶31 U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

<sup>72</sup> National Association of Obstetrics and Gynecology of Nicaragua, *amicus curiae* to the Supreme Court of Nicaragua, May 28, 2007, at 35.

breaking with their ethical and professional responsibilities and thereby discriminating against women who need emergency obstetric care.

### **Article 6(1): Right to Life**

The right under Article 6(1) not to be arbitrarily deprived of one's life must be interpreted broadly, and requires that positive measures be undertaken.<sup>73</sup> In General Comment 28, the Committee requested information, with regard to Article 6, "on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions."<sup>74</sup>

In its consideration of total abortion bans like Nicaragua's, the Committee has already made clear that such bans infringe upon pregnant women's right to life due to the increased maternal mortality that may result when women are forced to resort to unsafe illegal abortions. For example, in its Concluding Observations on Chile, the Committee said,

The criminalization of all abortions, without exception, raises serious issues, especially in the light of unrefuted reports that many women undergo illegal abortions that pose a threat to their lives. . . . The State party is under a duty to take measures to ensure the right to life of all persons, including pregnant women whose pregnancies are terminated. . . . [T]he Committee recommends that the law be amended so as to introduce exceptions to the general prohibition of all abortions . . . .<sup>75</sup>

Similarly, in response to Colombia's fifth periodic report, the Committee observed:

[T]he existence of legislation criminalizing all abortions under the law can lead to situations in which women are obliged to undergo high-risk clandestine abortions. [The Committee] is especially concerned that women who have been victims of rape or incest or whose lives are in danger as a result of their pregnancy may be prosecuted for resorting to such measures (art. 6). The State party should ensure that the legislation applicable to abortion is revised so that no criminal offences are involved in the cases described above.<sup>76</sup>

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<sup>73</sup> Human Rights Committee, Human Rights Committee General Comment No. 6, The Right to Life (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, ¶ 5 U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994).

<sup>74</sup> Human Rights Committee, Human Rights Committee General Comment No. 28, Equality of Rights Between Men and Women, ¶ 10 U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

<sup>75</sup> Human Rights Committee, Concluding Observations by the Human Rights Committee: Chile, ¶15 UN Doc. CCPR/C/79/Add.104, Mar. 30, 1999.

<sup>76</sup> Human Rights Committee, Concluding Observations of the Human Rights Committee: Colombia, UN Doc. CCPR/CO/80/COL, May 26, 2004, para.13.



It is noted that subsequent to the Committee's review the Colombia Constitutional Court invalidated the abortion ban based significantly on the violation of human rights, which it found to be incorporated as part of constitutional law.<sup>77</sup>

The Committee likewise called the application of Peru's criminal prohibition of abortion to rape victims "incompatible with articles 3, 6 and 7 of the Covenant."<sup>78</sup> Even in the case of a less restrictive ban than Nicaragua's, the Committee reinforced the "duty to adopt the necessary measures to guarantee the right to life (art. 6) of pregnant women who decide to interrupt their pregnancy."<sup>79</sup>

By banning therapeutic abortion, Nicaragua is violating its positive obligation to prevent women from being arbitrarily deprived of their lives. Indeed, this ban places some of the most vulnerable women – the young, the poor, and those with existing health conditions—at risk for loss of life due to unsafe abortions. The ban's documented victims include not only these women but also women deprived of their right to life due to the denial of emergency obstetric care by doctors fearing prosecution under the ban.

### **Article 7: Right to Freedom from Torture: Cruel, Inhuman or Degrading Treatment or Punishment**

#### ***a. Women Seeking Therapeutic Abortion and Emergency Obstetric Services, Including for Complications of Abortion Harmed by the Ban.***

Article 7 declares that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" which clearly prohibits infliction of both physical and mental suffering.<sup>80</sup> The Committee has applied Article 7 to situations where medical treatment is denied by the State party.

This Committee has long interpreted Article 7 to apply in situations where medical treatment is denied. In General Comment 28, it specifically called for information from State's parties on whether women who have become pregnant as a result of rape have access to legal abortion and emphasized the positive character of the State's obligation. The information provided by States parties on all these issues should include measures of protection, including "the availability of legal remedies, for women whose rights under article 7 have been violated.

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<sup>77</sup> *Ensuring Reproductive Rights in Colombia*, Women's Link Worldwide, [http://www.womenslinkworldwide.org/prog\\_rr\\_colombia.html](http://www.womenslinkworldwide.org/prog_rr_colombia.html) (last visited Oct. 5, 2008); *see also*, *Challenging Abortion Law in Colombia, an Interview with Monica Roa*, Women's Human Rights Net, July 2005, available at [http://www.womenslinkworldwide.org/pdf\\_programs/prog\\_rr\\_col\\_articles\\_25.pdf](http://www.womenslinkworldwide.org/pdf_programs/prog_rr_col_articles_25.pdf) ("It is time that the rights provisions written in international human rights treaties come to life and start having a real impact on women's lives").

<sup>78</sup> Human Rights Committee, Concluding observations by the Human Rights Committee: Peru, UN Doc. CCPR/CO/70/PER, Nov. 15, 2000, ¶20.

<sup>79</sup> Human Rights Committee, Concluding observations by the Human Rights Committee: Guatemala, UN Doc. CCPR/CO/72/GTM, Aug. 27, 2001, ¶19.

<sup>80</sup> Human Rights Committee, General Comment 20, Art. 9 (Forty Fourth Session, 1992) UN Doc. HRI/Gen//Rev. 1, 30, Mar. 10, 1992, ¶ 5.

The Committee has repeatedly recognized the applicability of article 7 to the denial of abortion. In the 2005 case of *K.L. v. Peru*, the Committee found the State party to be in violation of Article 7 when it denied an abortion to Karen Noelia Llantoy Huamán, a 17-year-old carrying an anencephalic fetus.<sup>81</sup> The abnormality was discovered three months into Huamán's pregnancy and, although the law permitted therapeutic abortion, the hospital denied authorization.<sup>82</sup> Huamán gave birth to baby girl who survived four days, during which time Huamán had to breastfeed her.<sup>83</sup> She subsequently fell into a deep depression.<sup>84</sup> The Committee found that the refusal of a therapeutic abortion was the cause of Human's mental suffering, in violation of Article 7.<sup>85</sup> Similarly, in 1996, the Committee said, "women are subject to inhumane treatment" in Peru as the result of criminalization of abortion for rape victims.<sup>86</sup> And in 2000 the Committee affirmed that the criminalization of abortion is incompatible with Article 7.<sup>87</sup>

Women in Nicaragua experience both physical and mental suffering, sometimes amounting to torture, as a result of the abortion law. Women experiencing complications of pregnancy and needing therapeutic abortion are forced to suffer from painful, frightening and life-threatening conditions, often for many months. Those experiencing unsafe abortions or other obstetric emergencies, who are often in extreme pain and require immediate treatment, also fear the consequence of prosecution. The mental anxiety is also horrific: added to the fear of being prosecuted is the fear that she will not get the needed treatment.<sup>88</sup> The law thus operates in diametric opposition to the policy of the World Health Organization, the Pan American Health Organization and the National Association of Obstetrics and Gynecology of Nicaragua that these situations require immediate emergency care as they can easily spiral out of control taking the lives of women. It also violates the understanding of the World Community as stated in the Beijing Platform for Action, that women suffering complications of abortion ought to be treated expeditiously and humanely.<sup>89</sup> In all cases, the denial of both therapeutic abortion and emergency medical services fulfills the purpose element of torture, as the required withholding of service is discriminatory and punitive.

