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Nicaragua Outlaws Therapeutic Abortion; Women's Lives Jeopardized

by LADB Staff

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A doctor terminating a pregnancy in Nicaragua to save a woman's life, or for any other reason, can now look forward to a ten-to-twenty-year prison sentence. The woman who has the abortion faces four years. On Oct. 26 the Asamblea Nacional (AN) repealed Article 165 of the criminal code allowing abortion under certain circumstances. Therapeutic abortion is now a criminal offense.

Previously, the 1893 code permitted the procedure and penalized abortion for other reasons with imprisonment of one to three years. Specifically, what medical practitioners have lost is the language of Article 165, which stipulated, "Therapeutic abortion will be determined scientifically, with the intervention of at least three practitioners and the consent of the spouse or nearest relative of the woman, for legal purposes."

Also lost is the protection of Article 146, which states, "Abortion will be determined scientifically, with the intervention of three medical specialists of the Ministry of Health, and the consent of the woman. This will not be punishable in any case."

Seeing an opening for this legislation as the Nov. 5 election day loomed closer, the Catholic Church joined forces with the many evangelical churches in Nicaragua to push through the legislation. Cardinal Miguel Obando y Bravo, now retired but still powerful, began in early October to exhort Nicaraguans to vote against anyone who promoted abortion. "Everyone has their way of thinking, but the people must know for whom to vote Nov. 5, to see who protects life, who defends life from conception until they are called to the house of the Father," said Obando.

The churches organized a petition campaign with a march to the AN on Oct. 7 to deliver a mountain of signatures, an estimated 290,000 of them, to the legislators. The lawmakers, noted during the past few years for their torpor, their stultified official performance on other matters, acquiesced with lightning speed to the demands of the cleric-driven multitude that there be no abortion under any circumstances in Nicaragua. The messengers, thousands of school children, men, and women, were bused in for the event from the far reaches of the country.

Political opportunism

Of the major presidential candidates, the conservatives Jose Rizo of the Partido Liberal Constitucionalista (PLC) and Eduardo Montealegre of the breakaway Alianza Liberal Nicaraguense (ALN) were in the throng, with their wives and running mates in tow. The Catholic hierarchy had asked, however modestly, that the event not be politicized, but many showed up with party banners and T-shirts. PLC spokesman Leonel Teller showed up with a band of youths with banners reading, "Vote for Rizo and reject therapeutic abortion." The display drew the scorn of other marchers,

forcing Rizo to leave, but the tactic could not have hurt. Recent polls showed candidate Rizo having gained ground, moving into second place ahead of Montealegre.

Front-runner Daniel Ortega of the Frente Sandinista para la Liberacion Nacional (FSLN) has come out against abortion as well. The only major candidate to favor therapeutic abortion, Edmundo Jarquin of the Movimiento Renovador Sandinista (MRS), has sunk to a distant fourth place. It was almost certainly the MRS' early embrace of reproductive rights that stimulated church leaders to mount the offensive in the first place; the church action was therefore political from the outset.

The prelates took charge of the demonstration and kept it on track. Archbishop of Managua and president of the Conferencia Episcopal de Nicaragua (CEN) Leopoldo Brenes told the crowd that the march was about respect for life. "It is for this that we petition the deputies to retire abortion in any of its forms and punish those who practice it," he said. "What is being committed is homicide, as well as terrible murder in the methods they use."

President Enrique Bolanos helped the church effort along with a reform bill marked urgent that included the abortion initiatives that he sent up to the congress. The urgency stamp meant that the bill could skip debate in the AN's Comision de Justicia and go directly to the floor. The bill presented by the church leaders would not have had that accelerated treatment, even though lawmakers had promised swift action.

Comision president and PLC Deputy Noel Periera Majano had told the press ten days after receiving the church bill that his committee had not even begun to debate it. "Look", he explained to reporters, "those seeking re-election are campaigning in the different departments, and those who are not up for re-election simply have no interest in participating in committee discussions because they are on their way out." Bolanos' bill was reported to be a carbon copy of the church text.

Periera Majano seemed disinterested in the bill and even a bit disgusted with it. "Nicaraguan society is crazy because it is using the issue to resolve something as sensitive as abortion at a time when passions are excited, as they are by the elections." While dissenters are seemingly in the minority in a country as dominated by the religious establishment as Nicaragua, this bill has attracted plenty of dissent.

The Movimiento Autonomo de Mujeres (MAM) denounced the AN for violating the separation of church and state and for undermining the concept of equality before the law. The organization has taken its case to the Procuraduria de Derechos Humanos and to the Inter-American Commission on Human Rights (IACHR). MAM has supported the MRS for its platform on women's issues (see NotiCen, 2006-08-31). Those who argue that this bill and its special treatment are anything but political have a difficult argument to make.

The most surprising defender of the reform is Daniel Ortega and the FSLN. As a political issue, conservatives assumed the advantage would be theirs, but, now that they have the Sandinistas tagging along, they have taken to looking askance at the new arrivals to the position.

Maria Eugenia Sequeira, chief of the ALN delegation, pointed out that the PLC, of which her party is a spin-off, has always been against all forms of abortion, and she called the FSLN populists for their late adoption. She denied any opportunism on the part of her own party, but said, "What I see is that the FSLN is using this issue for the electoral campaign," and not only that, but "Daniel Ortega promises there will be no Servicio Militar Patriotico (SMP) [as compulsory service is known], nor confiscations; he is offering a list of things that they [the FSLN] commonly practice." Sequeira correctly recalled that, when the FSLN presided over the Comision de la Mujer in the AN, the party never supported the elimination of therapeutic abortion. "They have been clearly pro-abortion," she said.

