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Partial Review of Nicaragua's Compliance with Human Rights for the Universal Periodic Review of the Human Rights Council, September 2009

Access to safe and legal abortion is a critical issue for the reduction of maternal mortality and morbidity, and the protection and fulfillment of women's human rights. Research conducted by Human Rights Watch (HRW) has confirmed what numerous other studies have shown: restrictive abortion laws do nothing to eliminate the need for abortion, but merely contribute to the use of unsafe services to the serious detriment of women's health and lives. In 2006, Nicaragua became one of only a handful of countries in the world that prohibit all forms of abortion. Nicaragua's Congress stripped the penal code of the one exception to the general criminalization of abortion: the possibility for woman to procure and a doctor to perform a "therapeutic" abortion without criminal responsibility.

Human Rights Watch conducted research on this topic in August 2007, and found that the abortion ban results in: 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. The net result has been avoidable deaths and disability.[1] The ban has also had a strong "chilling effect" on women seeking care for pregnancy complications and health care providers treating those women, for fear of criminal prosecution. The Nicaraguan government has not made any efforts to counter misperceptions about the blanket abortion ban for women seeking care, clarify guidelines about or sanction delays in emergency obstetric care, or fully investigate the maternal deaths that have occurred since the ban went into effect. This lack of due diligence may have resulted in additional fatalities not directly related to the ban on therapeutic abortion.

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[1] Human Rights Watch released a report on the abortion ban, *Over Their Dead Bodies: Denial of Access to Emergency Obstetric Care and Therapeutic Abortion in Nicaragua,* in October 2007. http://hrw.org/reports/2007/nicaragua1007

Nicaragua already has one of the highest rates of maternal mortality in the region, at 170 maternal deaths per 100,000 live births,[2] although the estimates fluctuate from 120 to 230 per 100,000. Since the blanket ban on abortion went effect, there have been at least dozen women who have died as a direct result of the total abortion ban, but there are no reliable government statistics on the exact causes of each of those deaths.[3] A recent report from Amnesty International stated that "there is evidence that pregnant women and girls are being driven to take their own lives. An official analysis of maternal mortality figures for 2007 and 2008 found that there had been 24 percent rise in teenage maternal deaths in 2008 compared to 2007. The main causes of adolescent maternal mortality were pre-eclampsia (hypertension) and the consumption of poison."[4]

Furthermore, the Nicaraguan government has pledged to reduce maternal mortality by 75 percent by 2015, in accordance with the UN Millennium Development Goal 5. The criminalization of all forms of abortion and its obvious links to increased maternal mortality and morbidity call into question Nicaragua's commitment to save the lives of pregnant women and girls.

Rights to health and health care

The UN Committee on Economic, Social, and Cultural Rights (CESCR) has consistently said that respecting women's right to health requires the decriminalization of abortion, at least in some circumstances. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) protects the right to the highest attainable standard of physical and mental health. In its General Comment 14, para. 14, the CESCR has stated that the ICESCR treaty obligation to reduce the stillbirth rate and infant mortality must be: "understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information."[5]

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[2] UNICEF, Child Info: Monitoring the Situation of Children and Women, http://www.childinfo.org/maternal_mortality_countrydata.php, accessed September 30, 2008.

[3] Padilla, Karen. La muerte materna en Nicaragua La vida de cada mujer cuenta. Ipas Centroamérica. Managua, Nicaragua. 2008.

[4] Amnesty International, "Not Even Where Her Life is at Stake: How the total abortion ban in Nicaragua criminalizes doctors and endangers women and girls," AI index: AMR 43/004/2009, July 2009, p. 5, http://www.amnestyusa.org/uploads/Nicaragua_abortion_ban_digest_English.pdf, accessed September 4, 2009.

[5]Also Paul Hunt, former UN Special Rapporteur on the Right to Health, and Judith Bueno de Mesquita of the University of Essex wrote, "the right to health includes entitlements to goods and services, including sexual and reproductive health care and information. It requires action to break down political, economic, social and cultural barriers that women face in accessing the interventions that can prevent maternal mortality [and

Right to life

The U.N. Human Rights Committee (UNHRC) and the Committee on the Elimination of Discrimination against Women (CEDAW Committee) have repeatedly expressed concern about the relationship between restrictive abortion laws, clandestine abortions, and threats to women's lives. The committees have recommended the review or amendment of punitive and restrictive abortion laws.

