



January 17, 2007

The Committee on the Elimination of Discrimination against Women
(CEDAW Committee)

Re: Supplementary Information on the Abolition of Therapeutic Abortion in Nicaragua
Scheduled for review during the CEDAW's 37th Session

Dear Committee Members:

This letter is intended to supplement the periodic report submitted by Nicaragua, which is scheduled to be reviewed by this Committee during its 37th Session. The Center for Reproductive Rights (The Center), an independent non-governmental organization, hopes to further the work of the Committee by providing independent information concerning the rights protected in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This letter provides specific and detailed information concerning the recent abolition of therapeutic abortion in Nicaragua.

The Right to Reproductive Health Care (Articles 12 and 16 of CEDAW)

Reproductive rights are fundamental to women's health and social equality and are an explicit part of the Committee's mandate under CEDAW. The commitment of States Parties to uphold and ensure these rights deserves serious attention. The Convention commits States Parties to: "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" [Article 12(1)];¹ and to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ... [t]he 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" [Article 16(1)(e)].²

The Committee's General Recommendation 24 on Women and Health affirms that "access to health care, including reproductive health, is a basic right under [CEDAW]"³ and is central to women's health and well-being.⁴ Furthermore, it instructs States Parties to take the following measures: "[e]nsure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health,"⁵ "...[r]educe maternal mortality rates through safe motherhood services and prenatal assistance,"⁶ and finally, to [r]equire all health services to be consistent with the rights of

women, including the rights to autonomy, privacy, confidentiality, informed consent and choice.”⁷ Additionally, in its General Recommendation 19 on violence against women, the Committee specifically requires States Parties to “ensure that measures are taken to prevent coercion in regard to fertility and reproduction.”⁸ In defiance of these recommendations from international human rights bodies, on October 26, 2006 the Nicaraguan National Assembly approved legislation to amend the penal code to remove the only exception to the code’s criminal ban on abortion. The exception, which appeared in Article 165 of the code, had permitted therapeutic abortions that saved women’s lives. By criminalizing all abortions, the government of Nicaragua is indeed stripping women of their autonomy and coercing them into making the reproductive decisions that the government deems appropriate.

As recently as 2001, the Committee noted the high maternal mortality rate in Nicaragua, and requested that the government provide information on the number of abortions performed and related deaths and illnesses.⁹ These remarks echoed concerns the Committee raised in 1993 concerning deaths related to abortion in Nicaragua.¹⁰ Also, the United Nations Committee on the Rights of the Child has questioned Nicaragua about access to abortion for rape victims, and has recommended that Nicaragua change some of the prevailing social attitudes towards abortion.¹¹ The Committee on the Rights of the Child has also noted the high rate of mortality caused by illegal abortions.¹²

Regionally and nationally, lack of access to safe, legal abortion is already a grave public health problem. In Latin America and the Caribbean, 4,000 women die from unsafe abortions every year.¹³ In Nicaragua, where maternal death rates are among the highest in the region, unsafe abortions cause 16% of all maternal deaths.¹⁴

Denying access to safe, legal abortion violates the human rights of women recognized in international treaties ratified by Nicaragua. The rights to life and health are threatened when women cannot undergo therapeutic abortions or are forced to resort to unsafe procedures. The rights to dignity, reproductive autonomy and security of the person are infringed when women cannot make decisions concerning their reproductive lives. The rights to equality and non-discrimination are implicated when a procedure that only women need is being criminalized.

Further, criminalizing all abortions goes against a global and regional trend toward recognition that access to abortion on certain grounds, including for therapeutic reasons, is a human right. An example of this trend at the global level includes the November 2005 ruling of the United Nations Human Rights Committee in the case of *KL v. Peru*.¹⁵ The Committee held that the basic human rights of a 17-year-old Peruvian girl had been violated when health officials denied her a therapeutic abortion although her fetus had a fatal abnormality. The ruling is in line with earlier statements of the Human Rights Committee, which has noted that “illegal abortions have detrimental consequences for women’s lives, health and well-being”¹⁶ and has recommended that countries introduce exceptions to general prohibitions on abortion.¹⁷

Recognition of the right to a safe, legal abortion under certain circumstances is also growing in the Latin American region, as evidenced by the case of *Paulina Ramírez v México*,¹⁸ which was brought to the Inter-American Commission on Human Rights. Paulina Ramírez was raped at the age of 13, became pregnant as a result of the rape and was denied access to an abortion though it was permitted by law. Earlier this year, the Mexican government acknowledged that the girl was

wrongfully denied access to an abortion, and has since issued a decree with guidelines regulating access to abortion for rape victims.

