



## Health. Access. Rights.

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9 June 2014

Human Rights Committee  
Office of the High Commissioner for Human Rights  
Geneva, Switzerland

RE: Supplementary information for Malawi, scheduled for review by the Human Rights Committee during its 111<sup>th</sup> session in July 2014

Dear Committee Members:

This shadow letter is intended to complement the periodic report submitted by the State of Malawi for your consideration during the 111th session of the Human Rights Committee (HRCtte). Our aim is to provide information about Malawi's restrictive abortion law and the need for continued attention and support by the government for law reform in order to comply with the International Covenant on Civil and Political Rights.

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 abortion law.

The abortion law in Malawi criminalizes abortion in all cases except when a woman's life is in danger. This restrictive law violates **Article 2(1)** of the Covenant (right to freedom from discrimination), **Article 6** (protecting the right to life of every human being) and **Article 9** (the right to liberty and security of person for all people). The HRCtte has stated in General Comment 28 that "State parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions."<sup>1</sup> The HRCtte has also criticized legislation that criminalizes or severely restricts access to abortion in several sets of concluding observations.<sup>2</sup> This Committee has specifically recommended to several State parties that they review or amend legislation criminalizing abortion, often referring to such legislation as violating the right to life.<sup>3</sup> The

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<sup>1</sup> Human Rights Committee, *General Comment 28: Art. 3* (68<sup>th</sup> Sess., 2000), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, at 228, U.N. Doc. HRI/GEN/1/Rev. 9 (2008).

<sup>2</sup> See e.g., **Argentina**, 03/11/2000, U.N. Doc. CCPR/CO/70/ARG, par. 14; **Bolivia**, 01/04/97, U.N. Doc. CCPR/C/79/Add. 74, par. 22; **Chile**, 30/03/99, U.N. Doc. CCPR/C/79/Add. 104, par. 15; **Peru**, 15/11/2000, U.N. Doc. CCPR/CO/70/PER, par. 20; **Poland**, 29/07/99, U.N. Doc. CCPR/C/79/Add. 110, par. 11; **Senegal**, 19/11/97, U.N. Doc. CCPR/C/79/Add. 82, par. 12; **Venezuela**, 26/04/2001, U.N. Doc. CCPR/CO/71/VEN, par. 19.

<sup>3</sup> See e.g., **Argentina**, 03/11/2000, U.N. Doc. CCPR/CO/70/ARG, par. 14; **Chile**, 30/03/99, U.N. Doc. CCPR/C/79/Add. 104, par. 15; **Peru**, 15/11/2000, U.N. Doc. CCPR/CO/70/PER, par. 20; **United Republic of**



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Committee has also acknowledged that restrictive abortion laws have a discriminatory and disproportionate impact on poor, rural women.<sup>4</sup>

According to a 2009 study by the Malawi Ministry of Health, every year approximately 30,000 women in Malawi 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>5</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>6</sup>

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 propose a draft bill. The process used by the MLC has been highly consultative, seeking direct input from the public and civil society on the need and process for law reform. We are optimistic that law reform will soon be achieved in Malawi. However, we urge this Committee to encourage and recommend that the government continue to closely monitor and support the process of law reform so that a draft bill moves from the MLC to Parliament in a timely manner. We also urge this Committee to acknowledge that the revised abortion law should not contain barriers that will hinder access to safe abortion for women in Malawi.

In particular, the revised law on abortion must not include provisions that limit the type of provider that can legally provide abortion. According to the World Health Organization (WHO), safe abortion can be provided by a range of trained health care professionals, including nurses and midwives.<sup>7</sup> As this Committee has previously recognized, access to safe abortion services for rural women is already compromised by a restrictive law. The WHO estimates that there are approximately two medical doctors for every 100,000 people living in Malawi.<sup>8</sup> Given this limited supply of doctors in the country, a provision limiting provider type would mean that

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**Tanzania**, 18/08/98, U.N. Doc. CCPR/C/79/Add. 97, par. 15; **Venezuela**, 26/04/2001, U.N. Doc. CCPR/CO/71/VEN, par. 19.