In addition to physical and mental suffering, such policies deny women equal protection pursuant to Article 3 of their right not to be subject to cruel, inhuman and degrading treatment. The message of such a law is that women are not fully human or equally entitled to the life- and health-saving treatment which is available to all but women and girls needing abortion or emergency obstetric services. As stated by the Special Rapporteur on Torture, discriminatory conduct includes punishment for "transgressing gender barriers and mandates or challenging predominant conceptions of gender roles."<sup>90</sup>

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<sup>81</sup> Karen Noelia Llantoy Huamán v. Peru, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005), ¶6.3.

<sup>82</sup> *Id.* at ¶¶ 2.1, 2.3.

<sup>83</sup> *Id.* at ¶2.6.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at ¶6.3.

<sup>86</sup> Human Rights Committee, Concluding Observations of the Human Rights Committee, Peru, U.N. Doc. CCPR/C/79/Add.72, Nov. 18, 1996, ¶15.

<sup>87</sup> Human Rights Committee, Concluding observations by the Human Rights Committee: Peru, UN Doc. CCPR/CO/70/PER, Nov. 15, 2000, para. 20.

<sup>88</sup> Human Rights Watch, *supra* note 7, at 14.

<sup>89</sup> Beijing Platform for Action (1995).

<sup>90</sup> Rapporteur on Torture, § 64.

The Committee against Torture (CAT Committee), in its General Comment 2, has also emphasized that women are “at risk of torture or ill-treatment...in contexts [including]... medical treatment, particularly involving reproductive decisions...”<sup>91</sup> In Conclusions and Recommendations, that Committee made clear that Chile’s policy of delaying treatment to coerce confessions from women who seek “life-saving treatment in public hospitals after illegal abortions,” denying them confidential treatment, or using their statements against them in a proceeding constitute a contravention of the Torture Convention.<sup>92</sup> It further called upon Chile, to “ensure immediate and unconditional treatment in accordance with WHO Guidelines. To underscore the urgency of the problem, the CAT Committee identified this issue as one requiring annual follow-up.”<sup>93</sup> Likewise here, the criminal ban creates fear in women that their doctors will report them for criminal prosecution.

Article 7 also provides that “in particular no one shall be subjected without his free consent to medical or scientific experimentation.”<sup>94</sup> International law scholar Rebecca Cook has stated that this sentence “furnishes grounds to oppose the cruelty and inhumanity of compelling a woman to continue a pregnancy which endangers her life or health.”<sup>95</sup>

The State party has the obligation to prevent acts of inhuman treatment through effective legislative, judicial and administrative means.<sup>96</sup> Nicaragua’s law does the opposite. It violates Article 7 by subjecting pregnant women to torture and inhuman treatment in multiple ways. Women like Olga Reyes who have been left in distress and not treated due to the doctors’ fear of interrupting a pregnancy have suffered physical and mental pain. Additionally, women carrying severely damaged fetuses, rape victims, and women with serious health conditions suffer mentally and physically from their inability to obtain a legal therapeutic abortion. The decision to seek a clandestine abortion is fraught with fear of prosecution or death.

### ***b. Doctors and Other Medical Providers Harmed by the Ban***

Medical professionals, who must refuse therapeutic abortion and emergency obstetric services as a result of the abortion ban, are likewise subjected to cruel, inhuman or degrading treatment. Article I of the Convention against Torture prohibits government actors from intentionally inflicting pain or suffering on a person for the purposes of obtaining a confession from that person or a third person.<sup>97</sup> The CAT Committee has found forced reporting, particularly in the case of emergency care, to be reprehensible and has called on Chile, which had a law similar to

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<sup>91</sup> Committee Against Torture, General Comment 2, ¶22.

<sup>92</sup> Committee Against Torture, Conclusions and Recommendations, Chile, U.N. Doc. CAT/C/CR/32/5, Jun. 14, 2004.

<sup>93</sup> *Id.* ¶¶7(m), 8.

<sup>94</sup> G.A.Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N.Doc. A/34/46 (1979) (entry into force Sept. 3, 1981).

<sup>95</sup> Rebecca J. Cook, *International Protection of Women’s Reproductive Rights*, 24 N.Y.U. INT’L L & POL. 645 (1992).

<sup>96</sup> CAT, Article 2, U.N. Doc. A/39/51 (1985).

<sup>97</sup> *Id.* at art. 1.

that of Nicaragua, to “eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion.”<sup>98</sup>

Medical providers who breach patient confidentiality with respect to abortion and post-abortion care endanger women’s health and violate ethics. In Nicaragua, the criminalization of abortion has resulted in the belief among health professionals that they must report suspected abortion attempts and therapeutic abortions as criminal activity amounts to the government coercing confessions for the sake of prosecution. It requires women and doctors to make decisions about their health and ethics requirements under duress in emergency situations. As in the case of Chile, this requirement violates medical professionals’ rights to be free from torture and cruel, inhuman, or degrading treatment.

Rather than their professional judgment and ethical commitments being respected, medical professionals are converted into the agents of a cruel, inhuman and degrading state policy. The law both distrusts their professional judgment and subjects them to the agonies of standing by, forcing them to submit private patient data to the state, turn away patients, or try to avert needless and avoidable suffering, desperation, death, and maiming with their hands tied.

### **Article 9: Right to Liberty and Security of Person**

Article 9 states, “every one has the right to liberty and security of person. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law....”

#### ***a. Women Seeking Therapeutic Abortion and Emergency Obstetric Services, Including for Complications of Abortion Harmed by the Ban***

In General Comment 8, the Committee clarifies that Article 9, "paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases" and is interpreted broadly to include among other circumstances, "mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc."<sup>99</sup>

Many Nicaraguan women do not obtain proper treatment for complications related to abortions because they fear prosecution and loss of liberty in the classic sense of imprisonment as well as the inability to obtain the medical care essential to protect their security of person. Further, by interfering in one of the most important and life-shaping decisions women make about their lives, it also undermines women’s right to liberty and to physical and mental integrity protected by Article 9 of the ICCPR.