In several sets of Concluding Observations, the CESCR has expressed deep concern over the relationship between high rates of maternal mortality and illegal, unsafe, and clandestine abortions.[6] The Committee has recommended that states parties increase education on reproductive and sexual health,[7] as well as implement programs to increase access to family planning services and contraception.[8] The CESCR has recognized that restrictive abortion laws or the criminalization of abortion contribute to the problem of unsafe abortion[9] and high rates of maternal mortality,[10] and has asked states parties on multiple occasions to legalize abortion, specifically when a pregnancy is life-threatening[11] or the result of rape or incest.[12]

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morbidity]. It requires participation by stakeholders in policy and service development. And it requires accountability for maternal mortality [and morbidity]. In short, the promotion and protection of the right to health demands actions that lead to a significant and sustained reduction in maternal mortality [and morbidity]." Paul Hunt and Judith Bueno de Mesquita, Reducing Maternal Mortality: The contribution of the right to the highest attainable standard of health, (Essex, Human Rights Centre, University of Essex), 2006.

[6] *See*, *e.g.,* Benin, 05/06/2002, U.N. Doc. E/C.12/1/Add.78, ¶ 23; Brazil, 23/05/2003, U.N. Doc. E/C.12/1/Add.87, ¶ 27; Cameroon, 08/12/99, U.N. Doc. E/C.12/1/Add.40, ¶ 25; Mauritius, 31/05/94, U.N. Doc. E/C.12/1994/8, ¶ 15; Mexico, 08/12/99, U.N. Doc. E/C.12/1/Add.41, ¶ 29; Mexico, 09/06/2006, U.N. Doc. E/C.12/MEX/CO/4, ¶ 25; Nepal, 24/09/2001, U.N. Doc. E/C.12/1/Add.66, ¶ 32; Panama, 24/09/2001, U.N. Doc. E/C.12/1/Add.64, ¶ 20; Poland, 16/06/98, U.N. Doc. E/C.12/1/Add.26, ¶ 12; Russian Federation, 12/12/2003, U.N. Doc. E/C.12/1/Add.94, ¶ 35; Senegal, 24/09/2001, U.N. Doc. E/C.12/1/Add.62, ¶ 26.

[7] *See*, *e.g.,* Benin, 05/06/2002, U.N. Doc. E/C.12/1/Add.78, ¶ 42; Bolivia, 21/05/2001, U.N. Doc. E/C.12/1/Add.60, ¶ 43; Mexico, 08/12/99, U.N. Doc. E/C.12/1/Add.41, ¶ 43; Mexico, 09/06/2006, U.N. Doc. E/C.12/MEX/CO/4, ¶ 44; Nepal, 24/09/2001, U.N. Doc. E/C.12/1/Add.66, ¶55; Poland, 19/12/2002, U.N. Doc. E/C.12/1/Add.82, ¶ 50.

[8] *See*, *e.g.,* Poland, 16/06/98, U.N. Doc. E/C.12/1/Add.26, ¶ 12; Poland, 19/12/2002, U.N. Doc. E/C.12/1/Add.82, ¶ 50.

[9] *See*, *e.g.*, Nepal, 24/09/2001, U.N. Doc. E/C.12/1/Add.66, ¶¶ 32–33 55; Poland, 16/06/98, U.N. Doc. E/C.12/1/Add.26, ¶ 12; Poland, 19/12/2002, U.N. Doc. E/C.12/1/Add.82, ¶ 29.

[10] *See*, *e.g.,* Bolivia, 21/05/2001, U.N. Doc. E/C.12/1/Add.60, ¶ 43; Chile, 26/11/2004, U.N. Doc. E/C.12/1/Add.105, ¶ 26; Mauritius, 31/05/94, U.N. Doc. E/C.12/1994/8, ¶ 15; Nepal, 24/09/2001, U.N. Doc. E/C.12/1/Add.66, ¶¶ 32–33 55.

[11] *See* Nepal, 31/08/2001, U.N. Doc. E/C.12/1/Add.66, ¶ 55.

