



NICARAGUA

# Over Their Dead Bodies

Denial of Access to Emergency Obstetric Care  
and Therapeutic Abortion in Nicaragua

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### Denial of Access to Emergency Obstetric Care and Therapeutic Abortion in Nicaragua

<b>Overview .....</b>	<b>1</b>
<b>A Brief History of Abortion and the Law in Nicaragua.....</b>	<b>3</b>
<b>Impact of the Ban on Therapeutic Abortion.....</b>	<b>6</b>
Denial of access to life- or health-saving abortion services .....	6
Denial or delay in access to other obstetric emergency care .....	9
Fear of seeking treatment.....	13
<b>Recommendations .....</b>	<b>15</b>
To the President of Nicaragua.....	15
To the Health Ministry of Nicaragua.....	15
To the National Assembly of Nicaragua .....	16
To Donors and United Nations agencies .....	16
<b>Acknowledgments.....</b>	<b>17</b>

## Overview

Nicaragua is one of only three countries in the world to maintain a blanket ban on abortion, even in cases of rape, incest, or life- or health-threatening pregnancies.<sup>1</sup> Such blanket abortion bans are incompatible with international human rights obligations, including obligations on the rights to life, health, and non-discrimination. Their imposition can, and most often does, have serious effects on the lives and health of women and girls.

Nicaragua's blanket ban on abortion was initially enacted in November 2006 and reaffirmed in September 2007, and includes a ban on previously-legal therapeutic abortions.<sup>2</sup> It allows for prison sentences for doctors who carry out abortions under any circumstances—even to save a pregnant woman's life—and on women who seek abortions, again, regardless of the reason. Although it appears that actual prosecutions are rare, the ban has very real consequences that fall into three main categories:

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.

The potentially most wide-ranging effect of the ban on therapeutic abortion—albeit the hardest to measure—is the surge in fear of seeking treatment for pregnancy-related complications, in particular hemorrhaging, because women and girls are afraid they will be accused of having induced an abortion. While the Nicaraguan

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<sup>1</sup> The other countries are Chile and El Salvador. See Center for Reproductive Rights, "The World's Abortion Laws," [http://www.reproductiverights.org/pub\\_fac\\_abortion\\_laws.html](http://www.reproductiverights.org/pub_fac_abortion_laws.html) (accessed September 19, 2007).

<sup>2</sup> Therapeutic abortion was not defined in Nicaraguan law, but was set out in an official norm issued by the Health Ministry: "The termination of pregnancy before 20 weeks gestation... due to maternal pathologies that are made worse by the pregnancy or for maternal pathologies that have a negative effect on the development and growth of the fetus." Health Ministry of Nicaragua, Medical Treatment Department/Department of Comprehensive Treatment for Women, "Norm for treatment of abortion" (Ministerio de Salud de Nicaragua, Dirección de Atención Médica/Dirección de Atención Integral a la Mujer, "Norma de atención al aborto") August 1989.

government has developed medical guidelines to mitigate some of the effects of the ban, it does not monitor the implementation of the guidelines and does not appear to properly investigate and sanction all medical personnel who cause unnecessary delay of or deny women access to legal care. Nicaragua's government has not made an effort to counter public misperceptions regarding abortion, the blanket ban, and available legal care options. This lack of due diligence may have resulted in additional fatalities not directly related to the ban on therapeutic abortion.

In the interests of protecting women's human rights including the rights to life, physical integrity, health, and non-discrimination, Human Rights Watch calls on Nicaragua's government to repeal penal code provisions that criminalize abortion, and instead guarantee in law that women have access to voluntary and safe abortions. And regardless of the legality of abortion, Nicaragua must immediately guarantee women and girls access to emergency obstetric care.

## A Brief History of Abortion and the Law in Nicaragua

On September 13, 2007, Nicaragua's National Assembly voted in favor of a new penal code that maintains a controversial blanket ban on abortion, which was first imposed during the country's hotly contested presidential campaign in November 2006. The new penal code specifies prison sentences of one to three years for the person who performs the abortion, and one to two years for the woman who procures it.<sup>3</sup> It provides no exceptions, even when the pregnant woman's life is at stake.