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<sup>98</sup> Committee Against Torture, Conclusions and Recommendations, Chile, U.N. Doc. CAT/C/CR/32/5, 6, Jun. 14, 2004.

<sup>99</sup> Human Rights Committee, Human Rights Committee General Comment 8, Right to liberty and security of persons, ¶1 (Sixteenth session, 1982).

## ***b. Doctors and Other Medical Providers Harmed by the Ban***

With inaccurate and inaccessible information about the law, coupled with the possibility of investigation or prosecution, medical facilities also have been reported to have, in some instances, turned women away for treatment of obstetric emergencies including abortion complications out of fear that their medical attention may involve clandestine abortion procedures. This is a direct and ultimate attack on doctor's liberty to practice medicine in accordance with professional standards and medical ethics.

### **Article 17: Right to Privacy**

Article 17 (1) provides that “no one shall be subjected to arbitrary or unlawful interference with [his/her] privacy.”

Pregnant women's right of privacy is inextricably intertwined with the right of doctors to maintain their patients' confidences and to practice their profession without interference. Doctors' uncertainty as to whether they must report induced abortion to the police or prosecuting authorities violates women's right to privacy under Article 17.

In its General Comment 28, the Committee notes that “States may fail to respect women's privacy relating to their reproductive functions, for example, where...States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion.”<sup>100</sup> The Committee notes, as is the case here, that this may result in the violation of “other rights in the Covenant, such as those of articles 6 and 7....”<sup>101</sup>

This Committee has noted that Article 17 protects the privacy of women and the obligation of doctors, in the exercise of their professional duty, to maintain confidentiality of medical information concerning their patients.<sup>102</sup> Confidentiality of medical information is central to the doctor-patient relationship, and the Committee has admonished that, without it, women may be deterred from seeking medical treatment.<sup>103</sup>

This Committee recommended in its Concluding Observation to both Chile, which has a similar ban on therapeutic abortion, and Venezuela, which allows therapeutic abortion only to save the life of the mother, that they should revise their laws specifically to protect the confidentiality of medical information.<sup>104</sup>

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<sup>100</sup> Human Rights Committee, General Comment 28, Equality of rights between men and women (Article 3), CCPR/C/21/Rev.1/Add.10, CCPR (Mar. 29, 2000) at ¶ 20.

<sup>101</sup> *Id.*

<sup>102</sup> Portugal, ICCPR, A/58/40 vol. I (2003) 56 at ¶ 83(18) (expressing concern that a provision of the Portuguese Code of Criminal Procedure compelled doctors to reveal confidential information about their patients. As with the case at hand, the Portuguese law was vague as to when doctors were forced to breach their duty of confidentiality. The Committee recommended that the state clarify the law.)

<sup>103</sup> Chile, ICCPR, A/54/40 vol. I (1999) 44 at ¶¶ 211; Venezuela, ICCPR, A/56/40 vol. I (2001) 49 at ¶ 77(19); Rebecca J. Cook, et al., ADVANCING SAFE MOTHERHOOD THROUGH HUMAN RIGHTS, WORLD HEALTH ORGANIZATION, *available at* [http://www.who.int/reproductivehealth/publications/RHR\\_01\\_5\\_advancing\\_safe\\_motherhood/advancing\\_safe\\_motherhood\\_through\\_human\\_rights.pdf](http://www.who.int/reproductivehealth/publications/RHR_01_5_advancing_safe_motherhood/advancing_safe_motherhood_through_human_rights.pdf).

<sup>104</sup> Chile, ICCPR, A/54/40 vol. I (1999) 44 at ¶ 211; Venezuela, ICCPR, A/56/40 vol. I (2001) 49 at ¶ 77(19).

Because abortion has been criminalized in Nicaragua, medical personal feel obligated to break their medical code of ethics either by refusing to treat a patient in need of urgent care or by betraying patient confidences and reporting women who come in seeking post-abortion care to the authorities.

As one doctor stated, “according to the law, if I find a pill in the vagina [intended to induce an abortion], I am required to publicly denounce [it].”<sup>105</sup> In the report by Human Rights Watch, all of the women and family members interviewed expressed fear that they would be turned in by their doctors and accused of having induced an abortion.<sup>106</sup>

The campaigns against abortion further interfere with OB/GYNs’ professional judgment as to appropriate medical treatment for their patients. By imposing the ban, the state and anti-abortion activists have usurped the role of the doctor in medical decision-making. In one reported instance, an Archbishop from Juigalpa intervened in a patient's medical treatment by speaking to the Director of the hospital, which resulted in the patient being sent home without treatment.<sup>107</sup> Although no cases of prosecution have been reported, a prosecution for abortion—which could give rise to criminal liability for both the woman and the doctor—amounts to a public prosecution for a private medical procedure. This is a significant invasion of well-held standards of privacy.

The total ban on abortion in Nicaragua thus amounts to a violation of the rights of privacy of both women and doctors protected by Article 17. Without the protections of doctor-patient confidentiality, doctors are unable to fulfill their professional duties and care for women, and women are deterred from seeking medical treatment for complications of pregnancy or clandestine abortion. The Committee should recommend that Nicaragua immediately comply with the mandates of Article 17 by ceasing any interference with the doctor-patient relationship, and ensuring the confidentiality of medical information.

### **Article 18: The Right to Freedom of Thought, Conscience and Religion**

Article 18(1) affirms that “[e]veryone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or belief of his choice.”<sup>108</sup> In General Comment 22, this Committee makes clear that the rights in this Article are “far reaching and profound,” noting that it “encompasses freedom of thought on all matters” and that “freedom of thought and freedom of conscience are protected equally with freedom of religion and belief.”<sup>109</sup> Article 18 provides that these rights are non-derogable and protected unconditionally.<sup>110</sup>

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<sup>105</sup> Interview with gynecologist in León, Nicaragua on Feb. 14, 2008.

<sup>106</sup> HUMAN RIGHTS WATCH, *supra* note 7 at 13.

<sup>107</sup> Interview with gynecologist in Managua, Nicaragua on Feb. 13, 2008.

<sup>108</sup> ICCPR, Article 18, U.N. Doc. A/6316 (1966), *accessed at* <http://www2.ohchr.org/english/law/ccpr.htm>

<sup>109</sup> Human Rights Committee, Human Rights Committee General Comment No. 22, The Right to Freedom of Thought, Conscience and Religion, ¶ 1, U.N.Doc No CCPR/C/21/Rev.1/Add.4 (Jul. 30, 2003) [hereinafter, General Comment 22].

<sup>110</sup> *Id.* ¶ ¶1,3.

