



Health. Access. Rights.

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20 April 2016

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

RE: Submission to the Office of the High Commissioner for Human Rights on the use of the technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality

Dear Council Members:

The Government of Malawi is currently working toward reforming its abortion law in order to reduce preventable maternal morbidity and mortality, in accordance with the Human Rights Council's technical guidance. This submission by Ipas Malawi is intended to report on Malawi's progress in using a human rights-based approach to reduce preventable maternal morbidity and mortality from unsafe abortion.

Currently in Malawi, abortion is only legal to save the life of a pregnant woman. Due to the restrictive law, safe abortion is largely inaccessible in Malawi. 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.¹

In line with the technical guidelines at para. 30, which states that "laws and policies that impede access to sexual and reproductive health services must be changed, including laws criminalizing certain services only needed by women," the Malawi government established the special Law Commission on the Review of the Law on Abortion ("Law Commission") in 2013. **The Law Commission was charged with reviewing the law on abortion and ensuring conformity of this law with the Malawi Constitution, government policies, and applicable international laws.**² Specifically, the Law Commission's terms of reference included consideration of international and regional human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the African Charter on Human and People's Rights (ACHPR) and the Protocol to the ACHPR on the Rights of Women in Africa (Maputo Protocol).³

¹ Ministry of Health of Malawi, *Abortion in Malawi: results of a study of incidence and magnitude of complications due to unsafe abortion* (May, 2011).

² Special Law Commission, *Report of the Law Commission on the Review of the Law on Abortion*, p. 10 (June, 2015).

³ *Id.*



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In analyzing the need to reform the abortion law, the Law Commission recognized rights entrenched in the Malawi Constitution including the rights to life, dignity, equality and non-discrimination, and freedom from torture and degrading treatment.⁴ **In its findings, the Law Commission recognized that these human rights principles “have the effect of binding the State to the duty of protecting, respecting, and fulfilling the reproductive health rights of women, including providing access to safe abortion.”**⁵ This is in conformity with the technical guidance which states at para. 30 that “legal recognition of sexual and reproductive health rights, equality between men and women and health as a human right should be accompanied by regulations providing for women’s access to services.”

The Law Commission released its final report and a draft revised abortion bill that would make abortion legal in cases where the continued pregnancy would endanger the life of the pregnant women, where abortion is necessary to prevent injury to the physical or mental health of the pregnant woman, and in cases of rape, incest, or fetal impairment. The highly consultative process used by the Law Commission, along with the integration of key human rights principles into the recommendations, have resulted in a revised abortion bill reflecting a human rights-based approach to reducing maternal mortality and morbidity from unsafe abortion, in accordance with the technical guidance. Ipas Malawi continues to work with the government and civil society to ensure that barriers in the draft bill are removed, and to ensure that abortion does not continue to be criminalized for women who need it.

The Government of Malawi is continuing to work toward the formal adoption of a reformed law to help ensure the women of Malawi can access sexual and reproductive health services, including safe abortion care, unimpeded and without being criminalized or risking their health and lives.

In addition to law reform, the Ministry of Health has supported conceptualizing comprehensive reproductive health care policies in accordance with the 1994 International Conference on Population and Development in Cairo (ICPD), in accordance with paras. 26-28, and 35 regarding the development of a national public health strategy and plan of action. **In 2009, the Government of Malawi adopted the Sexual and Reproductive Health and Rights (SRHR) Policy, with a goal of providing a framework for the accessible, acceptable, and affordable comprehensive SRHR services to all women, men, and young people.** Specific goals of this policy included empowering and enabling women and girls to have sexual and reproductive health choices and supporting informed decision making. These principles are in accordance with para. 35 of the technical guidance.

In addition, the President of Malawi is expecting to launch a National Human Rights Action plan, which includes recognition of the need to address barriers to comprehensive SRHR services, as well as a commitment by the Government to adopt a revised law on abortion.

⁴ *Id.* at p. 15, referencing Sections 16, 19, and 20 of the Malawi Constitution.

⁵ *Id.*



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In addition to this progress at the national level, there have been important advances recognizing the human right to abortion at the Africa regional level. On 18th January 2016, the African Commission on Human and People's Rights (ACHPR) through the mechanism of the Special Rapporteur on the Rights of Women in Africa officially launched the Campaign for the Decriminalization of Abortion in Africa in Addis Ababa, Ethiopia. This campaign presents an opportunity for reflection of the reproductive health challenges women and girls continue to face in Africa, seek support and action towards decriminalization of abortion by repealing of laws that conflict with article 14 of Maputo Protocol and for African Union Member States to utilize General Comment 2 as guidance to ensure implementation and accountability for reproductive health and rights of African women and girls. This effort will be an important opportunity for Malawi government to incorporate and find support in the regional human rights mechanisms supporting decriminalization of abortion.

The progress made towards reforming the law on abortion in Malawi, as well as reflecting a human rights-based approach in national level policies and action plans, is an express recognition by the Government of Malawi of the human rights principles and standards reflected in the Malawi Constitution and in international human rights instruments. We continue to work towards the achievement of these important human rights principles, and the technical guidance prepared by the Human Rights Council will continue to be an important resource for this work.

Sincerely,

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

Chrispine Sibande

Country Director
Ipas Malawi

Enclosed: Special Law Commission, *Report of the Law Commission on the Review of the Law on Abortion*, p. 10 (June, 2015).