

**UNITED NATIONS COMMITTEE AGAINST TORTURE AND CRUEL, INHUMAN OR  
DEGRADING TREATMENT OR PUNISHMENT**

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

In response to the

**FIRST PERIODIC REPORT  
OF NICARAGUA**

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## Executive Summary

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This report is submitted by MAM (Autonomous Women's Movement), CDC (Center for Constitutional Rights), MADRE and the IWHR (International Women's Human Rights Clinic at City University of New York School of Law).<sup>1</sup> It addresses the recent repeal of the long-standing exception under Nicaraguan law that allowed abortions for therapeutic reasons and in cases of rape and incest, and the subsequent enacted legislation that banned all forms of abortion, including medical procedures which result in harm to the fetus. The law, one of the most restrictive of its kind, criminalizes doctors who provide these necessary services and women who seek them or who, in desperation, self-abort. This law violates the Nicaraguan Government's obligations under Articles 2, and 16 of the Convention against Torture, and Cruel, Inhuman or Degrading Treatment or Punishment.

Prior to the repeal of the exceptions, 1,818 therapeutic abortions were performed in Nicaragua. Since the inception of the new law, however, approximately 2,500 women have gone abroad to obtain safe abortions. Doctors are chilled from performing life-saving treatments, including therapeutic abortions. Women's lives and health are placed at risk by this law in the following situations, all of which ethically demand the CAT Committee's immediate intervention:

- Pregnant women requiring **therapeutic abortion** to preserve their life, and physical or mental health. This includes women who (i) have a preexisting condition which could be exacerbated by pregnancy; (ii) suffer endangering complications from pregnancy; (iii) are victims of rape or incest; or (iv) are carrying a fetus with severe deformities;
- Pregnant women in need of **emergency obstetric services** to save their life and health. This includes women who are suffering from (i) critical complications of pregnancy (i.e. ectopic pregnancy, uncontrollable blood pressure, etc.), and (ii) complications of clandestine abortion (i.e. incomplete abortion, hemorrhaging, septicemia, etc.); and
- Pregnant women requiring **various medical treatments not involving abortion**. As elaborated below, doctors can incur criminal liability even when damage caused to the fetus is unintentional, and when the fetus is not aborted. As a result doctors are chilled from treating pregnant women in a variety of circumstances if there is even some attenuated possibility of danger to the fetus.<sup>2</sup>

Nicaragua's own estimates indicate that as of October 2008, twelve (12) women died as a result of the law. However this figure is likely much greater as it fails to take into account a sharp rise

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<sup>1</sup> See Appendix A, Signatories to the report.

<sup>2</sup> See Appendix B, Statement of Dr. Oscar Flores Mejia, Representative of the Nicaraguan Society of Obstetrics and Gynecology (SONIGOB), describing the challenges of medical professionals and the risks to the life and health of women as a result of the abortion ban by Dr. Flores, ¶16.

in young pregnant women alleged to have committed suicide, women who have attempted to self-abort through inserting pesticide pills intra-vaginally, and pregnant women who have died from causes indirectly related to their pregnancies, such as aneurysms and hyperthyroidism. Indeed, a recent alternative report to this Committee noted that as of December 2008 there were at least (80) eighty reported cases of pregnant women that had died as a result the lack of opportune medical intervention to save their lives. Such intervention would have been available to them before the enactment of the blanket ban.<sup>3</sup>

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. The absolute abortion ban criminalizes the types of procedures required to preserve the health of these women and thereby subjects them to severe physical and mental pain and suffering as a result of delay in adequate treatment. The Nicaraguan government, by enacting and supporting the law, has failed both to monitor its real impact, and to minimize its dangers, refusing to even give doctors assurances that they will not be subject to criminal prosecution for providing critical medical treatment in obstetric emergencies.

Nicaragua's retrogressive legislation directly violates its obligations contained in Article 2 of the Convention against Torture which requires States parties to "take effective legislative, administrative, judicial, or other measures" to prevent any acts or practices constituting torture from occurring within its jurisdiction.<sup>4</sup> The absolute abortion ban meets the elements of torture contained in Article 1 of the Convention, as it (i) is intentionally inflicted; (ii) causes severe pain and suffering, both physical and mental; (iii) intimidates and coerces women to carry their pregnancies to term, and physicians to forego their ethical and professional responsibilities and deny life and health saving treatment and discriminates against women by denying treatment that only women need, and is impermissibly "justified" on religious grounds; and (iv) is inflicted on the basis of direct and official state action, which compels adherence through criminalization.

Finally, the Nicaraguan government has an obligation under Article 16 of the Convention to prevent in any jurisdiction under its territory other acts of "cruel, inhuman, or degrading treatment or punishment which do not amount to torture under Article 1."<sup>5</sup> Therefore, to the extent that certain practices that are a consequence of the abortion ban, but do not amount to the Article 1 definition of torture, are nevertheless prohibited by Article 16.

International human rights bodies, including the Human Rights Committee have underscored that restrictive abortion laws have a heavy toll on women's lives and health, as have

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<sup>3</sup> ALTERNATIVE REPORT ON NICARAGUA presented to the Committee against Torture, 42<sup>nd</sup> Periodic Session (May 2009), at 20, accessed at [http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOs\\_OMCT\\_Nicaragua42.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOs_OMCT_Nicaragua42.pdf).

<sup>4</sup> CAT, Article 2, U.N. Doc. A/39/51 (1985), at ¶1.

