



Health. Access. Rights.

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October 2, 2015

Committee on the Elimination of Discrimination against Women (CEDAW)  
Office of the High Commissioners for Human Rights  
Geneva, Switzerland

RE: Supplementary information on Malawi scheduled for review by the CEDAW Committee during its 62<sup>nd</sup> Session in November 2015.

Dear Committee Members:

This shadow letter is intended to complement the periodic report submitted by the State of Malawi for your consideration during the 62<sup>nd</sup> Session of the CEDAW Committee. The Coalition on the Prevention of Unsafe Abortion (COPUA), a group of civil society organizations, has worked intensively to support the government in increasing the exercise of women's sexual and reproductive rights and to reduce maternal mortality due to unsafe abortion. COPUA has also worked to raise public awareness and support for the need to reform the country's restrictive law. This letter is intended to provide the Committee with information about Malawi's violations of CEDAW that result from the restrictive abortion law.

We wish to emphasize the following main points:

**Malawi is currently reviewing a proposed revision to the abortion law, however the draft bill still criminalizes abortion in most circumstances.**

**The draft bill also contains a requirement that women make a report to police before accessing abortion in cases of rape, an unnecessary procedural barrier to abortion access.**

**We request this Committee to urge the government to take necessary steps to ensure that a revised abortion law does not continue to criminalize abortion for women who need it and that the revised law does not contain barriers to access.**

### **The current abortion law**

The abortion law in Malawi criminalizes in all cases except to save a woman's life. The restrictive law violates **Article 2(f)** of the Convention, which requires State Parties to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." CEDAW **General Recommendation 24** on Women and Health states, "When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion."

Due to the restrictive law, safe abortion is largely inaccessible in Malawi, in violation of **Article 12** of the Convention (the rights of women to health and nondiscrimination) and **Article 16(e)** (the rights of women to decide freely and responsibly on the number and spacing of their children). This Committee has consistently criticized restrictive abortion laws, framing such laws as a violation of the rights to life and health and



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asking state parties to review legislation making abortion illegal.<sup>1</sup> Specifically, the Committee has asked States to remove all punitive provisions for women who undergo abortion in line with the Committee's General Recommendation 24 and the Beijing Declaration and Platform for Action.<sup>2</sup> This Committee has also examined the discriminatory effects of legislation making abortion illegal, noting that “[i]t is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women.”<sup>3</sup>

Without access to safe abortion, women in Malawi risk their health and lives by resorting to unsafe abortion. According to a 2009 study by the Malawi Ministry of Health, every year approximately 70,000 women and girls seek abortion services in Malawi, and of those, approximately 30,000 are treated for complications due to unsafe abortion. Almost half of these women were below the age of 25, 64 percent lived in rural areas, and only 22 percent reported using a contraceptive at the time of the pregnancy.<sup>4</sup>

Malawi has one of the highest maternal mortality rates in the world. According to the United Nations, Malawi is “off track” for achieving the Millennium Development Goal of a 75 percent reduction in maternal mortality by 2015.<sup>5</sup>

### **The draft bill fails to uphold articles 2, 12, and 16(e) of CEDAW**

We commend the government of Malawi for initiating a process to review the restrictive law. The Malawi Law Commission (MLC) has been working since April 2013 to consider the need for law reform and recently released its final report and a draft revised abortion bill for consideration by Parliament. We are concerned that the draft bill, while increasing the grounds under which a woman can seek an abortion, **will still criminalize abortion in many of the instances in which women and adolescents in Malawi are likely to need this service.** While the process used by the MLC to develop its report and recommendation was highly consultative, seeking direct input from the public and civil society on the need and process for law reform, we are concerned that the law continues to criminalize abortion in most circumstances in which women in Malawi need access to safe, legal abortion.