Of particular importance to the situation in Nicaragua is Article 18(2) which provides that “[n]o one shall be subject to coercion which would impair his freedom to adopt a religion or belief of his choice.”<sup>111</sup> General Comment 22 explains:

Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2. The same protection is enjoyed by holders of all beliefs of a non-religious nature.<sup>112</sup>

Respect for religious diversity and for gender and equality are paramount concerns. General Comment 22 limits the State’s power to restrict manifestation of religion, requiring respect for the non-derogable “right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26.”<sup>113</sup> This is true especially where states espouse through law or in “actual practice” a set of beliefs as official ideology.<sup>114</sup> The General Comment further integrates Article 20 of the Covenant by calling on States to prohibit advocacy of “religious hatred that constitutes incitement to discrimination, hostility or violence.”<sup>115</sup> Finally, General Comment 28 specifically underscores that States parties must “ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights.”<sup>116</sup>

The Constitution of Nicaragua is not inconsistent. It says the State “has no official religion” and “all its citizens enjoy the full exercise of the freedom of conscience and no one may evade compliance with the law or prevent other persons from exercising their rights and performing their duties by invoking religious beliefs or rules.”<sup>117</sup> The secular nature of the state is purposefully maintained to guarantee the rights of the “whole population” irrespective of their individual beliefs.<sup>118</sup>

Despite these provisions, the Government of Nicaragua has enacted and implemented an absolute ban on abortion based on a particular religious, traditional or cultural belief that the fetus is a person from the moment of conception, that all abortion is murder, and that the potential life of a fetus at any stage must subordinate the life and health of a pregnant woman, even in extreme cases. This official adoption of one belief about abortion deprives all women of their freedom of thought, conscience, and belief regarding reproductive decisions. It coerces Nicaraguan women to conform to the state-sanctioned belief despite that they may hold different

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<sup>111</sup> ICCPR, Article 18, U.N. Doc. A/6316 (1966), *accessed at* <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>112</sup> Human Rights Committee, Human Rights Committee General Comment No. 22, ¶ 5.

<sup>113</sup> *Id.* ¶8.

<sup>114</sup> *Id.* ¶10.

<sup>115</sup> *Id.* ¶7.

<sup>116</sup> Human Rights Committee, Human Rights Committee General Comment No. 28, ¶21.

<sup>117</sup> Third Periodic Report of Nicaragua to the Human Rights Committee, ¶ 536 U.N. Doc No CCPR/C/NIC/3 (Oct. 19, 2007).

<sup>118</sup> *Id.*

religious or conscientious beliefs, whether religiously or ethically determined, as to whether to terminate a particular pregnancy. In addition, the severe penalties the law imposes coerce women to abide by traditional, religious, and cultural attitudes about women as child bearers and abortion as sin or as “murder” in violation of Article 18.

The law was passed without consideration of the opinions of professional medical societies or national and international human rights organizations. Instead the Nicaraguan Government heeded to the requests of the Catholic Church and some evangelical groups that avidly lobbied for the ban. In doing so, the Nicaraguan State allowed “religious” interests to justify violations of women’s rights without due regard for the serious public health ramifications to half of its population.<sup>119</sup>

The obligation on States parties under Article 18, not to generate or permit advocacy of religious hatred and discrimination, is also violated here. Government actors and surrogates have identified and sought officially to condemn advocates of abortion rights as criminals. They have done nothing to stop campaigns that identify women and medical professionals who oppose the abortion ban as “baby killers” and “murderers.” As such, they are complicit in exposing these advocates to profound danger, which is an escalating problem today.

### **Article 19: The Right to Freedom of Information**

#### ***a. Women Seeking Abortions and Prenatal Care Harmed by the Ban***

Article 19(2) asserts that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds. In relation to Article 19, General Comment 10 provides that “the Committee needs in addition pertinent information about...conditions which in practice affect the exercise of this right.”<sup>120</sup> Further, in General Comment 28, the Committee has required States parties to report on “any laws or other factors which may impede women from exercising the rights protected under this provision on an equal basis.”<sup>121</sup>

With respect to the criminalization of abortion, this Committee underlined the critical relationship between the right to information and the right to life in its Concluding Observations on Guatemala’s report. It stated that “the State party has the duty to adopt necessary measures to guarantee the right to life of pregnant women who decide to interrupt their pregnancies by providing the necessary information and resources to guarantee their rights...”<sup>122</sup> The right to information thus implies a positive duty of the State to guarantee each woman access to accurate and complete medical information about her pregnancy as well as the law to enable her to make

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<sup>119</sup> Elfriede Harth, *President of Catholics for Choice Presentation to the European Parliament*, (April, 2008), <http://www.catholicsforchoice.org/topics/international/CFCPresentationtotheEuropeanParliament.asp> (last visited, Sept. 17, 2008).

<sup>120</sup> Human Rights Committee, Human Rights Committee General Comment No. 10, Freedom of Expression, ¶3 (Nineteenth session, 1983).

<sup>121</sup> Human Rights Committee, Human Rights Committee General Comment No. 28, Equality of Rights Between Men and Women, ¶ 22 U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

<sup>122</sup> Concluding Observations of the Human Rights Committee: Guatemala, CCPR/CO/72/GTM (27 August 2001).



the decisions necessary to protect her life and health, whether it be the need for an abortion or for emergency obstetric services. The law, together with official statements and media coverage supporting the absolute ban and demonizing the opponents, have led women to experience much anxiety and fear in seeking even legal medical treatment for obstetric emergencies under the ban for fear of criminal charges.

Thus, the Government of Nicaragua has violated the Covenant by failing to provide women information on legal procedures that, despite the ban, would greatly reduce maternal mortality and morbidity. It also obstructs the availability--particularly to poor and young women who have no option to leave the country – of information respecting the availability of even therapeutic abortion. The dire effects of the Nicaraguan ban on abortion are attributable, in part, to the lack of access to such information.

### ***b. Doctors Harmed by the Ban***

Similarly, the lack of access to complete and accurate information about the law influences doctors and health care practitioners in deciding whether to treat women with obstetric emergencies and thus violates their right to information under Article 19.

Most doctors and health practitioners refuse to provide even legal obstetric emergency treatment out of fear of being prosecuted for performing abortions. Although the Nicaraguan Health Ministry has developed a set of guidelines that cover a number of legal, in fact, mandated emergency care procedures, it has failed to address the concern of the doctors that they are inconsistent with the criminal law.<sup>123</sup> The National Association of Obstetrics and Gynecology of Nicaragua has asked for written clarification, but the Ministry has so far refused to provide it, thus fueling the view that those guidelines do not constitute legal exceptions. While some medical professionals risk themselves for the sake of saving their patients, others deny or delay life-saving treatment. That any woman should continue to be thus placed at risk because of the State's failure to clarify the law violates the Covenant.

## **Articles 17 and 23: Protection of the Family**

Article 23 recognizes that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”<sup>124</sup> According to General Comment 19, this right “implies, in principle, the possibility to procreate and live together” and extends not only to the family as a unit, but to each individual as members of families.<sup>125</sup> It operates in tandem with Article 17's protection against arbitrary interference with a person's family.<sup>126</sup> The General Comment also makes clear that the scope of protection afforded to diverse forms of family is a critical concern.<sup>127</sup> The Nicaraguan Constitution not only reflects the commitment to protection

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<sup>123</sup> Human Rights Watch, *supra* note 7 at 10.