Both its original enactment and the vote in September 2007 have been widely attributed to political parties wishing to ensure and maintain support from the Roman Catholic Church and the Evangelical Church.<sup>4</sup> Over the past year Nicaragua's ban on abortion has been criticized openly as harmful and contrary to the country's human rights obligations by various United Nations entities,<sup>5</sup> the European Commission, the Inter-American Commission on Human Rights, and several bilateral donors and donor agencies.<sup>6</sup>

Up until November 2006 Nicaragua's Penal Code—in force since 1893—had criminalized all abortion, except for those carried out for “therapeutic” reasons.<sup>7</sup> Yet access to legal therapeutic abortion became increasingly restricted: Nicaragua's Health Ministry estimates that formerly 10 percent of all pregnancies ended in an abortion or miscarriage, totaling approximately 7,500 abortions and miscarriages in

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<sup>3</sup> Penal Code of the Republic of Nicaragua, as amended on September 13, 2007, art. 143.

<sup>4</sup> This sentiment was shared unanimously by governmental and nongovernmental sources alike. Human Rights Watch interviews, Managua, August 12-16, 2007.

<sup>5</sup> United Nations Population Fund (UNFPA), the United Nations Children's Fund, and the United Nations special rapporteur on the right to health.

<sup>6</sup> The United Kingdom's Department for International Development (DFID), and representatives from the embassies of Italy, France, Sweden, Canada, the Netherlands, Denmark, and Norway.

<sup>7</sup> See footnote 2.

2005,<sup>8</sup> yet in that year only six abortions were classified as therapeutic or “medical.”<sup>9</sup>

In 1989, to facilitate the implementation of the penal code provisions allowing therapeutic abortion, the Health Ministry mandated all hospitals to set up a standing committee—made up of social workers and medical doctors—to determine whether women or girls with crisis pregnancies were eligible for a legal abortion.<sup>10</sup> Scholars report that only one such committee was ever set up at the Bertha Calderón hospital, the largest maternity care facility in the country.<sup>11</sup> Following the election of conservative President Violeta Chamorro in 1990, the newly instated conservative director of the hospital shut down the committee and access to therapeutic abortion became noticeably limited.

A study undertaken by the Nicaraguan Association of Obstetricians and Gynecologists (SONIGOB), among others, reported a drastic drop in requests for therapeutic abortion from 368 in 1989 to only 2 in 1999 at this hospital.<sup>12</sup> Since the therapeutic abortion committee at Bertha Calderón was dissolved in 1990, it became more difficult for women to get access to therapeutic abortion services, though still not impossible.

Medical doctors who served on the committee told Human Rights Watch that the blanket ban took away the last possibility for providing necessary care:

After [the committee was dissolved... [t]he cases weren’t done on paper.... The doctor would just solve the crisis and disappear it.... But

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<sup>8</sup> Pan-American Health Organization (PAHO), “Derogation of Therapeutic Abortion in Nicaragua: Impact on Health” (Organización Panamericana de la Salud (OPS), “Derogación del Aborto Terapéutico en Nicaragua: Impacto en Salud”), (Managua, Nicaragua: PAHO 2007), p. 14, citing Nicaragua’s Health Ministry.

<sup>9</sup> The remaining abortions and miscarriages treated in the public health system in 2005 were: 397 ectopic pregnancies (not officially classified as abortion), 232 cases of molar pregnancies, 1183 other abnormal pregnancies, 211 miscarriages, 49 other abortions, and over 5,400 nonclassified abortions, some of which might have originally been induced illegally. *Ibid.*

<sup>10</sup> Lois Wessel, “Reproductive Rights in Nicaragua: From the Sandinistas to the Government of Violeta Chamorro,” *Feminist Studies*, Vol. 17 (1991), Kingwood College, p. 6.

<sup>11</sup> *Ibid.*, p. 4.