<sup>5</sup> *Id.*, Article 16.

international health organizations, including the Beijing World Conference and the World Health Organization.

The criminalization of all forms of abortion in all circumstances violates the rights of Nicaraguan women to obtain the highest attainable standard of medical treatment expeditiously and humanely for pregnancy related complications – including clandestine abortions – and obstetric emergencies. According to the World Health Organization, “the incidence of unsafe abortion is influenced by the legal provisions governing access to safe abortion, as well as the availability and quality of legal abortion services.”<sup>6</sup>

In the case of Nicaragua, statistics and common sense indicate that threat of criminal sanctions for necessary therapeutic abortion creates a high incidence of unsafe abortion. It is crucial that Nicaragua permit women’s access to therapeutic abortions as well as standard health- and life-saving procedures in case of obstetric emergencies. Covered in this report is an analysis of the right to access safe and legal abortion within relevant treaties that Nicaragua has ratified or accessed.

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 termination of pregnancies resulting from rape and incest, or involving serious fetal deformity.

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<sup>6</sup> WORLD HEALTH ORGANIZATION: UNSAFE ABORTION: GLOBAL AND REGIONAL ESTIMATES OF THE INCIDENCE OF UNSAFE ABORTION AND ASSOCIATED MORTALITY IN 2003 (2007).

## Statement of Facts

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Nicaragua's first periodic report submitted to the Committee against Torture fails to address the absolute abortion ban or the pain, suffering and humiliation constituting torture and cruel, inhuman, and degrading treatment inflicted upon women. The report also fails to address governmental interference with the fundamental ethical obligations of medical professionals, in particular, the obstetricians and gynecologists affected by the abortion ban, and those that assist them.

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>7</sup> Under the old law, a woman could obtain an abortion if the fetus had severe defects, if pregnancy resulted from rape or incest, or if three (3) doctors agreed that her life was in danger. Every major medical society in Nicaragua opposed the ban.<sup>8</sup> Under the previous provision, Article 165, a therapeutic abortion could be carried out if three certified doctors approved the procedure.<sup>9</sup> According to the Nicaraguan Ministry of Health, 1,818 women received either legal abortions or treatment for complications like ectopic pregnancies in public hospitals in the year preceding the ban.<sup>10</sup> Under the second amended 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>11</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>12</sup>

The Catholic Church, that today represents a minority within Catholicism with respect to sexual and reproductive rights,<sup>13</sup> was instrumental in the passage of the abortion law in Nicaragua. 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.<sup>14</sup> In

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<sup>7</sup> Associated Press, *Nicaragua Bans All Abortion*, SUNDAY HERALD SUN (Australia), Nov. 19, 2006, at 40.

<sup>8</sup> N.C. Aizenman, *Nicaragua's Total Ban On Abortion Spurs Critics*, WASH. POST, Nov. 28, 2006, at A01.

<sup>9</sup> H LeyH de Código Penal, Art. 165, LA GACETA No. 96 (May 3, 1974), available at <http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/643cc814a8e2e2c4062570a600648d01>

<sup>10</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>11</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>12</sup> *Id.* Art. 143

<sup>13</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>14</sup> Kate Seelye, *The Cost of Nicaragua's Total Abortion Ban*, FRONTLINE WORLD, Mar. 13, 2008, available at,

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>15</sup> and collected 200,000 signatures that were presented to the Nicaraguan Congress.<sup>16</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>17</sup>

The new law is “a government death penalty imposed on women,” according to one gynecologist.<sup>18</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>19</sup> Specifically, an October 2007 report by Human Rights Watch outlines a three-fold effect on women: (1) denial of access to life- or health-saving abortion services, (2) denial or delay in access to other obstetric emergency care, and (3) a pronounced fear of seeking treatment for obstetric emergencies.<sup>20</sup>

According to Human Rights Watch, the Health Ministry “does not systematize complaints received for the delay or denial of care and so far has not studied the impact of the law on the lives and health of women.”<sup>21</sup> By Ministry of Health’s calculations, 112 pregnant women died in the year following the ban’s enactment.<sup>22</sup> Although it is impossible to tell how many of these lives could have been saved, the 58% increase in deaths attributable to causes “indirectly” related to the pregnancy—conditions like aneurysms and hyperthyroidism—gives some indication.<sup>23</sup> Additionally, the number of pregnant women whom the Ministry records as dying of causes “unrelated” to the pregnancy—including suicide or poisoning—has doubled.<sup>24</sup> Doctors say that this number reflects women who die attempting to induce an abortion.<sup>25</sup> Particularly disturbing are reports that women have died after inserting pesticide pills intra-vaginally.<sup>26</sup>

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[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>15</sup> *Id.*

<sup>16</sup> Joycelyn Getgen, *Reproductive Injustice: An Analysis of Nicaragua’s Complete Abortion Ban*, 41 CORNELL INT’L L.J. 143, 154 (2008).

<sup>17</sup> *Id.*

<sup>18</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>19</sup> HUMAN RIGHTS WATCH, *OVER THEIR DEAD BODIES: DENIAL OF ACCESS TO EMERGENCY OBSTETRIC CARE AND THERAPEUTIC ABORTION IN NICARAGUA*, at 6.

<sup>20</sup> *Id.* at 1.

<sup>21</sup> *Id.* at 10.

<sup>22</sup> MINISTERIO DE SALUD, *ANÁLISIS COMPARATIVO ANUAL DE SITUACIÓN DE MORTALIDAD MATERNA: AÑOS 2005, 2006, 2007 (2008)*.