<sup>124</sup> ICCPR, Article 23, U.N. Doc. A/6316 (1966),

<sup>125</sup> Human Rights Committee, Human Rights Committee General Comment No. 19, Protection of the family, the right to marriage and equality of the spouses, at ¶5 (Thirty-ninth session, 1990).

<sup>126</sup> ICCPR, Article 17, U.N. Doc. A/6316 (1966).

<sup>127</sup> General Comment 19 at ¶ 2.

of families;<sup>128</sup> it dedicates an entire chapter to the rights of families,<sup>129</sup> with special provisions related to the protection of pregnant women.<sup>130</sup>

The State Party's absolute ban on abortion is an arbitrary interference in the individual woman's right to establish, shape, and care for her family. Women's reproductive capacities may be limited or destroyed entirely when they cannot obtain a therapeutic abortion or face delays in treatment of conditions such as ectopic or molar pregnancies, or complications from legal abortion and, as a result, are rendered sterile.

The failure to provide such lifesaving treatment for women has caused numerous deaths and torn families apart. The full impact of the lack of therapeutic abortion upon families is incalculable. The women who died of indirect obstetrical causes likely to have been avoided by a therapeutic abortion in 2007 left 30 children motherless.<sup>131</sup> This has had the direct effect of depriving families of their mothers, daughters, and sisters, still the principal sources of childcare and domestic labor in Nicaragua. It also affects women's health, and thus their ability to sustain the family. It has a ripple effect on the extended family and other familial support systems by removing crucial links.

#### **Article 24: Rights of the Child**

The Covenant assures to every child "the right to such measures of protection as are required by [his/her] status as a minor, on the part of [his/her] family, society and the State."<sup>132</sup> In its General Comment with respect to article 24, the Committee noted that the scope of the rights States Parties are obligated to protect includes all other rights guaranteed by the Covenant, and "may also be economic, social, and cultural."<sup>133</sup> Thus, the State Party is obligated to protect more than just the political rights of minors (*e.g.*, citizenship and the right to a name): the State Party should also seek to protect rights such as health and life that are prerequisites to the significance and exercise of political and civil rights.

By denying women access to life-saving abortion and treatments, the Government of Nicaragua violates the rights of the child in two respects: (1) it deprives children of their mothers; and (2) it deprives the girl child, at special risk in early pregnancy, of her right to the protection of her life and health.

First, when a mother dies of untreated pregnancy complications, it has a number of lifelong ramifications for the child. First and foremost, children and infants under the age of five whose mothers die as a result of pregnancy complications are at a higher risk of dying themselves compared to those with living mothers.<sup>134</sup> Furthermore, the patriarchal structure of Nicaraguan

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<sup>128</sup> Nicaraguan Constitution, Article 70.

<sup>129</sup> Nicaraguan Constitution, Chapter IV.

<sup>130</sup> Nicaraguan Constitution, Article 74.

<sup>131</sup> Muerte Materna, 6.

<sup>132</sup> ICCPR, Article 24, U.N. Doc. A/6316 (1966).

<sup>133</sup> Human Rights Committee, Human Rights Committee General Comment 17, Rights of the Child, ¶3 (Thirty-fifth session, 1989).

<sup>134</sup> PAHO report, page 17.

family life<sup>135</sup> and the fact that one in four Nicaraguan families is headed by a woman<sup>136</sup> raise the serious question of who takes care of children left motherless by preventable obstetrical deaths. In light of the persistent poverty in Nicaragua,<sup>137</sup> the loss of mothers due to the ban on therapeutic abortions has an even more detrimental effect. A significant number of Nicaraguan children are born into poverty so deep that they are susceptible to chronic malnutrition.<sup>138</sup> The loss of a mother's income or domestic labor, or its compromise due to incapacities produced by the lack of treatment, are certain to make these effects even more profound.

Second, in addition to violating the rights of children left motherless or with an incapacitated mother due to the ban on therapeutic abortion, the State fails to provide appropriate reproductive health care for pregnant minors, in violation of both this Convention and the Convention on the Rights of the Child. General Comment 28 indicates this Committee's concern about minors' reproductive rights, calling for information regarding the availability of abortion to women pregnant as a consequence of rape.<sup>139</sup>

The abortion ban also violates, *inter alia*, the following articles of the Convention on the Rights of the Child: Article 6, which recognizes the right to life and survival; Article 24, which guarantees "the right of the child to the enjoyment of the highest attainable standard of health;" and Article 39, which calls upon States Parties to take measures to promote the physical and psychological recovery of child victims of abuse.<sup>140</sup>

The CRC's General Comment 4 expresses the Committee's grave concern with the negative health outcomes for the girl child of young motherhood and clandestine abortion, urging that States Parties create appropriate family planning programs for adolescents that include obstetrical care and abortion services. In particular, the General Comment provides:

Adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs. States parties should take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices.<sup>141</sup>

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<sup>135</sup> Muerte Materna, 6; World Bank Poverty Assessment--Nicaragua (noting that poor women participate less in the labor market than nonpoor women due to household work including childcare, gathering water, and collecting wood for cooking).

<sup>136</sup> UNICEF at a Glance: Nicaragua <http://www.unicef.org/infobycountry/nicaragua.html>.

<sup>137</sup> Nicaragua is the 3<sup>rd</sup> poorest nation in Latin America, with 2.3 million people in poverty, 831,000 of whom live in extreme poverty. *Id.*

<sup>138</sup> World Bank, Nicaragua Poverty Assessment Raising Welfare and Reducing Vulnerability (2003) available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1995/06/01/000009265\\_3961019105405/Rendered/PDF/multi0page.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1995/06/01/000009265_3961019105405/Rendered/PDF/multi0page.pdf), at 10 ("Although...the prevalence of malnutrition has consistently fallen over the past decade, nearly one in five children remains chronically malnourished").

<sup>139</sup> Human Rights Committee, General Comment No. 28, Equality of rights between men and women (article 3) (Mar. 29, 2000) CCPR/C/21/Rev.1/Add.10, ¶ 11.

<sup>140</sup> Convention on the Rights of the Child.