<sup>12</sup> H.L. McNaughton, M.M. Blandón, and L. Altamirano, “Should Therapeutic Abortion be Legal in Nicaragua: The Response of Nicaraguan Obstetrician-Gynaecologists,” *Reproductive Health Matters*, vol. 10.19, May 2002, p. 112.

now, since the law was signed, [public hospitals] don't treat any hemorrhaging, not even post-menopausal hemorrhaging.<sup>13</sup>

In January 2007 a number of civil society groups working on human and women's rights filed petitions with Nicaragua's Supreme Court to declare the new law unconstitutional.<sup>14</sup> The Court had still not ruled on these petitions when the National Assembly ratified the blanket ban on abortion by adopting the new Penal Code in September 2007.<sup>15</sup>

Human Rights Watch was not able to obtain any official information on prosecutions of providers or women for the crime of abortion. However, none of the doctors and public officials we interviewed could recollect one single case, and, judging by experience from other countries, it is likely that prosecutions are rare.

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<sup>13</sup> Human Rights Watch interview with medical doctor (name withheld), Managua, August 14, 2007.

<sup>14</sup> Petitions of Unconstitutionality of Law No. 603, January 2007, on file with Human Rights Watch.

<sup>15</sup> The concrete penal code provision revocation of which was sought in the petitions (law no 603) was replaced by a new penal code in September 2007. Therefore, though the relevant provisions are the same, the petitions filed with the Supreme Court are no longer valid and will have to be resubmitted to be ruled upon.

## **Impact of the Ban on Therapeutic Abortion**

Women are afraid of seeking treatment. That's the first step.... And doctors are afraid of providing treatment.... It's the psychological factor.... And the combination may have caused deaths.

—Employee of United Nations agency in Nicaragua<sup>16</sup>

Though in place for less than a year when Human Rights Watch visited Nicaragua in August 2007, the harmful impact on women of the ban on therapeutic abortion was already evident. While no doctors have been prosecuted for the crime of abortion, as far as we know, the mere possibility of facing criminal charges for providing life-saving health services has had a deadly effect.

### **Denial of access to life- or health-saving abortion services**

The inclusion of therapeutic abortions in the ban on abortion is designed to eliminate legal access to life- or health-saving abortion services. As such, whether enforced or not, it directly contravenes international human rights standards on the right to life, the right to health, the right to non-discrimination, and a number of other established human rights.<sup>17</sup>

It is impossible to ascertain how many women the blanket ban has prevented from accessing safe therapeutic abortion services and with what effect. Nicaragua's Health Ministry officials told Human Rights Watch that they did not have any official documentation of the effects of the blanket ban and no plans for gathering such documentation.<sup>18</sup>

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<sup>16</sup> Human Rights Watch interview with United Nations official (name withheld), Managua, August 15, 2007.

<sup>17</sup> For a full analysis of international human rights law and abortion within the context of Nicaragua, see Human Rights Watch, *Amicus Curiae Brief on the Abortion-Related Provisions of Law 603 of 2006 (Penal Code)*, presented by Human Rights Watch before the Supreme Court of Justice, August 2007, <http://hrw.org/pub/amicusbriefs/nicaraguao807web.pdf>.

<sup>18</sup> Human Rights Watch interview with Health Ministry employee (name withheld), Managua, August 13, 2007; and with Dr. Jorge Orochena, director for quality control, Health Ministry, Managua, August 14, 2007.