<sup>23</sup> These deaths increased from 19 in 2006 to 30 in 2007. *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Interview with Dr. Ligia Altamirano, in Managua (Feb. 13, 2008) [hereinafter Dr. Altamirano Interview].

<sup>26</sup> *Id.*; Interview with doctor in Leon (Feb. 14, 2008).

While NGOs estimate that 2,500 women with access to sufficient means have obtained abortions out of the country since the ban was imposed.<sup>27</sup> An unknown number of other women, largely poor and young, has 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>28</sup> One woman, a 30-year-old single mother of two with a chronic health condition, stopped taking her medication during the pregnancy.<sup>29</sup> She reported “feeling horrible and in pain” and had trouble caring for her children.<sup>30</sup> She tried to induce an abortion using pills and injections before finding a clinic to perform the abortion.<sup>31</sup>

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>32</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>33</sup>

Under the ban, however, doctors are afraid to treat women who have had miscarriages—both natural and self-induced—for fear of being accused of performing an abortion.<sup>34</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>35</sup> The president of the Society of Obstetrics and Gynecology of Nicaragua, 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>36</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

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<sup>27</sup> Silva, *supra* note 18 (citing the Autonomous Women’s Movement [MAM]).

<sup>28</sup> HUMAN RIGHTS WATCH, *supra* note 19, at 7–9.

<sup>29</sup> *Id.* at 7.

<sup>30</sup> *Id.* at 8.

<sup>31</sup> *Id.*

<sup>32</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>33</sup> HUMAN RIGHTS WATCH, *supra* note 19, at 11.

<sup>34</sup> Lakshmanan, *supra* note 32.

<sup>35</sup> HUMAN RIGHTS WATCH, *supra* note 19, at 5.

<sup>36</sup> Rory Carroll, *Nicaragua Votes to Outlaw Abortion*, THE GUARDIAN, Oct. 27, 2006, at 21.

pregnancy before she was finally operated on.<sup>37</sup> She died as a result of the delay.<sup>38</sup> In another case reported to the Autonomous Women's Movement (MAM), a pregnant woman died of diarrhea because the doctors were afraid that treating her would lead to a spontaneous abortion. To date the government has refused to take action against doctors who have refused legal obstetric care to women.<sup>39</sup>

The Nicaraguan Health Ministry had issued guidelines in December 2006 for doctors treating obstetric emergencies, applicable to both complications of illegal abortion and emergencies occurring in the context of wanted pregnancies. The protocols, however appear to contradict the law, in one place advising the doctor should "evacuate the uterus as soon as possible," independently of whether the fetus is alive or not.<sup>40</sup> Although the Society of Obstetrics and Gynecology of Nicaragua, concerned that the actions prescribed in the protocols themselves were illegal, sought a written advisory from the Health Ministry, they never received a response.<sup>41</sup> Moreover, the Health Ministry does not monitor implementation of the guidelines<sup>42</sup> and its definitions are still unclear, according to doctors and NGOs.<sup>43</sup>

Even apart from the threat of prosecution, "the pressure is great" on doctors not to perform therapeutic abortions. 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 and told the director that the patient was a member of his church, and that they were praying for her, and that the hospital should not do anything. The Director called the doctor and said, "Please don't put me in this situation." Then 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>44</sup>

Although this patient lived, the physicians evaluating the situation believed that the risk taken that she would die was extremely high. While doctors will not perform therapeutic abortions or provide emergency obstetric treatment involving abortion without consent of the patient this was a case in which the woman sought treatment.

In October 2008, the U.N. Human Rights Committee observed with concern Nicaragua's prohibition on abortion, stating that it did not conform with International Covenant on Civil and

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<sup>37</sup> Associated Press, *Women Die After Nicaragua's Ban on Abortions*, Nov. 6, 2007, available at <http://www.msnbc.msn.com/id/21601045>.

<sup>38</sup> *Id.*

<sup>39</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>40</sup> MINISTERIO DE SALUD, *NORMAS Y PROTOCOLOS PARA LA ATENCIÓN DE LAS COMPLICACIONES OBSTÉRICAS 110-111* (2008).

<sup>41</sup> Dr. Altamirano Interview, *supra* note 25.

<sup>42</sup> HUMAN RIGHTS WATCH, *supra* note 19, at 9–10.

<sup>43</sup> *Ban Putting Women's Lives at Risk*, *supra* note 38.

<sup>44</sup> Dr. Altamirano Interview, *supra* note 25.

Political Rights, and urging it to revise the its legislation.<sup>45</sup> Similarly, in November 2008, the Committee on Economic, Social and Cultural Rights noted with concern Nicaragua’s abortion ban and urged a revision of policy.<sup>46</sup>

## **Nicaragua's Absolute Abortion Ban Violates CAT Articles 1, 2 and 16**

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### **Legal Background**

Nicaragua’s retrogressive legislation— which effectively made criminal abortions conducted in even the most exigent of circumstances—violates the CAT Convention’s prohibitions on torture and cruel, inhumane or degrading treatment also recognized as *jus cogens* violations.<sup>47</sup> This Committee has previously grappled with abortion bans; its foundational texts, and jurisprudence, are highly instructive in contextualizing the Nicaraguan policy. As this section discusses, Nicaragua’s absolute abortion ban meets the elements of torture contained in Article 1, as (i) it is intentionally inflicted, (ii) causes severe pain or suffering, (iii) reflects purposes to intimidate and coerce women and physicians, to discriminate against women, as well as impermissibly impose a religious viewpoint on those affected; and (iv) is inflicted on the basis of direct state action which compels adherence through criminalization. This section will set forth the general recognition by this Committee and others that links the criminal ban on therapeutic abortion to torture and ill-treatment.