[12] *See*, *e.g.*, Chile, 26/11/2004, U.N. Doc. E/C.12/1/Add.105, ¶ 53; Malta, 14/12/2004, U.N. Doc. E/C.12/1/Add.101, ¶ 41; Nepal, 31/08/2001, U.N. Doc. E/C.12/1/Add.66, ¶55.

Most recently, the Human Rights Council at its eleventh regular session on June 18, 2009 adopted a landmark resolution on "Preventable Maternal Mortality and Morbidity and Human Rights." [13] Governments acknowledged that maternal mortality and morbidity is a human rights issue, expressed serious concerns for the unacceptably high rates of largely preventable maternal death and disability, and committed to stepping up efforts at the national and international levels to protect the lives of women and girls around the world.

Right to nondiscrimination and equal treatment in law

Abortion is a medical procedure that only women need. Therefore, access to legal and safe abortion services is essential to the protection of women's rights to nondiscrimination and equality. The CEDAW Committee has implied that the denial of medical procedures only women need is a form of discrimination against women. Restrictive abortion laws may amount in certain cases to discrimination against women in and of themselves.

The committee has also clarified that states have an obligation not to put barriers in place that prevent women's access to appropriate health care. As examples of such prohibited barriers, the committee has explicitly cited laws that criminalize medical procedures only needed by women and that punish women who undergo these procedures.

The UN HRC has also repeatedly established a clear link between women's equality and the availability of reproductive health services, including abortion.

CESCR General Comment 14 also elaborates on the application of principles of non-discrimination on the basis of gender and equal treatment with respect to the right to health,[14] as well as a recommendation that states parties integrate a gender perspective into their health-related policies, planning, programs and research.[15]

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[13] UN General Assembly, Human Rights Council, "Organizational and Procedural Matters, Draft of the Human Rights Council on its Eleventh Session," A/HRC/11/L.11, June25, 2009, p. X. "Human Rights Council Adopts Eight Resolutoins on the Promotion and Protection of all Human Rights," United Nations press release, June 17, 2009, http://www.unhchr.ch/huricane/huricane.nsf/view01/C0D823CE427993FCC12575D800678367?opendocument, accessed September 4, 2009.

[14] Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (22nd Sess., 2000), *in* Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, at 90, ¶ 18, U.N. Doc. HRI/GEN/1/Rev.5 (2001).

[15] Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (22nd Sess., 2000), *in* Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, at 90, 20, U.N. Doc. HRI/GEN/1/Rev.5 (2001).

Right to privacy, right to decide on the number and spacing of children

International human rights law protects the right to noninterference with one's privacy and family,[16] as well as the right of women to decide on the number and spacing of their children.[17] These rights can only be fully implemented where women have the right to make decisions about when or if to carry a pregnancy to term without interference from the state. The Human Rights Committee noted in the case of *K.L. v. Peru* that by denying K.L. access to a therapeutic abortion, Peru "interfered arbitrarily in her private life" and violated article 17 of the International Covenant on Civil and Political Rights (ICCPR).[18]

Right to information

Under international human rights law, states have an obligation to provide complete and accurate information that is needed to protect and promote the right to health, including reproductive health. Where abortion is not punishable by law, such complete and accurate information includes information about safe abortion options. The right to information, certainly as it relates to the right to health, includes both the negative obligation for a state to refrain from interference with the provision of information by private parties and a positive responsibility to provide complete and accurate information necessary for the protection and promotion of reproductive health and rights, including information about abortion.[19] Human rights law further recognizes the right to non-discrimination in access to information and health services, as in all other services.[20] Women are disproportionately affected when information about safe abortion services is withheld or restricted. Therefore, restricting or withholding abortion-related information may in some cases also constitute discrimination.

Freedom from cruel, inhuman, or degrading treatment

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[16] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceeded by Nicaragua on March 12, 1980; art. 17.

[17] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by Nicaragua on October 27,1981, art.16(1)(e). This article reads, "States Parties shall ensure, on a basis of equality of men and women,... (e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights."

[18] UN Human Rights Committee, Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003 (2005).

[19] Article 19,*The Right to Know: Human Rights and Access to Reproductive Health Information* (Philadelphia: University of Pennsylvania Press, 1995), pp. 39 and 61-72.