A medical doctor at a large public hospital in Managua, however, testified to one case:

Here [at this hospital] we have had women who have died.... For example, [name withheld] came here and had an ultrasound. It was clear that she needed a therapeutic abortion. No one wanted to carry out the abortion because the fetus was still alive. The woman was here two days without treatment until she expelled the fetus on her own. And by then she was already in septic shock and died five days later. That was in March 2007.<sup>19</sup>

Indeed, it is virtually inevitable that the law will lead to preventable maternal deaths, for two main reasons. First, it is not possible to foresee and prevent all pregnancies that might threaten the life or health of the pregnant woman, even in countries with universal healthcare and full access to modern contraceptive methods. That is, the need for therapeutic abortion cannot be completely eliminated. Second, it is possible to foresee the impact of specific pathologies on a pregnant woman's health, or on the healthy development of her pregnancy. That is, the death or severe health consequence following the denial of a therapeutic abortion is in many cases foreseeable and preventable.<sup>20</sup>

It is also inevitable that some women who could have had access to therapeutic abortion under the previous law now find themselves forced to seek illegal—and potentially unsafe—care in order to save their lives and health. This was the case of 30-year-old Mariana S. and 20-year-old Sofía M.

Mariana S. has a permanent health condition and needs daily medication. When she found herself pregnant, she suspended the use of the medication, as recommended by her pharmacist. She told Human Rights Watch of the rapid deterioration in her

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<sup>19</sup> Human Rights Watch interview with Dr. Francisco Del Palacio, deputy educational director at Alemán Hospital, Managua, August 16, 2007.

<sup>20</sup> Certain medical conditions predict high maternal risk (e.g. diabetes, cardiac conditions, and poorly controlled hypertension). Other conditions that imperil maternal health and might require termination of pregnancy for maternal reasons develop during pregnancy (e.g. eclampsia, or pre-eclampsia not responding to treatment, hellp syndrome and others). See American Medical Association, Jerry B. Leikin and Martin S. Lipsky, eds., *Complete Medical Encyclopedia* (New York, NY: Random House Reference, 2003), pp. 496, 1011, 1015.

health: “Right after I got pregnant I started having these horrible health problems.... I got really sick, it really affected me.... I didn’t feel good just walking on the street, I almost passed out.... I spent like five days without sleeping... feeling horrible and in pain.”<sup>21</sup>

A single mother of two, Mariana S. decided that she had to terminate the pregnancy in order to be able to care for her children. She was aware of the blanket ban on abortion: “I was very afraid.... It was very traumatic not to be able to talk about it, because it is a crime.”<sup>22</sup> After attempting to induce an abortion with injections and pills, Mariana S. found a clinic she could afford and fortunately had no complications from the intervention.

She said of the newly imposed ban, “I think they would have given me [an abortion before the ban] because of the [permanent health] problem I have ... They should decriminalize therapeutic abortion [again] because they would save more lives like that. In my case, for example, the abortion saved both me and the two children I already have.”<sup>23</sup>

Sofía M., a 20-year-old mental health patient, had suffered through the same ordeal. Sofía M.’s doctor told Human Rights Watch she had been diagnosed years earlier with a mental imbalance that causes her to be violent whenever she is not medicated.<sup>24</sup> In March 2007, when she discovered she was pregnant, Sofía M. knew she could not carry the pregnancy to term. She said, “I don’t want to kill. But in my case, I couldn’t have the child.... It would not be born healthy because I can’t stop taking the medicine.... If I can’t even take care of me, how would I take care of a child?”<sup>25</sup>

Sofía M. and her mother went from one clinic to another, but no one wanted to carry out the abortion because of the law: “They said they couldn’t do it because it is

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<sup>21</sup> Human Rights Watch interview with Mariana S. (pseudonym), Managua, August 16, 2007.

<sup>22</sup> Human Rights Watch interview with Mariana S. (pseudonym), Managua, August 16, 2007.

<sup>23</sup> Human Rights Watch interview with Mariana S. (pseudonym), Managua, August 16, 2007.

<sup>24</sup> Human Rights Watch interview with medical doctor (name withheld), Managua, August 16, 2007.

<sup>25</sup> Human Rights Watch interview with Sofia M. (pseudonym), Managua, August 16, 2007.

illegal.”<sup>26</sup> She finally found a clandestine provider through a friend and told Human Rights Watch of the added anxiety in having to procure illegal services: “I was afraid; I did not know what it was going to be like.”<sup>27</sup>

### **Denial or delay in access to other obstetric emergency care**

In most cases the blanket criminalization of abortion, including therapeutic abortion, has a restrictive effect on access to reproductive healthcare services as well as to abortion.<sup>28</sup> As seen in various countries, this “chilling” effect is often attributed, on the one hand, to incomplete, inaccurate, and inaccessible information about the law, and, on the other, to public officials fearing retribution if they act outside the law. Nicaragua is no exception.