In its Conclusions and Recommendations, the 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>48</sup> It further called upon Chile, to “ensure immediate and unconditional treatment in accordance with the World Health Organization Guidelines.

In its Concluding Observations to Lithuania, this Committee welcomed that country’s efforts to reform its legal system, bringing its criminal code in conformance with the prohibition against torture and ill-treatment by prohibiting the use of violence, intimidation, degrading treatment or *treatment impairing a person’s health.*” (Emphasis added).<sup>49</sup>

The Human Rights Committee has interpreted the prohibition against torture and other cruel, inhuman or degrading treatment under the ICCPR to apply to situations where medical treatment is denied. In General Comment 28, the HRC 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, noting the

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<sup>45</sup> Human Rights Committee, Concluding Observations on Nicaragua, UN DOC No. CCPR/C/NIC/CO/3 12 December 2008, ¶13.

<sup>46</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations Nicaragua, UN DOC E/C.12/NIC/CO/4, 28 November 2008, at ¶26.

<sup>47</sup> CAT General Comment No. 2, ¶1.

<sup>48</sup> CAT, Concluding Observations, Chile, U.N. Doc. CAT/C/CR/32/5, Jun. 14, 2004.

<sup>49</sup> CAT Concluding Observations, Lithuania, CAT A/59/44 (2003) 52, at ¶ 108.

information provided by States parties on all these issues should include measures of protection ... for women whose rights under article 7 have been violated.

The Human Rights 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>50</sup> The abnormality was discovered three months into Huamán's pregnancy and, although the law permitted therapeutic abortion, the hospital denied authorization.<sup>51</sup> Huamán gave birth to baby girl who survived four days, during which time Huamán had to breastfeed her.<sup>52</sup> She subsequently fell into a deep depression.<sup>53</sup> The Committee found that the refusal of a therapeutic abortion was the cause of Huamán's mental suffering, in violation of Article 7.<sup>54</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>55</sup> And in 2000 the Committee affirmed that the criminalization of abortion is incompatible with Article 7.<sup>56</sup> Although the criminalization of therapeutic abortion and emergency obstetric services are clearly identified as ill-treatment, the physical and mental pain and suffering women like Karen Noelia Llantoy Huamán must undergo as a result of the denial of this type of intervention warrants recognition as torture.

Indeed, the UN Special Rapporteur on Torture has stressed the close relationship between the right to health, especially the right to sexual and reproductive health, and the defence against torture, inasmuch as it affects both the general population and persons deprived of their freedom. His most recent report to the Human Rights Commission, states that:

"The right to health is closely related to and dependent upon the realisation of other human rights, including the prohibition against torture . . . In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including persons deprived of their liberty, to preventive, curative and palliative health services. In addition, States should refrain from limiting access to contraceptives and means of maintaining sexual and reproductive health, censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information."<sup>57</sup>

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<sup>50</sup> *Karen Noelia Llantoy Huamán v. Peru*, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005), ¶6.3.

<sup>51</sup> *Id.* at ¶¶ 2.1, 2.3.

<sup>52</sup> *Id.* at ¶2.

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

<sup>54</sup> *Id.* at ¶6.3.

<sup>55</sup> Human Rights Committee, Concluding Observations of the Human Rights Committee, Peru, U.N. Doc. CCPR/C/79/Add.72, Nov. 18, 1996, at ¶15.

<sup>56</sup> Human Rights Committee, Concluding observations by the Human Rights Committee: Peru, UN Doc. CCPR/CO/70/PER, Nov. 15, 2000, at ¶20.

<sup>57</sup> Report of the Special Rapporteur on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (Mr. VonBoven), §56. (hereinafter, *Rapporteur on Torture*)

The Committee on Economic, Social and Cultural Rights in its General Comment 14 affirms that “the right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to...human dignity, life, non-discrimination, equality, the prohibition against torture...[t]hese and other rights and freedoms address integral components of the right to health.” It states moreover, that the “the right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, *such as the right to be free from torture, non-consensual medical treatment and experimentation.*”<sup>58</sup>

General Comment 14 further requires states to undertake “measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, [and] emergency obstetric services and access to information . . . necessary to act on that information.”<sup>59</sup> It dictates that States have an obligation to adopt legislation and other measures to ensure “equal access to health-related services”<sup>60</sup> and that this obligation is nonderogable. States’ obligation to provide reproductive and maternal health care and to refrain from limiting “people’s access to health related information and services” is attributed a “comparably high priority.”<sup>61</sup>

Article 12 of the Convention on the Elimination of all Forms of Discrimination against Women affirms the responsibility of States parties to provide women with appropriate services when necessary throughout pregnancy and the post-natal period. Further, Article 12(l) requires States parties to eliminate all discrimination against women in the area of health care, and to ensure that men and women have equal access to health care services, including family planning.<sup>62</sup>

### **Intentional Infliction and Official Action**

Two elements of torture do not necessitate extensive analysis, since national legislation *ipso facto*, meets the criteria of (i) intentionality and (ii) official action. Because the Convention places upon states the affirmative duty to prevent within its territory treatment which constitutes torture<sup>63</sup> or cruel, inhuman or degrading treatment<sup>64</sup> the Committee has considered a State’s failure to intervene to stop, sanction and remedy any such treatment to constitute *de facto* permission sufficient for state liability—even when resulting ill-treatment has no foundation in any overt act by the State.<sup>65</sup> It was thus that

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<sup>58</sup> ICESCR General Comment 14, UN DOC E/2001/22 (2000) 128 at ¶13.

