

Oct. 9, 2017

Committee on the Convention Against Torture (CAT)
Office of the High Commissioners for Human Rights
Geneva, Switzerland

RE: Supplementary information for State Party review of Rwanda, scheduled for review by the CAT committee during its 62nd Session.

This shadow letter is intended to present to the Committee Against Torture (CAT) additional information for its review of Rwanda during the 62nd session. Ipas Africa Alliance is a non-governmental organization (NGO) based in Kenya and working across Africa to increase women's ability to exercise their sexual and reproductive rights and to reduce deaths and injuries from unsafe abortion. Ipas believes that every woman has the right to the highest attainable standard of health, to safe reproductive choices and to high quality of care. With this letter we would like to draw your attention to Rwanda's violation of women's protection under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention) as a result of Rwanda's highly restrictive abortion laws.

Despite the restrictive abortion laws, there were an estimate 60,000¹ induced abortions performed in Rwanda in 2009, with an annual rate of 25 abortions per 1000 women. Following amendments to the Penal Code in 2012, women in Rwanda can access abortion under certain circumstances, that include rape, incest or forced marriage and in cases of risk to the health of the woman or the fetus. The law however requires for women seeking abortion to get judicial authorization and in the event of seeking for abortion for health reasons, an approval must be obtained from two doctors. These legal and medical barriers make it nearly impossible for women to access safe, legal abortion services in the country. Women who violate Rwanda's abortion law are liable to up to 3 years imprisonment and fine equivalent of USD \$300 (63percent of Rwandans earn under \$1.25 a day)².

Article 1 of the Convention defines torture as including those acts inflicted for reasons based on discrimination of any kind, and which cause severe physical or mental suffering, committed with the consent or acquiescence of a public official.

¹Gutmacher Institute, Abortion in Rwanda; Fact Sheet, April 2013

² Organic Law instituting the penal code, N° 01/2012/OL of 02/05/2012, Official Gazette n° Special of 14 June 2012, Chapter III, Section 5, Articles 162–68 available at

http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_Rwanda_Abortion_Law.pdf

In several sets of Concluding Observations, the CAT has expressed concern regarding high rates of maternal mortality and identified the link between these deaths and unsafe abortion. The Committee noted to one State party that “medical personnel employed by the State den[y] the medical treatment required to ensure that pregnant women do not resort to illegal abortions that put their lives at risk ... Current legislation severely restricts access to voluntary abortion ... leading to grave consequences, including the unnecessary deaths of women.”³

The CAT has regularly found that the denial of access to post-abortion care may constitute torture or ill-treatment. This Committee noted particular concern in one case in which health providers coerced women who sought life-saving treatment after illegal abortions to provide information on who provided the abortion.⁴ In that case, the Committee urged the state to eliminate the practice of extracting confessions for purposes of prosecution from women seeking emergency medical care as a result of illegal abortion and called for remedial measures, including nullifying convictions not found to be in conformity with the Convention.⁵ The Committee has also urged that States must ensure immediate and unconditional treatment for persons seeking emergency care, in compliance with World Health Organization guidelines.⁶

The CAT has found that complete bans on abortion may constitute torture or ill-treatment on their face, as they place women at risk of preventable maternal mortality. In its 2009 review of El Salvador, the Committee recommended that the State party take measures to prevent torture and ill-treatment by “providing the required medical treatment, by strengthening family planning programmes, and by offering better access to information and reproductive health services, including for adolescents.”⁷ The Committee has also expressed concern over laws criminalizing abortion in cases of rape, incest, or when the fetus is not viable—noting that such laws mean that women “are constantly reminded of the violation committed against them, which causes serious traumatic stress and carries a risk of long-lasting psychological problems.”⁸ This Committee has noted with concern the existence of abuses against women in reproductive health facilities, finding that they may also constitute torture or ill-treatment. In its 2013 review of Kenya, the CAT expressed concern about “the on-going practice of post-delivery detention of women unable to pay their medical bills, including in private health facilities,” and urged the State party to strengthen efforts to end these practices as a means to preventing torture or ill-treatment.⁹

Numerous additional international human rights bodies have expressed concern over illegal and unsafe abortion. The Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee on the Rights of the Child (CRC), the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights (CESCR) have explicitly recognized the

³ See CAT Committee, *Concluding Observations, Peru*, par. 23, U.N. Doc. CAT/C/PER/4 (2006).

⁴ See CAT Committee, *Concluding Observations, Chile*, par. 4(h), U.N. Doc. CAT/CR/32/5 (2004).