“The effect [of the ban] has been on the medical personnel,”<sup>29</sup> said Dr. Jorge Orochena from the Health Ministry to Human Rights Watch. “There have been situations that should have been treated [but] out of fear they haven’t been treated fast.”<sup>30</sup> This sense was confirmed by a medical doctor from a low-cost clinic close to a major hospital in Managua. She commented to Human Rights Watch, “The day they passed the law [criminalizing all abortion] people come to my clinic from the hospital, bleeding. They start coming, and they say, ‘In the hospital they tell me to come to your clinic, that you can treat me, that they can’t.’ ... Many of those cases didn’t even have to do with abortion.”<sup>31</sup>

In an attempt to mitigate the consequences of the ban, the Nicaraguan Health Ministry in December 2006 issued a number of mandatory protocols for the provision

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<sup>26</sup> Human Rights Watch interview with Sofia M. (pseudonym), Managua, August 16, 2007.

<sup>27</sup> Human Rights Watch interview with Sofia M. (pseudonym), Managua, August 16, 2007.

<sup>28</sup> For the link between the criminalization of abortion and access to post-abortion care, see, for example, Human Rights Watch, *Decisions Denied, Access to Contraceptives and Abortion in Argentina*, June 2005, vol. 17, no.1 (B). See also generally Human Rights Watch, *The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico*, March 2006, vol. 18, no. (1)B, <http://hrw.org/reports/2006/mexico0306/>.

<sup>29</sup> Human Rights Watch interview with Dr. Jorge Orochena, Managua, August 14, 2007.

<sup>30</sup> Human Rights Watch interview with Dr. Jorge Orochena, Managua, August 14, 2007.

<sup>31</sup> Human Rights Watch interview with medical doctor (name withheld), Managua, August 14, 2007.

of emergency obstetric care. These guidelines cover most if not all obstetric emergencies, including ectopic pregnancies and post-abortion care.<sup>32</sup>

If fully implemented, it is possible that these guidelines could overcome a good part of the negative consequences of the blanket ban. Human Rights Watch's research, however, suggests that the guidelines are not followed at times. Moreover, our interviews with patients, doctors, and Health Ministry officials alike suggest that when the guidelines are ignored or their implementation is delayed, this often happens as a direct result of the blanket ban and resulting fear of prosecution.

One Health Ministry official who spoke on the condition of anonymity said, "In a national reference hospital ... the [OB/GYN] specialists told us clearly that if there was a case [of obstetric emergency], they wouldn't treat it.... They interpret [the guidelines] as they see fit so as not to get involved."<sup>33</sup> The same official acknowledged that not all medical personnel have reacted in this way: "If there had been a complete denial of services to women then, at this point, we would have seen a real surge in maternal deaths [and we haven't]."<sup>34</sup>

Meanwhile, the Health Ministry does not monitor the full implementation of the protocols, 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>35</sup> The Nicaraguan government also has not attempted to address the prevailing misperceptions in the general public regarding the legality of post-abortion care (regardless of whether the abortion was induced or a miscarriage), and does not appear to properly investigate and sanction all medical personnel who cause unnecessary delay of or deny women access to legally available care.

But even without such official information and study, it is clear that the lack of or delay in access to emergency obstetric care could potentially affect hundreds of

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<sup>32</sup> Health Ministry, "Norms and Protocols for Treatment of Obstetric Emergencies" (Normas y Protocolos para la Atención del as Complicaciones Obstétricas"), Managua, December 2006.

<sup>33</sup> Human Rights Watch interview with Health Ministry official (name withheld), Managua, August 13, 2007.

<sup>34</sup> Human Rights Watch interview with Health Ministry official (name withheld), Managua, August 13, 2007.