<sup>59</sup> Art. 14

<sup>60</sup> Art. 43

<sup>61</sup> Art. 44

<sup>62</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981). Article 12.

<sup>63</sup> See CAT, Art. 2(1).

<sup>64</sup> See CAT, Art. 16(1).

<sup>65</sup> CAT General Comment 2, ¶ 18.

[t]he Committee has made clear that where State authorities [have grounds to believe that ill-treatment is being committed by non-State actors] and they fail to exercise due diligence to prevent [said ill treatment] the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts.<sup>66</sup>

However, in the case of Nicaragua, the issue is not inaction by the State, but rather national legislative action outlawing therapeutic abortion and emergency obstetric services, regardless of the circumstances or consequences of pregnancy of the woman. In the case at hand, State officials are quite literally authors, and their policy not only consents to, but mandates the impermissible treatment, namely by compelling women to carry pregnancies to term, without exception. There can be no question that the elements of intentionality and official action are satisfied here.

### **Severe Physical and Mental Pain or Suffering**

Pregnancy related complications and obstetric emergencies invariably entail severe physical and/or psychological pain and suffering, as well as the possibility of death or permanent damage to the woman's health. Avoiding or delaying treatment unnecessarily prolongs and exacerbates the severe physical pain and suffering and intensifies the very real threat of death and permanent damage, constituting severe psychological suffering.

Women in Nicaragua experience both severe physical and mental suffering 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. Women in obstetric emergency, whether brought on by complications of pregnancy or clandestine abortion suffer searing pain as well as the threat of death if not immediately cared for.

In its amicus brief to the Nicaraguan Supreme Court, the Society of Obstetrics and Gynecology of Nicaragua pointed to the grave suffering women with, for example, cancer or serious heart conditions must undergo over a nine-month period before the prescribed treatment can be applied as a result of the ban.<sup>67</sup> The proportion of total maternal deaths attributable to conditions such as cancer, hypothyroidism, and deep vein thrombosis rose 10% from 2006 to 2007.<sup>68</sup> Of the 30 such deaths in 2007, 12 were attributable to pre-existing conditions exacerbated by a pregnancy that would likely have been ameliorated by a therapeutic abortion.<sup>69</sup> These women were mostly young, rural mothers whose deaths were preventable.<sup>70</sup>

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<sup>66</sup> *Id.*

<sup>67</sup> National Association of Obstetrics and Gynecology of Nicaragua, *amicus curiae* to the Supreme Court of Nicaragua, May 28, 2007, at 22.

<sup>68</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>69</sup> *Muerte Materna*, at 9.

<sup>70</sup> *Id.*

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.

The ban also denies victims of rape and incest the ability to abort an unwanted pregnancy resulting from a sexual assault. If a victim opts to terminate the pregnancy, she stands in violation of the criminal law and risks criminal prosecution. Because the law denies all women access to safe and legal abortion services, it compels many rape victims to carry their attacker's child against their will, even with the significant risks this poses to their mental health by constantly reminding them of the violence they have experienced. Rather than exacerbate their ongoing trauma, many victims still opt for seeking an abortion, despite the fact that it is illegal as well as potentially unsafe.<sup>71</sup>

Women suffering complications of unsafe abortions or other obstetric emergencies in wanted pregnancies seek care when they are already in extreme pain and are at high risk of death. They require immediate treatment at the same time as they also fear the consequence of prosecution for seeking treatment. According to the Human Rights Watch:

PAHO 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>72</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>73</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>74</sup> The President of the Society of Gynecology and Obstetrics of Nicaragua, 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>75</sup> Because doctors feel forced to choose between their obligation to treat patients in need and staying within the bounds of the law, Nicaraguan women remain in constant jeopardy, as they cannot access medical care to save their lives and protect their health.

Women who are denied access to a therapeutic abortion or obstetric emergency treatment also suffer horrific mental anxiety.<sup>76</sup> As an example, the Society of Obstetrics and Gynecology of

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<sup>71</sup> See, The Impact of the Complete Abortion Ban in Nicaragua: A Briefing to the UN Committee against Torture by Amnesty International. Submitted for the CAT 42<sup>nd</sup> Session, at 6.

<sup>72</sup> *Supra*, note 63 at ¶11.

<sup>73</sup> Lakshmanan, *supra* note 32.

<sup>74</sup> HUMAN RIGHTS WATCH, *supra* note 19, at 5

<sup>75</sup> Rory Carroll, *Nicaragua Votes to Outlaw Abortion*, THE GUARDIAN, Oct. 27, 2006, at 21.

<sup>76</sup> HUMAN RIGHTS WATCH, *supra* note 19, at 14.