We are also concerned with language in the draft bill that **requires women who are raped to make a report** to police before they are able to access safe, legal abortion. This type of reporting requirement is likely to interfere with a woman's decision-making process and be a barrier to health services. Rape reporting requirements are an unnecessary procedural hurdle that make abortion more difficult to access, and may deter women or adolescents from seeking the procedure through legal means, exposing them to the risks of unsafe abortion procedures. This Committee has previously raised concerns about the lack of

<sup>1</sup> See, e.g., **Bolivia**, 31/05/95, U.N. Doc. A/50/38, par. 393; **Mauritius**, 31/05/95, U.N. Doc. A/50/38, par. 196; **Paraguay**, 09/05/96, U.N. Doc. A/51/38, par. 131.

<sup>2</sup> See, e.g., **Mauritius**, U.N. Doc. CEDAW/C/MAR/CO/5, par. 31 (2006); **Nicaragua**, U.N. Doc. CEDAW/C/NIC/CO/6, par. 18 (2007); **Philippines**, U.N. Doc. CEDAW/C/PHI/CO/6, par. 28 (2006).

<sup>3</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation 24: Women and Health* (20<sup>th</sup> Sess., 1999), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, at 244, par. 11, U.N. Doc. HRI/GEN/1/Rev.5 (2001).

<sup>4</sup> Levandowski, B.A., Mhango C., Kuchingale E., Lunguzi J., Katengeza H., Gebreselassie H., Singh S. (2012). Estimating the incidence of abortion in Malawi. Chapel Hill, NC, USA: Ipas. Unpublished.

<sup>5</sup> United Nations Development Programme (2007). MDG Monitor: Quick facts. Malawi: Progress by goal.  
[http://www.mdgmonitor.org/country\\_progress.cfm?c=MWI&cd=454](http://www.mdgmonitor.org/country_progress.cfm?c=MWI&cd=454).



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accessibility to safe abortion, particularly in cases of rape.<sup>6</sup> In addition, this Committee has expressed concerns regarding punitive provisions and reporting requirements that prevent women from seeking medical treatment.<sup>7</sup> We urge this Committee to recommend that the government adopt a reformed abortion law that does not require women to report a case of rape to police before they may seek a legal abortion.

**We request that the Committee include the following questions to the State of Malawi during the 62<sup>nd</sup> Session:**

1. What steps will the State take to ensure that the restrictive abortion law is reformed to meaningfully address the problem of unsafe abortion in Malawi, including by decriminalizing abortion for women who need the service.
2. How will the State ensure that a reformed law on abortion does not include barriers to health services, such as requiring a woman to make a report to the police before accessing abortion in cases of rape?
3. What steps will the State take to ensure that post-abortion and safe abortion care are integrated into the public health care system at all levels, including for poor women and women living in rural areas who may seek such services?

### **Further Background information**

Abortion in Malawi is legally restricted to circumstances where the pregnancy puts the life of the pregnant woman in danger.<sup>8</sup> In the Sub-Saharan Africa region, where Malawi is located, 18 percent of maternal deaths are attributable to unsafe abortion and Malawi has one of the highest maternal mortality rates in the world.<sup>9</sup> A study at a large health facility in Malawi indicated that 24% percent of maternal deaths in 1999 were a result of postabortion complications.<sup>10</sup>

While we applaud the government for seeking review of the abortion law, until the law is revised, rates of death and injury from unsafe abortion will remain high. Studies have shown that banning or restricting abortion does not reduce abortion rates, but instead impacts the safety of procedures. Abortion incidence is estimated to be higher in regions with restrictive abortion laws as compared to countries with liberal

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<sup>6</sup> See, e.g., **Dominican Republic**, U.N. Doc. A/59/38, par. 309 (SUPP) (2004); **Jordan**, U.N. Doc. CEDAW/C/JOR/CO/4, par. 9 (2007); **Jordan**, U.N. Doc. A/55/38, par. 180 (2000); **Myanmar**, U.N. Doc. A/55/38, par. 129–130 (2000); **Panama**, U.N. Doc. A/55/38/Rev.1, par. 201 (1998); **Venezuela**, U.N. Doc. A/52/38/Rev.1, par. 236 (1997).