<sup>35</sup> Human Rights Watch interview with Dr. Jorge Orochena, Managua, August 14, 2007.

women and girls every year in Nicaragua. The Pan-American Health Organization estimates that one woman per day suffers from an ectopic pregnancy in Nicaragua,<sup>36</sup> and every two days a woman suffers a miscarriage from a molar pregnancy,<sup>37</sup> and another woman a miscarriage from cancer-related pregnancy complications.<sup>38</sup> All of these cases often generate the need for emergency obstetric care, in most cases to treat incomplete miscarriages,<sup>39</sup> resulting infections, and/or septic shock,<sup>40</sup> and, in the case of ectopic pregnancies, to surgically remove the fertilized ovum.<sup>41</sup> Moreover, Nicaraguan health protocols mandate comprehensive and immediate treatment for all such emergencies.

The case of 24-year-old Olga María Reyes illustrates how doctors' fear of being perceived to have provided an abortion can contribute to deadly delay in access to emergency obstetric care. Reyes died in a public hospital in León in April 2007 when she was six to eight weeks pregnant, due to the delayed removal of an ectopic pregnancy, according to the doctors who spoke to her family. When Reyes finally presented the public hospital in León with an ultrasound result from a private clinic that diagnosed her with a ruptured ectopic pregnancy, she was left unattended for hours despite the fact that Health Ministry regulations require immediate attention to ectopic pregnancies. Reyes was eventually operated upon, but too late. She died of cerebral arrest due to excessive hemorrhaging.<sup>42</sup>

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<sup>36</sup> Ectopic pregnancy is "a condition in which a fertilized egg implants outside the uterus.... The greatest risk to the woman is when an ectopic pregnancy ruptures, and severe bleeding occurs.... A woman with a ruptured ectopic pregnancy needs immediate surgery to remove the embryo and repair or remove the damaged tissues of the fallopian tube." American Medical Association, Jerrold B. Leikin and Martin S. Lipsky, eds., *Complete Medical Encyclopedia* (New York, NY: Random House Reference, 2003), p. 497.

<sup>37</sup> "Molar pregnancy is "an abnormal pregnancy that probably results from the fertilization of a so-called empty egg, an egg without chromosomes. In this condition, the fertilized egg degenerates, and the placenta grows into a mass of tissue resembling a cluster of grapes." *Ibid*, p. 855.

<sup>38</sup> PAHO, "Derogation of Therapeutic Abortion in Nicaragua: Impact on Health," p. 14.

<sup>39</sup> An incomplete miscarriage occurs when some of the fetal tissue remains in the uterus after a miscarriage and must be removed by a doctor. Leikin and Lipsky, eds., *Complete Medical Encyclopedia*, p. 850-851.

<sup>40</sup> "Septic shock is a life-threatening condition that occurs when bacterial infections get into the blood, multiply rapidly, and produce bacterial toxins. The condition requires immediate medical treatment, including intravenous antibiotic drugs and medical procedures to maintain blood pressure and blood volume.... New born, older people and pregnant women are also more susceptible to septic shock." *Ibid*, p. 1104.

<sup>41</sup> In some cases an ectopic pregnancy terminates in a miscarriage. In other cases there is hemorrhaging and shock, which requires a speedy surgical intervention to stop the loss of blood and save the woman's life. See PAHO, "Derogation of Therapeutic Abortion in Nicaragua: Impact on Health," p. 14.

<sup>42</sup> Human Rights Watch and Ipas joint interview with Claudia Pérez, Nagarote, August 15, 2007; and with José Agustín Pérez, Nagarote, August 15, 2007. Reyes's medical record corroborates this account. On file with Human Rights Watch.

