



Health. Access. Rights.

MALAWI OFFICE: Sonali Building, Private Bag 20 | Lilongwe, Malawi  
info@ipas.org | www.ipas.org

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

RE: NGO information for Malawi, scheduled for Universal Periodic Review by the Human Rights Council during its 22<sup>nd</sup> session in May 2015

Dear Committee Members:

Please find below information that we would like to see included in the OHCHR's summary of stakeholders' information to be provided for consideration of the Human Rights Council's Universal Periodic Review for Malawi. If only portions of this text can be included, we would be most appreciative if you could include the recommendations highlighted in bold-face type.

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 its international treaty obligations.

### Introduction

1. International human rights treaties require that governments take steps to alleviate high rates of maternal mortality by working to address unsafe abortion. Abortion in Malawi is legally restricted to circumstances where the pregnancy puts the life of the pregnant woman in danger.<sup>1</sup> In the East 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>2</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>3</sup>

2. 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

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<sup>1</sup> Republic of Malawi Penal Code. Sections 149-151, as read with Section 243.

<sup>2</sup> World Health Organization (2011). *Unsafe abortion: Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008*, 6th edition. Geneva: World Health Organization.

<sup>3</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.

abortion in countries with restrictive laws, but many others suffer long-term health consequences, including chronic pain and sterility.<sup>4</sup>

3. Ipas Malawi submits the following information as part of the Universal Periodic Review mechanism with regard to Malawi on behalf of the Coalition on the Prevention of Unsafe Abortion (COPUA). COPUA is a group of civil society organizations that have 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.

4. The restrictive law in Malawi violates the International Covenant on Civil and Political Rights (ICCPR) provisions related to access to safe abortion, including Article 2(1) (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 Human Rights Committee (HRCtee) has criticized legislation that criminalizes or severely restricts access to abortion in several sets of concluding observations.<sup>5</sup> The HRCtee 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>6</sup> That Committee has also acknowledged that restrictive abortion laws have a discriminatory and disproportionate impact on poor, rural women.<sup>7</sup>

5. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) also protects women's right to health, requiring in Article 12 that states eliminate discrimination against women in the area of health care, including reproductive health care. Article 16 also protects women's right to decide on the number and spacing of their children and to have access to the information and means to do so. This CEDAW Committee's General Recommendation 24 describes the duty of States under that treaty such that they must "take appropriate legislative, judicial, administrative, budgetary, economic and other measures ... to ensure that women realize their rights to health care."<sup>8</sup>

6. Malawi is also signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which requires at Article 12 protection of the right to the highest attainable standard of physical and mental health. The CESCR Committee has repeatedly expressed deep concern over the relationship between high rates of maternal mortality and illegal, unsafe,

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<sup>4</sup> WHO, *note 11*.

<sup>5</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>6</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 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>7</sup> See e.g., **Argentina**, 03/11/2000, U.N. Doc. CCPR/CO/70/ARG, par. 14.

<sup>8</sup> CEDAW Committee, *General Recommendation 24 on Women and Health, article 12*, para. 17, U.N. Doc.A/54/38/Rev.1 (1999) [hereinafter *General Recommendation 24, Women and Health*].

clandestine abortions.<sup>9</sup> That Committee has also said in General Comment 14 that “[t]he right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.”<sup>10</sup>

7. The Convention on the Rights of the Child (CRC) also requires the government of Malawi to uphold the highest attainable standard of health for children and ensure proper health care for mothers, children, and families (Art. 24). The CRC Committee has on several occasions made the link between illegal, unsafe abortion and high rates of maternal mortality, as well as expressed concern over the impact of punitive legislation on maternal mortality rates.<sup>11</sup>

### Unsafe Abortion in Malawi

8. 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>12</sup>

9. 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>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.

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<sup>9</sup> See e.g., **Cameroon**, 08/12/99, U.N. Doc. E/C. 12/1Add.40, par. 25; **Mauritius**, 31/05/94, U.N. Doc. E/C. 12/1994/8, par. 15; **Senegal**, 24/09/2001, U.N. Doc. E/C.12/1/Add.62, par. 26.

<sup>10</sup> Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (22<sup>nd</sup> Sess., 2000), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, at par. 8, U.N. Doc. HRI/GEN/1/Rev.5 (2001).

<sup>11</sup> See, e.g. **Chad** 24/08/99, U.N. Doc. CRC/C/15/Add. 107, par. 30; **Colombia**, 16/10/2000, U.N. Doc. CRC/C/15/Add. 137, par. 48; **Guatemala**, 09/07/2001, U.N. Doc. CRC/C/15/Add.154, par. 40.

<sup>12</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>13</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>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.

10. 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 the Council 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 the Council to acknowledge that the revised abortion law should not contain barriers that will hinder access to safe abortion for women in Malawi.**

11. **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>16</sup> As international human rights bodies have previously recognized, access to safe abortion services for rural women is already compromised by a restrictive law.<sup>17</sup> The WHO estimates that there are approximately two medical doctors for every 100,000 people living in Malawi.<sup>18</sup> Given this limited supply of doctors in the country, a provision limiting provider type would mean that 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.

12. 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.**

13. **A draft bill should ensure that adolescent girls are able to consent to confidential abortion care, without requirements of parental authorization.** International bodies have also explicitly linked the right to privacy in accessing abortion care to women's equality.<sup>19</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.

14. Restrictions on access to abortion violate a woman's right to life found in Article 6 of the ICCPR. 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.

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<sup>16</sup> World Health Organization. 2012. Safe Abortion: Technical and Policy Guidance for Health Systems. Second Edition. Geneva: WHO.

<sup>17</sup> See, e.g. **Bangladesh**, 12/08/97, U.N. Doc. A/52/38/Rev.1, Part II, par. 438 (CEDAW); **Ecuador**, 18/08/98, U.N. Doc. CCPR/C/79/Add. 92, par. 11 (HRCtee).

<sup>18</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).


<sup>19</sup> See, e.g. 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).

15. 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. ICCPR and CEDAW require State Parties to undertake to respect and ensure to all individuals the rights of the treaties 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 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.

### Conclusion

16. 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 the Human Rights Council's review of the State of Malawi's compliance with international human rights standards.

Very sincerely,

A handwritten signature in black ink, appearing to read 'Chrispine Sibande', written in a cursive style.

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

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