<sup>141</sup> Committee on the Rights of the Child, "Adolescent health and development in the context of the Convention on the rights of the Child, CRC/GC/2003/4, Thirty-third session (1 July 2003), ¶ 31

On several occasions, CRC has made the link between illegal, unsafe abortion and high rates of maternal mortality<sup>142</sup> and expressing its concern over the impact of punitive legislation on maternal mortality rates.<sup>143</sup> In one case, CRC recommended that a state party undertake a study of the negative impact of early pregnancy and illegal abortion.<sup>144</sup> The committee has expressed concern over punitive abortion legislation<sup>145</sup> and has occasionally suggested that a State party review its practices under existing abortion legislation.<sup>146</sup>

As stated above, Nicaragua has a high rate of adolescent pregnancies, many of which are the result of rape. Rather than provide appropriate, sensitive obstetrical treatment for pregnant adolescents, the State forces them to carry to term in spite of the dangers of pregnancy for the immature body, and in spite of the psychological trauma attendant to rape, which may have a role in the unusual number of suicides of pregnant adolescents.

## **B. ICCPR Articles Violated by Attacks on Women’s Human Rights Defenders and Other Opponents of Government Policies**

### **Article 17: Right to Freedom from Unlawful Reputational attacks**

Article 17 states, “(1) No one shall be subjected to [...] unlawful attacks on his honor and reputation,” and “(2) Everyone has the right to the protection of the law against such interference or attacks.”

Article 26(3) of the Nicaraguan Constitution mirrors this concern, establishing “the right to respect for the individual’s honor and reputation.” These rights are not viewed as merely hortatory, but are enforceable under Article 45, which allows for a personal lawsuit by individuals whose rights have been violated or are threatened with violation.<sup>147</sup>

The Human Rights Committee’s General Comment with respect to Article 17 explains that the right to be free unlawful reputational attacks “is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons.”<sup>148</sup> Instead of protecting the honor and reputation of its citizens, the Government of

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<sup>142</sup> See e.g., Chad, 24/08/99, U.N. Doc. CRC/C/15/Add.107, ¶ 30; Colombia, 16/10/2000, U.N. Doc. CRC/C/15/Add.137, ¶ 48; Guatemala, 09/07/2001, U.N. Doc. CRC/C/15/Add.154, ¶ 40; Nicaragua, 24/08/99, U.N. Doc. CRC/C/15/Add.108, ¶ 35; Nicaragua, 20/06/95, U.N. Doc. CRC/C/15/Add.36, ¶ 19.

<sup>143</sup> See e.g., Chad, 24/08/99, U.N. Doc. CRC/C/15/Add.107, ¶ 30; Guatemala, 09/07/2001, U.N. Doc. CRC/C/15/Add.154, ¶40.

<sup>144</sup> See Chad, 24/08/99, U.N. Doc. CRC/C/15/Add.107, ¶ 30.

<sup>145</sup> See e.g., Armenia, 24/02/2000, U.N. Doc. CRC/C/15/Add.119, ¶ 38; Chad, 24/08/99, U.N. Doc. CRC/C/15/Add.107, ¶ 30; Kyrgyzstan, 09/08/2000, U.N. Doc. CRC/C/15/Add.127, ¶ 45; Palau, 21/02/2001, U.N. Doc. CRC/C/15/Add.149, ¶ 46.

<sup>146</sup> See e.g., Chad, 24/08/99, U.N. Doc. CRC/C/15/Add.107, ¶ 30; Palau, 21/02/2001, U.N. Doc. CRC/C/15/Add.149, ¶ 47.

<sup>147</sup> Title IV of the 1987 Nicaraguan Constitution (with 1995, 2000 and 2005 reforms), *available at* <http://pdba.georgetown.edu/Constitutions/Nica/nica05.html>.

<sup>148</sup> Human Rights Committee, Human Rights Committee General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17);, ¶ 1, U.N. Doc. No CCPR/C/21/Rev.1/Add.7 (Aug. 4, 1988).

Nicaragua is actively complicit in stigmatizing those who oppose the total ban on therapeutic abortion.

The complete criminalization of abortion encourages attacks on the honor and reputation of women seeking emergency health care, doctors who provide such care, and all those who oppose the absolute illegality of abortion. The persistent attacks on political activists are a violation of the right to be free from unlawful attacks upon the reputation and honor.

The Government of Nicaragua is using spurious criminal investigations backed by articles in the media to sully the reputations of independent women's rights and reproductive rights activists. In addition, the Nicaraguan Association for Human Rights (ANDPH) has launched a coordinated attack on the reputations of the nine human rights activists that has included both the media and apparatus of the legal system. In a total denial of due process, the Public Prosecutor has been investigating these activists, who assisted a nine-year old girl to obtain a legal abortion based on rape, for aiding and abetting a pedophile in order to promote abortions in Nicaragua.<sup>149</sup> The denunciations by the Public Prosecutor and ANDPH have made them targets of harassment and public scorn.<sup>150</sup> As yet, no charges have been filed. More recently, the Government announced a criminal investigation of 17 Nicaraguan organizations involved in opposition to the abortion ban and other issues.

Beyond these specific attacks, the official declaration by the Ministry of Governance that opponents of the abortion ban are criminals contributes to a dangerous atmosphere and serves to ratify other dangerous and escalating reputational attacks. The characterization of human rights activists as "traitors" and of health care providers as "murderers" and "baby killers" is a quintessential example of an attack on reputation. Left unchecked by the Nicaraguan government, these attacks have become increasingly invasive and menacing. For example, the home of one of the leading activists was recently painted in Sandinista colors and oil poured on the ground in front of her house. Furthermore, the government's encouragement of and failure to condemn these reputational attacks is especially risky because of the highly charged nature of the abortion debate.

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<sup>149</sup> Elizabeth Romero, *Caso "Rosita" No Termina Con Juicio: ANPDH denuncia a la Red de Mujeres*, LA PRENSA, Nov. 17, 2007, <http://www.laprensa.com.ni/archivo/2007/noviembre/17/noticias/nacionales/227714.shtml>.

<sup>150</sup> *Id.* (A reader identified as JMR writes of the activists: *God is the ultimate judge. The villain and his accomplices who have masterminded this atrocity won't stay laughing for long. Sooner or later, they'll get their payback where it hurts most. I would love to be there to enjoy watching them suffer.*)

**Article 19: Right to Freedom of Expression, Article 21: Right of Peaceful Assembly,  
Article 22: Freedom of Association, and Article 25: Political Rights**

In General Comment 25, the Committee recognizes that citizens take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves.<sup>151</sup> This participation is supported by ensuring freedom of expression, assembly, and association. These rights apply to the “free operation of non-governmental human rights organizations and political parties,” and the Human Rights Committee has urged governments “to take all necessary steps to enable national non-governmental human rights organizations to function without hindrance.”<sup>152</sup> The Nicaraguan government’s campaign of intimidation and harassment of women’s human rights organizations is a violation of these rights.

- a. Article 19 asserts, “everyone shall have the right to hold opinions without interference; and that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.