It is worth clarifying that current Nicaraguan law does not prohibit the interruption of an ectopic pregnancy. This is because such an intervention is not considered a therapeutic abortion under the International Classification of Diseases and Related Health Problems, notably because it, per definition, involves the removal of a nonviable fertilized ovum.<sup>43</sup>

Angela M.'s 22-year-old daughter is another case in point. Her pregnancy-related hemorrhaging was left untreated for days at a public hospital in Managua, despite the obligation, even under Nicaraguan law and guidelines, to treat such life-threatening emergencies. In November 2006, only days after the blanket ban on abortion was implemented, Angela M. told Human Rights Watch of the pronounced lack of attention: "She was bleeding.... That's why I took her to the emergency room ... but the doctors said that she didn't have anything.... Then she felt worse [with fever and hemorrhaging] and on Tuesday they admitted her. They put her on an IV and her blood pressure was low.... She said. 'Mami, they are not treating me.'... They didn't treat at all, nothing."<sup>44</sup>

From comments made by the doctors at the time, Angela M. believes her daughter was left untreated because doctors were reluctant to treat a pregnancy-related emergency for fear that they might be accused of providing therapeutic abortion. Angela M.'s daughter was finally transferred to another public hospital in Managua, but too late: "She died of cardiac arrest.... She was all purple, unrecognizable. It was like it wasn't my daughter at all."<sup>45</sup>

Medical doctors Human Rights Watch spoke to recounted many other cases of obstetric emergencies that should have been treated, even with the ban in place, but where patients were left to fend for themselves. "One 17-year-old girl came to my clinic," said one doctor. "Her family came to ask me for help. In the hospital they had said they wouldn't treat the hemorrhaging because of the law.... It was a 12-week

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<sup>43</sup> See International Classification of Diseases and Related Health Problems, <http://www.who.int/classifications/apps/icd/icd10online/> (accessed September 18, 2007), Chapter XV.

<sup>44</sup> Human Rights Watch and Ipas joint interview with Angela M. (pseudonym), Managua, August 14, 2007.

<sup>45</sup> Ibid.

pregnancy, bleeding. ... I examined her, and it was an incomplete abortion, with bleeding.”<sup>46</sup>

In fact, regardless of the blanket ban on induced abortion, Nicaragua’s official guidelines on post-abortion care require public hospitals to provide comprehensive health care in cases such as Angela M.’s daughter and the 17-year-old girl who was turned away from the hospital. In cases of incomplete abortions or miscarriages in pregnancies of 12 weeks and less, the mandated treatment includes “the evacuation of the uterus as soon as possible,” that is, the completion of the abortion or miscarriage.<sup>47</sup> In pregnancies of more than 12 weeks, medical personnel are required to “procure the spontaneous expulsion of the product of conception and subsequently clean the uterine cavity.”<sup>48</sup>

## **Fear of seeking treatment**

The potentially most wide-ranging effect of the blanket ban on abortion—albeit the hardest to measure—is a surge in fear of seeking treatment for pregnancy-related complications, in particular hemorrhaging, because women and girls are afraid they will be accused of having induced an abortion. All women and family members Human Rights Watch interviewed expressed heightened levels of anxiety in this regard, often with reference to the massive media coverage of this issue.

While Nicaragua’s government has an obligation to protect freedom of speech and press, it has a corresponding obligation to ensure access to accurate and complete information concerning prevailing health problems, their prevention, and their control.<sup>49</sup> Where incomplete or inaccurate health information is readily available in the public sphere—for example because it is provided by groups opposed to the decriminalization of therapeutic abortion in legitimate exercise of their right to freedom of expression—the state may have a responsibility to launch an affirmative

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<sup>46</sup> Human Rights Watch interview (name withheld), Managua, August 13, 2007

<sup>47</sup> “Protocol for Post-Abortion Care and Its Different Clinical Stages” (“Protocolo de Atención Postaborto y sus Diferentes Formas Clínicas”), in Health Ministry, “Norms and Protocols for Treatment of Obstetric Emergencies,” p. 111.

<sup>48</sup> Ibid.