Nicaragua highlights the mental health consequences for a woman who must, as a result of the withdrawal of therapeutic abortion, carry to term an anencephalic pregnancy ( *e.g.* where the fetus has no brain and is thus unviable outside the uterus) and how the condition is aggravated as a result of inability to receive the prescribed treatment:

Women diagnosed with anencephalia experience a mixture of feelings: surprise, sadness, anguish, despair, uncertainty, doubts, resignation, frustration, added to this the inability to get a therapeutic abortion which increments her state of anguish. These circumstances also produce post-traumatic stress which is a state of mental suffering caused by the receipt of a catastrophic diagnosis. This disorder is long-term and only a third of women affected recover, another third can show signs of recovery after a whole year of treatment, while the other third continue to experience symptoms for ten years after having received the diagnosis.<sup>77</sup>

The traumatizing consequences of being forced to bring an anencephalic fetus to term transcend the profound anguish at the diagnosis itself. The pregnant woman continues to appear pregnant and in social life—if she doesn't totally isolate herself—has to deal with people's constant positive reactions to her pregnancy each of which brings her back to the horrible truth that she is carrying a fetus that cannot survive. As such, she suffers continual psychological assault by virtue of the inability to obtain a therapeutic abortion upon diagnosis.

The Nicaraguan law thus operates in diametric opposition to the policy of the World Health Organization (WHO)<sup>78</sup>, the Pan American Health Organization (PAHO) and the National Association of Obstetrics and Gynecology of Nicaragua<sup>79</sup> that these situations require immediate emergency care as they can easily spiral out of control taking the lives of women or significantly impacting their health. 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>80</sup>

The State party has the obligation to prevent acts of inhuman treatment through effective legislative, judicial and administrative means.<sup>81</sup> Nicaragua's law does the opposite. It violates the Convention against Torture 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

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<sup>77</sup> Society of Obstetrics and Gynecology of Nicaragua (hereinafter SONIGOB), *amicus curiae* to the Supreme Court of Nicaragua, May 28, 2007, at 22, 23.

<sup>78</sup> *Supra*, Note 4.

<sup>79</sup> See SONIGOB *supra* note 77, at 35, stating 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>80</sup> The United Nations Fourth World Conference on Women, Beijing, China, September 1995. Action for Equality Development and Peace. Platform for Action, at ¶11.

<sup>81</sup> CAT, Article 2, U.N. Doc. A/39/51 (1985).

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.

### **Impermissible Purposes**

Nicaragua's abortion law violates a number of impermissible purposes named in the Convention, namely, discrimination, coercion and imposition of religious or traditional beliefs. General Comment 2 indicates that the element of purpose in Article 1, does not "involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances."

### ***Intimidation or Coercion***

The repeal of provisions allowing therapeutic abortions in certain extreme circumstances was manifestly aimed at coercing women into carrying their pregnancies to term, regardless of extenuating circumstances, and coerces and intimidates doctors into the denial or delay of life- and health-saving treatment. This motivation satisfies the "purpose" element of Article 1.

Article 1 of the Convention expressly prohibits intentional, official action which inflicts severe suffering for purposes such as intimidation and coercion. While the vast majority of cases that the Committee has encountered involving coercion and intimidation were presented in the context of interrogations, "obtaining . . . information or a confession"<sup>82</sup> is a wholly separate prohibited purpose under Article 1. The plain reading of Article 1 dictates that the independent prohibited purpose of "intimidating or coercing [a person subjected to suffering] or a third party," is not objective-specific. Therefore, the crucial inquiry in the present case is whether, under the circumstances, it can be objectively determined that the absolute abortion ban carried the purpose of coercing or intimidating either the class of persons targeted by its regulation, or third parties.

The only reasonable conclusion from the totality of circumstances is that the purpose and effect of the new policy has been to compel and intimidate women whose well-being is threatened by their pregnancy, and doctors who have the duty to provide appropriate medical treatment.

The repeal of the exceptions to Nicaragua's already restrictive abortion policy has the effect of subjugating women whose life and physical and mental health are at risk. As previously mentioned, the old law allowed abortions in three narrow circumstances: (1) when the fetus had severe defects; (2) when pregnancy resulted from rape or incest; and (3) when three doctors agreed that the woman's life was endangered by the pregnancy. The official repeal of the provisions which established these exceptions was therefore aimed at these three categories of women, although a much broader swath of women have been negatively effected by the repeal.

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<sup>82</sup> *Id.*, at Article 1.

The undisputed purpose of the absolute abortion ban was to outlaw all forms of abortion. The threat of criminal prosecution and a heavy prison sentence coerces women to carry their pregnancy to term, even when their lives and health are at grave risk. It also coerces medical professionals into refusing to perform any procedures involving abortion and emergency obstetric treatment. This, without more, meets the “purpose” element of torture. However, the consequences of the new policy have been even more severe. The criminalizing of even negligent harm caused to the fetus intimidates doctors from performing medical procedures that do not involve abortion, but could potentially cause some harm to the fetus. The policy intimidates doctors into delaying emergency care despite grave consequences to women.

The fear of criminal prosecution and incarceration, moreover intimidates women to delay and often avoid obtaining necessary and often life- and health-saving medical care. Those women who are refused necessary treatment often turn to clandestine abortions in unsanitary settings or in desperation attempt to self-abort in private. When complications arise from clandestine abortions, this policy further has the effect of intimidating women into delaying or avoiding seeking emergency obstetric services for fear of being discovered, and intimidating doctors into delaying or denying such treatment for fear of being accused of having performed an abortion.

The facts and circumstances in the present case create a reasonable inference that the absolute ban on abortion carries the purpose and effect of intimidating and coercing women and doctors. It therefore satisfies the “purpose” element of Article 1.