Also, in May of this year, Colombia's Constitutional Court ruled that abortion should be permitted when a pregnancy threatens a woman's life or health, and in cases of rape, incest and fetal impairment.¹⁹ The court found that denying women access to safe abortion care in these circumstances violated the nation's constitution and women's human rights.

In addition, it should be noted that in response to the Nicaraguan National Assembly's vote to criminalize all abortions the Inter-American Commission (the Commission) on Human Rights released a statement to the Nicaraguan government manifesting its concern that the ban is a violation of international law and human rights. The Commission warned that denial of therapeutic abortion services "endangers women's lives as well as their physical and psychological integrity."²⁰ The Commission also cautioned that the ethical mandate of health care providers to "protect the lives of their patients and provide them with adequate treatment" would be compromised by the ban.²¹

We hope the Committee will also consider addressing the following questions to the government of Nicaragua:

1. Now that therapeutic abortion has been made illegal, what measures does the government of Nicaragua have in place that will protect women whose pregnancies threaten their lives or health?
2. What will the government of Nicaragua do to prevent a rise in unsafe abortion?
3. How will the government resolve the tension between the ban on therapeutic abortion and health-care providers' ethical obligation to protect the lives of their patients and provide them with adequate treatment? Will health-care providers be penalized for choosing to save the lives of their patients?

We appreciate the active interest that the Committee has taken in reproductive health and rights, and the strong Concluding Observations and General Recommendations the Committee has issued to governments in the past, emphasizing the need for governments to take steps to ensure the realization of these rights. We hope that the information presented is useful during the Committee's review of Nicaragua's compliance with the provisions contained in the Convention.

If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Sincerely,

Lilian Sepúlveda
Legal Adviser for Latin America and the Caribbean

¹ 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, art. 12(2), U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981).

² *Id.*

³ Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation 24: *Women and Health*, 20th Sess., para. 1, U.N. Doc A/54/38 (1999) in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 271 (2003).

⁴ *Id.* at para. 2.

⁵ *Id.* at para. 31(b).

⁶ *Id.* at para. 31(c).

⁷ *Id.* at para. 31(e).

⁸ Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation 19: *Violence against women*, 11th Sess., para. 24(m), U.N. Doc A/54/38 Rev.1 (1999) in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003).

⁹ *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Nicaragua*, 25th Sess., 525th to 526th mtg., paras. 300-01, U.N. Doc. CEDAW/A/56/38 (2001).

¹⁰ *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Nicaragua*, 12th Sess., 219th mtg., paras. 391-92, U.N. Doc. CEDAW/A/48/38 (1993).

¹¹ *Committee on the Rights of the Child, Summary record of the 212th meeting: Nicaragua*, 9th Sess., 212th mtg., para. 22, U.N. Doc. CRC/C/SR.212 (1995).

¹² *Id.* at para 52; *Concluding Observations of the Committee on the Rights of the Child: Nicaragua*, 21st Sess., 549th to 550th mtg., para. 35, U.N. Doc. CRC/C/15/Add.108 (1999).

¹³ UNDP/UNFPA/WHO/World Bank Special Programme of Research, Development and Research Training in Human Reproduction (HRP), *Prevention of Unsafe Abortion*, available at http://www.who.int/reproductive-health/unsafe_abortion/index.html.

¹⁴ *Ipas, Nicaragua on the verge of banning abortion*, October 16, 2006, available at http://www.ipas.org/english/press_room/2006/releases/10162006.asp.

¹⁵ *Human Rights Committee, Communication No. 1153/2003*, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

¹⁶ *Concluding Observations of the Human Rights Committee: El Salvador*, 78th Sess., 2113th to 2115th mtg., para. 14, U.N. Doc. CCPR/CO/78/SLV (2003).

¹⁷ *Concluding Observations of the Human Rights Committee: Chile*, 65th Sess., 1733rd to 1734th mtg., para. 15, U.N. Doc. CCPR/C/79/Add.104 (1999).

¹⁸ *Paulina Ramírez v. Mexico*, Petición 161/02, Acuerdo de Solución Amistosa, Inter-Am. C.H.R. (2006).

¹⁹ *In re Abortion Law Challenge in Colombia*, Corte Constitucional, Sentencia C-355/06 (2006).

²⁰ English translation of letter available at http://www.reproductiverights.org/pdf/index_nicaragua_english.pdf.

²¹ *Id.*