The freedoms to hold and express opinions have been enshrined repeatedly by the Human Rights Committee as central to the human rights system and the ICCPR. In General Comment 22, the Committee states that article 19.1 includes the right of everyone to hold opinions without interference and that this right is unconditional.<sup>153</sup> The Human Rights Committee stated in General Comment 25 that a commentary on public issues without censorship or restraint is vital to inform public opinion.<sup>154</sup>

- b. Article 21 states: “The right of peaceful assembly shall be recognized.”<sup>155</sup>

The Human Rights Committee has denounced attacks on demonstrations and obstacles to peaceful protest as violations of article 21. In the Committee’s concluding observations on Argentina, the committee recommended that “Attacks against human rights defenders and persons participating in peaceful demonstrations should be promptly investigated and the perpetrators disciplined or punished as required” and that the State Party provide information on measures taken in its next report.<sup>156</sup>

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<sup>151</sup> Human Rights Committee, Human Rights Committee General Comment No. 25, The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, ¶ 8, U.N. Doc. No. CCPR/C/21/Rev.1/Add.7 (Dec. 7, 1996).

<sup>152</sup> Human Rights Committee, Concluding Observations of the Human Rights Committee, Azerbaijan, ¶ 23, U.N. Doc. No. CCPR A/57/40 (2002) *discussing* reported violations of articles 19, 22 and 25 of the Covenant.

<sup>153</sup> Human Rights Committee, Human Rights Committee General Comment No. 22, Right to Freedom of Thought, Conscience and Religion, ¶ 3, U.N. Doc. No. CCPR/C/21/Rev.1/Add.4 (1993).

<sup>154</sup> Human Rights Committee, Human Rights Committee General Comment No. 25, The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, ¶ 12, U.N. Doc. No. CCPR/C/21/Rev.1/Add.7 (Dec. 7, 1996).

<sup>155</sup> ICCPR, Article 21.

<sup>156</sup> Human Rights Committee, Concluding Observations by the Human Rights Committee: Argentina, UN Doc. CCPR A/56/40 (2001), ¶ 13.

c. Article 22 states, “[e]veryone shall have the right to freedom of association with others.”<sup>157</sup>

With respect to article 22 of the Covenant, the Committee has reiterated concern about reports of cases of intimidation and harassment of human rights activists by the authorities and stated that “the free functioning of non-governmental organizations is essential for the protection of human rights.”<sup>158</sup>

d. Political rights, guaranteed in article 25, include the right and the opportunity, without any distinctions as to any rights described in article 2, including political or other opinion, and without unreasonable restrictions, to take part in the conduct of public affairs.<sup>159</sup>

Because freedom of expression, assembly, and association are essential conditions for the effective exercise of the right to vote and must be fully protected, the Human Rights Committee has directed States to take positive measures to overcome limitations.<sup>160</sup> In General Comment 25, the Committee makes clear that the Covenant requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.<sup>161</sup>

There has been a marked increase in media attacks by the Nicaraguan government directed at number of women’s rights organizations as well as individuals who have voiced their concerns about the blanket ban and labored to legalize therapeutic abortion. As recently as September 7, 2008, “women’s organizations were victims of harassment by the government in order to detract from accusations of abuse and demands for transparency.”<sup>162</sup> The government’s unfounded public accusations of money laundering are in violation of Article 19(1), which guarantees the right to hold and express opinions without interference.

The government-orchestrated attacks on the September 20, 2008 demonstration in León are in clear violation of the right to hold and express opinions (article 19), right to peaceful assembly (article 21), right to association (article 22), and the right to take part in public affairs (article 25). The Nicaraguan government and police did not intervene and have not fully investigated the attacks, thereby neglecting the positive duty to ensure its citizens’ rights.

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<sup>157</sup> ICCPR, Article 22.

<sup>158</sup> Human Rights Committee, General Documents Not Relating To Specific States - Annual and Sessional Reports - CCPR - A/53/40 (1998) (conclusions and recommendations on Belarus).

<sup>159</sup> ICCPR, Article 25.

<sup>160</sup> Human Rights Committee, Human Rights Committee General Comment No. 25, The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, ¶ 12, U.N. Doc. No CCPR/C/21/Rev.1/Add.7 (Dec. 7, 1996).

<sup>161</sup> *Id.*

<sup>162</sup> *CENIDH Expresses Concern About Attacks on NGOs*, NICARAGUA NETWORK (September, 2008) <http://www.nicanet.org/?p=563> (last visited Sept. 28, 2008).

It is clear that the escalating situation is increasingly dangerous for the human rights defenders as well as for the survival of dissent in Nicaragua. The Public Prosecutor's continuing investigation of the nine women's rights leaders the official declaration that opposition to the abortion ban is illegal and the money-laundering accusations against 17 domestic groups along with the forced closing of two international organizations that assisted these groups are an attempt to intimidate, silence and paralyze all opposition to the government's ban on therapeutic abortion. The women face prison time if brought to trial and convicted, and in the meantime, the charges have a chilling effect on freedom of assembly and association because activists who oppose the ban fear prosecution.<sup>163</sup> Additionally, these unfounded charges drain the financial and energetic resources of these organizations, preventing them from exercising their political rights.<sup>164</sup>

Health care providers are also targets of this campaign of attacks. Many doctors will privately say they are against the abortion ban but in public are afraid to express their opposition.<sup>165</sup> Those who oppose the abortion law and have done so publicly have also come under attack, receiving threatening calls and have been subject to efforts at entrapment by those seeking illegal abortions. Government harassment, the threat of prosecution, and the possibility of losing one's license and the prestige of a lifetime of work, prevents women's health care providers from exercising their rights to freedom of expression.<sup>166</sup>

Peaceful assembly and freedom of association in Nicaragua are clearly under attack not only for NGOs that advocate for women's health rights and oppose the ban on therapeutic abortion. The investigations brought against the women's rights leaders and organizations are part of a broader systematic campaign to delegitimize and paralyze women's right movements in Nicaragua that have sought to eliminate violence against women and advocated for the right of women to obtain legal therapeutic abortions.<sup>167</sup> The threat of prosecution, harassing phone calls and the media propaganda greatly restrict the free operation of Nicaraguan human rights NGOs.

### III. Conclusion

The criminalization of all forms of abortion in Nicaragua in all circumstances violates the human rights of Nicaraguan women, specifically the rights under the ICCPR to equality and non-discrimination (arts. 3 and 26), life (art. 6), freedom from inhuman treatment (art. 7), liberty and security of person (art. 9) privacy (art. 17), conscience and belief (art.18), expression (art.19), peaceful assembly (art. 21), freedom of association (art. 22), protection of the family (arts. 17 and 23), protection of the rights of children (art. 24), and political rights (art. 25). The ban violates women's rights both by forcing women who need therapeutic abortions to seek unsafe clandestine abortions or continue dangerous pregnancies, and by effectively restricting access to legal emergency obstetric care. The ban also violates the rights of doctors to practice their profession ethically and confidentially and provide needed and often emergency services to their pregnant patients. Furthermore, the state-supported attacks on activists and medical

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<sup>163</sup> Penn Garvin, *Information on the Case Against the Network of Women Against Violence*, CAWN Promoting Women's Rights and Gender Equality, (April, 2008) <http://www.cawn.org/news/genderviolence.htm> (last visited, Sept. 21, 2008).