### ***Discrimination of Any Kind***

Article 1 of the Conventions expressly prohibits ill-treatment when carried out for “any reason based on discrimination of any kind.” This Committee has addressed gender discrimination as an element of torture, in no-uncertain terms, emphasizing, “gender is a key factor.”<sup>83</sup> Noting, “State reports frequently lack specific and sufficient information on the implementation of the Convention with respect to women,” the Committee stated in General Comment 2 that “the contexts in which females are at risk include ... medical treatment, particularly involving reproductive decisions.”<sup>84</sup>

CEDAW General Recommendation 24 affirms “the duty of States parties to ensure, on a basis of equality between men and women, access to health care services, information and education implies an obligation to respect, protect and fulfill women's rights to health care. States parties have the responsibility to ensure that legislation and executive action and policy comply with these three obligations. The obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals”, and calls on States parties to actively “ensure the removal of all barriers to women’s access to health services, education and information, including in the area of sexual and reproductive health.”<sup>85</sup> Among the stated

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<sup>83</sup> CAT General Comment No. 2, ¶ 22.

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

<sup>85</sup> CEDAW General Recommendation 24 (Twentieth session, 1999): Article 12: Women and Health, A/54//38 Rev.1 part I (1999) 3 at ¶ ¶ 2, 5-7 and 9-31.

barriers to women's access to appropriate health care are laws that “criminalize medical procedures only needed by women and that punish women who undergo those procedures.”<sup>86</sup>

The CEDAW Committee has also addressed the discriminatory policies of States parties with blanket abortion bans analogous to those of Nicaragua. In their 1999 Concluding Observations and Comments to Chile, the CEDAW Committee noted with particular concern “the laws prohibiting and punishing any form of abortion.”<sup>87</sup> The Committee emphasized that they considered these provisions “to violate the human rights of all women.”<sup>88</sup> They then called on the Chilean government to amend the abortion laws to “provide safe abortion and to permit termination of pregnancy for therapeutic reasons or because of the health, including the mental health, of the woman.”<sup>89</sup>

More egregiously, the law deprives a woman of basic medical treatment by precluding her access to legal and safe therapeutic abortion where the pregnancy threatens her physical well-being due to a preexisting condition or her psychological well-being when the pregnancy is a result of rape or incest. Furthermore, it diminishes her access to emergency obstetric services following a clandestine abortion, be it for her own fear of prosecution or a physician’s reluctance or refusal.

Nicaragua’s regressive abortion policy falls squarely within the definition of a prohibited discriminatory purpose that was in the contemplation of this Committee. It deprives women of the liberty to make reproductive decisions and causes severe psychological suffering, which in itself amounts to torture.<sup>90</sup> In addition to physical and mental pain and suffering, such policies are a double violation as they deny women equal protection pursuant to Article 16 of their right not to be subject other cruel, inhuman or degrading treatment or punishment.

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. The law presents a crisis for women, driving some to clandestine abortion, some to anguished acquiescence to unwanted pregnancy and others who desperately try to find a legal abortion.

### ***Imposition of Religious Beliefs***

The Article 2 *jus cogens* prohibition of torture allows for no derogation. As such, the Nicaraguan absolute abortion ban cannot be justified by any religious reasons. This Committee’s General Comment 2 provides that the prohibition against torture is “absolute and nonderogable ... *no exceptional circumstances whatsoever* may be invoked by a State Party to justify acts of torture.”<sup>91</sup> The comment expressly indicates that States parties may not invoke “public safety”

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<sup>86</sup> *Id.*

<sup>87</sup> CEDAW Committee, Concluding Observations: Chile, U.N. Doc. CEDAW/C/CHI/CO/3./1999, ¶228.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at ¶229.

<sup>90</sup> CAT General Comment No. 2, at ¶22

<sup>91</sup> *Id.* at ¶ 5. (emphasis in original).

or “religious or traditional” reasons as permissible grounds for derogation from prohibition on torture or ill-treatment.

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>92</sup>

### **Cruel, Inhuman or Degrading Treatment or Punishment**

To the extent this Committee finds that the harms discussed herein do not amount to torture as defined in Article 1, they are nevertheless prohibited by the Article 16 prohibition on cruel, inhuman or degrading treatment or punishment, (hereinafter “ill-treatment”).

As the Committee stated in General Comment No. 2, “[t]he obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture.<sup>93</sup> Article 16 definition of ill-treatment also requires proof of official action. General Comment No. 2 indicates that ill-treatment differs from torture in the severity of the suffering involved, implying a lower threshold. As discussed in the analysis of the absolute abortion ban under Article 2, the elements of (i) intent, (ii) severe suffering, and (iii) official action are satisfied here. Because the definition of ill-treatment “does not require proof of an impermissible purpose.<sup>94</sup> the Nicaraguan abortion ban easily meets the threshold of ill-treatment.<sup>95</sup>

By this Committee’s own estimation, the definitional threshold between ill-treatment and torture is often not clear, however, “experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate . . . Accordingly, the Committee has considered the prohibition of ill-treatment to be likewise nonderogable.<sup>96</sup>

### **Suggested Recommendations**

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It should be noted there have been reports that the Nicaraguan Supreme Court will likely issue a ruling, possibly as early as May 2009, on the issue of the 2006 criminalization of therapeutic abortion. According to one such report, the Court Vice-President Rafael Solis has stated that a

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<sup>92</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>93</sup> *Id.*, at 3

<sup>94</sup> CAT, General Comment No. 2, at ¶13.