<sup>49</sup> Committee on Economic, Social and Cultural Rights, “The right to the highest attainable standard of health (General Comments), General Comment 14,” August 11, 2000, U.N. Doc. E/C.12/2000/4, paras. 12(b), 16 and note 8.

public health information campaign specifically aimed at correcting the misperceptions. This would seem to be particularly pertinent with regard to potentially life-saving health services such as post-abortion care, which, in the words of the Nicaraguan Health Ministry, is designed to “prevent those complications that lead to death and maiming of the pregnant woman.”<sup>50</sup>

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<sup>50</sup> “Protocol for Post-Abortion Care and Its Different Clinical Stages” in Health Ministry, “Norms and Protocols for Treatment of Obstetric Emergencies,” p. 103.

## **Recommendations**

Human Rights Watch calls on Nicaragua's government to protect women's human rights to life, physical integrity, health, non-discrimination, privacy, liberty, information, freedom of religion and conscience, equal protection under the law, and the right to make decisions about the number and spacing of children. Regardless of the legality of abortion, Nicaragua must immediately guarantee women and girls access to emergency obstetric care, including post-abortion care and interventions necessary to prevent maternal mortality and morbidity.

In the following section, we identify some essential steps.

### **To the President of Nicaragua**

- Publicly support women's right to immediate unhindered access to safe abortion where the intervention is needed to protect the pregnant woman's health or life, and support legislative reform to facilitate women's access to voluntary and safe abortion services.
- Raise public awareness of the availability of emergency obstetric services at public hospitals and clinics, including, explicitly, the provision of humane post-abortion care regardless of the illegality of abortion.

### **To the Health Ministry of Nicaragua**

- Devote adequate resources to the dissemination of and training on the national norms on emergency obstetric care.
- Proactively investigate and sanction all health personnel who do not make all efforts to fully implement the Ministry's guidelines on emergency obstetric care. Sanctions should include the suspension or revocation of medical licenses for repeat offenders.

- Systematically collect and analyze data, and provide regular public updates on the number of complaints filed for the delay or denial of services in the public healthcare system.
- Proactively investigate and document the causes of maternal mortality and morbidity on a case-by-case basis.
- Ensure that all women know and understand that they will be provided with humane post-abortion care at public and private health centers and hospitals, regardless of the illegality of abortion.

### **To the National Assembly of Nicaragua**

- Enact laws that allow women to have access to voluntary and safe abortions. These measures should include the repeal of penal code provisions that criminalize abortion, especially those that punish women who have had an induced abortion and those that punish doctors for providing abortion services.

### **To Donors and United Nations agencies**

- Advocate for Nicaragua to remove legal restrictions on abortion and to ensure women access to safe and legal abortions.
- Provide funding for the documentation and publication of the causes of maternal mortality and morbidity in Nicaragua.
- Expand funding for reproductive health related programs in Nicaragua. Support the information campaigns of government and nongovernmental organizations seeking to educate women about their right to access contraception and abortion.

## **Acknowledgments**

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# Over Their Dead Bodies

## Denial of Access to Emergency Obstetric Care and Therapeutic Abortion in Nicaragua

Nicaragua is one of only three countries in the world to maintain a blanket ban on abortion—even in cases of rape, incest, or life- or health-threatening pregnancies. Such blanket abortion bans are incompatible with international human rights obligations, including obligations on the rights to life, health, and non-discrimination. Their imposition can and most often does have serious effects on the lives and health of women and girls. This is certainly the case in Nicaragua.

Nicaragua's ban was extended to therapeutic abortion in 2006. The potentially most wide-ranging effect of this—albeit the hardest to measure—is the surge in fear of seeking treatment for pregnancy-related complications, in particular hemorrhaging.

While the Nicaraguan government has developed medical guidelines to mitigate some of the effects of the ban, it does not monitor the implementation of the guidelines, and does not appear to properly investigate and sanction all medical personnel who cause unnecessary delay of or deny women access to legal care.

Nicaragua's government has not made an effort to counter public misperceptions regarding abortion, the blanket ban, and available legal care options. This lack of due diligence may have resulted in additional fatalities not directly related to the ban on therapeutic abortion.

But directly or indirectly, the net result of the ban has been avoidable deaths.