<sup>7</sup> See, e.g., **Brazil**, U.N. Doc. CEDAW/C/BRA/6, par. 29–30 (2007); **Chile**, U.N. Doc. CEDAW/C/CHI/CO/4, par. 20 (2006); **Honduras**, U.N. Doc. CEDAW/C/HON/CO/6, par. 25 (2007); **Mauritius**, CEDAW/C/MAR/CO/5, par. 31 (2006); **Nicaragua**, U.N. Doc. CEDAW/C/NIC/CO/6, par. 18 (2007); **Pakistan**, U.N. Doc. CEDAW/C/PAK/CO/3, par. 41 (2007); **Peru**, U.N. Doc. A/57/38, par. 482 (2002); **Philippines**, U.N. Doc. CEDAW/C/PHI/CO/6, par. 28 (2006).

<sup>8</sup> Republic of Malawi Penal Code. Sections 149–151, as read with Section 243.

<sup>9</sup> World Health Organization (2011). *Unsafe abortion: Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008*, 6<sup>th</sup> edition. Geneva: World Health Organization.

<sup>10</sup> Lema V.M. et al. (2005), *Maternal Mortality at the Queen Elizabeth Central Teaching Hospital*. East African Medical Journal, 82(1):3–9. Blantyre, Malawi.



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abortion laws. Not only do more women die from unsafe abortion in countries with restrictive laws, but many others suffer long-term health consequences, including chronic pain and sterility.<sup>11</sup>

The Family Planning Association of Malawi found that women in Malawi seek abortion for a variety of reasons, including poverty, unplanned pregnancy, coercion, shame and fear of being forced out of school.<sup>12</sup> A 2004 study of Malawian adolescents showed that more than one-third of 15-19 year olds and approximately one-fifth of 12-14 year olds reported having one or more close friends who tried to end a pregnancy.<sup>13</sup>

In 2003, an initiative by the Reproductive Health Unit of the Malawi Ministry of Health led to an increase in provider training and facility upgrades for public facilities that provide post abortion care. We applaud this initiative, but note that the need to continue provider trainings focused on a broad array of provider types is necessary to reach women living in rural areas.

Restrictions on access to abortion violate a woman's right to health under **Article 12** and women's right to decide on the number and spacing of their children under **Article 16** of the Convention. In Malawi, the restrictive law means that every year approximately 70,000 women who wish to terminate a pregnancy face a threat to their physical, mental, and social well-being. A woman who turns to an untrained provider or attempts to self-induce can experience devastating life-long effects on her physical health, including infertility, injury, or even death. Abortion restrictions discriminate against women by criminalizing a health care procedure that only women need, and the impact of these restrictions are primarily felt by women who must carry the burden of unwanted pregnancy or else risk her life and health by seeking an unsafe abortion.

The government of Malawi should be strongly urged to decriminalize abortion and ensure that services are safe and accessible to all women who need them, and the government should ensure that this occurs in a timely manner.

We hope that this information will be useful for your review of the State of Malawi's compliance with the CEDAW Convention.

Very Sincerely,

A handwritten signature in black ink, appearing to read 'Chrispine Sibande'.

Chrispine Sibande, Senior Policy Advisor, Ipas Malawi and National Coordinator of COPUA

For and On behalf of  
Coalition on the Prevention of Unsafe Abortion (COPUA)

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<sup>11</sup> WHO, *note 10*.

<sup>12</sup> Family Planning Association of Malawi (2008). Magnitude, views and perceptions of people on abortion and post abortion care services in four Malawian districts. Paper presented at the Third African Conference on Sexual Health and Rights. Abuja, Nigeria.

<sup>13</sup> Munthali, A. et al. (2006). Adolescent sexual and reproductive health in Malawi: results from the 2004 National Survey of Adolescents. Occasional Report. New York: Guttmacher Institute.