⁵ *Id.* at par. 7(m).

⁶ *Id.*

⁷ CAT, *Concluding Observations, El Salvador*, par. 23, U.N. Doc. CAT/C/SLV/CO/2 (2009).

⁸ CAT, *Concluding Observations, Paraguay*, par. 23, U.N. Doc. CAT/C/PRY/CO/4-6 (2011). See also, CAT, *Concluding Observations, Nicaragua*, par. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009) (noting that denial of access to abortion in cases of sexual violence can cause serious traumatic stress and risk of long-lasting psychological problems such as anxiety and depression, recommending that abortion be legal in cases of sexual violence).

⁹ CAT, *Concluding Observations, Kenya*, par. 27, U.N. Doc. CAT/C/KEN/CO/2 (2013).

connection between illegal, unsafe abortion and high rates of maternal mortality, and each of these Committees have requested on numerous occasions that State parties review legislation criminalizing abortion.¹⁰

As the authority on the right to health, the CESCR has elaborated on this right in its **General Comment 14**, specifying that states must implement measures to “(i)mprove child and maternal health, sexual and reproductive health care services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as resources necessary to act on that information.”¹¹ Furthermore, in its most recent **General Comment 22** on the right to sexual and reproductive health under article 12, CESCR stated that the “right to sexual and reproductive health is an integral part of the right to health enshrined in article 12” and full enjoyment of this right is often limited by a number of legal, procedural, practical, and social barriers.¹² Specific to abortion restrictions, the General Comment notes that denial of abortion services often contributes to increased maternal mortality and morbidity, constituting a violation of the right to life or security, and sometimes amounting to torture or cruel, inhuman or degrading treatment.¹³ The CESCR General Comment 22 also calls for the repeal or reform of discriminatory laws, policies and practices in the area of sexual and reproductive health, *including liberalization of restrictive abortion laws*, as well as the removal of all barriers that interfere with access by women to comprehensive sexual and reproductive health services, goods, education and information.¹⁴

As a party to CAT, Rwanda has an obligation to prevent all forms of ill-treatment and torture within its jurisdiction¹⁵. Rwanda’s restrictive abortions laws violate **Articles 2 (1) and 16 (1)** of the Convention which *inter alia* require each state party to take effective legislative, administrative and judicial measures to prevent the acts of torture. Torture is defined as “any act causing severe pain of suffering, whether Physical or mental” intentionally inflicted for purposes of obtaining information, punishment, intimidation, “or for any reason based on discrimination of any kind”¹⁶. In **General Comment 2** the Committee recognized that the States’ obligation to “prevent torture and inhuman or degrading treatment or punishment/ ill-treatment, are indivisible, interdependent and interrelated”¹⁷.¹⁸ That this obligation to prevent ill-treatment, “overlaps with and is largely congruent with the obligation to prevent torture”.

Background of Rwanda abortion law

¹⁰ Center for Reproductive Rights, *Abortion and Human Rights: Government Duties to Ease Restrictions and Ensure Access to Safe Services* (2008).

¹¹ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (22nd Sess., 2000), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, at 90, par. 14, U.N. Doc. HRI/GEN/1/Rev.5 (2001).

¹² CESCR, *General Comment 22: The Right to Sexual and Reproductive Health (article 12 of the International Covenant on Economic, Social and Cultural Rights)* paras. 1-2 (May, 2016).

¹³ *Id.* at par. 12.

¹⁴ *Id.* at par. 28.

¹⁵ Comm. Against Torture, *General Comment No. 2 Implementation of Article 2 by State Parties*, paras 1,16

¹⁶ Guttmacher Institute, *Abortion in Rwanda; Fact Sheet*, April 2013

¹⁷ Comm. Against Torture, *General Comment No. 2 Implementation of Article 2 by State Parties*, para 3

¹⁸ Comm. Against Torture, *General Comment No. 2 Implementation of Article 2 by State Parties*, paras 3

Before 1977 the abortion law in Rwanda was based on the 1940 Penal Code of the Belgian Congo¹⁹, that made abortion illegal with the only exception as to the save the life of the pregnant woman. In 1977, Rwanda enacted a penal code that furthered the exceptions to abortion. This law prohibited abortion but for when the continuance of the pregnancy posed a serious danger the health of the pregnant woman. The 1977 law further included administrative barriers, that required woman in need of abortion services to get a second medical opinion, who must be a State physician, or a physician approved by the State, in a public or a private hospital also approved by the State to provide the services. More recently however in June 2012, Rwanda amended the Penal Code, and Article 162 on criminal abortion further expanded the exceptions for performing an abortion to include reasons of rape, incest, forced marriage and when the pregnancy is a risk to the health of the woman and the fetus.