In September, Ortega signed a statement drafted by evangelical leaders saying the existing 100-year-old abortion laws were "a pretext to legalize all abortions." Savaging women, terrorizing their doctors The new law is dismissive to the point of cruelty toward the health, and even the life, of the pregnant person, who sometimes has not reached the age that would allow her to be called a woman.

In 2003, a nine-year-old girl was given an abortion after having been raped, made pregnant, and infected with two different sexually transmitted diseases (see NotiCen, 2003-02-27). Difficult to accomplish even then, the procedure would be impossible to perform legally now, and that is acceptable for advocates of the code reform. "The current law allows a small door in which abortions can be performed, and we are trying to close that door," said Rafael Cabrera, obstetrician and leader of the Yes to Life Movement. "We don't believe a child should be destroyed under the pretext that a woman might die."

Physician members of the Nicaraguan Society of Gynecology and Obstetrics disagreed with their colleague's view, however, and held a news conference to tell the world that the new legislation would endanger women and make doctors fear performing life-saving procedures. "When a woman arrives at a hospital with vaginal bleeding, we're going to be afraid to do anything. If we treat her, we could be prosecuted, and if we don't, we could also be prosecuted," said society president Efrain Toruno. These doctors were already in fear for their professional lives under the old law.

The reproductive-rights group Ipas says that only 24 legal abortions have been performed in Nicaragua in the last three years, while an estimated 32,000-36,000 illegal abortions have been performed in each of those years, many under unsafe conditions. Said Marta Maria Blandon, Central America director of Ipas, "The worst message of this proposed law is that the lives of women don't matter to this president, or to the government, or the church." The severity of this law comes as a shock to human rights advocates within Nicaragua, but the real surprise was the FSLN's embrace of it.

The Sandinista revolution was famed for its advocacy of the rights of women, with the result that women are well represented in the party leadership. Now, says Maria Pizarro of MAM, a split has developed among the women at the top of the party apparatus. "The position of the party leadership is hypocritical and opportunistic," she said. "They've created a crisis within the women's movement of the Frente Sandinista." Pizarro is a gynecologist and clinical director of Salud Integral para la

Mujer (Simujer). In passing the legislation, deputies pointedly refused to hear from medical or any other organizations in opposition.

PLC Deputy Wilfredo Navarro articulated the brush-off succinctly, saying, "I believe the subject is exhausted, and the scientific discussion is pointless. Here the topic is whether you are in favor of murder or whether you are against it." Various organizations had attempted to consult on the matter, but were turned away without a hearing. The law was passed with a questionable vote of 52 in favor, with nine PLC deputies and one Alternativa Cristiana deputy abstaining. The rest of the 92 members were absent. Navarro defended it, saying, "There was no politicking or vote-grabbing here. This was a response to the clamor of most Nicaraguan women, who want respect for life."

The FSLN's chief of delegation Edwin Castro backed him. "Politics has nothing to do with abortion," he said. "Here, a legal measure to protect life was taken, and there is no connection of any kind with electioneering." Sharp rebuke from international community Internationally, foreign governments and organizations traditionally in solidarity with Nicaragua were taken aback, and there will likely be repercussions.

Patricio Rojas, representative of the Pan American Health Organization (PAHO), said that, with this law, Nicaragua will fail to meet the two Millennium Development Goals (MDGs) that call for a two-thirds reduction in infant mortality and a three-quarters reduction in maternal mortality by 2015. The MDGs were established and approved by the UN General Assembly in 2000 as poverty-and inequality-reduction measures. Nicaragua's maternal mortality stands at 83.4 per 100,000 live births.

"The state is virtually forcing women to emigrate to countries where they can have abortions or to bury their daughters who die of botched back-street abortions in their backyards," said Georgina Munoz, national liaison for Coordinadora Civil, an umbrella organization of nongovernmental organizations (NGOs).

The UN assistant secretary-general and director on the UN Development Program (UNDP) tried to forestall the legislation, saying abortion is "a very delicate issue that must be discussed at the right time and in the right place, which is not likely to be during an election." Human Rights Watch (HRW) noted, "The new penal code doesn't just go against basic human rights, it goes against fundamental principles of humanity. Human Rights Watch knows from experience what it generally means to be pregnant as the result of rape or to have an unsafe abortion: misery, desperation, and even the death of the pregnant woman."

The US-based organization foresees legal action. Jose Miguel Vivanco, executive director of HRW's Americas division, said the law could lead to lawsuits in international courts. Nicaragua recognizes the Inter-American Court of Human Rights (IACHR), which sits in Costa Rica. It is uncertain whether the violation of rights implied in the law would even pass a Nicaraguan constitutional test. Foreign governments that have provided much-needed support to Nicaragua in the past tried to intercede in the passage of the law.

A letter signed by ambassadors of donor countries Sweden, Canada, and Finland, as well as the UN and the European Union (EU), that was sent to AN President Eduardo Gomez read in part, "The

human rights of women are a principle recognized in the Constitution of the Republic of Nicaragua, as well as in the Declaration of Human Rights, the Convencion Americana sobre los Derechos Humanos, the Convention on the Elimination of all Forms of Discrimination Against Women, The International Conference on Population and Development (1994), the Fourth Conference of the Woman in Beijing (1995) and their consequent ratifications in 2004 and 2005, all assumed sovereignly by Nicaragua."

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