[20] ICCPR, art. 19(2); UN Committee on Economic, Social and Cultural Rights, General Comment 14, "The Right to the Highest Attainable Standard of Health," paras. 12(b) and 18.

The right to be free from cruel, inhuman, or degrading treatment is protected by international customary law as well as by several international and regional human rights treaties.[21] The UN HRC, in concluding observations on Peru, expressed concern that under Peru's laws, abortion gave rise to penalty even if the woman was pregnant as a result of rape. It found that the penal code restrictions on abortion subjected women to inhuman treatment incompatible with article 7 of the ICCPR.[22] In its 2005 decision on the *K.L. v. Peru* case, the UN HRC noted that "the right set out in article 7 of the Covenant relates not only to physical pain but also to mental suffering." The Committee found that K.L.'s depression and emotional distress "could have been foreseen" and "not enabling her to benefit from a therapeutic abortion was â€¦ the cause of the suffering she experienced."[23] In this case, the HRC considered "the facts before it reveal a violation of article 7 of the Covenant."[24]

More recently in May 2009, the United Nations Committee against Torture (CAT) described the criminalization of abortion under any circumstances in Nicaragua as a violation of human rights. At its 42nd session in Geneva, the CAT expressed its profound concern about Nicaragua's strict ban on abortion, urging the government to repeal the 2006 law that banned therapeutic abortion and to make its legislation on abortion more flexible, especially in cases of rape or incest.[25]

Questions for the government of Nicaragua on abortion to clarify in its upcoming presentation to the Human Rights Council

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[21] ICCPR, art. 7; American Convention on Human Rights ("Pact of San JosÃ©, Costa Rica"), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), art. 5.

[22] UN Human Rights Committee, Concluding Observations on Peru, UN Doc. CCPR/C/79/Add.72 (1996), para. 15; UN Human Rights Committee, Concluding Observations on Peru, UN Doc. CCPR/CO/70/PER (2000), para. 20.

[23] UN Human Rights Committee, K.L. v. Peru, Communication No. 1153/2003,UN Doc. CCPR/C/85/D/1153/2003(2005), para 6.3.

[24] Ibid. The Committee also found violations of articles 2, 17, and 24, and decided that it was not necessary to make a finding on article 6.

[25] "The Committee urges the State party to review its legislation on abortion, as recommended by the Human Rights Council, the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights in their latest concluding observations, and to consider the possibility of providing for exceptions to the general prohibition of abortion for cases of therapeutic abortion and pregnancy resulting from rape or incest. The State party should, in accordance with the guidelines issued by the World Health Organization, guarantee immediate and unconditional treatment for persons seeking emergency medical care. The State party should also avoid penalizing medical professionals for the exercise of their professional responsibilities." UN Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture: Nicaragua," CAT/C/NIC/CO/1, June 10, 2009, para. 16, http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.NIC.CO.1_en.pdf, accessed September 4, 2009.

1. Since the total abortion ban took effect, what has the Nicaraguan government been doing to uphold the human rights to protect non-discrimination, the health and lives of women and adolescent girls who have a life-threatening or unhealthy pregnancy?
2. What has the Nicaraguan government done to improve the data collection procedures on maternal mortality and morbidity /disability?
3. Has the Nicaraguan government explored the reasons behind each case of maternal mortality and morbidity—that is, each pregnant woman's death and disability—and published the results?
4. What is the Nicaraguan government doing to reduce the high levels of maternal mortality and morbidity, in line with the Millennium Development Goals, and improve public awareness of family planning information and services?
5. What has the Nicaraguan government done to ensure that the Ministry of Health has issued clear medical guidelines and clarified the widespread confusion on the management of emergency obstetric services?
6. Can the government inform the Council if the Nicaraguan Supreme Court has set a date or timetable to rule on the constitutionality of the abortion ban, in light of the petitions before it?
7. What measures has the Nicaraguan government put in place to guarantee adolescents' right to life and access to services, including reproductive health information and services (i.e. contraception, detection and treatment of sexually transmitted infections, including HIV, screening for gender-based violence) and comprehensive sexuality education?
8. What has the Nicaraguan government done to respond to the explicit concerns and condemnations of civil society, professional medical associations, foreign governments and international bodies about the gender biases and discriminatory provisions in the new penal code that prohibit completely any form of abortion, even to save a woman's life?