



## Faculty of Law, University of Toronto

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84 Queen's Park  
Toronto, Canada, M5S 2C5

24 February 2010

Luz Patricia Mejía, Chair  
Inter-American Commission on Human Rights

Dear Madam Chair,

### **In re: Amalia and Nicaragua**

We write concerning the human rights implications arising from the management of the 27 year old pregnant woman, given the pseudonym of Amalia. She appears to have been denied appropriate diagnosis and care on the ground that she is pregnant. Accordingly, she is suffering loss of her rights to humane treatment (Article 5), her rights to personal liberty and security (Article 7), her rights to privacy and dignity (Article 11), and her rights regarding nondiscrimination and equality (Articles 1 and 24) under the American Convention on Human Rights.

Particularly distressing to Amalia is that reliable diagnosis of her medical condition appears to be manipulated to subordinate her interests in appropriate diagnosis and care to protection of medical personnel against charges of inducing abortion.

The threat that medical personnel perceive in rendering Amalia appropriate care reflects the oppression to which they are subject under Nicaragua's indefensibly prohibitive law on abortion, which precludes medical personnel from acting in accordance with the ethics of medical care to give priority first to the well-being of the patient. Amalia has been diagnosed with cancer, appropriate care of which may or may not compromise the well-being of the fetus she bears, depending upon the nature of the cancer and the options of care appropriate for its management. The worst-case scenario is that the cancer requires treatment that would compromise fetal survival. This is one scenario among several. However, Amalia's care givers are preoccupied by the risks they perceive to themselves by undertaking management that would cause miscarriage, or by producing a medical condition in Amalia in which her continuing survival or health would make therapeutic abortion medically indicated. Because her caregivers fear criminal prosecution should they undertake such treatment, they may be managing her diagnosis and potential care in defense of their own interests, not those of Amalia.

Conditioning Amalia's care under these conditions of perceived legal risks to caregivers is discriminatory against her, denying her care that would be afforded a non-pregnant patient. Compelling the sacrifice of Amalia's appropriate diagnosis and choice among care options violates her human rights, treating her as an instrumental incubator for her fetus, not as a human being entitled to self-determination, dignity, and the security of having her health care providers put the priority of her care above their own interests. By contrast, parents of born children are not compelled to give a liver-segment, bone marrow or even minimum-risk blood donations to promote the survival of their born children, but Amalia is at risk of compulsion to forgo disinterested diagnosis and indicated care options to serve perceived interests of her unborn child. This constitutes



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discrimination against her in violation of her rights to humane treatment (Article 5), to personal liberty and security (Article 7), and to privacy and dignity (Article 11).

Accordingly, we request that the Inter-American Commission on Human Rights require that Nicaragua afford Amalia diagnosis by a provider not compromised by the perceived risk of prosecution, and that, dependent on the outcome of diagnosis, Amalia be afforded choice among options of medically indicated care. Whether such care may compromise the survival and well being of her fetus is a choice that, in accordance with ethics of medical care, reinforced by laws protective of human dignity, should be exercised only by Amalia. The choice should not be imposed upon her by medical, governmental, judicial or other officers.

Denial of impartial diagnosis, untainted by provider self-protection, and denial of choice among indicated treatment options, expose Amalia to the risk of irreparable harm. She may be denied appropriate care to preserve her own life or health, or denied the right to afford priority according to her own values between the interests of her existing family, including herself and her 10 year old daughter, and her fetus. The Commission should accordingly exercise its authority to require Nicaragua to adopt precautionary measures to prevent such irreparable harm to Amalia and her family.

Sincerely,

A handwritten signature in black ink that reads "Rebecca J. Cook".

Rebecca J. Cook, M.P.A., J.D., J.S.D., F.R.S.C.  
Professor, Faculty Chair in International Human Rights  
and Co-Director, International Reproductive and Sexual Health Law Programme  
Faculty of Law, Faculty of Medicine, and Joint Centre for Bioethics

A handwritten signature in black ink that reads "Bernard M. Dickens".

Bernard M. Dickens, O.C., Ph.D., LL.D., LL.D.(h.c.)F.R.S.C.  
Professor Emeritus of Health Law and Policy  
and Co-Director, International Reproductive and Sexual Health Law Programme  
Faculty of Law, Faculty of Medicine and Joint Centre for Bioethics

cc: Felipe González, IACHR Vice-Chair: Rapporteur for Nicaragua  
Dr. Guillermo Gonzalez, Minister of Health; Marcia Ramirez, Minister for the Family  
José Pallais, President, Commission on Justice of the National Assembly;  
Ana Julia Balladares, President, Commission on Women;  
Dr. Francisco Rosales, President, Constitutional branch, Supreme Court of Justice;  
Dr. Manuel Martinez, President, Supreme Court of Justice

enclosed: Ethical and Legal Approaches to the 'Fetal Patient', *Int'l J. of Gynecology & Obstetrics* 83 (2003) 85-91.