<sup>164</sup> *Id.*

<sup>165</sup> Interview with gynecologists in Leon (Feb. 14, 2008).

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*



professionals who oppose the ban violate the right to freedom from reputational attacks (art. 17), hold and express opinions (art. 19), peacefully assemble (art. 21) and participate in public affairs (art. 25).

It is a matter of the utmost urgency that Nicaragua comply with the ICCPR to enable women to obtain therapeutic abortion and emergency medical services and to stop the escalating attacks on women's human rights defenders, including women's rights activists and medical professionals who oppose the ban on abortion.

#### **IV. Suggested Recommendations**

The Government of Nicaragua must immediately:

1. Issue written Guidelines for Emergency Obstetric Services from the Ministry of Health's guidelines making clear that the current abortion ban does not affect the right and obligation of doctors to provide without delay with full respect for the confidentiality of information, abortion and other life- and health-saving treatment, including for complications of spontaneous and induced abortion as well as other obstetric complications. The Guidelines should ensure that neither medical professionals, nor pregnant women or those that assist them will be prosecuted for seeking emergency obstetric care.
2. Provide training for doctors and public hospital administrators on and monitor implementation of these guidelines. Publicize to doctors that they can follow the Ministry of Health's guidelines regarding emergency obstetric care without fear of prosecution under the penal code.
3. Publicize the Guidelines through media channels through a popular educational campaign that will ensure that both doctors and women understand their rights and dispel any perception that providing emergency obstetric services could lead to prosecution.
4. Revise the penal code:
  - a. To eliminate any criminal penalties attached to therapeutic abortion, including where abortion is necessary to protect a pregnant woman's life or health, where the pregnancy resulted from rape or incest, and where there is evidence of significant fetal damage or deformity.
  - b. To allow therapeutic abortion on the basis of the consent of the pregnant woman and the judgment of one medical professional.<sup>168</sup>

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<sup>168</sup> The previous Nicaraguan law allowed abortions only when three doctors and the spouse or nearest relative agreed on the necessity of an abortion to save the pregnant woman's life. *See surpa* note 3.

"It is widely recognized in law that mentally competent adults enjoy autonomy of choice in their medical and health care, that they do not require the consent of any third party, including a wife or husband, and are not subject to the veto of any third party." Rebecca Cook, et. al, CONSIDERATIONS FOR FORMULATING REPRODUCTIVE HEALTH LAWS 16, WORLD HEALTH ORGANIZATION (2000).

- c. To clarify that no criminal penalty shall attach if an abortion results as an indirect consequence of an obstetric procedure or other pregnancy-related treatment.
5. Undertake a public education campaign to encourage women to seek therapeutic abortions under the law and to dispel any perception that doing so could lead to prosecution.
6. Provide women and their families with legal remedies if a denial of emergency obstetric care or legal therapeutic abortion leads to permanent injury or death. Such remedies should include sanctions against doctors who refuse to provide legal obstetric care.
7. Collect and provide data to the Committee regarding both mortality and morbidity associated with pregnancy, disaggregating all cases resulting from lack of access to therapeutic abortion or to emergency obstetric care. This should include an investigation into the number of pregnant women who died and might die from suicide or poisoning in the year after the enactment of the ban on therapeutic abortion. The data should be provided to the Committee within six months and the process of data collection and investigation should be continuous.
8. Cease any investigation into criminal charges against reproductive rights activists or activist groups, announce publicly that the investigations are closed, and provide compensation to those wronged by these governmental actions.
9. Ensure the continuing ability of civil society groups and human rights defenders to exercise their rights under the Covenant by ceasing to attack their reputations publicly and by ceasing investigation of spurious charges of money laundering, and ensuring the ability of local groups to have the fiscal and other support of international non-governmental groups in Nicaragua.
10. Stop the campaign of intimidation and harassment against those opposed to the ban and ensure the safety and freedoms of reproductive rights activists and vigorously prosecute those who participate.

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Spousal consent has also specifically been found to be an unacceptable impediment to women's health and equality. *See e.g.*, CEDAW Committee, Concluding Observations by the CEDAW Committee: Benin, UN Doc. No. CEDAW/C/BEN/CO/1-3 para. 32, Jul. 22, 2005 (calling on the government to eliminate spousal consent for abortions in order to prevent clandestine unsafe abortions).

The previous Nicaraguan law on therapeutic abortion was unusually severe, even among countries that restrict women's access to abortion. *See supra* note 2 (noting that no country other than Nicaragua required three doctors' consent). The three doctor requirement was unduly burdensome and put special constraints on women living in rural areas where it may be difficult to find three doctors.

By requiring four people, other than the woman herself, to consent to emergency medical treatment which is usually adequately assessed privately by a woman and her doctor, the past Nicaraguan law violated many of the rights enumerated in this Shadow Report. The previous restriction on therapeutic abortion did not serve any legitimate government purpose, put women's lives and health in unnecessary danger, and was a discriminatory imposition on the pregnant woman's capacity to decide the course of her health care.

## **APPENDIX A: SIGNATORIES TO THE SHADOW REPORT**

MAM, the Movimiento Autonomo de Mujeres of Nicaragua (Autonomous Women's Movement), is an autonomous political movement comprised of individual women, among whom are long-standing reproductive rights activists and experts, dedicated to the promotion of equality, freedom and solidarity. MAM has played a critical role in regard to reproductive rights, in particular in opposing, and raising awareness about the implications of, the recent legislative ban on therapeutic abortion in Nicaragua as a matter of women's health and rights under Nicaraguan and human rights principles such as the right to life and the right to gender equality.

CDC, the Centro de Derechos Constitucionales (Center for Constitutional Rights) of Nicaragua, is an independent organization dedicated to the advancement of rights under Nicaraguan and international law. The CDC has played a critical role in the legal challenges and raising awareness about the recent legislative ban on therapeutic abortion in Nicaragua.

IWHR, the International Women's Human Rights Law Clinic, founded in 1992, is part of Main Street Legal Services of the Clinical Program of the City University of New York School of Law. IWHR combines the education of progressive law students in using human rights with partnership with women activists and lawyers in the United States and abroad who are seeking to use the frameworks and mechanisms of international law and human rights to advance the human rights of women. IWHR has long-standing relationships with reproductive rights activists in Nicaragua—dating at least from the Cairo conference in 1994, and Professor and Director Rhonda Copelon has a long history as a reproductive rights lawyer both in the United States and internationally. Recently, the IWHR participated in shadow reports before the Committee Against Torture and the Committee on Economic, Social and Cultural Rights with respect to Chile's ban on abortions.