Therefore, for a woman to obtain a legal abortion for the reasons above, she requires certification from a “competent Court”, that the pregnancy resulted from rape, incest or forced marriage. While to obtain an abortion for the reason of health, the woman is required to get permission from two doctors., and one must make a “written report in three copies”. In Rwanda, as self-induced abortion is considered illegal, thus for the abortion to be legal, it must be performed by a doctor, yet there is only one doctor for every 17000 people living in Rwanda.²⁰

We urge this Committee to recommend that the government decriminalize abortion to address the problem of unsafe abortion. We also urge this Committee to acknowledge that any reformed law on abortion should not contain barriers that will hinder access to safe abortion for women in Rwanda.

Consequences of Unsafe abortion in Rwanda

About half of all abortions performed in Rwanda are performed by untrained persons; an estimated 34% are performed by traditional healers, and 17% are self-induced abortions.²¹ Whereas the rate of complications may differ depending on where the abortion was performed, the complication rate of unsafe abortions is high, rating between 54–55% among poor women in both rural and urban areas, with 24000 women and girls suffering complications requiring emergency medical treatment.²² This dire situation is further compounded by the cultural and religious stigma against abortion forcing women to not only risk their health but also their lives in an attempt to terminate unwanted/unintended pregnancies. Further, most women seeking safe, legal abortion services in Rwanda are unable to meet the legal and medical requirements and thus further risk imprisonment.²³ Either due to lack of awareness on the law, or due to lack of

¹⁹ Abortion in Rwanda; Rwanda: Conditioned Legalization of Abortion Divides Society; East African Center for Law and Justice; <http://eaclj.org/about-us/13-the-christian-medical-fellowship-abortion-.html>

²⁰ Ministry of Health, Human Resources for Health Policy, Kigali Rwanda: Ministry of Health 2012.

²¹ Guttmacher Institute, Abortion in Rwanda; Fact Sheet, April 2013, paras 6,7

²² Guttmacher Institute, Abortion in Rwanda; Fact Sheet, April 2013, paras 6,7

²³ IPAS, When Abortion is a crime: Rwanda (2015) available at <http://glihdrwanda.org/wp-content/uploads/2016/10/WHEN-ABORTIONIS-A-CRIME-IN-RWANDA.pdf>

access to money or other resources that would grant access to either a judge or two doctors, women increasingly resort to unsafe abortion.

In its concluding observations to Nicaragua, this Committee noted with concern that in the event of rape, a woman who seeks for abortion services, such a situation where safe, legal services would largely be inaccessible; presents “constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression.”²⁴ The Committee further noted that women who, for the reasons mentioned above, seek an abortion face the risk of being penalized for doing so.”

Notably, criminalizing a health service that only women need is a violation of women’s right to health and protection from non-discrimination.²⁵ In its **General Comment 2** this Committee states that “the principle of non- discrimination is a basic and general principle of the protection of human rights and fundamental to the interpretation and application of the Convention.”²⁶ The Committee further notes that “non-discrimination is included within the definition of torture itself, when the Convention explicitly prohibits specifies acts when carried out “*for any reason based on discrimination of any kind...*”, adding that the mental abuse is an important factor in determining whether an act constitutes torture. The CEDAW Committee further elaborated on this issue when it examined the discriminatory effects of legislation criminalizing abortion, noting that “it is discriminatory for a State Party to refuse to provide legally for the performance of certain health services for women.”²⁷

We commendably note some attempts to improve the law by reducing the prison sentence from 2-5 years to 1-3 years.²⁸ However, women should never be criminalized for seeking health care. Between July 2013 and April 2014 alone, 300 women were imprisoned for illegal abortions.²⁹ Whereas the Rwanda State report does address the issue of women imprisoned for illegal abortions, the Committee in its **General Comment 2** notes that “state reports frequently lack specific and sufficient information on the implementation of the Convention with respect to women”, further emphasizing that “gender is a key factor.”³⁰ That “the contexts in which females are at risk include the deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes.” This Committee requested that the government of Rwanda include information in its report on

²⁴ Comm. Against Torture, 42nd Session, Consideration of Reports Submitted by States Parties Under Article 19 Of The Convention, Concluding Observations of The Committee Against Torture, Nicaragua para 16