<sup>95</sup> *Id.* at ¶10.

<sup>96</sup> *Id.* at ¶13.

“draft existed that would rule that therapeutic abortion was unconstitutional because ‘the life of the woman as much as the life of the child, is protected by the constitution.’”<sup>97</sup>

If the Supreme Court of Nicaragua is to declare the law unconstitutional, it is imperative this Committee identify the necessary implementation measures consistent with Nicaragua’s responsibility to prevent torture and ill-treatment under the Convention. Nicaragua’s failure to take such action would be a violation of its international responsibility and of those acting on its behalf as well as the need to exercise due diligence to prevent obstruction by private persons or entities.<sup>98</sup> General Comment No 2 further notes that “each State party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, ...in hospitals...as well as in contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.”<sup>99</sup>

In all, it is a matter of the utmost urgency that Nicaragua comply with the Convention against Torture to enable women to obtain therapeutic abortion and emergency medical services.

Therefore, the Government of Nicaragua must immediately:

1. 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>100</sup>
2. 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. 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 on 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

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<sup>97</sup> Supreme Court ruling on abortion rumored for May, NICARAGUA NETWORK HOTLINE (April 14, 2009), *accessed at*, <http://www.nicanet.org/?p=644>

<sup>98</sup> CAT General Comment No. 2, ¶15.

<sup>99</sup> *Id.*

<sup>100</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.. “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).

pregnant women or those that assist them will be prosecuted for seeking emergency obstetric care.

3. 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.
4. 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.
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.

## **Appendix A: Signatories to the Report**

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MAM, the Movimiento Autonomo de Mujeres (Autonomous Women’s Movement) of Nicaragua, is an autonomous political movement comprised of individual women, among whom are long-standing reproductive rights and activists. MAM has played a critical role in opposing and raising awareness about the implications of the recent Nicaraguan ban on therapeutic abortion as violations of women’s rights to life, health and 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 to the recent legislative ban on therapeutic abortion, as well as defending the rights of human rights defenders in Nicaragua.

MADRE is an international women's human rights organization that works in partnership with community-based women's organizations worldwide to address issues of health and reproductive rights, economic development, education, and other human rights. MADRE has been working with MAM to raise awareness at the international level of issues related to reproductive rights and the suppression of civil society in Nicaragua.

IWHR, the International Women’s Human Rights Clinic of the City University of New York School of Law, founded in 1992, combines the education of law students in human rights with partnership with women’s rights activists and lawyers in the United States and abroad. IWHR seeks to advance the human rights of women by using the frameworks and mechanisms of international law and human rights.

## Appendix B: Statement of Dr. Oscar Flores

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### Statement of Dr. Oscar Flores Mejia, Representative of the Nicaraguan Society of Gynecology and Obstetrics (SONIGOB)

*Dr. Oscar Flores Mejia is a Professor of Graduate and Undergraduate Studies in Gynecology and Obstetrics, Professor of Sexual and Reproductive Health, Professor of Menopausal studies in the Department of Medicine in Managua, and he is a former senior member of the Department of Medicine of Managua. Dr. Flores is a member of the Central American Federation of Societies of Gynecology and Obstetrics (FECASOG), the Latin-American Federation of Societies of Obstetrics and Gynecology (FLASOG), and the American College of Gynecologists and Obstetricians in Nicaragua. He was named Master of Gynecology and Obstetrics in Latin-America by the Latin-American Federation of Gynecologists and Obstetricians (FLASOG).*

1. The penalization of therapeutic abortion in Nicaragua results in the violation of human, sexual and reproductive rights of Nicaraguan women, interferes with medical practice, and causes an avoidable rise in maternal mortality and drives women to turn to unsafe abortion, which has grave consequences, including death.
2. In addition to threatening women's human and reproductive rights, the ban on therapeutic abortion limits medical practice, because the ban fails to provide security for those practicing in the gynecological profession.
3. The adoption of the Protocols for obstetric complications contradict the constitutional laws of the country (the penal code) so that they force doctors to disobey the penal code on pain of various years in prison and revocation of medical licensure.
4. In the medical practice, there are situations when abortion may be inevitable, for example when ovular membranes rupture and the embryo remains alive. Under the current law, it is illegal to terminate the pregnancy, so doctors must wait until the body expels the fetus naturally, at which point the mother is already at great risk of death from septic shock. In cases of uterine cancer detected early in the pregnancy, under the law, the woman is required to continue the pregnancy to birth, and the doctor must wait to treat it at an advanced stage where it is no longer curable.
5. Under the law, late-term pregnancies may present complications such as cardiac failure that cannot be treated; in serious cases of preeclampsia and eclampsia, where the treatment is to terminate the pregnancy immediately, if the fetus is immature, it may produce lesions or fetal death without medical attention. A doctor may be the subject of sanctions for breaking the laws of the new penal code with respect to the lesions of the unborn.
6. If we, as medical professionals, do what is indicated by the protocols and break the law, we will go to prison, but if we do not observe them and fail to act, we will negligently cause maternal deaths.

7. These laws are incompatible with medical practice, requiring us to abandon our profession, immigrate to another country, and discourage others from entering the medical profession. For these reasons, we must modify the law and the criteria on which the legislature and the executive base the country's laws. Finally, we must incorporate exceptions within the law that allow us to save women's lives, avoid maternal and fetal complications, preserve women's human rights, and permit the free practice of medicine.