<sup>4</sup> See e.g., **Argentina**, 03/11/2000, U.N. Doc. CCPR/CO/70/ARG, par. 14.

<sup>5</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>6</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).

<sup>7</sup> World Health Organization. 2012. Safe Abortion: Technical and Policy Guidance for Health Systems. Second Edition. Geneva: WHO.

<sup>8</sup> World Health Organization. 2013. Country Cooperation Strategy at a glance: Malawi. [http://www.who.int/countryfocus/cooperation\\_strategy/ccsbrief\\_mwi\\_en.pdf](http://www.who.int/countryfocus/cooperation_strategy/ccsbrief_mwi_en.pdf).



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vulnerable women—in particular young women, poor women and women living in rural areas—are more likely to obtain needed abortion through illegal and unsafe methods.

A revised law on abortion must also take into account the current health care delivery system. Poor women and women living in rural areas may rely more heavily on care provided in local health clinics. The revised abortion law should not have overly burdensome facility requirements such that these clinics are unable to provide safe and legal abortion services.

A draft bill should ensure that adolescent girls are able to consent to confidential abortion care, without requirements of parental authorization. This Committee has explicitly linked the right to privacy in accessing abortion care to women's equality.<sup>9</sup> Confidential abortion care must be explicit for all women, but particularly for adolescent girls, as they may be more likely to be deterred from seeking safe services if privacy is not guaranteed.

**We request that the Committee praise the Malawi government for its role in initiating and supporting a consultative process by which the abortion law will soon be reformed.**

**We request that the Committee pose the following questions to the State of Malawi during the 111<sup>th</sup> Session of the Human Rights Committee:**

1. What further steps will the State take to ensure that a draft bill on abortion continues to move forward toward approval as law?
2. How will the State ensure a revised law to allow a broad base of health care providers to perform abortion services in different types of facilities, taking into account that poor women and women living in rural areas may access health care from mid-level providers in local clinics?
3. How will the State ensure that minors seeking abortion are able to access the services confidentially, without involvement by a parent or guardian?
4. What steps will the State take to ensure that post-abortion and safe abortion care are integrated into its free health-care program at all levels, including for poor women and women living in rural areas who may seek this service?

#### Background information

Abortion in Malawi is legally restricted to circumstances where the pregnancy puts the life of the pregnant woman in danger.<sup>10</sup> In the East Africa region, where Malawi is located, 18 percent of

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<sup>9</sup> Human Rights Committee, *General Comment 28: Equality of Rights Between Men and Women (Art. 3)* (68<sup>th</sup> Sess., 2000), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, at 168, par. 20, U.N. Doc. HRI/GEN/1/Rev. 5 (2001).

<sup>10</sup> Republic of Malawi Penal Code. Sections 149-151, as read with Section 243.



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maternal deaths are attributable to unsafe abortion and Malawi has one of the highest maternal mortality rates in the world.<sup>11</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>12</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 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>13</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>14</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>15</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 life found in **Article 6** of the Covenant. 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. **Article 2(1)** requires State Parties to undertake to respect and ensure to all individuals the rights of the Covenant without distinction, including by sex. Abortion restrictions discriminate against women by criminalizing a health care procedure that only women need, and the impact of these

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<sup>11</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>12</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.

<sup>13</sup> WHO, *note 10*.

<sup>14</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>15</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.



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restrictions are primarily felt by women who must carry the burden of an unwanted pregnancy or else risk her life and health by seeking an unsafe abortion.

The current steps the government of Malawi has taken should result in removal of legal restrictions on abortion and ensure that services are safe and accessible to all women who need them, and the government should ensure that this work continues to progress in a timely manner.

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

Very sincerely,

A handwritten signature in black ink, appearing to read 'Chrispine', written over a light blue horizontal line.

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)