²⁵ Comm. Against Torture, General Comment No. 2 Implementation of Article 2 by State Parties, para, 20

²⁶ Comm. Against Torture, General Comment No. 2 Implementation of Article 2 by State Parties, para, 20

²⁷ Comm. On the Elimination of Discrimination Against Women, *General Recommendation 24: Women and Health (20th Session 1999)*, in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*. at 24 para. 11

²⁸ The Penal Code (2012), Government Gazette -REPUBLIC OF RWANDA. Arts 165- 166

²⁹ IPAS, *When Abortion is a crime: Rwanda* (2015) available at <http://glihdrwanda.org/wp-content/uploads/2016/10/WHEN-ABORTIONIS-A-CRIME-IN-RWANDA.pdf>

³⁰ Comm. Against Torture, General Comment No. 2 Implementation of Article 2 by State Parties, para, 22; Committee against Torture; Consideration of reports submitted by States parties under article 19 of the Convention; Second periodic reports of States parties due in 2016; Rwanda. Submitted 9th August 2016; President Kagame pardon girls arrested for abortion. Can be accessed at <http://www.irwanda24.com/?p=10495>

addressing barriers to abortion care, especially in cases of unwanted pregnancy due to rape, incest, or forced marriage, or due to the multiple provider approval requirement. **The government has failed to provide an update on progress in ensuring access to safe, legal abortion services. We urge the Committee to request an update and commitment from the government on addressing these barriers.**

We commend Rwanda for implementing the Committee's recommendation to adopt the definition of torture in conformity with the convention, as well as recent actions by the head of state to pardon prison sentence for women convicted for abortion related charges.³¹

We note, however, that these developments need to be made effective by "legislative administrative and judicial measures" that ensure that women in Rwanda can access safe, legal abortion services without fear of imprisonment, abortion services. **We urge this Committee to recommend that the government institutionalize and strengthen its commitments to realize the obligations under the Convention.**

The Human Rights Committee has addressed this issue in its concluding observations to Poland where the Committee reiterates its concern about the high number of clandestine abortions that may put the lives and health of women at risk, and the significant procedural and practical obstacles faced by women to access safe legal abortion.³² That Committee recommended ensuring that legislation does not prompt women to resort to clandestine abortions that put their lives and health at risk, and that the State should further refrain from adopting any legislative reform that would amount to a retrogression of already restrictive legislation on women's access to safe and legal abortion.

Restrictive abortion laws in Rwanda limit access to safe legal abortion, violating the rights of women and girls by exposing them to unsafe procedures that can be excruciatingly painful and traumatic, leaving them with lifelong injuries and often deadly consequences. These women turn to unsafe abortion, with fear of incarceration, even where they may meet the legal requirements for a safe abortion.

We request this Committee pose the following questions to the State of Rwanda during the 62nd Session of CAT:

1. What steps will the State take to release women and girls who are imprisoned as a result of the punitive abortion laws?
2. What steps will the state take to disseminate information on the law on abortion and the grounds upon which women can access safe, legal abortion to all stakeholders, including law enforcement, doctors, nurses and the judiciary?
3. What steps will the State take to amend the abortion law and remove legal and procedural barriers that are currently impeding women's ability to access safe abortion services?

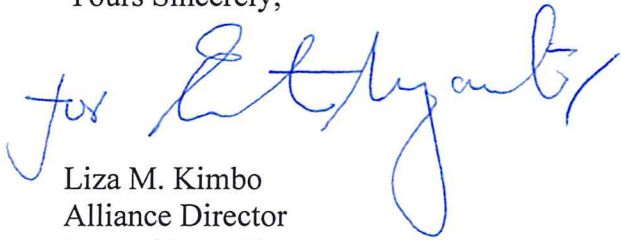
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³² Human Rights Committee; Concluding observations on the seventh periodic report of Poland*; The Committee considered the seventh periodic report submitted by Poland (CCPR/C/POL/7) at its 3306th and 3308th meetings (see CCPR/C/SR.3306 and 3308), held on 17 and 18 October 2016.

The government of Rwanda should be strongly urged to ensure that the domestic laws are in conformity with the CAT and thus ensure protection of vulnerable populations, especially women and girls, from situations that threaten, their rights to life, health and liberty.

We hope that the information provided in this letter will be useful to the Committee during its review of Rwanda's compliance with the Convention during its 62nd session.

Yours Sincerely,



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